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**UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH**

MARK CHRISTOPHER TRACY d/b/a
Emigration Canyon Home Owners
Association,

Plaintiff,

vs.

SIMPLIFI COMPANY, *et al.*

Defendants.

**MEMORADUM IN OPPOSITION TO
DEFENDANTS' MOTIONS TO
DISMISS**

Case No.: 2:21-cv-00444-RJS-CMR

Judge: Robert J. Shelby

Magistrate: Cecilia M. Romero

Mark Christopher Tracy (“Mr. Tracy”) d/b/a Emigration Canyon Home Owners Association (“The ECHO-Association”) hereby submits this Memorandum in Opposition to the Motion to Dismiss filed by Defendants Simplifi Company (“Simplifi”),¹ Emigration Canyon Deputy Mayor Jennifer Hawkes (“Deputy Mayor Hawkes”), Eric Lee Hawkes (“Mr. Hawkes”), and Utah Attorney Jeremy R. Cook of the Salt Lake City law firm Cohne

¹ As Simplifi failed to file a mandatory Disclosure Statement pursuant to Rule 7.1 Federal Rules of Civil Procedure, Mr. Tracy objects to Motion to Dismiss filed on behalf of Simplifi in its entirety.

Kinghorn P.C. (successor in interest to Parsons Kinghorn Peters P.C.) (“Utah Attorney Cook”)(collectively “Simplifi Defendants”)² to include the Motion to Dismiss filed by Defendant David M. Bennion³ (“Defendant Bennion”)(collectively “Defendants”) stating as follows.

I. INTRODUCTION

The present litigation details the willful impairment of a constitutionally protected and senior property right to clean, safe culinary drinking water in Emigration Canyon (the “Canyon”) under the color of state law and therewith use and enjoyment of a private home pursuant to 42 U.S.C. § 1983 (“Section 1983”) to include unlawful agreement to collect improper fees and costs via Utah state tax-foreclosure sale pursuant to a class-based animus under 42 U.S.C. § 1985(3) (“Section 1985”).

Defendants argue that Mr. Tracy lacks legal standing to commence the instant litigation due to the fact that the assignment of statutory federal civil right claims is void under Utah common law. Moreover, because the Complaint is untimely and fails to include sufficient factual allegations to support a claim that is plausible on its face, the Court should award legal fees and costs against Mr. Tracy and find Mr. Tracy to be a vexatious litigant subject to a pre-filing order.⁴

² Dkt. No. 6.

³ Dkt. No. 7.

⁴ As this Court has not granted a Motion to Dismiss filed by either Simplifi Defendants or Defendant Bennion, Mr. Tracy declines to address factual allegations of a premature motion for attorney fees and costs under 42 U.S.C. § 1988. Mr. Tracy furthermore

These arguments fail.

Assignment of claims for willful damage to private property under the color of state law are lawful, and Mr. Tracy has timely filed and sufficiently pled the requirements of an unlawful conspiracy of private persons under 42 U.S.C. §1985(3) as articulated in *Griffin v. Breckenridge*, 403 US 88 (1971).

Mr. Tracy requests that the Court deny Defendants' motions or in the alternative grant leave to file amendment to incorporate additional factual information as outlined herein.

II. ARGUMENT

A. Motion to Dismiss Standard.

In considering a motion to dismiss under Rule 12(b)(6), the court must accept all well-pleaded facts as true and viewed in the light most favorable to the non-moving party. *Ruiz v. McDonnell*, 299 F.3d 1173, 1181 (10th Cir. 2002). The court may grant a motion to dismiss only if it appears beyond doubt that the plaintiff is unable to prove any set of facts entitling to relief under the plaintiff's theory of recovery. *Id.* citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). As such, in order to survive a motion to dismiss, a plaintiff must provide "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1974 (2007). The court's function on a Rule 12 (b)(6) motion is not to weight potential evidence that the parties

objects to all such factual representations submitted to the Court by Defendants as impermissible under Rule 403 Federal Rules of Evidence.

might present at trial, but to assess whether there is reason to believe that the plaintiff has a reasonable likelihood of factual support for these claims. *Ridge at Red Hawk, L.L.C. v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007).

B. Mr. Tracy Has Legal Standing to Assert Assigned Federal Civil Right Claims.

Defendants argue that in an unpublished and subsequently vacated decision ordered by the United States Court of Appeals for the 10th Circuit Court,⁵ Robert J. Shelby, presiding judge of the instant Action, determined that Section 1983 and Section 1985⁶ claims may not be assigned in Utah.⁷

Addressing claims of purported First Amendment and Due Process violations, it must be conceded that this Court did initially rule that a federal civil right violation “is an injury to the individual rights of a person” and is more similar to a “personal injury tort” than to claims for damages to property or breach of contract. *Am. Charities for Reasonable Fundraising Regul., Inc. v. O'Bannon*, No. 2:08-CV-875, 2016 WL 4775527, at *6 (D. Utah Sept. 13, 2016)(unpublished).

This Court’s previous (but vacated) blanket conclusion that Section 1983 claims are “personal injury torts” and thus are not assignable under Utah common law is however

⁵ *American Charities Reasonable Funding v. O'Bannon*, 909 F.3d 329, 334 (10th Circuit 2018).

⁶ Contrary to the Simplifi Defendants’ recital, Judge Robert J. Shelby did not rule on Section 1985 but only Section 1983 claims.

⁷ *Simplifi Motion to Dismiss* at page 6 and *Defendant Bennion Motion to Dismiss* at page 4.

inconsistent with the guidance of the United States Supreme Court and is ripe for reconsideration in the light of the allegations of the instant Action.

Specifically, for Utah common law to govern disposition of the present case, two (2) requirements must first be met:

1. [the federal laws] are not adapted to the [goal of protecting all persons in the United States in their civil rights], or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law; and
2. Any assessment of the applicability of a state law to federal civil rights litigation . . . must be made in light of the purpose and nature of the federal right. *Wilson v. Garcia*, 471 U.S. 261, 267 (1985) (citation omitted) (internal quotation marks omitted).

As such, under the second prong of *Wilson*, while assignment of a wrongful death or personal injury cause of action may have bearing on federal civil rights litigation, the present case specially addresses a constitutional right to the use and enjoyment of private property and should be evaluated as such when deciding if the assignment of statutory federal civil right may be determined by state law.

Under the first prong of *Wilson*, the Complaint alleges that Utah Attorney Cook, a licensed legal professional specializing in water rights, willfully misrepresented both the validity and priority date of duplicitous water shares claimed by Emigration Improvement District (“EID” aka Emigration Canyon Improvement District aka ECID) with the positive knowledge that hydrological studies completed by the Utah State Engineer and EID’s own hydrologist had indicated that operation of large-diameter commercial wells in the Canyon

would impair the senior water right belonging to Karen Penske (“Ms. Penske”) “with almost certainty.”⁸

As a retired ICU nurse with no specialized knowledge of water rights and of modest means, having been denied access to hydrological studies completed with public funds, Ms. Penske was unable comprehend the scope and impact of Simplifi Defendants’ operation of large-diameter commercial wells in the Canyon’s Twin Creek Aquifer and thus impairment of her own constitutionally protected property right to clean, safe drinking water.⁹

After Mr. Tracy documented massive ground subsidence and fissures in the Freeze Creek drainage area with the assistance of other Canyon residents and independent drinking water experts,¹⁰ and acquired substantial evidence of lead contamination of all four (4) large-diameter commercial wells operated by Simplifi Defendants,¹¹ Ms. Penske assigned Section 1983 and Section 1985 claims to Mr. Tracy’s dba entity The ECHO-Association.^{12, 13}

⁸ *Complaint* at page 4, nos. 15, 17; page 7, no. 27; page 8, no. 28; page 10, no. 41.

⁹ *Id.* at page 10, no. 43.

¹⁰ *Id.* at page 11, no. 45; *see also* audio-video recording entitled “Aerial and Ground Recording of Emigration Oaks PUD near Lots Nr. 199, 171, 178, 180, 182 and 184 (YouTube)” available at the website maintained by The ECHO-Association at https://echo-association.com/?page_id=3310.

¹¹ *Id.* at page 7, no. 24.

¹² *Id.* at page 11, no. 46.

¹³ As all amendments to pending federal whistleblower litigation must be filed under court seal pursuant to 31 U.S.C. § 3730(b)(2), Mr. Tracy must necessarily limit publication of documents and information related to pending FCA litigation as appropriate (*see Complaint* at page 6 no. 2).

The instant Action demonstrates that pooling information and resources is critical to identifying and successfully prosecuting federal civil rights violations. Under the first prong of *Wilson*, Utah common law does not *furnish* suitable remedies but is rather a *direct hindrance* to the prevention of continued fraudulent consolidation of senior water rights as additional single-family domestic wells in the Canyon suffer contamination and depletion by Defendants.

Under the requirements of *Wilson*, assignment of federal civil rights claims is not void in the State of Utah.

C. Mr. Tracy Has Legal Standing to Assert His Own Federal Civil Right Claims.

Mr. Tracy owns senior perfected surface water right 57-8947 (a16183). The Complaint records that the Canyon Stream suffered total depletion in August 2018 for the first time in recorded history and continues to date.¹⁴

Should the Court follow the recent unpublished (and later vacated) decision ruling that Section 1983 claims may not be assigned under Utah common law, Mr. Tracy should be granted leave to assert impairment of his own constitutionally protected property right to the surface water of the Canyon Stream.

D. The Instant Action Has Accrued Within the Statute of Limitations Period.

It is recognized that state law dictates when a legal action commenced under Section 1983 and Section 1985 is timely. *Wilson v. Garcia*, 471 U.S. 261, 275 (1985). Defendant

¹⁴ *Complaint* at page 8, no. 29.

Bennion notes that Section 1983 and Section 1985 claims fall within a 4-year tolling provision in Utah, but then offers cursory a conclusion without authority that an unlawful agreement and/or conduct before July 22, 2017 must be necessarily time barred.¹⁵

This deduction is incorrect.

While state law determines the duration of the statute of limitations, federal law dictates when a federal cause of action accrues. *Alexander v. Oklahoma*, 382 F.3d 1206, 1215 (10th Circuit 2004). The federal discovery rule provides that claims accrue and “[t]he statute of limitations begins to run when the plaintiff knows or has reason to know of the *existence and cause of the injury* which is the basis of his action” (emphasis added). *Indus. Constructors Corp. v. United States Bureau of Reclamation*, 15 F.3d 963, 969 (10th Cir.1994). In particular, “[a] civil rights action accrues when facts that would support a cause of action are or should be apparent.” *Fratus v. Deland*, 49 F.3d 673, 675 (10th Cir.1995) (internal quotations omitted).

