

Tierra Investments, LLC
6440 Wasatch Blvd Ste 340
Salt Lake City Utah 84121

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

PROTEST FEE PAID

18-04529

\$ 30.00

September 26, 2018

Dear Mr. Jones,

We hereby protest permanent change applications "a44045" (57-7796) and "a44046" (57-10711) filed by Emigration Improvement District ("**EID**").

Our company owns a private residence located in Emigration Canyon serviced by an underground point-of-diversion under water right 57-8923 (priority date 3/28/1991) (see Report of Conveyance signed by attorney Jeremy Cook of Cohne Kinghorn P.C. attached as **Exhibit A**).

Although the current occupant has not yet reported impairment of the water source to date as originally predicted and protested by EID through attorney Gerald Kinghorn† (see https://echo-association.com/?page_id=2204), we are deeply concerned about EID's current proposal to add over 500 new homes in the Canyon under "a44045" as reported by EID trustees Michael Scott Hughes, David Bradford, Mark Stevens and EID's legal representative Jeremy Cook of Cohne Kinghorn P.C. on March 12, 2015 (see https://echo-association.com/?page_id=1425).

In order for EID to connect points-of-diversion Nr. 1 – 5 proposed under "a44045", EID must construct over **2.5 miles** of appropriately sized water lines at an estimated cost of over **\$3 million** dollars. It does not appear that EID owns or has secured easements from the private land developers necessary to connect the new water sources to EID's existing water system.

The proposed project is therefore physically unfeasible.

Moreover, in June 2013 EID began charging 86 Emigration Canyon residents a "fire-hydrant rental fee" because it was unable to service its existing debt burden (see **Exhibit D**). We therefore conclude that the proposed development plan submitted by EID under permanent change application "a44045" for 600 acre feet is also economically unfeasible.

Please note that EID's own hydrologist Jack Barnett reported in the 1966 that "any reduction in stream flow will increase the concentration of bacteria in the stream and increase the

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opportunity for bacteria to contaminate existing water supplies" (see https://echo-association.com/?page_id=220),

We must reason that the proposed change applications would also affect the circa 400 private wells located near the Canyon Stream and are thus detrimental to public health and welfare.

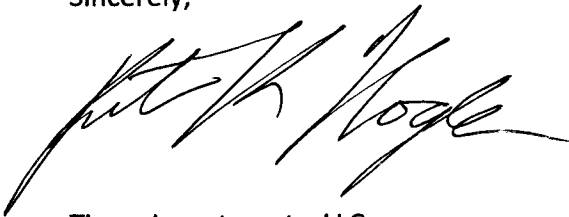
As you are aware, *total depletion* of the Emigration Canyon Stream was published on the front page of the Salt Lake Tribune and then confirmed directly to your office by a resident less than 2 miles east of Hogle Zoo (see **Exhibits B and C**).

Because EID has the burden under Utah Code 73-3-3 (5) of producing evidence that the proposed changes will not cause an existing water right to experience quantity impairment, we can safely assume that the total depletion of the Canyon Stream this year will render this task insurmountable in regard to both "a44045" and the surface points of diversion under "a44046".

Lastly, please note that the "heretofore" point-of-diversions Nr. 8 ("Freeze Creek Well Nr. 1") and Nr. 9 ("Well #2") listed in "a44046" are not approved under water share 57-10711 but rather "a12710a" (57-8865) and "a17521" (57-7796) contrary to EID's submission.

We request that your office deny both change applications in their entirety.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter H. Hogle". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tierra Investments, LLC

EXHIBIT A

REPORT OF WATER RIGHT CONVEYANCE

\$40 Fee Rec'd by

029134 MD

Receipt # 17-04278

USE THIS CONVEYANCE REPORT FORM WHEN 100% OF THE WATER RIGHT IS CONVEYED.

