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VIA HAND DELIVERY

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

Re: Second Addendum to The ECHO-Association Protest Regarding Permanent Change Applications “a44045” (57-7796) and “a44046” (57-10711) submitted by Emigration Improvement District / Immediate Termination of Water Extraction via the Upper Freeze Creek and Brigham Fork Wells and all Points-of-Diversion Recorded under “t43182” / Request for a Second Protest Hearing

Dear Mr. Jones:

On behalf of the Protestant Emigration Canyon Home Owners Association (“**The ECHO-Association**”), we hereby submit the following Second Addendum and request immediate termination of water extraction via the Upper Freeze Creek and Brigham Fork Wells operated by EID to include all points-of-diversion previously identified under “t43182” (57-7796).

Please note the following for the record:

- On December 10, 1996, in order to protect the surface water right of Utah’s Hogle Zoo awarded under Civil Decree #25890, Salt Lake City demanded that “all family use temporary change applications be required to have water use monitored **so they do not exceed their water right**” (emphasis in the original) (see Salt Lake City correspondence in Matter of Application 57-7796, t20534 attached as **Exhibit A**);
- However, during the EID trustee meeting from August 16, 2016, EID Trustee Chairman Michael Scott Hughes conceded that EID had failed to properly measure water discharged from the Brigham Fork Well (see https://echo-association.com/?page_id=2498);
- During the December 19, 2018 Protest Hearing of permeant change applications “a44045” (57-7796) and “a44046” (57-10711) submitted by Emigration

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Improvement District (“**EID**” aka ECID), EID General Manager **Eric Hawkes** conceded that it had failed to monitor water extraction from all the points-of-diversion recorded under permanent change application “a44046 but “would do so in the future” (*see* protest hearing recording commencing at time counter 0:36:59 available at https://echo-association.com/?page_id=635);

- The aforementioned points-of-diversion were however previously approved and are currently operated under temporary change application “t43182” (57-7796) under the express condition that EID must “install and maintain measuring devices to record all water diverted *from all sources* under this application and report this information to the Division’s Water Use Program” (emphasis added) (*see Exhibit B*);
- Contrary to the factual recital of EID General Manager **Eric Hawkes** during the protest hearing that the Brigham Fork Well was currently non-operational due to “mechanical issues” as similarly recorded in EID’s 2017 Customer Confidence Report (*see Exhibit C*), EID General Manager Eric Hawkes reported during the EID Trustee Meeting of September 18, 2018 that the Brigham Fork Well *had failed* EPA drinking water standards for sulfates and turbidity despite having pumped millions of gallons into the EID water system since October 2003 (*see* https://echo-association.com/?page_id=1221);
- As previously reported to your office, EID is continuing repair of the Brigham Fork Well without the prior approval of your office (*see* EID trustee meeting agenda from December 13, 2018 attached as **Exhibit D**); and lastly,
- Multiple Emigration Canyon residents connected to the EID water system have frequently complained of colored and foul drinking water supplied by EID since the Brigham Fork Well commenced operation sometime in October 2003 (*see* https://echo-association.com/?page_id=1221).

As over forty (40) private wells have reported quantity and quality impairment to date to include *total depletion of the Emigration Canyon Stream* less than two miles from Utah’s Hogle Zoo to the determinant of existing superior water rights while EID has failed to comply with the express conditions of its current change applications, we hereby request that your office issue an order immediately terminating water extraction via the Brigham Fork and Upper Freeze Creek Wells to include all points-of-diversion previously approved under “t43182” until which time that EID produces evidence that proper metering devices have been installed and are operational.

The ECHO-Association also requests the opportunity to formally respond to representations made by Don Barnett, P.E. at the protest hearing of permanent change applications “a44045” and “a44046” on December 19, 2018 (the “Hearing”).

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Despite Don Barnett's reference at the Hearing to a hydrology study completed in July 2000 by Dr. Aldolph Yonkee and himself (the "Yonkee Report") as definitive evidentiary support for EID's permanent change applications, the Yonkee Report was not produced to the Utah Division of Water Rights.¹ A copy of the Yonkee report is attached herewith as **Exhibit E**.

According to the conclusions made by Mr. Don Barnett in the Yonkee Report:

- "The ability of bedrock aquifers to store water may be low, depending on porosity and the detailed nature of fracture systems. Porosity associated with fracturing is typically low (less than several percent for most rocks), such that the volume available for storing water is limited." *Id.* at page 36.
- "Low storage and rapid fluid flow may result in relatively large and rapid seasonal fluctuations in ground water levels and spring discharges, as observed in the study area, and in the nearby Park City area, *particularly for the Twin Creek Limestone.*" *Id.*
- "Importantly, over pumping of wells within fractured bedrock aquifers with limited storage *may result in mining of ground water.* Additionally, some fractures that close down as water pressures decreased during over pumping, with large drawdowns, may not completely reopen when water levels recover, permanently damaging the ability of the aquifer to deliver water to a well" (emphasis added). *Id.* at page 37.
- "Thus if the aquifer does not recharge each spring, then mining of water from the aquifer is likely to occur, and similar considerations may apply to other potential aquifers in the study area. Over pumping of a well that repeatedly produces excessive drawdown may also damage an aquifer as some fractures that close down during over pumping may not completely reopen once water levels recover." *Id.* at page 38.
- "Sufficient historical data are not available for Well 1 [*i.e.*, Boyer Well #1] to track static and pumping water levels during this period, and Well 2 [*i.e.*, Boyer Well #2] was not completed until 1994.² However, a review of 1998 data on water levels for Well 2 indicates that summer-time demand for water exceeded natural recharge to the aquifer in *this relatively good water year*" (emphasis added). *Id.*
- The Freeze Creek and Western basin subunits of the *Upper Twin Creek* HSU [*i.e.*, Twin Creek Limestone] are the sources of Wells 1 and 2, [*i.e.*, Boyer Wells #1 and #2] which produce respectively from the Giraffe Creek Member and middle part of the Leeds Creek Member (Figure 6). Development of additional wells in these members [*i.e.*, Brigham Fork and Upper Freeze Creek Wells currently proposed by EID under "a44045" (57-

¹ EID previously refused to comply with a GRAMA request, dated March 3, 2015, requesting a copy of the Yonkee Report.

² The construction and operation of Boyer Well Nr. 2 was however not approved by your office until December 31, 1996 under "17521" (57-7796).

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7796)] *could cause well interference and is not recommended*” (emphasis added). *Id.* at page 46.

The conclusions of the Yonkee Report neither to construct nor operate the Brigham Fork and Upper Freeze Creek Wells as proposed by EID under “a44045” (57-7796) are further supported by the detailed analysis and express recommendations of the former Utah Lake-Jordan River Area Engineer Jack Arnold Barnett† of your office attached herewith as **Exhibit F**.

The Hearing Panel, The ECHO-Association and additional Protestants are entitled to have Mr. Don Barnett and EID explain how his representations during the Hearing are allegedly supported by the Yonkee Report, especially where the conclusions in the Yonkee Report as well as the analysis and recommendations of Mr. Don Barnett’s father and business partner appear to explicitly contradict Mr. Don Barnett’s testimony.

Please feel free to contact me regarding any questions.

Kind Regards,

CHRISTENSEN & JENSEN, P.C.



Scot A. Boyd