In the Utah Court of Appeals

Emigration Canyon Home Owners Association, a Utah Corporation, *Petitioner/Appellant,* v. Kent L. Jones, Utah State Engineer, and Emigration Improvement District, a special service district of the State of Utah, *Respondents/Appellees.*	**No. 2020295-CA**

Response Brief of the Utah State Engineer

On appeal from the Third Judicial District Court
Honorable Su Chon presiding
No. 190901675

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Oral Argument Requested

Current and Former Parties

Appellate Court Parties and Counsel

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Parties to the district court proceedings

There were no parties in the district court who are not parties to this appeal.

[1] The Utah State Engineer is a public officer and the Director of the Division of Water Rights. Kent L. Jones was the State Engineer when this case began, but he has since retired. Teresa Wilhelmsen is the current State Engineer. The State Engineer is a required party under Utah Code § 73-3-14(2).

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Introduction

The State Engineer is statutorily charged with the supervision, appropriation, and distribution of Utah's scarce and valuable water resources. Those duties include evaluating applications filed by water right owners to change how they use their existing water rights.

The legislature has carved out a narrow channel for judicial review of those decisions. While any interested person can protest a change application at the administrative level, only persons aggrieved by a change application order may request judicial review in accordance with the Utah Administrative Procedures Act (UAPA). In other words, a petitioner must plead that a decision will cause it a particularized injury and must raise its claims to the State Engineer's level of consciousness during the informal administrative proceedings.

Here, Emigration Canyon Home Owners Association (ECHO) attempts to challenge two State Engineer decisions granting change applications filed by Emigration Improvement District (EID). But ECHO does not have standing because it is not aggrieved and because it did not bring its claim to the State Engineer's attention. The only particularized claim ECHO makes in its petition for review is the alleged impairment of a water right that ECHO did not own during the administrative proceedings. Because ECHO did not own that right, it could not have raised any alleged injury to that right to the

State Engineer. The only person who potentially could have alleged an injury was the then-owner of that right, but he did not participate in the proceedings at all. ECHO's acquisition of that owner's allegedly impaired water right on the eve this litigation does not now enable ECHO to pass through the statutory barriers to de novo review. This Court should thus affirm the district court's dismissal of ECHO's petition for lack of standing.

Statement of the Issues

Issue 1: Does ECHO have statutory standing to request de novo review of the State Engineer's decisions when ECHO did not own a water right during the protest period and the owner of the right ECHO has since acquired did not exhaust his administrative remedies?

Preservation: ECHO preserved this issue, R. 553-57, and the district court addressed it, R. 751-54.

Standard of Review: A district court's ruling on a motion to dismiss is a question of law that this Court reviews for correctness. *McKitrick v. Gibson*, 2021 UT 48, ¶ 14, 496 P.3d 147. Standing generally presents a mixed question "'because it involves the application of a legal standard to a particularized set of facts,'" but "the question of whether a specific individual has standing to assert a claim is primarily a question of law." *Id.* (quoting *Hinkle v. Jacobsen*, 2019 UT 72, ¶ 18, 456 P.3d 738). So while the Court reviews the district court's "factual findings with deference," it gives

"minimal discretion to the district court on determinations of whether a given set of facts fits the legal requirements for standing." *McKitrick*, 2021 UT 48, ¶ 14.

Issue 2: Does ECHO have public interest standing to seek de novo review of the State Engineer's decision when it does not have statutory standing to do so and when it also has not shown that the Change Applications are of significant public importance?

Preservation: ECHO preserved its argument that it has public interest standing, R. 558-64, and the district court addressed it, R. 754-55.

Standard of Review: The standard of review is the same as it is for Issue 1.

Statement of the Case

EID applies to change the points of diversion for its water rights

This case began in 2018 when Emigration Improvement District (EID) submitted two Permanent Change Applications (the Change Applications) to the State Engineer. R. 23, 45, 56, 66-82.

EID is a special services district. It has water rights "established prior to 1903" that authorize it to divert water from Emigration Creek "to use for irrigation, domestic, and stockwatering purposes in the Salt Lake Valley." R. 47, 59. Since 1996, it has had the right to use up to "33.0 cfs or 649.99 acre feet of water" from 19 surface sources and from 22 wells. R. 47, 59.

