



May 30, 2018

VIA REGULAR MAIL
Kent L. Jones, State Engineer
Utah Division of Water Rights
2594 W. North Temple, Suite 220
Salt Lake City, UT 84114-6300

ATTORNEYS AT LAW
Roger P. Christensen
William J. Hansen
Mary C. Corporon †
Phillip S. Ferguson
Karra J. Porter
David C. Richards
Scott T. Evans**
Rebecca L. Hill
Ruth A. Shapiro
George W. Burbidge II
Geoffrey C. Haslam
Nathan D. Alder
Stephen D. Kelson
Scot A. Boyd
Heather L. Thuet
Sarah E. Spencer †
Tyler V. Snow
Kristen C. Kiburtz
Jacob W. Macfarlane
Tanner S. Lenart
Jeremy S. Stuart
Bryson R. Brown
J.D. Lauritzen
Crystal L. Orgill
Erika M. Larsen

cc:
Alan Matheson
Utah Division of Environmental Quality
195 North 1950 West
Salt Lake City, UT 84114

RECEIVED
JUN 04 2018
WATER RIGHTS
SALT LAKE

Re: Legal Notice of Illegal Water Use in Emigration Canyon, Salt Lake County, UTAH & Unapproved Repair of the Brigham Fork and Upper Freeze Creek Wells by Emigration Improvement District

Dear Mr. Jones:

Thank-you for your correspondence from March 5, 2018 whereby you determined that the Utah State Division of Water Rights will no longer accept temporary change applications filed by Emigration Improvement District ("EID" AKA ECID) for the continued operation of the Brigham Fork (point-of-diversion Nr. 18) and the Upper Freeze Creek Wells (point-of-diversion Nr. 28) designated under temporary change application "t43182" (57-7796) after January 16, 2019.

In that March 5 correspondence, there is no mention of the substantives issues identified in the request for reconsideration specifically related to the delivery of water service to more than forty (40) homes for which there appears to be no corresponding water rights. Furthermore it appears that you did not intend to reconsider the temporary change application despite evidence that we provided that existing water rights would be (and have been) impaired by the temporary change request filed by EID.

In regard to the latter, Utah Code §73-3-8 requires that the State Engineer "shall" investigate all temporary change applications, and "shall" deny the temporary change application if the state engineer finds there is "reason to believe the change would impair existing rights" (emphasis mine).

Over a year ago, on April 20, 2017, the Emigration Canyon Home Owners Association ("ECHO-Association") provided information regarding the scientific analysis of the hydrology of Emigration Canyon, which conclusively documented that the aforementioned large-diameter commercial wells operated by EID would impair existing and senior water rights held in Emigration Canyon "with almost certainty" and that "any

Special Counsel:
Dale J. Lambert

**Also licensed in Nevada
† Also licensed in Colorado
*Also licensed in Idaho

E.R. Christensen (1886-1979)
Jay E. Jensen (1928-2003)
Ray R. Christensen (1922-2014)

reduction in stream flow will increase the concentration of bacteria in the stream and increase the opportunity for bacteria to contaminate existing domestic water supplies” (emphasis added) (see excerpt 1966 Master Thesis entitled “Ground-Water Hydrology of Emigration Canyon, Salt Lake County, Utah” by Jack Arnold Barnett available at https://echo-association.com/?page_id=220).

Since our last correspondence, multiple Emigration Canyon residents with superior water shares to EID have reported water quantity and quality impairment directly to your office as correctly predicted by Mr. Jack Barnett, and the ECHO-Association has acquired evidence that **thirty (30)** private wells have been impaired since October 2003 and 2013 when the Brigham Fork Well and the Upper Freeze Creek Well commenced operation respectively (see <https://waterrights.utah.gov/cgi-bin/docview.exe?Folder=57-7796&Key=Sort+by+Date>; see also <https://echo-association.com>). Moreover, in April 2015, expert hydrologist Dr. Hansen revealed that EID had failed to maintain minimum stream flow of the Emigration Canyon Stream in **8** of the past **14 years** in violation of EID’s own Water Conservation and Management Plan, adopted under federal funding guidelines established under the Safe Drinking Water Act of 1974 (see https://echo-association.com/?page_id=1211).

