

# Guide to ECHO-Association Membership Benefits

## Q: Why is there Water Litigation in Emigration Canyon?

**A: In short, there simply isn't enough water.** The State of Utah is a "first-in-time, first-in-right" jurisdiction whereby the owner of a perfected water right may enjoin or prevent water extraction by subsequent users if an earlier water source put to beneficial use is depleted more than the amount allotted and approved by the Utah Division of Water Rights ("**State Engineer**"). Should a water owner change a point-of-diversion of a previously perfected water share through a temporary or permanent change application, the older or "senior" priority date is forfeited. As all four (4) wells operated by such as Emigration Improvement District ("**EID**") are now included in the permanent change applications filed with the State Engineer, all perfected water rights in the Canyon are senior to all EID water rights. Because the surface water and underground wells are now entirely depleted in several areas of the Canyon and public officials have repeatedly refused to take action, we join hands together not only to help ourselves but also assist those who cannot otherwise act alone.

## Q: Why should I be concerned?

**A: There is no win-win solution to water depletion in the Canyon.** Over **forty (40)** water-right owners have reported substantial changes in the productive capacity of surface and underground water sources to include *total loss*. In order to service its massive debt burden, EID trustees promised future water service to **ninety-seven (97)** vacant lots thereby permitting The Boyer Company LC, City Development Inc. and R. Steve Creamer to overbuild the Emigration Oaks PUD by at least **131** domestic units. As such, we do not believe that water sources will magically replenish themselves with the change of season as purported by Emigration Canyon Major Joseph Smolka. Most significantly, the maintenance and operation of the present EID water-system infrastructure is *economically unfeasible* and may be *irreparable* due to substantial design and construction defects, which occurred during Mayor Smolka's tenure as "EID Operations Manager."

## Q: What exactly is The ECHO-Association?

**A: The Emigration Canyon Home Owners Association is a private organization** formed in January 2014 to pool information and resources thereby providing a collective remedy for what the amended federal complaint alleges to be over three decades of gross mismanagement of scarce Canyon resources by the current EID trustees, managers, Mayor Smolka and private land-developers such as R. Steve Creamer, The Boyer Company LC, and City Development Inc.

## Q: Why would I want to become a confidential member of The ECHO-Association?

**A: The ECHO-Association offers a comprehensive and cost-effective benefits package to our members.**

- If a member's home or water system is *rendered uninhabitable or inoperable* due to loss of water service or impairment of a senior water right, The ECHO-Association will carry all legal fees and costs in the first instance to recover economic damage and loss.
- If a member was *falsely promised future water service* by EID for a private home or vacant parcel, we will carry all legal fees and costs in the first instance to recover economic damage and loss.
- If a member's property *is assessed EID fees and taxes* used to operate its water system, service its debt or defend its actions in state or federal court, The ECHO-Association will carry all legal fees and costs in the first instance to stop collection and/or foreclosure sale of the property.

## Q: If I decide to become a member of The ECHO-Association, am I subject to counter-suit?

**A: No.** ECHO representative Mark Christopher Tracy and the United States are only plaintiffs in the pending federal litigation while The ECHO-Association will be the only plaintiff in any action on behalf of a member. The association may take no legal action to prohibit and/or protest water use by a member.

**Q: Must the current EID trustees be ordered to cease management of a water system?**

**A: Yes.** In the past, in order to protect the Canyon Stream and senior water rights, the following has occurred:

- **On August 20, 2015**, in order to prevent EID from issuing water letters for new construction in the Canyon, The ECHO-Association filed a legal impediment to the approval of changes to EID water rights with Utah State Engineer Kent L. Jones (*lis pendens*).

Result: EID issued six (6) water letters for new homes to be constructed in the Canyon before federal district judge Jill N. Parish lifted the encumbrance and assessed a \$30,000 fine against ECHO representative Mark Christopher Tracy.

- **On May 5, 2016**, in an open and public EID trustee meeting, The ECHO-Association gave legal notice to EID trustees Michael Scott Hughes, David Bradford and Dr. Mark Stevens warning that the continued operation of the Upper Freeze Creek Well violated federal funding guidelines and warned of substantial fines and penalties should EID continue water extraction via the newly completed well after May 19, 2016.

Result: EID trustees extracted another estimated 30 million gallons from the water source.

- **On April 20, 2017**, The ECHO-Association filed an information letter with the Utah State Engineer and United States Attorney's Office revealing ongoing impermissible (free) water use by **forty-six (46)** domestic units unpermitted and without explanation by EID, and then submitted an expert report of David E. Hansen Ph.D., P.E. revealing *substantial depletion* of the Canyon stream since January 2000.

Result: The Utah State Engineer approved the **59th** temporary change application filed by EID since 1988, took no action to prevent impermissible water use but then later directed EID to file a permanent change application revealing the junior priority date of EID's water shares.