The Complaint alleges that Defendants misrepresented and successfully concealed hydrology reports warning of continued groundwater mining of the Canyon’s Twin Creek Aquifer providing culinary drinking water service to Ms. Penske’s private home until December 21, 2018 when Mr. Tracy secured an original copy of the July 2000 Barnett-Yonkee study from a previously unknown source.¹⁶

¹⁵ *Bennion Motion to Dismiss* at page 5.

¹⁶ *Compliant* at pages 10-11, nos. 43 and 44.

After careful monitoring water quality of her private well over a two (2) year period, on June 2, 2021 Ms. Penske recorded that the concentration of Total Dissolved Solids (“TDS”) had exceeded primary drinking water levels and thus the operation of large diameter commercial wells by Simplifi Defendants had in fact impaired her senior property right to safe drinking water as predicted.¹⁷

Furthermore, Ms. Penske was forced to render payment to Salt Lake County on March 13, 2019, after Simplifi Defendants certified Ms. Penske’s home for tax-foreclosure sale for Ms. Penske’s refusal to pay “water base fees” used to finance the construction of the same lead-contaminated large-diameter commercial wells, which had impaired Ms. Penske’s drinking water.¹⁸

As Ms. Penske could not have known the scope and impact of the cause of injury until after she had recorded that her private well was unsuitable for culinary drinking, under the federal discovery rule the statute of limitations period commenced on June 2, 2021.

The instant Action is timely.

E. Mr. Tracy Has Sufficiently Plead Section 1985 Claims.

Simplifi Defendants argue that it is “irrational” that a “well-respected lawyer... [with] no involvement with EID [as a state actor]”¹⁹ would misuse a position of trust as a

¹⁷ *Id.* at page 10, no. 43.

¹⁸ *Id.* at page 9, no. 38.

¹⁹ Defendant Bennion incorrectly cites that actions of a state actor are required under a Section 1985 claim. *Defendant Bennion Motion to Dismiss* at pages 7-8.

community and religious leader and admonish members of the Church of Jesus Christ of Latter-Day-Saints, Emigration Canyon Ward No. 181358 (“Emigration Canyon Ward”) to pay fees and costs assessed by Simplifi Defendants necessary for continued operation of the Boyer Water System.²⁰ Furthermore, Defendants argue it is beyond comprehension that Simplifi through Deputy Mayor Hawkes and EID financial manger Mr. Hawkes would create fraudulent billing and then commence tax-foreclosure proceedings against LSD Nonmembers due to the fact that Utah Attorney Cook and EID Trustee Chairman Michael Scott Hughes²¹ are themselves LDS Nonmembers.²²

These arguments are inconsistent with both the factual allegations of the Complaint as well as the requirements of Section 1985.

Firstly, Defendant Bennion’s direct involvement and substantial economic interest in the construction and operation of the Boyer Water System is well documented. Specifically, Simplifi Defendants currently operate both the culinary drinking water and water sewage system of Defendant Bennion’s private luxury residence located in the Emigration Oaks Private Urban development (lot no. 407, Emigration Oaks PUD Phase 4a) at public expense -- the later of which was constructed by EID Trustee Chairman Michael Scott Hughes as an unlicensed contractor for LDS Members including Defendant

²⁰ *Simplifi Motion to Dismiss* at page 8.

²¹ EID is controlled by 3 trustees. It appears that current EID trustees David Bradford and Brent Tippetts are active members of the Emigration Canyon Ward including former EID trustees Mark Stevens and Lynn Hales.

²² *Simplifi Motion to Dismiss* at page 9, footnote no. 8 and page 10.

Bennion. *See* Legal Invoice of Salt Lake City law firm Parsons Kinghorn Peters P.C., attached as Exhibit A and excerpt of EID Trustee Meeting Minutes dated March 6, 2003, attached as Exhibit B; *see also* PDF document entitled “Undisclosed Conflict of Interest Between EID Trustee Chairman Michael Scott Hughes, R. Steve Creamer, Walter J. Plumb III (City Development Inc.), and Kem Gardner (The Boyer Company LC)” available at the website administered by The ECHO-Association at https://echo-association.com/?page_id=1661.

The Complaint further records that on June 13, 2013, facing imminent default of federally-backed loans, EID announced that it would collect “fire-hydrant rental fees” from 86 Canyon residents not connected to the Boyer Water System servicing Defendant Bennion’s private residence, leading Simplifi Defendants to creating multiple “dummy accounts” for LDS Nonmembers thereby billing one elderly widowed catholic resident with a senior impaired water right **\$2,613.54** for a “water base fee” in February 2018.²³ *See* Exhibit C and Exhibit D.

Furthermore, Defendants failed to inform Canyon residents such as Ms. Penske that the Utah State Engineer had expressly rejected the construction of large-diameter commercial wells in 1966 and had warned against continued groundwater mining of the Canyon’s Freeze Creek Aquifer on December 15, 1995.²⁴ *See* audio recording entitled “Utah State Engineer Hearing – Barnett Testimony (December 15, 1995)” available at

²³ *Complaint* at page 9, nos. 34 and 36.

²⁴ *Id.* at no. 39.

website administered by The ECHO-Association at https://echo-association.com/?page_id=2204.

As predicted, the Canyon stream suffered total depletion in August 2018²⁵ and Ms. Penske's well was rendered unsuitable for culinary drinking water on June 2, 2021.²⁶

To establish a conspiracy claim under § 1985(3), and survive a motion to dismiss, the plaintiff must demonstrate as plausible:

- 1) a conspiracy involving two or more individuals;
- 2) that the conspiracy was entered into for the purpose of depriving, directly or indirectly, a person or class of persons of the equal protection of the laws;
- 3) an act in furtherance of the conspiracy occurred;
- 4) and such act caused injury to a person or property, or a deprivation of any right or privilege of a citizen of the United States.
- 5) prove that the conspiracy was motivated by racial, or other class-based, invidiously discriminatory animus. *Hunt v. City of Toledo Law Dept.*, 881 F. Supp. 2d 854 - Dist. Court, ND Ohio 2012 citing *Johnson v. Hills & Dales Gen. Hosp.*, 40 F.3d 837, 839 (6th Cir. 1994), cert. denied, 514 U.S. 1066, 115 S.Ct. 1698, 131 L.Ed.2d 560 (1995) and *Griffin v. Breckenridge*, 403 U.S. 88, 102, 91 S.Ct. 1790, 1798, 29 L.Ed.2d 338 (1971).

²⁵ *Id.* at page 8, no. 29; *see also* Salt Lake Tribune article entitled "Salt Lake Tribune – "Why is Emigration Creek — a Historic Utah Waterway — Dry?" at the website administered by The ECHO-Association available at https://echo-association.com/?page_id=405.

²⁶ *Id.* at page 10, 43.

In this regard, the Complaint alleges the following: EID does not have employees and operates entirely through private independent contractors such as Simplifi Defendants.²⁷ Deputy Mayor Hawkes, Mr. Hawkes and Defendant Bennion are residents of the Canyon as well as members of the predominant religious and social community.²⁸ To increase revenue, and to prevent default of federally-backed loan obligations secured with the legal advice of Utah Attorney Cook, Simplifi created multiple “accounts” for LDS Nonmembers not connected to the Boyer Water System and then commenced tax-foreclosure proceedings against LDS Nonmember Ms. Penske with the assistance of Utah Attorney Cook.²⁹ In order to ensure that Simplifi was not forced to commence tax-foreclosure sale against fellow LDS Members of the Emigration Canyon Ward, Defendant Bennion, acting in his capacity as a LDS Bishop, admonished LDS Members of their “moral obligation” to pay fees and costs assessed by Simplifi in order to prevent EID’s financial collapse³⁰ thereby securing continued water service to Mr. Bennion’s private residence while simultaneously contaminating Ms. Penske’s private well and thereby impairing a constitutionally protected senior property right to clean, safe drinking water.³¹ In order to remain living in her home, on March 13, 2019, Ms. Penske rendered payment of **\$1,304.86** to the Salt Lake County Treasurer although Ms. Penske documented

²⁷ *Id.* at page 2, no. 11 and page 5, no. 20.

²⁸ *Id.* at page 4, no. 14.

²⁹ *Id.* at page 9, nos. 36 and 37.

³⁰ *Id.* at nos. 8 and 9.

³¹ *Id.* at page 10, nos. 39 and 43.

contamination of her private well via operation of large-diameter commercial wells by Simplifi Defendants as predicted.³²

Lastly, regarding “class-based, invidiously discriminatory animus” the Complaint documents that LDS Nonmembers who refused to render payment for the benefit of Deputy Mayor Hawkes, Mr. Hawkes, and Defendant Bennion *et al.* are publicly disparaged as “of the devil ... the father of contention”³³ or marginalized by Canyon officials. *See e.g.*, email correspondence by Emigration Canyon Metro Township Member Gary Bowen and Emigration Canyon Ward member, attached as Exhibit E at Exhibit No. A; *see also* audio recordings entitled “EID Trustee Chairman Hughes on His Role as a Publicly Elected Official” and “EID Trustee Chairman Hughes on Lowering the Water Table and Impairment of Private Wells” and “EID Trustee Chairman Hughes on Impairment of the Emigration Canyon Steam” available at the website administered by The ECHO-Association at https://echo-association.com/?page_id=1661.

Lastly, misrepresentations concerning the misuse of public funds for the financial gain of LDS Members including Deputy Mayor Hawkes, Mr. Hawkes and Defendant Bennion are both alleged in the Complaint and well documented. *See* Community letter, attached as Exhibit F and EID Trustee Meeting dated March 18, 2010, attached as Exhibit G; *see also* PDF document entitled “Billing for Legal Services Provided to EID by

³² To date, Ms. Penske continues to receive certified payment demands for “water base fees” submitted by Simplifi Defendants for tax collection by the Salt Lake County Treasurer.

³³ *Id.* at no. 40.

Attorney Gerald H. Kinghorn (PKH)” at the website administered by The ECHO-Association at https://echo-association.com/?page_id=6073.

The Complaint alleges certification of tax-foreclosure sale by Simplifi through Deputy Mayor Hawkes and Mr. Hawkes with the defective legal advice of Utah Attorney Cook and moral declarations of Defendant Bennion directed toward the predominate religious and social group of the Canyon community.

As such, the Complaint supports a plausible inference of a conspiracy of two or more persons, willfully deprivation of constitutionally protected right to safe drinking water and thus and private property, an act in furtherance of the conspiracy, and injury via class-based animus.