WATER RIGHT # 57-8923

SECTION A. CONVEYANCE SUMMARY

If no water right number is mentioned on deed, is a map attached? Yes ___ No ___

1. Assignment ___ Warranty Deed ___ Quitclaim Deed ___ Sheriff's Deed ___ Trustee's Deed ___ Water Deed Trust Deed ___
Other : _____
2. Date Signed 10 / 26 / 2017 Date Recorded ___ / ___ / ___
Book _____ Page # _____ Entry # _____
3. Grantor Hogle, Patrick K.
4. Grantee(s) Tierra Investments, LLC
5. Mailing Address : 136 South Main Street, Suite 220, Salt Lake City, Utah 84101
6. E-mail Address (to be notified of ownership updates) : _____
7. Special Conditions/Information of Conveyance _____

If no water right number is mentioned on deed, is a map attached? Yes ___ No ___

1. Assignment ___ Warranty Deed ___ Quitclaim Deed ___ Sheriff's Deed ___ Trustee's Deed ___ Water Deed ___ Trust Deed ___
Other : _____
2. Date Signed ___ / ___ / ___ Date Recorded ___ / ___ / ___
Book _____ Page # _____ Entry # _____
3. Grantor _____
4. Grantee(s) _____
5. Mailing Address : _____
6. E-mail Address (to be notified of ownership updates) : _____
7. Special Conditions/Information of Conveyance _____

If no water right number is mentioned on deed, is a map attached? Yes ___ No ___

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2. Date Signed ___ / ___ / ___ Date Recorded ___ / ___ / ___
Book _____ Page # _____ Entry # _____
3. Grantor _____
4. Grantee(s) _____
5. Mailing Address : _____
6. E-mail Address (to be notified of ownership updates) : _____
7. Special Conditions/Information of Conveyance _____

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Report of Water Right Conveyance

REPORT OF WATER RIGHT CONVEYANCE

WATER RIGHT # 57-8923

SECTION B. CERTIFICATION

I, Patrick K. Hogle, certify that I am authorized by Administrative Rule R655-3-7 to complete this report, and that the information contained herein or attached hereto is true and accurate to the best of my knowledge.

[Signature] Signature 10/26/2017 Date 801-652-7891 Phone #

FOR LICENSED PROFESSIONALS ONLY

I, Jeremy Cook, certify that I am licensed as attorney in the State of Utah, that my license number is 10325, that I was retained by an owner of the water right to prepare or supervise the preparation of the Report of Conveyance; that the report is true and accurate to the best of the preparer's knowledge; that an appropriate search of County Records records has been made and that the attached documents evidence the ownership interest of the grantee.

[Signature] Signature 10/26/17 Date 801-363-4300 Phone #
Address: _____

This report is not a title opinion based on the title search made. It does not warrant or guarantee title to water rights. This report was prepared for the purpose of updating records of the Division of Water Rights.

SECTION C. DIVISION OF WATER RIGHTS - FOR OFFICIAL USE ONLY

Received: 10/27/17 Filed: 10/27/17 Reviewed By: [Signature]
Database Changed: 11/8/17 By: [Signature]
File Changed: 11/8/17 By: [Signature]
New File Number based on Segregation _____
Remarks: _____

AMOUNT OF WATER RIGHT RETAINED _____ RECEIVED
_____ OCT 27 2017
_____ WATER RIGHTS
_____ SALT LAKE

No agency of the State of Utah warrants or guarantees title to certain water rights. The water right ownership information of record in the Division of Water Rights concerning this water is based on the information which has been submitted by this Report of Water Right Conveyance.

REPORT OF WATER RIGHT CONVEYANCE
SCANNED

EXHIBIT B

Why is Emigration Creek — a historic Utah waterway — dry? Blame runs from climate change to drought to development to water-sucking wells.



(Brian Maffly, The Salt Lake Tribune) Sam Plumb inspects the dry creek bed on his family's property in Emigration Canyon. The creek through much of the canyon has been completely dewatered for the past two months, a sign of Utah's worsening drought and possibly excessive groundwater pumping to feed hundreds of homes in the canyon east of Salt Lake City.