Change applications do not request new water rights. They instead request a modification to existing rights. Utah Code § 73-3-3(1), (3), (4). In this case, EID asked the State Engineer to change the points of diversion where EID could take water under its existing water rights. R. 67, 76. EID's Change Applications did not ask the State Engineer to increase the amount of water EID could take under its water rights or to change the source of any of that water. R. 67, 70, 76, 79 (identifying the same quantity of water to be diverted before and after the proposed change and identifying Emigration Cr. Springs & Underground Water Wells as source of water before and after the change).

ECHO's protest

When a water right holder files a change application, the State Engineer starts an informal administrative proceeding to take evidence and hear protests about the application. Utah Code §§ 73-3-3(5), -6, -7; Utah Admin. Code R.655-6-2. But at the end of that process, it "shall be the duty" of the State Engineer to "approve the application" if there is "reason to believe" the application satisfies the criteria outlined in Utah Code section 73-3-8(1)(a)(ii) – (vi), including that (1) the proposed use will not impair existing rights or interfere with the more beneficial use of water; (2) the proposed plan is physically and economically feasible and won't be detrimental to the public welfare; (3) the applicant has the financial ability to

complete the work; (4) the applicant filed the application in good faith and not for speculation or monopoly; and (5) if applicable, the application complies with a groundwater management plan under section 73-5-15. Utah Code § 73-3-8(1)(a).

Upon receiving EID's Change Applications, the State Engineer opened an informal administrative hearing and allowed any interested parties to submit protests to EID's proposed changes. R. 47, 58. The protest period ran from September 10, 2018 through January 25, 2019. R. 751.

The State Engineer received 39 protests in response, R. 5-7, including one filed by ECHO. R. 87-236, 238-460, 474-483.

There is some dispute about what ECHO is. ECHO asserts that it is a d/b/a entity of Mark Tracy. R. 4; Aplt. Br. at 2. The district court found, however, that ECHO is an unincorporated association. Supp. R. 1040-41. ECHO's appeal challenges that characterization. Aplt. Br. at 18-19.

Regardless, ECHO's protest did not allege that Mr. Tracy or ECHO owned any water rights that EID's Change Applications would impair. ECHO's protest only mentioned one specific water right—right no. 57-8947 (the Mather Right)—but neither ECHO nor Mr. Tracy claimed any ownership interest in that right. R. 90-91. ECHO instead identified that water right as belonging to "Canyon resident Mather." *Id.* ECHO's protest also complained the Change Applications would affect "other water rights to Emigration

Canyon Creek . . . which service Utah's Hogle Zoo, the historic Mt. Olivet Cemetery, and This is the Place State Park[.]" R. 91. ECHO and Mr. Tracy did not claim an interest in any of those rights either.

Mr. Mather did not file a protest to complain about the impairment of his right at any time during the State Engineer's proceedings. R. 5-7.

The State Engineer granted EID's Change Applications on January 16 and 25, 2019. R. 45, 56. The decisions noted that the grants were subject to prior water rights and did not change the "nature of use" or the "place of use" of the water. R. 47, 59. The decisions also reiterated, "No additional quantity of water beyond what has already been approved for diversion" under EID's prior water rights "is being contemplated under" the Change Applications. R. 48, 59. One of the protestors timely filed a motion to reconsider the January 16, 2019 order. R. 24.

ECHO acquires the Mather Right and petitions for judicial review

After the State Engineer granted the Change Applications, Mr. Mather executed a quitclaim deed conveying the Mather Right to ECHO. R. 531-33. The description in the deed says that Mr. Mather quitclaimed the water right to ECHO on November 8, 2018. R. 531. Yet Mr. Mather did not sign, and thus could not have delivered, the deed until February 11, 2019. R. 533. Mr. Tracy recorded that deed on February 21, 2019. R. 531-33.

ECHO then filed its petition for de novo judicial review, R. 1-39, and alleged for the first time that it owned the Mather Right, R. 4. ECHO's petition did not allege that ECHO owned any other water right or affected property.

The district court dismisses ECHO's petition

EID and the State Engineer moved to dismiss ECHO's petition because ECHO did not have statutory or public interest standing. R. 510-23, 536-47. Utah Code section 73-3-14 provides that only persons aggrieved by an order of the State Engineer may seek judicial review in accordance with UAPA. Utah Code § 73-3-14. EID and the State Engineer argued that ECHO was not a party aggrieved by an order of the State Engineer under Utah Code section 73-3-14(1)(a) because ECHO did not own the Mather Right during the protest period and the then-owner of that right had not exhausted his administrative remedies by filing his own protest. R. 515-19, 538-45, 614-22. EID submitted a copy of the recorded deed in support of its motion. R. 531-33.