III. CONCLUSION

For the foregoing reasons, Mr. Tracy requests that the Court deny Defendants’ Motions to Dismiss or in the alternative grant leave to file amended complaint.

DATED this 24th day of September, 2021.

**MARK CHRISTOPHER TRACY DBA
EMIGRATION CANYON HOME OWNERS
ASSOCIATION**

/s/ Mark Christopher Tracy
Mark Christopher Tracy
Pro Se Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of September, 2021, a true and correct copy of the foregoing **MEMORADUM IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS** was served via email to the following:

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EXHIBIT A



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BOWEN
COMPLAINT

GEN 1717.95
OAKS 62.90
EXPLAN 416.25

2197.10

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Page: 1
February 28, 2003
Client No: 8031-00M
Statement No: 134614

General

	Hours	
02/04/03 GHK Confer with Mr Hughes and prepare contract revisions for onsite systems.	0.45	83.25 G
02/05/03 GHK Conference with Mr Hughes regarding meeting agenda for board meeting.	0.25	46.25 G
02/06/03 SKR Research Third District Court docket for case history and status of Dana Bowen v. William R. Bowen(.2); Office conference with Jerry Kinghorn regarding the same(.1). GHK Confer with Mr Hughes regarding trustee status and onsite systems agreement; revise and edit onsite systems agreement; confer with Mr Hughes and review documents from court.	0.30 0.70	 129.50 G
GHK Travel to Camp K and attend board of trustees meeting.	1.65	175.00 G
02/07/03 JD Letter to David Gee enclosing draft of the <u>Onsite Wastewater Disposal System Agreement</u> .	0.05	2.25 G
02/11/03 GHK Conference with Mr Smolka and Mr Hughes regarding trustees issues and meeting of trustees.	0.65	120.25 G
02/13/03 GHK Travel to Carrollo offices; attend engineering committee meeting with		

Emigration Improvement District

Page: 2
February 28, 2003
Client No: 8031-00M
Statement No: 134614

General

	Hours		
Mr Hales and Mr Smolka.	2.25	416.25	EXP
GHK Confer with Mr Bowen regarding onsite systems construction and conflict of interest issues and residency issue.	0.34	62.90	G
02/17/03			
GHK Conference with Mr Bowen regarding conflict of interest rules; research statute and provide Mr Bowen with citation to statute. e-mail information to trustees.	2.45	453.25	G
02/18/03			
GHK Confer with Mr Hughes concerning status of onsite system contract and conflict of interest issues.	0.34	62.90	G
02/20/03			
GHK Conference with Mr Hughes, Mr Smolka and Mr Hales concerning Pinecrest issues, disclosure requests etc.	0.75	138.75	G
02/21/03			
GHK Confer with Heather at Legacy Land Title regarding closing of Emigration Oaks lot and reconveyance of Trust deed; prepare correspondence to Legacy Land Title Co.	0.34	62.90	G
GHK <u>Confer with Mr Hughes regarding onsite systems contract and confer with Mr Bennion and Mr Hughes;</u> Confer with Chief Deputy Hendrickson regarding complaint from Mr Bowen.	0.90	166.50	G
02/24/03			
GHK Confer with Mr Smolka regarding meeting agenda and county attorney investigation.	0.25	46.25	G
02/25/03			
GHK Confer with Mr Bowen regarding availability of minutes etc; confer with Mr Hughes regarding Onsite Systems contract and conflict issues.	0.45	83.25	G
02/27/03			
GHK Confer with Mr Hughes, confer with Mr Gee and revise and edit onsite systems			

EXHIBIT B

EMIGRATION IMPROVEMENT DISTRICT

BOARD OF TRUSTEES

REGULAR MEETING

THURSDAY, MARCH 6, 2003

CAMP KOSTOPULOS, 2500 EAST EMIGRATION CANYON ROAD

SALT LAKE CITY, UTAH

Board Members in Attendance: Bill Bowen, Lynn Hales, Mike Hughes

Ex Officio: Fred Smolka–EID General Manager, Don Barnett–Barnett Intermountain Water Consulting, Gerald H. Kinghorn–Legal Counsel, Ron Rash–Carollo Engineers

Chair Mike Hughes called the meeting to order at 5:05 p.m.

...

7. Wastewater issues

Chair Hughes reported that the Acorn Hills system was permitted on December 23, the F Cause hearing was completed on March 4, most of the system has been bedded, and they have been asked to wait until the F Cause is finished before continuing. It was requested that certain criteria be followed and that reporting be provided to Salt Lake County. He explained that the Emigration Oaks system is owned by The Boyer Company, Dave Bennion, City Development, and Beck and requires approval of Emigration Oaks Property Owners to cross their road. He stated that he is doing the construction work on the project, and once the project is complete, it will be turned over to the EID to own and operate the system. He confirmed that he is the contractor on the job and that he is not a licensed contractor but that he hires and manages the contractors. He applied for the permit, and the EID is the body politic which went to the State to obtain the permit. He explained that the State requires a body politic to petition for a combined waste water system. He recalled that when the well protection zones were established a couple of years ago, five lots in Emigration Oaks became unbuildable. The Board agreed that something needed to be done to help those lot owners solve the problem that was created by the District. He briefly described the process they had gone through to come up with a solution. He explained that another group then approached the EID with a similar situation, in which the County permitted them to build their homes, then told them they would have to put their waste in vaults and have it pumped out. It was the Board's opinion that vaults fail, so they also agreed to try to move the waste for Acorn Hills off site and combine it into an off-site drainfield. He clarified that the District simply agreed to be the body politic if the properties with the problem could find a solution and pay for it. The property owners did the work to find a solution and hired the contractors to get it done. They also hired Michael Hughes and Ecosense Technologies to articulate the process. He described the increased size and redundancy required for a combined system.

David Crompton asked if the EID knew Chair Hughes would be the contractor. Mr. Hughes replied that he did not believe there was any question about that. Mr. Bowen stated that he had not realized that Mr. Hughes was the contractor until the February 6 EID meeting when he asked the question that he has requested be reflected in those minutes. Mr. Hales stated that he was perfectly aware month after month as this item was on the agenda and Chair Hughes reported each month that Chair Hughes was hired by both groups to provide engineering support relative to these small community systems.

Ms. Weyher stated that she had done some research and learned that Ecosense Technologies is listed in the telephone book as an LLC; that it does not have a business license in the county; that Way Big LLC, which is an owner of Ecosense, is an expired LLC; and that Michael Hughes is not a licensed contractor. She questioned why he represented that he was the contractor on this job. Chair Hughes explained that Ecosense Technologies is wholly owned by a company called Liaison. Way Big took over ownership of Ecosense, and it was then acquired by Liaison. Liaison also does not have a contracting license. He explained that his role is to oversee the contractors who do the work. He hires the engineering firms and construction contractors, all of which are licensed. He explained that lease waivers are signed with all contractors, and each carries the liability for the work they perform. Ms. Weyher stated that it was obvious that Chair Hughes was not a contractor and did not know how licensed contractors work. Mr. Hales commented that a number of property owners in the canyon have hired people who are not licensed contractors to oversee and coordinate construction of their homes. Ms. Weyher retorted that they are not using public funds. Chair Hughes and Mr. Hales clarified that the property owners involved in these wastewater projects are not using public funds. Mr. Hales explained that the homeowners have simply contracted with Chair Hughes to perform a service for them. Ms. Weyher stated that she spoke with the County and learned that a stop work order was put on the Acorn Hills project, and they indicated that they had more concerns about this project than she did. Chair Hughes explained that he attended the F Cause hearing, and not a single issue was raised other than that the County did not want him to proceed until a vegetation plan had been provided. Ms. Weyher stated that she would file a complaint with the Department of Professional Licensing that Chair Hughes is representing himself as a contractor.

Margot McCallum verified with Chair Hughes that he would stand to gain personally from his work on this project and asked if he believed that was a fair business practice since he is Chair of the EID Board. Chair Hughes replied that he had no problem with it. Ms. McCallum asked if this project was put out to bid so other contractors could bid on it. Chair Hughes explained that the work is not being done by the District, and that question is not relevant. He explained that the EID's only involvement is that they will take ownership of a completed system and manage it into perpetuity. Ms. McCallum stated that she had an issue with Chair Hughes gaining financially from a project in which the EID is involved.

Mr. Crompton maintained that the project could not have proceeded without the EID obtaining the permit. Therefore, Chair Hughes would not have been able to make any money unless the Board had voted in favor of the project proceeding. Chair Hughes explained that he would have made money on the work he did for the property owners whether or not the EID agreed to take over and maintain the systems, and he did not believe a conflict existed. He stated that he has discussed every aspect of this project every month for a year and a half, and the minutes will reflect that. He explained that the EID caused something to happen to the property owners, that no one did anything about solving

it, and that the Board felt obligated to do something to help solve the problem. Mr. Bowen agreed that was the case with Emigration Oaks, but he did not believe the same argument could be made for Acorn Hills. Chair Hughes explained how the Acorn Hills situation was similar because the County wanted to force owners of homes that had already been built to put their waste into vaults. He recalled that Mr. Bowen, in meeting after meeting, had commented that vaults fail and are not a good idea, and that has been the Board's position throughout this process. Mr. Bowen agreed that he had said that vaults fail and stated that these two systems are not the only systems of this type being considered. He was aware of one other area in Emigration Oaks where a source protection problem exists. He admitted that he may not have paid sufficient attention to the location of Acorn Hills and that Acorn Hills did not have the source protection issue associated with it. He believed the taped records could demonstrate that he was either not listening or that the distinction was not well articulated.

Chair Hughes believed it was odd that this appeared to be such a surprise to everyone when there have probably been 30 meetings where this was discussed. The Board has talked about it to the point that the other Board Members got irritated when he discussed issues related to the wastewater systems at the meetings. He did not believe there was any contractor who would have gone through the process. He commented that it has been a nightmare to get it to this point, including a multitude of design changes with Salt Lake County, the State of Utah, the Division of Drinking Water, and the property owners. He stated that he had not tried to hide anything about what was happening. He noted that the people who will receive the benefit are thrilled to have a solution, are paying for it completely, and not one dime of public funds will go into these systems. The systems they will get are three times the system they would have if they did not have to meet the criteria required for this type of system. He was proud of what he had been able to accomplish, and he did not have any apologies for the work he had done. He stated that, if people want to complain and slow their neighbors' progress, they should do what they think they need to do. The reality is that the property owners had a problem, no one stepped up to help them, he did what he could, the District did what it had to do with its eyes completely open, and the records and the minutes will reflect that.