Further, as to what appears to be unapproved use of water, documentation shows that EID publicly purports to provide water service to **278** domestic units, although your office approved water use for *only* **233** domestic units.

In addition to the unapproved **forty-five (45)** domestic units, we have since learned that EID has issued six (6) water letters for new construction for a total of **fifty-one (51)** domestic units all drawing water from the Canyon aquifer, without any approved right to do so.

Utah Administrative Rules provide clear guidance in the enforcement of water rights in Emigration Canyon. Specifically, “Administrative Penalties and Administrative Costs” under R655-14-12 provides:

(1) Pursuant to Sections 73-2-1 and 73-2-25 and these rules, the Enforcement Engineer *shall assess* the initial administrative penalties, which may include an administrative fine, a requirement to replace water and the reimbursement of enforcement costs to which the respondent may be subject for any violation as set forth in Subsection 73-2-25(2)(a).

...

(3) *Each day* a violation is repeated, continued or remains in place, constitutes a separate violation (emphasis added).

It is our understanding that the State Engineer lacks authority to either grant approval for EID’s continued operation of the Brigham Fork and Upper Freeze Creek Wells or to allow water use at **fifty-one (51)** domestic units in Emigration Canyon *without a valid water right*.

As such, we request that your office and/or the Utah Department of Environmental Quality (“*DEQ*”) immediately investigate and ascertain whether valid water rights exist for the point-of-uses (attached as Exhibit A) as identified by the United States postal addresses.

Furthermore, EID recently reported that it has commenced repairs to both the Brigham Fork and Upper Freeze Creek Wells (*see* EID Trustee Agenda from April and May 10, 2018 available at <https://www.ecid.org>). Review of all applications filed under #57-7796 does not reveal a valid repair application filed by EID since July 31, 2017 (*see Exhibits B, C and D*).

Under Utah Administrative Code “[t]he drilling, construction, deepening, repair, renovation, replacement, cleaning, development, or abandonment of the following types of wells are regulated by these administrative rules and the work *must be permitted by the Utah Division of Water Rights ...*” (emphasis added).

Because multiple Emigration Canyon residents have reported impairment of senior water shares (*see* impairment letters available at https://echo-association.com/?page_id=214), severe impairment of the Emigration Canyon Stream has been documented by Dr. Hansen, and EID’s legal right to operate the Brigham Fork and Upper Freeze Creek Wells will automatically expire in less than eight (8) months, we believe it to be appropriate that well repairs must cease until the DDW receives and approves requisite repair applications properly filed by EID.

We hereby reserve the right to protest any well repair and extension request or change application filed by EID.

Finally, please note that the website maintained by EID continues to maintain that EID “holds one of the most senior water rights in the canyon” whereby for “specific information regarding property water right, water right priorities, or enforcement of water rights issues, contact the State Engineer’s office, Division of Water Rights” (*see* <https://www.ecid.org/price-list>). This information is demonstrably false (*see* <https://echo-association.com/wp-content/uploads/Riley-Report-long-redacted.pdf>).

We have not seen any evidence that your office has taken action to require the removal of these false and misleading statements in reference to the operation of large-diameter commercial wells by a political subdivision of the State of Utah.

As several Emigration Canyon Homes Owners have reported both quality and quantity impairment to their water rights during the spring-runoff months, which is traditionally the *highest flows* of the Emigration Canyon Stream (*see* Dr. Hansen Report available at https://echo-association.com/?page_id=1211), and many more private wells may be subject to bacterial contamination from decreased stream flows during late summer and autumn months, we request that your office make these investigations a priority.

Although not required, I have also forward a copy of this correspondence to the property owners of record listed in Exhibit A.

Please refer any questions regarding this legal notice of illegal water use at forty-nine (49) locations and unpermitted repair of the Brigham Fork and Upper Freeze Creek Wells directly to us.

Sincerely,

CHRISTENSEN & JENSEN P.C.