The district court granted the motions to dismiss. R. 751-55. It held that ECHO was not an aggrieved party, and therefore lacked standing, because ECHO did not own the Mather Right when it protested the Change Applications. R. 752-54. The district court rejected ECHO's argument that it acquired the Mather Right between September and November 2018. R. 753. The court concluded that, as a matter of law, Mr. Mather could have only

conveyed the Mather Right when he signed the deed and delivered it to ECHO. R. 753-54. The earliest that could have happened was February 11, 2019, after the end of the protest period and after the State Engineer issued the decisions. R. 753-74. The district court also held ECHO did not have standing under the public interest exception because ECHO did not raise issues of significant enough public importance. R. 754-55.

ECHO appealed pro se. R. 762-63. This Court then temporarily remanded the case so the district court could resolve a dispute between ECHO and EID about whether ECHO is a d/b/a of Mr. Tracy that could proceed pro se or an unincorporated association that needs counsel. R. 801. The district court determined that ECHO is an unincorporated association that must have counsel. Supp. R. 1040-41. The State Engineer did not, and does not, take a position on ECHO's corporate form.

Summary of the Argument

This Court should affirm the district court's dismissal of ECHO's petition because ECHO does not have statutory or public interest standing to challenge the State Engineer's decisions.

ECHO does not have statutory standing. Only aggrieved parties under section 73-3-14 can request judicial review of State Engineer decisions in accordance with UAPA. So to have standing, a petitioner must plead a particularized injury from the State Engineer's decisions. A petitioner must

also have exhausted its remedies by participating in the State Engineer's informal administrative proceedings and raising the injuries to its water rights to the State Engineer's level of consciousness. ECHO does not satisfy those requirements.

As to the first requirement, ECHO is not an aggrieved party because its petition does not plead that the State Engineer's decisions will particularly injure ECHO. ECHO's petition largely raises potential injuries to the Emigration Canyon area that would affect all canyon residents. Those injuries are not specific to ECHO, so ECHO does not have standing to litigate them. The only particularized claim ECHO possibly identifies is that the Mather Right has been impaired. But ECHO did not own the Mather Right when the State Engineer issued its decisions. Those decisions thus could not have inured ECHO. Also, the Mather Right—like all Utah water rights—is defined and limited by its beneficial use. But nothing in ECHO's petition pleads that the State Engineer's decisions have injured ECHO's beneficial use of water from the Mather Right.

As to the second statutory requirement, ECHO did not exhaust or preserve any claim that it would be injured by the impairment of the Mather Right. A petitioner must have raised the impairment of its water right to the State Engineer's level of consciousness. That didn't happen here. While ECHO's protest mentioned the Mather Right, ECHO did not own, or even

claim that it owned, that right when it filed its protest. ECHO's protest thus did not bring a specified injury to ECHO's own interests to the State Engineer's level of consciousness. What's more, Mr. Mather—the then-owner of the Mather Right—did not file a protest. He would not have standing to challenge the State Engineer's decisions. ECHO's purchase of the Mather Right from Mr. Mather does not give ECHO standing to challenge the decisions either.

Finally, the district court correctly held that ECHO does not have public interest standing. The court held that ECHO did not satisfy the public interest doctrine because it did not raise issues of significant enough public importance. That holding was right. But this Court can affirm on other grounds. After the district court dismissed the petition, the Utah Supreme Court held that parties who lack statutory standing cannot use public interest standing to enter the courts. That is precisely what ECHO tries to do here. If ECHO does not have statutory standing—and it does not—it cannot proceed under the public interest doctrine.

For those reasons, ECHO does not have standing, and this Court should affirm.

Argument

This Court should affirm the district court's dismissal of ECHO's petition. ECHO does not have statutory standing under section 73-3-14

because it is not an aggrieved party and did not properly exhaust its remedies. And because ECHO fails the statutory standing test, it cannot use public interest standing to obtain judicial review of the State Engineer's decisions.

I. ECHO Lacks Statutory Standing to Request De Novo Review.

ECHO does not have statutory standing to challenge the State Engineer's decisions. "[S]tanding is a [threshold] jurisdictional requirement" to bring an action in Utah courts. *McKitrick v. Gibson*, 2021 UT 48, ¶ 17, 496 P.3d 147 (quoting *Gregory v. Shurtleff*, 2013 UT 18, ¶ 11, 299 P.3d 1098) (second alteration in original). If a claimant cannot satisfy that requirement, the case must be dismissed. *Utah Alunite Corp. v. Jones*, 2016 UT App 11, ¶ 6, 366 P.3d 901.