Kathy Christensen, a homeowner in Emigration Oaks, commented that she appreciated what the District has done, and she believed the people in attendance who had come to take pot shots at the Board were being unfair. She believed they were entitled to their point of view, but they are criticizing rather than trying to do anything constructive to solve problems. She appreciated the members of the Board who have tried to solve problems for property owners who cannot get their homes built through no fault of their own.

Ron Draughon asked Chair Hughes if he had recused himself from any vote from which he could derive financial gain, such as the vote to obtain the permits which allowed him to do the work which resulted in his financial gain. Chair Hughes replied that he did not. Mr. Kinghorn clarified that the EID Board authorized Chair Hughes to work with the homeowners to find a solution because the homeowners were in a quandary about how to deal with the source protection zone, and no one knew what would ultimately happen. Chair Hughes came back each month and reported on the alternatives they had tried. There is now a system that has been approved by the State, and Mr. Kinghorn had a draft policy to distribute to the Board this evening. No vote has been taken on the policy or the contract, and Chair Hughes will have to file a disclosure and should recuse himself from voting on the final contract because he does stand to make a financial gain. However, the contract is not

yet before the Board for a vote. Mr. Kinghorn stated that he did not believe anyone could have anticipated that this process would have ended as it has. He stated that Chair Hughes did what the Board authorized him to do, which was to find a solution to the problem. He agreed that this matter could have been discussed in greater detail so the Board might have been better informed about the process, but the report always came at the end of the agenda, and the other Board Members asked for a brief report so they could end the meeting and go home. He believed those reports were given short shrift and that the Board Members could have asked more questions. He was not aware that Chair Hughes had ever made an attempt to hide anything. Now the Board is in a position where they need to develop a policy and consider where they are. They should hold a public meeting to discuss the issues related to this matter and find a process to get to the end result without unfairly damaging anyone, especially those who relied on Chair Hughes who acted in a dual capacity when he got the State to approve the system. Mr. Kinghorn explained that the District will manage the system when it is done, and the property owners will be charged a service charge to cover the cost of managing it.

Ms. Weyher stated that she did not wish to personally attack Chair Hughes, but she believed it was important that this issue be resolved. She had no intention of obstructing the project, but she believed it was important that the EID work as professionally as possible.

Chair Hughes noted that the property owners spent more than \$20,000 for percolation tests and that there is no way to explore a solution without an idea of where the solution can be put. The parties involved had to move forward at some point, and the parties were all committed to doing that. A solution had to be engineered before it could be taken to the State to apply for a permit, and engineering is very costly. He explained that he oversaw the work but did not do any of it, and he became manager of the project by default. The solution took on a life of its own, and he did not go out and solicit the work. He stated that he probably stood to lose money on the Acorn Hills project. That did not matter to him because the property owners had been through so much, and he felt bad about that. He was happy to help and was proud of the work he had done.

Mr. Bowen stated that he believed Mr. Kinghorn had accurately described the process that occurred at the Board meetings and that it had been given short shrift. He believed that contrasted with the work and approaches the Board has taken on other projects where they have been more careful. He noted that they spent thousands of hours on the Emigration Oaks expansion area, which he believed was approached with meticulous detail and full and complete understanding. He believed they had made mistakes and not proceeded carefully in this instance. He referred to the February 6 meeting minutes. He noted that they state that Mr. Kinghorn indicated that he would have to come up with a risk assessment and that he believed the risk would be very low. However, in a personal conversation Mr. Bowen had with Mr. Kinghorn, Mr. Kinghorn had indicated that the risk assessment was difficult for him to undertake because this had never been done before. Mr. Kinghorn commented that this is a pioneering effort to try to solve these problems. Mr. Bowen stated that he believed the process had failed materially and accepted his share of the responsibility for that. He recalled that Chair Hughes reported on this process numerous times, and as Mr. Bowen thought back over the conversations, he would characterize them as reporting on the technologies and bureaucratic processes with the State, not with the action and operational issues that were undertaken. He stated that, when Chair Hughes reported that the Acorn Hills project was 75% completed at the February meeting, he was shocked and wondered

how things had reached that point so quickly. Mr. Bowen believed the Board had abandoned its methodical public processes in this case.

Mr. Hales stated that he had a different view of the process and that he concluded differently than Mr. Bowen. He believed this item had been on at least 80% of the agendas for the last 18 months. He wanted it to be clear that the problem in Emigration Oaks was caused by the EID Board and their desire to provide a source protection zone and that the Board imposed restrictions on a number of previously platted and sold lots in Emigration Oaks. That resulted in discussions by the Board of what their liability to the lot owners might be. In his mind it was always clear where this process was headed, which was that the EID would ultimately take ownership of the wastewater systems upon appropriate contractual agreements with the lot owners. Those contracts would deal with liability, repair, associated fees, etc. Acorn Hills had a similar situation, not with an immediate source protection problem, but with the District planning to supply water on that street. He believed Chair Hughes had given reports of all the aspects of the project. He explained that the District is still pursuing a process of contractually binding the lot owners to terms that the EID and community can tolerate where risks are understood to the extent they can be understood and where the fees will come from the home owners, not tax payers. He believed that, if the people Chair Hughes contracted with to provide services have a problem, that is between them, and he was not aware of any problems. He did not see that this process created a responsibility on the Board that they were not willing or wanting to take on, and he would be willing to speak under oath to his opinions. He noted that he attended every Board meeting, and he did not understand where the comments expressed this evening were coming from. He noted that the people who contracted with Chair Hughes are not at this meeting complaining about the situation. He was not certain about the purpose of the attacks from the public or whether people were attacking Chair Hughes, the Board, or the process.

Ms. Weyher stated that the State of Utah penalizes people and makes it impossible for them to work in the future if they represent themselves as contractors and are not. Mr. Hales explained that the EID has not contracted with Chair Hughes, and he has not made that representation to the Board. Ms. Weyher stated that she was talking about being a contractor, hiring subcontractors, overseeing a project, and having the proper licensing to insure that person is personally responsible if something goes wrong. Mr. Hales replied that the important thing for the Board to consider if they enter into contracts to take responsibility for the two systems is that they have the responsibility to assess the systems as they are in the ground, not necessarily how they got in the ground. The Board will review the contracts with the owners to be certain that the systems meet the purpose for which they were designed and that the liabilities for those systems are with the appropriate parties.

Mr. Kinghorn explained that one aspect of the contract requires Ecosense to warrant to the District that the systems work in compliance with the construction permits, so there will be a contractual relationship between Ecosense and the District. One problem with disclosures at this point is that the District is still working through the terms of the contractual relationship. This is a work in progress, and there is no final contract. He recommended that a meeting be held to discuss the policies and contractual issues, after which the Board can make some decisions about this process before the contract is finalized.

Mr. Hales noted that the Board always asks for Mr. Kinghorn's recommendations as they have this evening, and the record will show that they have asked for his opinion regarding

legalities throughout this process. He could not remember a time when the Board had acted outside of Mr. Kinghorn's recommendations, and that is what they are doing with this process.

Ms. Weyher asked Chair Hughes again if his business was legitimate and whether he had a business license. Chair Hughes replied that he does have a business license under the name of Liaison.

Ms. McCallum stated that this was not a personal attack on Chair Hughes but was a matter of the process by which the EID Board conducts its business. She believed the EID had a contract with Chair Hughes because the permit had to be acquired by the EID. She believed a relationship existed that is perceived by the public to be something that it is not, and she believed Board Members needed to be very careful about appearances.

Chair Hughes stated that sometimes people lose sight of the idea that this is about public service. It was the public that had the problem, and it was the public that the EID tried to serve. He explained that the EID Board was formed to provide water and sewer to Emigration Canyon, and sometimes people lose sight of the fact they are supposed to be providing service to the public. He noted that these property owners could not build on their lots or move into their homes for months on end because the EID was trying to keep their well clean for the rest of the people on the water system.

Mr. Crompton stated that he believed Chair Hughes should have recused himself from any further action on the Board as soon as he realized he stood to make a financial gain from this process. Mr. Draughon stated that he was concerned about the legality of any vote that was taken on this issue in the past where Mr. Hughes did not recuse himself. Mr. Bowen stated that he did not recall after reviewing the minutes that the Board had taken a vote to obtain the permit. Mr. Hales stated that he has asked the County Attorney on a number of occasions what constitutes a conflict of interest, and each attorney he has spoken with has his own opinion. He stated that he had never heard a unanimous agreement of what constitutes a conflict of interest, and many people may disagree with Mr. Crompton's opinion. Mr. Crompton stated that he believed when it comes to material gain the ordinance is clear. Mr. Hales replied that he had read the ordinance and did not see that Chair Hughes was in conflict based on his contracting with the property owners nor that his role as EID Chair had brought him any gain. He noted that many people in the canyon contract with other people in the canyon to provide a service for them. Mr. Crompton argued that the Acorn Hills sewer project would not be approved if the EID Board does not agree to contract for its maintenance, and Chair Hughes' material gain from that project depends on his vote. Mr. Hales stated that he believed the people had paid Chair Hughes as the project went along, and his compensation did not depend on the Board taking over the system. Chair Hughes confirmed that was correct.

Mr. Smolka noted that another special improvement district could potentially have been formed to take over the sewer systems. Mr. Bowen recalled that Mr. Kinghorn had made a statement that this system relied on approval by the EID because it is the only special improvement district in the jurisdiction. He had been impressed by the idea that it was the EID or nothing. Mr. Kinghorn recalled that he stated his opinion as being that the State would not approve a community wastewater system unless it was operated by a public entity, and he did not think they would approve it for a homeowners association. The problem with predicting what the State might do with this situation is that the State has never worked with one of these systems before. These two systems are the first ever

approved in the State of Utah. He had been uncertain how this would develop, because the regulations depended on the type of technology employed.

MOTION: Bill Bowen moved to ALLOCATE time to adequately discuss the wastewater systems topic at the next regularly scheduled Board meeting and that the District make a substantial effort to inform the public of the issues to be discussed. He believed a newsletter should be distributed and that it should be posted on the web site. Lynn Hughes seconded the motion.

VOTE: Unanimous in favor of the motion.

Mr. Hales stated that he was not certain that the Board was at a point where the policy could be finalized before April 10 and posted for public review. Mr. Bowen stated that the policy itself could either be a detailed item on the agenda that evening or not, depending on whether or not it is ready.