Scot A. Boyd

Enclosures: a/s

cc: Alan Matheson
Utah Division of Environmental Quality
195 North 1950 West, Salt Lake City, UT 84114

R. Steve Creamer
6451 E BRIGHAM FORK CIR
Salt Lake City, UT 84108

R. Steve Creamer
PO BOX 581188
Salt Lake City, UT 84158

Emigration Canyon Property Owner
(2600, 1956 & 1475 N PINECREST CYN RD)
R E A A M S, LLC; ET AL
c/o CAROLYN MEYER
2820 HOLIDAY RANCH LOOP
Park City, UT 84060

CHRISTINE J HUGHES
5754 EMIGRATION CANYON RD
Salt Lake City, UT 84108

DAVID C & CHRISTINE G BRADFORD
130 S SKYCREST LN
Salt Lake City, UT 84108

MARK H & MARILYN W STEVENS
5335 E PIONEER FORK RD
Salt Lake City, UT 84108

BRENT R & JULIE A TIPPETS
343 N PIONEER RIDGE RD
Salt Lake City, UT 84108

FRED A & MARILYN M SMOLKA
5010 E TRAILS END WY
Salt Lake City, UT 84108

FRED A & MARILYN M SMOLKA
- OR CURRENT PROPERTY OWNER -
4990 E TRAILS END WY
Salt Lake City, UT 84108

JOHN A & KATHRYN C CHRISTENSEN
6162 E LAST CAMP CIR
Salt Lake City, UT 84108

LYNN B & MARY HALES
- OR CURRENT PROPERTY OWNER -
684 N FREEZE CREEK CIR
Salt Lake City, UT 84108

DAVID M & REBECCA P BENNION
931 N TWIN CREEK CIR
Salt Lake City, UT 84108

ERIC L & JENNIFER HAWKES
271 N MARGARETHE LN
Salt Lake City, UT 84108

JOSEPH D & LAURA T SMOLKA
46 S SMOKEY LN
Salt Lake City, UT 84108

JOHN K & MARGARET W MORRIS
5082 E QUAD RD
Salt Lake City, UT 84108

MARILYNN E PAINE
6220 E DONNER TRAIL CIR
Salt Lake City, UT 84108

DAVID P & JOHNA D BREMS
119 N YOUNG OAK RD
Salt Lake City, UT 84108

ROGER D & SUSAN Q BIRD

6161 E LAST CAMP CIR
Salt Lake City, UT 84108

MICHAEL J & LORETTA MCHUGH
6207 E DONNER TRAIL CIR
Salt Lake City, UT 84108

RICHARD MONSEN
5632 E TWIN CREEK RD
Salt Lake City, UT 84108

JEANNE L CROCKETT
652 N PIONEER FORK RD
Salt Lake City, UT 84108

PAUL H & KATHRYN W BROWN
696 N PIONEER FORK RD
Salt Lake City, UT 84108

W P JR & JOAN K RYAN
5370 E PIONEER FORK RD
Salt Lake City, UT 84108

CHRISTOPHER C CANALE & RACHEL E BAAR
5470 E PIONEER FORK RD
Salt Lake City, UT 84108

ALEXANDER & APRIL ISANI
5637 E PIONEER FORK RD
Salt Lake City, UT 84108

ROBERT & NANCY J STAGGERS
5949 E PIONEER FORK RD
Salt Lake City, UT 84108

PATRICIA A & ALBERT T VITALE
6002 E PIONEER RIDGE CIR
Salt Lake City, UT 84108

ANDREW L & JOAN M GALLEGOS
336 N MIDDLE OAK LN
Salt Lake City, UT 84108

ROBERT C STEINER
429 N OLD OAK RD
Salt Lake City, UT 84108

JOHN C & GLORIA J DAVIS
442 N OLD OAK RD
Salt Lake City, UT 84108

Emigration Canyon Property Owner
(465 N OLD OAK RD);
c/o RICHARD L MILES
2072 RIDGEHILL DR
Bountiful, UT 84010