When a statute creates a cause of action, that statute can also dictate the standing requirements to enforce it. *McKitrick*, 2021 UT 48, ¶ 17. The legislature has done that here. By statute, only a "person aggrieved by an order of the state engineer may obtain judicial review" of that order "in accordance with" UAPA. Utah Code § 73-3-14(1)(a). Claimants must pass two tests to proceed. First, a claimant must be aggrieved by an order of the State Engineer. *Id.* Second, a claimant must satisfy the requirements for judicial review in accordance with UAPA by raising their claims before the State Engineer in the administrative proceedings. *Id.* Only persons who are both

aggrieved and who have complied with UAPA have standing under the statute. *Id.*; *see Utah Alunite Corp.*, 2016 UT App 11, ¶ 9 n.6 ("[A] party who is not also an 'aggrieved person' lacks standing just as fully as does an 'aggrieved person'" who did not join the State Engineer's administrative proceeding). ECHO does not satisfy either requirement, regardless of whether ECHO is a d/b/a of Mr. Tracy or an unincorporated association.

A. ECHO is not a person aggrieved by an order of the State Engineer.

ECHO does not have standing because it cannot show it is aggrieved by the State Engineer's decisions. The only claimants who can petition for de novo review of State Engineer decisions are those who are "aggrieved by an order of the state engineer." Utah Code § 73-3-14(1)(a). The aggrievement requirement reflects Utah's traditional standing test. *Haik v. Jones*, 2018 UT 39, ¶ 17, 427 P.3d 1155 (declaring "aggrieved" is consistent with the traditional standing requirement). So a claimant is not aggrieved unless it can demonstrate the State Engineer's decision will result in a "distinct and palpable injury that gives rise to a personal stake" in the action. *Id.* ¶ 18. Stated differently, the claimant must have a particularized injury. *Washington Cnty. Water Conservancy Dist. v. Morgan*, 2003 UT 58, ¶¶ 15-16, 82 P.3d 1125. This limitation prevents courts from wading into water decisions that would be more appropriately left to the other branches of

government. *See Haik*, 2018 UT 39, ¶ 18 (explaining justification for traditional standing requirement).

General concerns do not rise to the level of an aggrievement. *Haik*, 2018 UT 39, ¶ 20. In *Haik*, for example, the Court held a claimant was not aggrieved—and thus did not have standing—when he only alleged he owned land in the valley but did not allege that the change applications would affect him "in any direct or particularized way." *Id.* What's more, a claimant does not have a particularized injury merely because it filed a protest during the State Engineer's administrative proceedings. *Washington Cnty.*, 2003 UT 58, ¶¶ 11-16. Utah law permits "any person interested" to protest a change application, Utah Code § 73-3-7(1), meaning anyone may voice their concerns "about proposed changes in water rights." *Badger v. Brooklyn Canal Co.*, 922 P.2d 745, 750 n.9 (Utah 1996) (Badger I). A claimant's participation in the protest process thus does not indicate that the claimant has suffered, or will suffer, a particularized injury. *Washington Cnty.,* 2003 UT 58, ¶¶ 15-16.

ECHO is not an aggrieved person under those authorities. ECHO filed a lengthy petition in this matter, but that petition is largely devoted to ECHO's general grievances against EID and decades-old State Engineer decisions. R. 10-24. None of those past decisions is at issue. ECHO also raises a number of concerns that any land or water rights owner might have. R. 26-38. For example, it complains that "[d]ozens of homeowners have reported . . .

impairment" of their water rights or quality since 1988. R. 29. It also makes general allegations about impairment of water quality, R. 30-34, EID's finances, R. 30-31, 34, and impairment of water rights generally, specifically naming those belonging to the Hogle Zoo, Mt. Olivet Cemetery, and This Is The Place State Park, R. 30. Those allegations do not, however, plead that the State Engineer's decision caused a direct or particularized injury to ECHO.