EXHIBIT C

PROPOSAL FOR RAISING FUNDS FOR ANNUAL PAYMENTS OF STATE OF UTAH LOAN
June 1, 2013

Introduction and overview

The Emigration Improvement District (EID) is drilling a new well to serve the residents of the Canyon. The decision about whether and where to drill the well have been considered in great detail by the EID board. This new source of water is crucial to providing water reliably to present and future subscribers of the water system. The cost of the new well is expected to be in the range of \$1.6 to \$1.8 million. We have received a 25-year, interest-free loan from the State of Utah to pay the costs of drilling and related development. In order to meet the terms of repayment, the District must raise about \$84,000 more money each year. This letter describes the proposed increases needed to service that debt. This matter will be considered at a public hearing on Thursday, 20 June 2013, 7:00 PM at the Emigration Canyon fire station.

This letter covers three topics: (1) the proposed increase in the base or standby fees to pay for the new well; (2) the proposed inauguration of a fire hydrant fee for those who have access to a hydrant who are not currently paying anything to the District; and (3) the proposed increase in water fees for the heaviest users. This first page outlines the issues and provides the key information for each of these topics, so you should read it even if you are not interested in the details of the proposal. We've added additional explanatory material for those who want to consider these matters in more depth.

Increase in base fees to pay for the new well

We propose to increase the monthly amount of each base and standby fee by \$15. The base fee doesn't vary with the amount of water used, and therefore it represents a reliable source of income. This will provide about 88% of the money needed to satisfy our annual payment requirements.

Inauguration of a fire hydrant fee for non-subscribers

We have 86 households in the Canyon who are within 250 feet of an EID hydrant but who pay nothing to the District for that service. We propose to levy a fee of \$15/mo to help sustain the system and ensure that those hydrants can be used for fire suppression. The policy of the District has been that we would allow use of the hydrants for non-subscribers, but charge a fee for water use in the event they were needed to fight a fire. With this new hydrant fee, the District will eliminate that policy, so that all who have access to a hydrant will be entitled to its use with no emergency water use charge. This fee will yield the additional 12% of the money needed for debt service.

Increase in the water use fee for the heaviest users

The amount of water in the underground reservoirs from which we draw is finite. The purpose of a progressive rate schedule is to discourage heavy consumption of this limited and shared resource. However, even with the increment of 7 cents per 1000 gallons, we still have a significant number of households that use more than 50,000 gallons per month during the hottest months. Heavy use by some affects all who share the system by disproportionately drawing on the aquifers. We propose to increase the 1000-gallon increment to 14 cents per gallon for all use that exceeds 50,000 gallons in a month. Frankly, we would rather have the water than the money, so if you are a heavy user of the system, please consider all available conservation measures to reduce your water use.

entirely appropriate for heavier users to pay proportionately more for their water use (as the current rate structure demands), it is not fair for those users to pay a larger share for an asset that all benefit from equally. Secondly, the income from water use fees is unreliable. Consider the following example. Suppose that the low water runoff conditions we have seen for the past two years continued for another two or three years. We might at that point be forced into water-use restrictions that would result in a significant reduction in the income to the District. That would have little effect on our ability to pay for water production costs, which would fall more or less in concert with the revenue from use. But if we were relying on use fees to pay the annual fixed bond payment, what would we tell the State when those revenues were not sufficient for us to meet our bond debt service? Do we really want to live in a community that has a reputation for defaulting on our obligations because we chose a faulty income model? We received our latest bond from the State Water Resources board at a 0% interest rate—do we want to weaken our position with them for future funding requests? Those are very real risks if we choose to pay for capital improvements from use fees that are sensitive to both price and availability.

Details about the decision to levy a fire hydrant fee

The only households affected by this charge will be the 86 who have the benefit of a proximate hydrant but who pay nothing at all to the entity that provided it, the EID. Charging the modest proposed fee will remove a historical inequity, where some residents receive a benefit for which they pay nothing. Please note that around 40% of households which pay a base or standby fee do not now use EID water.

Details about the rate change for heavy water use

The heaviest months of use for the community are July and August, although June and September are often heavy as well, depending on the climate conditions during the summer. During the period of most intense use, our community-wide consumption has exceeded 9,000,000 gallons a month. Last July, the 18% of households who used more than 50,000 gallons a month accounted for about 47% of the 8,000,000 gallons used that month. If we deduct their first 50,000 gallons and only look at their collective use of water exceeding 50,000 gallons, we find that amounts to fully 20% of the total community use.

An examination of water use the following month is instructive. As subscribers became aware of the problems we were having with the wells, they (you) began to reduce use. August use was about three-fourths of the use in July, and the percentage of households whose use exceeded 50,000 gallons dropped from 18% to 11%. Consequently, their excessive use (>50,000 gallons) accounted for just 8% of the total use. If we could treat every summer month as we did last August, and keep our community-wide consumption to around 6,000,000 during those hot times, we'd certainly breathe easier during the summer. Let us emphasize yet again: The proposed rate increase is not primarily an income measure, but rather an incentive to conserve.

EMIGRATION IMPROVEMENT DISTRICT BOARD

Michael Hughes, Chairman

David Bradford

Mark Stevens

Fred A. Smolka, Manager

EXHIBIT D

Emigration Improvement District
P.O. Box 58945
Salt Lake City, UT 84158

NOTE: NOW AVAILABLE - 2016 WATER QUALITY REPORT CAN BE VIEWED ON THE DISTRICT'S WEBSITE - Next Trustee Meeting will be Thursday, April 12th - 7:00 PM @ Fire Station - CONTACT US: (p) 801.243.5741 (e) eric@ECID.org (w) www.ECID.org

PREVIOUS BALANCE	\$987.00
PAYMENTS	\$0.00
CURRENT CHARGES	\$94.50
TOTAL DUE BY 05/14/2018	\$1,081.50
DUE AFTER 05/14/2018	\$1,086.00

Pat Sheya
7610 S 3395 E
Salt Lake City, UT 84121-5451

ACCOUNT NUMBER	4909	Meter #		Start Read		End Read		Consumption	
CUSTOMER	Pat Sheya								
SERVICE ADDRESS									
BILL DATE	02/13/2018								
SERVICE	START	END	USAGE	AMOUNT					
Late Fee Revenue 02/13/2018				\$4.50					
6102 Emig Cyn Rd									
Water Base Fee (3 Mo. @ \$15 per/mo.)	04/01/2018	06/30/2018		\$45.00					
6102 Emig Cyn Rd Lot									
Water Base Fee (3 Mo. @ \$15 per/mo.)	04/01/2018	06/30/2018		\$45.00					
TOTAL CURRENT CHARGES				\$94.50					

Please detach below perforation and return with payment

Online Code:304153

I DON'T BELIEVE THIS!! I AM NOT HOOKED TO THEIR WATER SYSTEM - WAS INTIMIDATED & PESTERED BY FRED SMDLKA TO HOOK UP & URGED TO SELL MY WATER RIGHT DATED 1957 TO EID FOR \$7,500.

I TOLD HIM TO NOT BOTHER ME AGAIN ABOUT THIS AND

Emigration Improvement District
P.O. Box 58945
Salt Lake City UT 84158

LEAVE ME ALONG - NOW THEY HAVE A LIEN AGAINST MY PROPERTY TH I HAVE OWNED FOR 60 YEARS -

Patricia Sheya

ACCOUNT NUMBER	4909
SERVICE ADDRESS	
AMOUNT DUE	\$1,081.50
DUE DATE	05/14/2018
NAME	Pat Sheya

NOTE: UNPAID BILL MAY BECOME A PROPERTY ASSESSMENT AND A TAX LIEN MAY BE PLACED AGAINST PROPERTY ON DELINQUENT AMOUNTS. LEGAL OWNER RESPONSIBLE TO NOTIFY DISTRICT OF CHANGE IN OWNERSHIP

K. Wayne Cushing, CPA
 Salt Lake County Treasurer
 Website: slco.org/treasurer
 Email: slcotreasurer@slco.org
 Tel : (385) 468-8300
 Fax: (385) 468-8301

DELINQUENT TAX NOTICE
 (Including Property Tax, Certifications, Penalties, & Interest)
 THROUGH
MARCH 15, 2018



Treasurer's Office
 2001 South State Street #N1-200
 P.O. Box 144575
 Salt Lake City, UT 84114-4575
 Hours: 8AM - 5PM
DUE: MARCH 15, 2018

Property Owner		Parcel #	Tax District
*****AUTO**SCH 5-DIGIT 84121 AA 4311-P29 T17 #BWNINKS# #103332700900007# SHEYA, PATRICIA P & PALMER, CYNTHIA S; TRS C/O L&PS FAM TRUST 7610 S 3395 E COTTONWOOD HEIGHTS UT 84121-5451		10-33-327-009-0000	ABV
Property Address			
6102 EMIGRATION CANYON RD			

CATEGORY CODE	DESCRIPTION / SERVICE PROVIDER	PHONE #	PROPERTY TAX OR CERTIFICATION	LATE PENALTY	DISTRICT PENALTY, INTEREST, & FEES	TOTAL
259	EMIGRATION IMP. DISTRICT	801-582-6176	704.62	22.50	148.00	875.12
Subtotal						875.12
Returned Check Fee						0.00
Administrative Fee						0.00
TOTAL DUE						875.12

PAYMENTS RECEIVED AFTER FEBRUARY 15, 2018 ARE NOT REFLECTED ON THIS DELINQUENT TAX STATEMENT. *DUE ON OR BEFORE MAR 15, 2018*

<p align="center">Information</p> <p>PAY BY 03/15/18 TO AVOID ADDITIONAL INTEREST CHARGES.</p>	<p align="center">Payment Options</p> <p>IN-PERSON</p> <ul style="list-style-type: none"> • Check or Cash (Credit/Debit cards accepted online only) <p>BY MAIL</p> <ul style="list-style-type: none"> • Check (Please don't send cash) <p>CREDIT/DEBIT CARD Bank Fees: Credit 2.40% (\$1.95 min.) / Debit 1% (\$1 min.)</p> <ul style="list-style-type: none"> • Online Payment: slco.org/treasurer • Telephone Toll-free Payment: 1-855-362-0841 • Smart Phone QR Payment: <p>eCHECK (electronic check currently no bank processing fee)</p> <ul style="list-style-type: none"> • slco.org/treasurer "Make A Payment Online" and follow prompts (Bank account & routing #s needed)
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Please review the important info on the reverse side

<p align="center">Property Tax Information</p> <p>10-33-327-009-0000 SHEYA, PATRICIA P & PALMER, CYNTHIA S; TRS C/O L&PS FAM TRUST 7610 S 3395 E COTTONWOOD HEIGHTS UT 84121-5451</p>	<p align="center">TOTAL DUE</p> <p align="right" style="font-size: 1.2em;">875.12</p> <p align="right">*DUE ON OR BEFORE MAR 15, 2018*</p> <p>INSTRUCTIONS:</p> <ul style="list-style-type: none"> • Write the parcel #(s) on the check • The canceled check is your receipt • Do not send cash • Make checks payable to: Salt Lake County Treasurer PO Box 410418 Salt Lake City, UT 84141-0418
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Please "GO GREEN" With Us

You're Invited... to join our growing pilot project to receive future tax notices on paper via mail and digitally via email. Especially if your mortgage holder pays your property tax and you are just receiving a copy, then you are a prime candidate for this program. In the future, you will have the control to opt out of the paper version if that is your preference.