Emigration Canon Property Owner
(585 N SNOWBERRY LN)
c/o SNOWBERRY RIDGE HOA, INC
920 E WOODOAK LN # 200
Murray, UT 84117
ROBERT G & KIMBERLY R GERLACH
6153 E LAST MONUMENT CIR
Salt Lake City, UT 84108

KAREN & MIKE NOBLE
492 N MARATHON CIR
Salt Lake City, UT 84108

STEPHEN O & JESSICA HOOK
1113 N BURNT FORK RD
Salt Lake City, UT 84108

WILLIAM M, JR. & AMY B CUTTING
1121 N BURNT FORK RD
Salt Lake City, UT 84108

STEPHANIE L FAGIN & JOHN A SILVERMAN
1112 N BURNT FORK RD
Salt Lake City, UT 84108

JEFFREY C & DEBORAH J BIERMAN
1118 N KILLYONS LN
Salt Lake City, UT 84108

DARLENE M MCNEIL
1156 N KILLYONS LN
Salt Lake City, UT 84108

STEVEN J BORST
1295 N KILLYONS LN
Salt Lake City, UT 84108

KENNETH E STRUHS
– OR CURRENT PROPERTY OWNER –
1035 PINECREST CANYON RD
Salt Lake City, UT 84108

LAWRENCE S & CYNTHIA M FURSE
2295 PINECREST CANYON RD
Salt Lake City, UT 84108

CATHERINE F GILLMOR
155 S SKYCREST LN
Salt Lake City, UT 84108

TJ N & AMANDA WINGER
120 S SKYCREST LN
Salt Lake City, UT 84108

WILLIAM FELTON
– OR CURRENT PROPERTY OWNER –
18 S DIANE HOLLOW WY
Salt Lake City, UT 84108

DOUGLAS A BRAUN
691 N FREEZE CREEK CIR
Salt Lake City, UT 84108

HILARY J SILBERMAN
5820 EMIGRATION CANYON RD
Salt Lake City, UT 84108

RICHARD N & TAMARA J BECK
971 N TWIN CREEK CIR
Salt Lake City, UT 84108

EXHIBIT A

1. 6451 E BRIGHAM FORK CIR;
2. 2600 N PINECREST CYN RD (undeveloped);
3. 1956 N PINECREST CYN RD (undeveloped);
4. 1475 N PINECREST CYN RD (undeveloped);
5. 5754 EMIGRATION CANYON RD;
6. 130 S SKYCREST LN;
7. 5335 E PIONEER FORK RD;
8. 343 N PIONEER RIDGE RD;
9. 5010 E TRAILS END WY;
10. 4990 E TRAILS END WY;
11. 6162 E LAST CAMP CIR;
12. 684 N FREEZE CREEK CIR;
13. 931 N TWIN CREEK CIR);
14. 271 N MARGARETHE LN;
15. 46 S SMOKEY LN;
16. 5082 E QUAD RD;
17. 6220 E DONNER TRAIL CIR;
18. 119 N YOUNG OAK RD;
19. 6161 E LAST CAMP CIR;
20. 6207 E DONNER TRAIL CIR;
21. 5632 E TWIN CREEK RD;
22. 652 N PIONEER FORK RD;
23. 696 N PIONEER FORK RD;
24. 5370 E PIONEER FORK RD;
25. 5470 E PIONEER FORK RD;
26. 5637 E PIONEER FORK RD;
27. 5949 E PIONEER FORK RD;
28. 6002 E PIONEER RIDGE CIR;
29. 336 N MIDDLE OAK LN;
30. 429 N OLD OAK RD;
31. 442 N OLD OAK RD;
32. 465 N OLD OAK RD;
33. 585 N SNOWBERRY LN;
34. 6153 E LAST MONUMENT CIR;
35. 492 N MARATHON CIR;
36. 1113 N BURNT FORK RD;
37. 1121 N BURNT FORK RD;
38. 1112 N BURNT FORK RD;
39. 1118 N KILLYONS LN;
40. 1156 N KILLYONS LN;
41. 1295 N KILLYONS LN;
42. 1035 PINECREST CANYON RD;
43. 2295 PINECREST CANYON RD;
44. 155 S SKYCREST LN;
45. 120 S SKYCREST LN;
46. 18 S DIANE HOLLOW WY;
47. 691 N FREEZE CREEK CIR;

- 48. 5820 EMIGRATION CANYON RD; and
- 49. 971 N TWIN CREEK CIR located in Salt Lake County, Utah.