By Brian Maffly • Published: September 8
Updated: September 08, 2018

The creek winding down Emigration Canyon once sustained Mormon pioneers' inaugural crops planted in the summer of 1847 and helped water the Intermountain West's first major settlement for decades.

In some sense, Salt Lake City owes its existence to Emigration Creek, but early this summer, as persistent drought gripped northern Utah, the stream went dry for most of its run through the historic canyon.

The disappearance of flows has alarmed creekside residents, who say the problem cannot be blamed entirely on a rainless summer and climate change.

"In all the time I've lived up here, particularly hot summers, there would be days, maybe a week, where you would see a diminished flow. To see it the way it is now, it is truly bizarre," said Sam Plumb, standing in the dry creek channel with waist-high vegetation growing among rocks where Bonneville cutthroat trout used to swim and spawn. "It looks like a man-made feature. All that's missing is the hose."

Plumb, whose family has owned property in the canyon bottom for decades, and many other creekside residents say flows have been in steep decline since the Emigration Improvement District (EID) sunk deep, large-bore wells. These wells pump up groundwater, filling massive tanks and largely serve newer subdivisions, such as Emigration Oaks, filled with bigger homes and fancy landscaping nestled in the hills north of the creek.

T | TRENDING

- 1 Surprising BYU is showing plenty of respect for No. 11 Washington as showdown of nationally ranked t
- 2 A Utah trophy hunter bagged a bear in Alaska. It was legal, he thought — and that's where his troubl
- 3 Mia Love tells Fox News that Democrats target her because 'I am a black female Republican' and they
- 4 Utah entrepreneur whose wife was killed by infamous bomber Mark Hoffmann dies
- 5 Derrick Favors jokes that he has all the answers as Jazz gather for media day, but with virtually ev
- 6 Utah teen riding in a car with his family accidentally shot and killed by a target shooter

"That is absolutely not true," said Joe Smolka, mayor of the newly created Emigration Township, adding this stretch of the creek is officially designated an "intermittent" stream.

"It has gone dry in the past, and it's always stopped flowing at dry times," said Smolka, himself a longtime resident and brother of EID official Fred Smolka. "It will start flowing again when the leaves drop."

The district supplies culinary water to about half the canyon's 1,600 residents, who occupy about 575 homes.

"If you have people living in the canyon, it doesn't matter if you draw out of big wells. They are not taking any more water out than is necessary," Joe Smolka said. "If each of those homes was on an individual well, they would be drawing out the same amount of water [overall]. It's not the district's fault."

In various filings with courts and state agencies, the EID has defended its practices, saying they don't pose undue harm to other water users and that they serve a greater good, particularly by ensuring a reliable water source to fight a potential wildfire through a new network of bright red hydrants. Should the canyon burn, dozens if not hundreds of homes could be lost.

The EID has monitored the groundwater for years and the data levels rise and fall with precipitation, according to Smolka.

This year's drought is notably severe after a string of dry years going back to 2000. Diminishing surface-water supplies reached a threshold that triggered an emergency statewide response mandated by state law. The Department of Natural Resources is convening a special meeting Monday to prepare a plan for addressing conditions that are taking a toll on many communities and sectors of the economy.

But the EID's critics allege heedless groundwater pumping has exacerbated Emigration's problems.

"THIS IS A CRISIS," Patricia Sheya wrote to Jones in all capital letters. "Twenty-plus wells along the canyon road are dry. This is a devastating event that has never, ever happened in my 60 years of living in this beautiful place. How dare you allow such environmental damage to be done by criminal activity of a few greedy developers!"

Letters have poured into the state engineer's office seeking intervention in the EID's primary water right, which dates to 1872 and initially appropriated surface water drawn from the canyon mouth to irrigate orchards on 159 acres at what is now Hogle Zoo. It also provided water for 17 homes and 226 head of cattle. Critics argue the district forfeited this 1872 priority date when it moved its diversion point to pull groundwater farther up-canyon from spots that could interfere with established, albeit junior, uses. In other words, the district's water right should move from the front of the line to the back.