- **On September 8, 2018**, the Salt Lake Tribune environmental reporter, Brian Maffly, documented *total depletion* of the Canyon stream less than two miles from Hogle Zoo.

Result: On September 10th, EID requested approval of **568** new homes and **multiple new well sites** located on property belonging to private land-developers. As the ultimate measure of last resort, The ECHO-Association filed action to block EID's permanent change applications and, if necessary, will file litigation in Utah state or federal district court in order to prevent further – and possibly irreversible – damage to the Canyon hydrology in our lifetime.

**Q: Is water in Emigration Canyon safe to drink?**

**A: It is currently unknown.** In 1966, EID's own hydrologist Jack Barnett P.E., P.G. warned that "[a]ny reduction in stream flow would increase the concentration of bacteria and increase the opportunity for bacteria to contaminate existing domestic water supplies [located near the creek]." During the July 2016 trustee meeting, EID trustees *refused to state* if the Brigham Fork Well was contaminated with iron bacteria and failed to report the same in its 2017 Customer Confidence Report or 2015 Sanitary Survey as mandated under the Safe Drinking Water Act of 1974. This past month, the EID general manager revealed that EID's Brigham Fork Well failed EPA water quality standards for sulfates and turbidity. The ECHO-Association therefore recommends independent and continuous bacterial testing of all drinking-water sources in Emigration Canyon and will provide free pump testing at the request of its members.

**Q: How do I become a member of The ECHO-Association?**

**A: It is simple.** After conflict review and approval of the online application prior to January 1, 2019, The ECHO Association will affirm membership benefits upon payment of the membership fee. By collecting thousands of pages of documents, over a hundred hours of voice recordings, interviewing numerous witnesses and consulting subject-matter experts over the past four-and-a-half years, The ECHO-Association is uniquely positioned to achieve the best possible results at the lowest cost to our members.

## The ECHO-Association Membership Fees

Membership fees are determined by the parcel tax number of the home and/or property as listed below.\*

- Current ECHO-Association Members: **\$1**
- Upper Emigration Cyn Rd (undeveloped): **\$2,750**
- Lower Pinecrest Canyon north-east of Killyon's Fork: **\$3,000**
- Maple Grove (aka Red Hill/Gravelly Lane): **\$3,750**
- Quartermile Rd: **\$4,000**
- Upper Pinecrest Canyon: **\$4,250**
- Lower Emigration Canyon Rd (west of Ruth's Dinner): **\$4,250**
- Upper Emigration Cyn Rd (developed): **\$4,500**
- Margarethe Ln: **\$4,750**
- Skycrest (aka Spring Glen): **\$4,750**
- Lower Pinecrest Canyon south-west of Killyon's Fork: **\$5,250**
- Badger Hallow: **\$7,500**
- Emigration Place: **\$8,250**
- Pinecrest Pipeline Operating Company: **\$10,000**
- Spring Glen Water Company: **\$12,000**
- Acorn Hills Water Corporation: **\$15,000**
- Emigration Oaks – Phases 1 – 4 & 5 (undeveloped): **\$17,500**
- Emigration Oaks – Phases 6 & 6A (undeveloped): **\$20,500**
- Emigration Oaks – Phases 4a (undeveloped): **\$27,000**
- Snowberry Ridge (undeveloped): **\$40,000**
- Killyon's Canyon: **\$45,000**
- Silver Oaks, Young Oaks, Quad I & II: **\$47,500**
- Burr Fork PUD: **\$55,000**
- Emigration Oaks – Phases 1 – 4 & 5 (developed): **\$80,000**
- Emigration Oaks – Phases 6 & 6A (developed): **\$85,000**
- Emigration Oaks – Phases 4a (developed): **\$90,000**
- Snowberry Ridge (developed): **\$250,000**
- All Domestic Units Built with Water Letters Issued by EID after August 20, 2015: **\$250,000**

Each additional parcel registered with an ECHO-Association member will be reduced by 50% of the list fee.

Canyon residents who submitted a Letter of Protest to the Utah State Engineer prior to 5:00pm on October 17, 2018 enjoy a 10% reduction in the membership fee for each registered parcel.

The ECHO-Association membership fees may be claimed as an economic loss in subsequent litigation.

All legal services will be provided under the terms of the current representation agreement between *qui tam* Relator/ECHO-Association President **Mark Christopher Tracy** and **Christensen & Jensen P.C.** whereby judgement award of reasonable attorney fees at the successful conclusion of litigation will be equally shared between the same.

\* The cost of member benefits is valid until **December 1, 2018** (receipt of application) and may be adjusted on a case-by-case basis until the final deadline on December 31, 2018. Membership benefits may only be transferred to a third party with the express consent of The ECHO-Association.

-- Unlike Death and Taxes, There is No Guarantee of Litigation Success in Any Pending or Future Legal Action --