EXHIBIT B

APPLICATION TO RENEW AN EXISTING WELL STATE OF UTAH

Pursuant to Section 73-3-28 Utah Code Annotated 1953, as amended, application is hereby made to the State Engineer to renovate an existing well based on the following showing of facts.

~~E-229104~~ 7/14/09
~~E-26735~~ E 31547

1. Water Right No.: 57-7796 Appl./Claim #: _____

2. Owner: EMIGRATION IMPROVEMENT DISTRICT
 Address: PO BOX 58945
 City: SALT LAKE CITY State: UTAH Zip Code: 84158

3. The existing well: (check those applicable)
 leaks around the outside of the casing
 casing needs repair
 requires cleaning and/or deepening

4. The Utah licensed well driller who will perform the work is: Name:
PETERSEN DRILLING - DEWEY PETERSEN

5. Explanatory: N 1280 E W 2028 from the E 1/4 Cor
Sec 28 T1N, R2E, S1

 The applicant hereby agrees, if this application is approved, to abide by the rules and regulations promulgated by the State Engineer regarding the renovation of existing wells. The applicant further agrees to and hereby authorizes the State Engineer to endorse his original claim or application to show any change resulting from this application.

Judith Smolke, MANAGER

Signature of Applicant _____ Signature of Applicant _____

***** FOR OFFICE USE ONLY *****

1. _____ Application filed and received by: _____
2. _____ Application examined by: _____
 Recommendation: _____
3. _____ Field examination by: _____
 Recommendation: _____
4. _____ Application approve/rejected subject to the following conditions: _____

5. _____ Authority granted under this application will end.

[Signature]
 Area Engineer
 For Jerry D. Olds, P.E.
 State Engineer

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 WATER RIGHTS
 SALT LAKE
 Renewal

EXHIBIT C

APPLICATION TO RENOVATE AN EXISTING WELL STATE OF UTAH

Pursuant to Section 73-3-28 Utah Code Annotated 1953, as amended, application is hereby made to the State Engineer to renovate an existing well based on the following showing of facts.

1. Water Right No.: 57-7796 Appl./Claim #: t37769
2. Owner: Emigration Improvement District c/o Barnett Intermountain Water Consulting
Address: 106 West 500 South, Ste 101
City: Bountiful State: Ut Zip Code: 84010
3. The existing well: (check those applicable)
 leaks around the outside of the casing
 casing needs repair
 requires cleaning and/or deepening
4. The Utah licensed well driller who will perform the work is: Name:
Petersen Brothers Drilling Co. - Lic. #249
5. Explanatory: The Emigration Improvement District's (EID) Brigham Fork Well located N. 1,280 ft., W. 2,028 ft. from the E4 corner of Section 28, T1N, R2E, SLB&M is in need of repair. Corrosion of the original steel casing has damaged the pump making it inoperable. The District is planning to insert a perforated PVC liner the full length of the well and replace the pump. The driller is available and waiting to begin upon approval of this application.

The applicant hereby agrees, if this application is approved, to abide by the rules and regulations promulgated by the State Engineer regarding the renovation of existing wells. The applicant further agrees to and hereby authorizes the State Engineer to endorse his original claim or application to show any change resulting from this application.

[Signature] Signature of Applicant
Signature of Applicant Signature of Applicant

- ***** FOR OFFICE USE ONLY *****
1. Application filed and received by: _____
 2. Application examined by: _____
Recommendation: _____
 3. Field examination by: _____
Recommendation: _____
 4. 10/31/11 Application approved/rejected subject to the following conditions: _____
 5. 4/30/11 Authority granted under this application will end.