My Email Address: (Please print clearly) _____ @ _____

(My email address opts me into the paper and eBill tax notice pilot project)

See info and provide mail and email address changes on the reverse side of this payment stub

1329 2018 0020 0259 1033327009000000 00000087512 9

K. Wayne Cushing, CPA
 Salt Lake County Treasurer
 Website: slco.org/treasurer
 Email: slcotreasurer@slco.org
 Tel : (385) 468-8300
 Fax: (385) 468-8301

DELINQUENT TAX NOTICE
 (Including Property Tax, Certifications, Penalties, & Interest)
 THROUGH
MARCH 15, 2018


SL SALT LAKE COUNTY
 TREASURER

Treasurer's Office
 2001 South State Street #N1-200
 P.O. Box 144575
 Salt Lake City, UT 84114-4575
 Hours: 8AM - 5PM
DUE: MARCH 15, 2018

Property Owner	Parcel #	Tax District
*****AUTO**SCH 5-DIGIT 84121 AA 4312P29 T17 #BWNBNKSF# #103332701000004# SHEYA, PATRICIA P & PALMER, SHEYA; TRS C/O L&PS FAM TRUST 7610 S 3395 E COTTONWOOD HEIGHTS UT 84121-5451	10-33-327-010-0000	ABV
Property Address		
6102 EMIGRATION CANYON RD		

CATEGORY CODE	DESCRIPTION / SERVICE PROVIDER	PHONE #	PROPERTY TAX OR CERTIFICATION	LATE PENALTY	DISTRICT PENALTY, INTEREST, & FEES	TOTAL
259	EMIGRATION IMP. DISTRICT	801-582-6176	578.00	20.00	58.92	656.92
Subtotal						656.92
Returned Check Fee						0.00
Administrative Fee						0.00
TOTAL DUE						656.92

PAYMENTS RECEIVED AFTER FEBRUARY 15, 2018 ARE NOT REFLECTED ON THIS DELINQUENT TAX STATEMENT. *DUE ON OR BEFORE MAR 15, 2018*

Information	Payment Options
<p>PAY BY 03/15/18 TO AVOID ADDITIONAL INTEREST CHARGES.</p>	<p>IN-PERSON</p> <ul style="list-style-type: none"> Check or Cash (Credit/Debit cards accepted online only) <p>BY MAIL</p> <ul style="list-style-type: none"> Check (Please don't send cash) <p>CREDIT/DEBIT CARD Bank Fees: Credit 2.40% (\$1.95 min.) / Debit 1% (\$1 min.)</p> <ul style="list-style-type: none"> Online Payment: slco.org/treasurer Telephone Toll-free Payment: 1-855-362-0841 Smart Phone QR Payment:  <p>eCHECK (electronic check currently no bank processing fee)</p> <ul style="list-style-type: none"> slco.org/treasurer "Make A Payment Online" and follow prompts (Bank account & routing #s needed)

Please review the important info on the reverse side 


This stub must accompany any onsite or mailed payment

Property Tax Information	TOTAL DUE	656.92
10-33-327-010-0000 SHEYA, PATRICIA P & PALMER, SHEYA; TRS C/O L&PS FAM TRUST 7610 S 3395 E COTTONWOOD HEIGHTS UT 84121-5451	*DUE ON OR BEFORE MAR 15, 2018*	
INSTRUCTIONS: - Write the parcel #(s) on the check - The canceled check is your receipt - Do not send cash - Make checks payable to: Salt Lake County Treasurer PO Box 410418 Salt Lake City, UT 84141-0418		

Please "GO GREEN" With Us

You're Invited... to join our growing pilot project to receive future tax notices on paper via mail and digitally via email. Especially if your mortgage holder pays your property tax and you are just receiving a copy, then you are a prime candidate for this program. In the future, you will have the control to opt out of the paper version if that is your preference.

My Email Address: (Please print clearly) _____ @ _____
 (My email address opts me into the paper and eBill tax notice pilot project)

See info and provide mail and email address changes on the reverse side of this payment stub 

1329 2018 0020 0259 1033327010000000 0000065692 3

To: Kent L. Jones, State Engineer
Utah Division of Water Rights
2594 West North Temple, Suite 220
Salt Lake City, Utah 84114-6300
Telephone: 801-538-7240

September 12, 2018

PROTEST FEE PAID

18-04280 *wl*
15⁰⁰

Update to my first letter:

Re: Protest to EID Change Application for Water Right A-44045 (57-7796)

THIS IS A CRISIS----Emigration Creek is DRY!! No more endangered Bonneville Cutthroat trout!! Twenty plus wells along the canyon road are dry. This is a devastating event that has never, ever happened in my 60 years living in this beautiful place. How dare you allow such environmental damage to be done by criminal activity of a few greedy developers! This is appalling----

Even if this immediate drawdown of the canyon aquifer were stopped now it will take decades for the stream to recover as noted by EID hydrologist Jack Barnett on December 15, 1995 at a public hearing, and the trout are gone, gone, gone.

The EID hydrologist Jack Barnett when the the Boyer Emigration Oaks development was being built warned that the threat of no water was possible if the homes being built exceeded 700 using only domestic wells. That buildout and many more are in the foreseeable future if you don't help to stop it.

I have a superior water right to that owned by the EID dating back to April 23, 1953-- (#57-2285). So do many of my neighbors who have respected this very special place.

I am astonished that there hasn't been any kind of interest on the part of the people who have the most to lose if the ecology of the place has been destroyed as it has been now.

The canyon is significant to the LDS church in that Brigham Young at the mouth of this unique and gentle canyon declared "This is the place--" with a monument marking the spot at the present time.

Patricia (Pat) Sheya
6102 Emigration Road, Salt Lake City, Utah 84108

Patricia Sheya

RECEIVED
WR SEP 17 2018
WATER RIGHTS
SALT LAKE

SCANNED WR

Patricia Sheya
6102 Emigration Cyn Rd
Salt Lake City, Utah 84108

Kent L. Jones, State Engineer
Utah Division of Water Rights
1594 W. North Temple, Suite 220
Salt Lake City, UT 84114-6300

October 4, 2018

Ref: Update to Protest of Permanent Change Application "a44045" (57-7796) and "a44046" (57-10711) by Emigration Improvement District

Dear Mr. Jones,

This is an update to my previous protest.

Please note that my private well has experienced **quantity impairment** I believed to be caused by the extraction of water by the operation of the Brigham Fork, Upper Freeze Creek, Freeze Creek Well Nr. 1 (aka Boyer Well #1) and Well #2 (aka Boyer Well #2) by Emigration Improvement District.

Sincerely,



Patricia (Pat) Sheya

SCANNED LP

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OCT 15 2018

WATER RIGHTS
SALT LAKE

LP

EXHIBIT E



Emigration Canyon
Home Owners
Association
Tel. 801-669-9825

echo-association.com

Via Electronic and Certified Mail

Gary A. Bowen
Emigration Canyon Community Council
6486 Emigration Canyon Rd
Salt Lake City, Utah 84108

Emigration Improvement District
PO Box 58945
Salt Lake City, UT 84158

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

November 26, 2018

Ref: Retraction of Slanderous and Libelous Statements of ECCC Member Gary Bowen / Public Apology to Mark Christopher Tracy, The ECHO-Association and Its Members

Dear Mr. Bowen,

The Emigration Canyon Home Owners Association ("*The-ECHO-Association*") is dedicated to protecting both the private interests of Emigration Canyon homeowners as well as the historic waterway of the Emigration Canyon Stream as a public good. Our association is registered as a DBA with the Utah Department of Commerce under entity number 1084780 and legal services are provided to us by the highly-respected law firm Christensen & Jensen P.C.

On September 12, 2018 Emigration Improvement District ("*EID*" aka ECID) trustees filed permanent changes with the Utah Division of Water Rights for the construction of the "Thaynes Well" on a planned Gun Range and Wedding Resort owned by the Butler Crockett & Walsh Development Corp. ("*Walsh*") just north of the Emigration Oaks Property Owners Association, Inc. (see <https://www.utah.gov/pmn/files/441425.pdf>; see also https://echo-association.com/?page_id=2985).

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NOV 29 2018 ^{uc}

SCANNED RC
WATER RIGHTS
SALT LAKE

The ECHO-Association has reason to believe, in your official capacity as a member of the Emigration Canyon Community Council (“ECCC”), you denied both the existence and scope of EID’s permanent change applications and likewise failed to inform Emigration Canyon residents of the scheduled public discussion of the proposed Gun Range and Wedding Resort prior to the ECCC meeting on November 13, 2018 (see **Exhibits A** and **B**; see also <https://www.sltrib.com/news/politics/2018/11/15/utah-landowner/>).

Moreover, the next day at 11:31 pm you circulated an email erroneously informing Emigration Canyon residents that the meeting of the Emigration Canyon Metro Planning Commission (“**Planning Commission**”) was scheduled for 08:30 pm the following *evening* instead of its actual scheduled time at 08:30 am the following *morning* (see **Exhibit A**).

In anticipation of the massive planned building development in Emigration Canyon and on behalf of ECHO-Association members, I filed a protest against construction of the Thaynes Well thereby blocking Planning Commission approval of the proposed Gun Range and Wedding Resort by EID and Walsh (see https://echo-association.com/?page_id=635). In a subsequent email correspondence from November 14, I requested that the Utah State Engineer Kent L. Jones reopen the protest period for Emigration Canyon water users who were unable to file protests based upon your misstatements and in what appears to be an active concealment of the EID-Walsh development plans (see ECHO-Association email attached as **Exhibit B**; see also https://echo-association.com/?page_id=2985).

Contrary to my unequivocal request, in an email correspondence and apparent phone call to the Deputy Utah State Engineer and acting Utah State Engineer Boyd Clayton that same day, you postulated under the referenced subject line of my November 14 email that I had somehow committed a “fraud” in “your name.” Moreover, as a “retired Security Analyst working to protect Utah residents from securities fraud” you stated that the matter “should be referred to Office of the Utah Attorney General *for a criminal investigation*” of some unspecified penal offense (emphasis added) (see email correspondence of ECCC member Gary Bowen attached as **Exhibit C**).