In a federal court case, resident Mark Tracy has submitted documents and hydrology reports that show experts had concluded years ago that there is insufficient groundwater in the canyon to support large-scale water withdrawals. These documents show the canyon's groundwater and stream flows are deeply interconnected.

A 2000 study concluded the canyon could supply water for up to 700 homes, while leaving a minimum flow of 1.6 cubic feet per second in the creek. During the next 14 years, however, average August stream flows fell below that minimum eight times, even though there are far fewer than 700 homes pulling water, according to a report commissioned by Tracy's attorneys.

His suit contends the district obtained federal funding for its water projects under fraudulent pretenses. Those subsidized projects are now allegedly doing irreparable harm to the canyon, and Tracy contends the harm is manifesting as an increasingly dry stream channel and murky water discharging from shallow wells.

Plumb recalls a time in his childhood when his late father, the revered angler Jack Plumb, would set up a pool in their yard to hold trout that had been stranded in stream ponds during periods of low water.

"This was my old man's idea. It worked because it was brief periods of time even in a really rough summer, but this type of dryness, there is nothing," he said. Now there are no trout to rescue, and Plumb wonders if the weedy channel behind his and his parents' homes is what normal looks like.

"The soils are drying out. Have the levels gotten to such a degree that any moisture is [drawn] into the surrounding soil," he said. "What is it going to take to restore the stream or is this our new reality?"

EXHIBIT C

17 September 2018

Stephen B and Michelle D Andersen
3980 E Emigration Canyon Rd
Salt Lake City, UT 84108

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

Re: Emigration Improvement District Water Rights 57-7796 and 57-10711

PROTEST FEE PAID

18-043644
1500 for 57-7796

PROTEST FEE PAID

18-04365 *wl*
1500 for 57-10711

Dear Mr. Jones:

We are submitting this letter, along with two checks for \$15 to file protests on both permanent change applications filed by EID; Emigration Improvement District's continued use of the Brigham Fork and Upper Freeze Creek Wells (57- 7796), as well as the recently segregated Boyer #2 Well (57-10711).

We believe that the depletion of groundwater has adversely impacted the quality of water from our well, as well as severely impacted the flow of Emigration Creek. Over the last several years the water from our well has become increasingly concentrated with calcium carbonate, iron, and particulates. It was necessary to install a filter system on our well several years ago after decades without any issue. This year we need to change the filters on a much more frequent basis (every several months) which would indicate a degradation of our water supply.

Emigration Creek, which flows through our property, has been bone dry, since July 8th. Though the last few years of drought have almost certainly contributed to this, we have lived at this residence since 1986 and have never observed such an extreme decrease in the stream flow. Despite witnessing other periods of low precipitation over that time we have never lost the stream so early in the year and had it continue for such duration; over two months to date. This has a dire impact on the wildlife and the forestry in the canyon. The heightened risk of wildfire due to loss of vegetation dying from the depletion of ground water should be of grave concern not only to all canyon residents but also to our neighbors downwind in the valley.

We believe the current crises affecting many residents, the loss of water quality and quantity as well as the loss of Emigration Creek in parts of the canyon will continue to escalate and spread without stringent curtailment on these wells and additionally a moratorium on the addition of new points of diversion without full disclosure and public hearings. It is clear that the world is in climate change and we are in uncharted territory as we do not know what next year, or the next decade, will bring. Therefore our leadership needs to be very cautious and careful of how our natural resources, particularly water, are handled. We need to slowdown and make very sure we are not jeopardizing not only the canyon population but the entire Wasatch front.

Please note: Our water right (Water Right: 57-3037, Application/Claim No.: A31417, Cert. No.: 6203, Priority date 9/21/1959, with irrigation and domestic usage), is superior to both of the EID's water rights listed above.

Sincerely,



Stephen B Andersen
Michelle D Andersen
3980 E Emigration Canyon Rd Salt
Lake City, UT 84108

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EXHIBIT D

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