RECEIVED
OCT 24 2011
TO
WATER RIGHTS
SALT LAKE

[Signature]
Area Engineer
For Kent L. Jones, P.E.
State Engineer

EXHIBIT D



GARY R. HERBERT
Governor
SPENCER J. COX
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

MICHAEL R. STYLER KENT L. JONES
Executive Director State Engineer/Division Director

July 31, 2017

EMIGRATION IMPROVEMENT DISTRICT
P. O. BOX 58945
SALT LAKE CITY UT 84158

Dear Applicant:

RE: 57-7796 (t42153)

EXPIRATION DATE: January 31, 2018

Your application to clean, repair, renovate, or deepen an existing well evidenced by 57-7796 (t42153), is hereby **APPROVED**. You currently have a right to divert 200.0 acre-feet from a 10 inch well 1200 feet deep, which is located at a point:

North 1280 feet, West 2028 feet, from the E4 Corner, Sec 28, Town 1N, Range 2E, SLB&M.

Any renovation or repair work done to an existing well for the purpose of securing a normal water supply must be completed by a currently licensed Utah well driller and must be done in compliance with the construction standards set forth in the State of Utah Administrative Rules for Water Well Drillers, under the following conditions:

- 1) No more water can be diverted and beneficially used from the renovated or deepened well than has been previously allowed under valid water rights for the well.
- 2) The licensed driller **MUST** notify the State Engineer of the intention to renovate or deepen the well and must file a timely report of activities conducted, including abandonment, if applicable.

This approval DOES NOT authorize the drilling of a new well. In the event that the existing well cannot be properly renovated and you wish to drill a new well within 150 feet of the existing well and to permanently abandon the old well, an **Application to Replace an Existing Well** must be filed AND approved. If you wish to replace the old well more than 150 feet OR keep the old well for any purpose, then an **Application for Permanent Change** must be filed AND approved before a new well can be drilled.

Enclosed you will find two postage-paid forms. One is the Driller (START) Card form, which you **MUST** give to the licensed driller with whom you contract to repair the well. The other is the Applicant Card form. It is **YOUR RESPONSIBILITY** to sign and return this form to this office immediately upon well completion. **Your submittal of the APPLICANT Card form will be notice to our office that the work has been completed and will begin the 30-day period in which the driller is to submit a report as required herein.** The driller cannot legally commence repair of the well until you provide him with the Driller (START) Card form, which will then be submitted to our office for verification. Please review this letter with the driller so that the conditions set forth are understood by all parties.

Sincerely,

Ross Hansen, P.E.
Regional Engineer

APPLICATION TO RENOVATE AN EXISTING WELL STATE OF UTAH

Pursuant to Section 73-3-28 Utah Code Annotated 1953, as amended, application is hereby made to the State Engineer to renovate an existing well based on the following showing of facts.

1. Water Right No.: 57-7796 Appl./Claim #: 142153
 Point of Diversion: POD #10 Brigham FK. Well
2. Owner: Emigration Improvement District
 Address: P.O. Box 58945
Salt Lake City UT 84158
3. The existing well: (check those applicable)
 leaks around the outside of the casing
 casing needs repair
 requires renovation
 requires deepening
4. The Utah licensed well driller who will perform the work is: Name:
PETERSEN BROTHERS DRILLING CO INC (742)
5. Explanatory: Well driller will be onsite to repair holes in the well casing and to clean the well to optimize production.

 The applicant hereby agrees, if this application is approved, to abide by the rules and regulations promulgated by the State Engineer regarding the renovation of existing wells. The applicant further agrees to and hereby authorizes the State Engineer to endorse his original claim or application to show any change resulting from this application.

[Signature] [Signature]
 Signature of Applicant Signature of Applicant

***** FOR OFFICE USE ONLY *****

1. 7/22 Application filed and received by: ES
2. 7/22 Application examined by: ES
 Recommendation: Approve
3. 9/27 Field examination by: ES
 Recommendation: _____
4. 7/28 Application approve/rejected subject to the following conditions: Approve

5. 1/31/18 Authority granted under this application will end.

[Signature]
 Area Engineer
 For Kent L. Jones, P.E.
 State Engineer

RECEIVED
 JUL 27 2017
 WATER RIGHTS
 SALT LAKE