I am puzzled how you could have possibly interpreted my November 14 email as a “fraud” committed “in your name”. I can only assume that you misread the subject line of my correspondence and neglected the forward slash, which separated the two subjects of my email (see **Exhibit B**).

To my further surprise, on November 16, 2016 at the behest of the acting Utah State Engineer Boyd Clayton, your statements of a “fraud” committed by me “in your name” and “criminal activity” were published on the permanent record of EID water rights 57-7796 and 57-10711 on the “Utah.gov”

website administered by the Utah Division of Water Rights along with a cursory remark from the acting Utah State Engineer Boyd Clayton that it was “disappointing” that “individuals” may “choose to misrepresent the facts... from time to time” (see **Exhibit C**). Although referenced, a copy of the ECHO-Association email from November 14 was however not included in the published dialogue between you and the acting Utah State Engineer Boyd Clayton (see *id.*).

Lastly, on November 19, 2018, during a telephone call with The ECHO-Association consultant and former EID trustee Bill Bowen (no relation with ECCC member Gary A. Bowen), you stated that The ECHO-Association was not registered with the Utah Department of Commerce and had failed to register as a non-profit organization under IRS Code 501(c)(3). An additional “criminal complaint” to both the Utah Department of Commerce and the Office of the Utah Attorney General for some unspecified penal offense would follow at your behest today, Friday, November 23, 2018.

Yet again, I am confused as to both the factual basis as well as legal conclusions of your verbal statements to The ECHO-Association consultant Bill Bowen.

Given the quantity and quality impairment of over forty (40) private wells to date, the *total depletion* of the Emigration Canyon Stream less than two miles from Utah’s Hogle Zoo for the first time in recorded history, and the possibility water service interruption to over **100 homes** in Emigration Canyon regardless of the approval or rejection of the pending permanent changes to EID water rights by the Utah State Engineer, I will not tolerate slanderous or libelous statements directed toward my person, any member of The ECHO-Association or the association as a business entity.

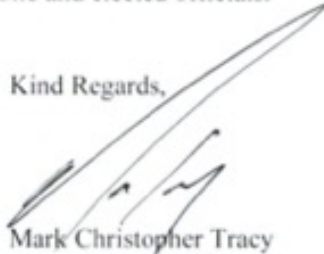
I hereby demand a **full and public retraction** of your statements to include an **official apology** of the ECCC to myself, the ECHO-Association and its members posted on the websites administered by the ECCC, EID and Utah State Engineer for a period of not less than six (6) months.

Failure to publish a full retraction of your statements and apology on or before **December 7, 2018** may lead to substantial monetary fines, legal fees and costs in subsequent civil litigation against you and other yet to be named defendants.

I hereby further request that the Utah Division of Water Rights post this correspondence, including the original ECHO-Association email of November 14, in its entirety under the permanent record of EID water shares 57-7796 and 57-10711. Furthermore, The ECHO-Association remains adamant that the Utah State Engineer Kent L. Jones reopen the protest period of change applications “a44045” and “a44046” until which time as Emigration Canyon residents may review the EID-Walsh development plans in detail and file protest at their unhindered convenience.

As the birthplace of the State of Utah, the future of Emigration Canyon may only be decided *after* adequate public notice and comment period. The members of The ECHO-Association deserve and will tolerate no less from our public and elected officials.

Kind Regards,

A handwritten signature in black ink, appearing to read 'Mark Christopher Tracy'. The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Mark Christopher Tracy
- *qui tam* Relator / ECHO-Association President

EXHIBIT A

[TO **EXHIBIT E** OF MEMORANDUM
IN OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS]

SCANNED RC

From: Gary Bowen <garybowen@msn.com>
Date: November 14, 2018 at 11:31:11 PM MST
To: ECHO Association <m.tracy@echo-association.com>
Cc: Scot Boyd <scot.boyd@chrisjen.com>, Brian Maffly <bmaffly@sltrib.com>, "hannahjoycee00@gmail.com" <hannahjoycee00@gmail.com>, "dharrie@sltrib.com" <dharrie@sltrib.com>, "davidson@sltrib.com" <davidson@sltrib.com>, "Katie McKellar" <kmckellar@deseretnews.com>, "jpacker@xmission.com" <jpacker@xmission.com>, "lindsaywhitehurst@gmail.com" <lindsaywhitehurst@gmail.com>, "dHUDSON@good4utah.com" <dHUDSON@good4utah.com>, "newsdesk@kutv2.com" <newsdesk@kutv2.com>, "news@fox13now.com" <news@fox13now.com>, "elberrod@gmail.com" <elberrod@gmail.com>, "rosshansen@utah.gov" <rosshansen@utah.gov>, "kentliones@utah.gov" <kentliones@utah.gov>, "uasd@uasd.org" <uasd@uasd.org>, "briandavis@utah.gov" <briandavis@utah.gov>, "uag@utah.gov" <uag@utah.gov>, "districtattorney@slco.org" <districtattorney@slco.org>, Brian King <brian@briansking.com>, "wendy@UtahOpenLands.org" <wendy@UtahOpenLands.org>, "carl@saveourcanyons.org" <carl@saveourcanyons.org>, "jdougall@utah.gov" <jdougall@utah.gov>, "amatheson@utah.gov" <amatheson@utah.gov>, "slcotreasurer@slco.org" <slcotreasurer@slco.org>, "newsmedia@ldschurch.org" <newsmedia@ldschurch.org>, "mike@ECID.org" <mike@ECID.org>, "brent@ECID.org" <brent@ECID.org>, "dave@ECID.org" <dave@ECID.org>, "eric@ECID.org" <eric@ECID.org>, "dbarnett@barnettwater.com" <dbarnett@barnettwater.com>, "craign@aguaeng.com" <craign@aguaeng.com>, "larryh@aguaenviron.com" <larryh@aguaenviron.com>, "joesmolka@ecmetro.org" <joesmolka@ecmetro.org>, "jenhawkes@comcast.net" <jenhawkes@comcast.net>, "SteveECCC@gmail.com" <SteveECCC@gmail.com>, "lincmehring@gmail.com" <lincmehring@gmail.com>, "danderson760@gmail.com" <danderson760@gmail.com>, "harpsts@gmail.com" <harpsts@gmail.com>, "flowerpixel@hotmail.com" <flowerpixel@hotmail.com>, "bill_tobey@yahoo.com" <bill_tobey@yahoo.com>, "paulhandybrown@gmail.com" <paulhandybrown@gmail.com>, "emigrationweb@gmail.com" <emigrationweb@gmail.com>, "tyler@tippetts.cc" <tyler@tippetts.cc>, "marciascott52@yahoo.com" <marciascott52@yahoo.com>, "tab5k@yahoo.com" <tab5k@yahoo.com>, "dbrems@gsbsarchitects.com" <dbrems@gsbsarchitects.com>, "robertpaine@ecmetro.org" <robertpaine@ecmetro.org>, "carolqianelo@gmail.com" <carolqianelo@gmail.com>

Subject: Re: ECCC Public Official Gary Bowen / Request to Reopen Protest Period of EID Permanent Change Applications "a44045" and "a44046"

Reply to all.

The accusations of Mr. Mark Tracy against me are false. Tuesday night, November 14, after the ECCC meeting I politely approached Mr. Tracy while we were still in the Emigration Canyon Fire Station to clarify his loud rude comments about me, EID, and other Emigration Canyon residents. He verbally pushed me aside refusing to talk to me. Furthermore, from my informed research of the accusations of Mr. Tracy against EID and ECCC, Mr. Tracy is not telling the receivers of this email the truth about EID and the conditional use application made by John Walsh for his Pinecrest property. The Walsh agenda and permit is under review by Salt Lake County Planning and Development and has been referred to the Emigration Canyon Planning Commission for a meeting tomorrow, November 15, 8:30 PM at the Salt Lake County Chamber. This is a public meeting anyone can attend. Salt Lake County removed ECCC from any notification of planning and development notices at the beginning of 2018.

ECCC is a charitable community council, not subject to agenda and meeting notification of Utah government entities. Neither ECCC nor I, as an ECCC member, have any authority to block or extend any appeal that any of you wish to make to Utah State or Salt Lake County authorities. Mr. Tracy's claim against EID was discussed in ECCC's October 9, 2018. After our ECCC discussion I was concerned enough that I attended the October 11 meeting of EID and stayed till the end of the meeting when I was allowed to raise the accusation of Mr. Tracy against EID, which Mr. Tracy repeats again in this email. EID Board, EID Consultants, and

SCANNED

EID Legal Council explained to me in detail that EID had filed as required by Utah State rules an updated report on the status of EID. I was told that the report did not identify new wells nor new houses to be authorized in Emigration Canyon. I did this in defense of Emigration Canyon residents and concluded that EID was continuing to serve the interest of Emigration Canyon properties, property owners, and residents not the greed that Mr. Tracy alleges. Any of you who have a different perception, should do as I do attend the meetings of EID, ECMT, ECCC, EC Planning Commission ask questions. Do not trust nor believe Mr. Tracy.

Since Mr. Tracy has sent out this personal email to which I am personally responding, I shall respond by quoting the Lord Jesus Christ as recorded in the Book of Mormon, 3 Nephi 11:29-30

"For verily, verily, I say unto you,
he that hath the spirit of contention is not of me,
but is of the devil, who is the father of contention,
and he stirreth up the hearts of men to contend with anger,
one with another."

"Behold, this is not my doctrine,
to stir up the hearts of men with anger,
one with another;
but this is my doctrine,
that such things should be done away."

Let us not be angry with one another. Let us love and work to help one another as friends and neighbors.

If any of you know of something that I have done wrong, please call me on my cell phone listed below. The cell phone is new. I am in early stage of learning how to use it. I am in County meetings all day tomorrow, October 15. but please call me with you questions and comments.

Gary Bowen
cell phone [801-837-7523](tel:801-837-7523)

Sent from [Outlook](#)

SCANNED RC

EXHIBIT B

**[TO EXHIBIT E OF MEMORANDUM
IN OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS]**

From: ECHO Association <m.tracy@echo-association.com>

Subject: ECCC Public Official Gary Bowen / Request to Reopen Protest Period of EID Permanent Change Applications "a44045" and "a44046"

Date: November 14, 2018 at 6:23:19 AM MST

To: agarybowen@msn.com

Cc: Scot Boyd <scot.boyd@chrisjen.com>, Brian Maffly <bmaffly@sltrib.com>, hannahjoycee00@gmail.com, dharrie@sltrib.com, ldavidson@sltrib.com, Katie McKellar <kmckellar@deseretnews.com>, lpacker@xmission.com, lindsaywhitehurst@gmail.com, dhudson@good4utah.com, newsdesk@kutv2.com, news@fox13now.com, elpenrod@gmail.com, rosshansen@utah.gov, kentjones@utah.gov, uasd@uasd.org, briandavis@utah.gov, uag@utah.gov, districtattorney@slco.org, Brian King <brian@briansking.com>, wendy@UtahOpenLands.org, carl@saveourcanyons.org, jdougall@utah.gov, amatheson@utah.gov, slcotreasurer@slco.org, newsmedia@ldschurch.org, mike@ECID.org, brent@ECID.org, dave@ECID.org, eric@ECID.org, dbarnett@barnettwater.com, craign@aquaeng.com, larryh@aquaenviron.com, joesmolka@ecmetro.org, jenhawkes@comcast.net, SteveECCC@gmail.com, lincmehring@gmail.com, danderson760@gmail.com, harpsts@gmail.com, flowerpixel@hotmail.com, bill_tobey@yahoo.com, paulhandybrowns@gmail.com, emigrationweb@gmail.com, agarybowen@msn.com, tyler@tippetts.cc, marciascott52@yahoo.com, tab5k@yahoo.com, dbrems@gbsbsarchitects.com, robertpaine@ecmetro.org

Dear Mr. Bowen,

You currently serve as a member of the Emigration Canyon Community Council ("**ECCC**") (see attached).



Gary Bowen

Phone: (801) 582-6909

Email: agarybowen@msn.com

Location: Main Canyon Road, Upper Section

See also <http://www.emigrationcanyon.org/community-council/council-members/>

The ECHO-Association received notice that during the recent ECCC meeting on October 9, 2018 you personally denied the existence and/or positive knowledge of the pending permanent change applications of the Emigration Improvement District ("**EID**" aka ECID) for the construction of over 500 new homes in Emigration Canyon via 108 points-of-diversion.

Due to the fact that you were cc'ed our email correspondence from September 14, 2018 (see attached), we believe that you knowingly made a false statement to the members of the ECCC as a publicly elected official.

The ECHO-Association further concludes that your intention was to dissuade Emigration Canyon water users from filing protest with the Utah State Engineer for the apparent benefit of private land developers identified by the points-of-diversion in EID's permanent change applications.

Indeed, multiple protests against permanent changes to EID water rights were not timely filed with the Utah State Engineer Kent L. Jones prior to the October 17, 2018 deadline:

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We hereby request the Utah State Engineer reopen the protest period for change applications "a44045" (57-7796) and "a44046" (57-10711) and provide notice of the deadline for filing protest to all water users in the Utah and Jordan River Drainage Area, Salt Lake County Emigration Creek Subdivision, Code 57, Book 1 via certified mail to remedy this deficiency.

Lastly, during the ECCC meeting last night, you stated that as a "private organization", ECCC was "not required" under the Utah Open Meetings law to publish the ECCC meeting agenda 24 hours prior to scheduled meetings.

As such, you emphatically argued that the ECCC was in no way obligated to inform Emigration Canyon residents of a proposed gun range and "wedding venue" in the area of Upper Pinecrest Canyon proposed by land-developer John Walsh of the Butler, Crockett and Walsh Development Corporation (see e.g. water right 57-3442).

We question both the accuracy and motive behind these public statements and hereby demand your **immediate resignation** from the ECCC without further delay.

Regards,

Mark Christopher Tracy
- *qui tam* Relator / ECHO President
Tel. [929-208-6010](tel:929-208-6010)

SCANNED RC

EXHIBIT C

[TO **EXHIBIT E** OF MEMORANDUM
IN OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS]

SCANNED RC



waterrights DNR <waterrights@utah.gov>

Re: Out of the office Re: ECCC Public Official Gary Bowen / Request to Reopen Protest Period of EID Permanent Change Applications "a44045" and "a44046"

1 message

Thu, Nov 15, 2018 at 10:28 AM

Boyd Clayton <boydclayton@utah.gov>
To: agarybowen@msn.com
Cc: Teresa Wilhelmson <teresawilhelmson@utah.gov>, Kent Jones <kentjones@utah.gov>
Bcc: waterrights@utah.gov

Mr. Bowen,

Thank you for informing us that correspondence we have received about change applications a44045 and a44046 which may allege your support and participation were not authorized. We will place your communication on the files for the change applications so notice appears of the document defects. Its disappointing individuals become so passionate about issues they choose to misrepresent the facts but it happens from time to time so we appreciate your clarification.

Since we have no way of knowing if fraud or other error was involved in the creation of documents and who might be behind those actions, we leave to you the decision of whether to pursue a criminal investigation. We have no objection if you choose to contact the county attorney or the attorney general's office to report the incident and encourage pursuing a criminal complaint. Please let me know if I can do anything else to help.

Boyd Clayton
Utah Division of Water Rights

On Wed, Nov 14, 2018 at 11:52 PM Gary Bowen <agarybowen@msn.com> wrote:
Boyd Clayton,

This is a fraud committed by Mr. Mark Tracy in my name. I have made no "Request to Reopen Protest Period of EID Change Applications "a44045" and "a44046"! Please call me on my cell phone 801-837-7523. I am at the Salt County Watershed Symposium all day tomorrow, November 15, 2018.

I'm copying this to members of the Emigration Canyon Community Council, Emigration Improvement District, and Emigration Canyon Metro Township Council.

I'm not an attorney. I am now retired 8 years from the Utah Department of Commerce, Division of Securities where I worked as a Security Analyst working to protect Utah residents from securities fraud. It is my opinion that this fraudulent "Request" filed by Mr. Mark Tracy in my name should be referred to the Office of the Utah Attorney General for a criminal investigation.

Gary Bowen
801-837-7523 cell

Sent from Outlook

From: Kent Jones <kentjones@utah.gov>
Sent: Wednesday, November 14, 2018 11:31 PM
To: agarybowen@msn.com

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LP

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11/15/2018 State of Utah Mail - Re: Out of the office Re: ECCC Public Official Gary Bowen / Request to Reopen Protest Period of EID Permanent C

Subject: Out of the office Re: ECCC Public Official Gary Bowen / Request to Reopen Protest Period of EID Permanent Change Applications "a44045" and "a44046"

I will be out of the office between those dates. If you need assistance please contact Boyd Clayton at boyclayton@utah.gov

--

Kent L. Jones, P.E.
State Engineer
Department of Natural Resources
Division of Water Rights
1594 West North Temple, Suite 220
PO Box 146300
Salt Lake City, UT 84114-6300
www.waterrights.utah.gov

Office: (801) 538-7371
kentjones@utah.gov

Emails to and from this email address may be considered public records and thus subject to Utah GIAMA requirements

SCANNED LP

https://mail.google.com/mail/u/0/ikAAp4TRou-QMqWQTJ9k_7Y5b4xrtof-S-KayRAHwTG9MQZ/u/0?ik=85e60be24&view=pt&search=&permth 22

SCANNED RC

EXHIBIT F

Emigration Improvement District

EID's Response to Walsh Project and Water Right Change Application Filed to State Engineer's Office



Due to inquiries, the Emigration Improvement District needs to set the record straight relative to the relationship between its recent water right change applications and the conditional use applications of John Walsh. There is none! Zero! Nada! The District has had zero communication with Mr. Walsh and was just as surprised as the rest of the Canyon residents regarding the filing. Yet, true to form Mr. Tracy has seized again an opportunity to advance his own interests and duplicitous litigation against the District and his attack on the Canyon residents' water right by spreading mistruths about any relationship between the filings and seeking to prey on the fears and suspicions of the uninformed and gullible. Don't let him deceive you. In September the District filed change applications on its water rights due to a change in the State Engineer's former practices for the Canyon which stems from the assertions and threatenings of Mr. Tracy. In those change applications, as have been for 25 years, there are several potential future points of diversion in the Upper Pinecrest area, including one potential future well site. As a responsible public water supplier, these potential future points of diversion are identified in case in the future the Upper Pinecrest residents desire to join the canyon-wide water system and/ or there is a need to develop a water source in that area. That's the plain truth. There is absolutely no relationship between the District's filing and Mr. Walsh's permit application.

[Click on Link Below for a Copy of Previous Letter to Community on Change Application.](#)

EID - Letter To Community -
Change Application

EXHIBIT G

EMIGRATION IMPROVEMENT DISTRICT
BOARD OF TRUSTEES REGULAR MEETING
THURSDAY, MARCH 18, 2010
EMIGRATION CANYON FIRE STATION
5025 EMIGRATION CANYON ROAD
SALT LAKE CITY, UTAH

Board Members in Attendance: Mike Hughes – Chairman, David C. Bradford, Mark Stevens
Ex Officio: Fred Smolka – EID General Manager, Jerry Kinghorn—Legal Counsel

3. Future projects – feasibility work

...

Mr. Smolka reported that substantial progress has been made in the Pinecrest area, and Lynn Hales has been meeting with John Walsh to reach an agreement. It is proposed that the EID would purchase an interest in the 6-inch pipeline Mr. Walsh has already installed and be given the right to go to the spring. Mr. Smolka indicated a potential location for the EID reservoir, which would not be on Mr. Walsh's property. The water could gravity flow into the reservoir, and a line could be brought from the reservoir into Mr. Walsh's line. It appears that the EID might be able to get enough water from Secret Spring to provide for the entire Canyon for five or six months of the year. Chair Hughes explained that, if the EID could show that not using Thomas Spring and developing Secret Spring would not affect stream flows, Mr. Walsh's concerns should be alleviated. The spring was tested in late summer conditions and was flowing at 67 gpm, which mean it would be possible to use the spring without affecting stream flow or Mr. Walsh's water flow. Mr. Smolka explained that, if the EID could net 50 gpm during the winter when it will not affect flows to areas further downstream, that would provide 72,000 gallons per day, and the EID's current winter use is about 50,000 gallons per day. Mr. Stevens asked if the EID would have to sign away rights to Thomas Spring. Mr. Kinghorn replied that Mr. Walsh has not talked about the EID giving up that point of diversion. Mr. Smolka indicated the location of the Bertagnole property and recalled that the EID is hoping the Bertagnoles might deed a portion of their land to the EID. Mr. Kinghorn reported that the Bertagnoles are in the process of having their property appraised. Chair Hughes noted that, even with the spring, the EID will need another water source and should be actively seeking one, and he would not want to give up a point of diversion anywhere.