To be sure, ECHO's petition alleges that ECHO now owns the Mather Right. R. 4. It then contains one conclusory sentence that it "has suffered total impairment of its water right." R. 24. But none of that means ECHO has pleaded that it is "aggrieved by an order of the state engineer." ECHO does not allege that the State Engineer's decisions in the 2018 Change Applications—as opposed to the list of State Engineer decisions dating back to the 1980s—impaired the Mather Right. In fact, ECHO's protest, which is attached to the petition, indicates that impairment had already occurred before the State Engineer granted the Change Applications. R. 91; *see also* Aplt. Br. at 22 (conceding the Mather Right had "suffered total impairment" during "the summer, autumn, and winter of 2018"). And ECHO has not alleged the water would come back in the absence of the Change Applications.

Additionally, the alleged impairment of the Mather Right does not mean ECHO is "aggrieved by an order of the state engineer" because ECHO did not even own the Mather Right until after the State Engineer granted the Change Applications. *See* R. 753-54; *infra* at 18-23. The State Engineer's decisions granting the Change Applications thus could not have injured ECHO. ECHO instead caused its own injuries by acquiring an impaired right.

Even setting those problems aside, ECHO is also not aggrieved because does not plead an injury to its beneficial use of water. Water rights are usufructuary rights. They give the owner a right to a benefit from the water, not a right to the water itself. *Salt Lake City v. Salt Lake City Water & Elec. Power Co.*, 71 P. 1069, 1072 (Utah 1903) (as "usufructuary" rights, "[n]either at common law, nor under the law of appropriation, does the . . . appropriator own the water in the stream."). So beneficial use of water is "the basis, the measure, and the limit" of all Utah water rights. Utah Code § 73-1-3; *see also Platt v. Town of Torrey*, 949 P.2d 325, 331 (Utah 1997) (recognizing the extent of a water right "is limited to that amount which can be put to beneficial use").

ECHO's petition does not plead an impairment to any beneficial use of the Mather Right. ECHO does not allege that it has put the water from the Mather Right to beneficial use, or that it could do so if the State Engineer

hadn't granted the Change Applications. In fact, ECHO does not even allege that it owns any land or other property that could benefit from water under the Mather Right. Without those allegations, ECHO cannot show the State Engineer's decisions granting the Change Applications injured ECHO or its water right.

In sum, ECHO's petition does not sufficiently plead that the State Engineer's decisions have injured ECHO or its water right. In the absence of such allegations, ECHO has even fewer grounds to pursue its general grievances than the landowner in *Haik* who raised general complaints about how the State Engineer's decision would affect water in valley. *See* 2018 UT 39, ¶ 20. As in that case, ECHO does not have statutory standing to pursue its general grievances about the State Engineer's decisions.

B. ECHO has not exhausted its remedies or preserved its claims.

ECHO also lacks standing because it did not, and could not, claim before the State Engineer that its water right would be impaired. An aggrieved person may only seek judicial review of the State Engineer's decisions "in accordance with" UAPA. Utah Code § 73-3-14(1)(a). And under UAPA, a claimant "may seek judicial review only after exhausting all administrative remedies available." Utah Code § 63G-4-401. Aggrieved persons thus do not have standing unless they have become parties to the

State Engineer's informal administrative proceeding. *See Western Water, LLC v. Olds*, 2008 UT 18, ¶ 19, 184 P.3d 578 (applicant must strictly comply with the statutory application process before seeking judicial relief); *S&G, Inc. v. Morgan*, 797 P.2d 1085, 1088 (Utah 1990) (holding party could not seek judicial review where it did not participate in State Engineer's proceedings).

Related to that exhaustion requirement, parties requesting judicial review of State Engineer decisions must have preserved their specific claims in the administrative proceedings. *Badger v. Brooklyn Canal Co.*, 966 P.2d 844, 847 (Utah 1998) (*Badger II)*. It is "well-settled" that parties cannot bypass the State Engineer's administrative proceeding by asking the court to determine issues the State Engineer should have addressed originally. *Id.* So if a party fails to raise an issue before the State Engineer, the issue is waived and is not subject to review. *Id.* To raise an issue to the State Engineer, parties must bring injuries to their vested water right to the State Engineer's "level of consciousness" so "there is at least the possibility" that the State Engineer could consider them. *Id.*

The district court correctly dismissed ECHO's petition because ECHO was not aggrieved when it filed its protest. R. 754. ECHO did not own the Mather Right during the protest period. And it did not acquire standing by buying that right from an owner who did not exhaust his remedies. So too,

ECHO's protest did not exhaust or preserve any remedies or claims because ECHO did not own—or even claim it owned—the Mather Right.

1. ECHO did not own the Mather Right during the protest period.

This Court should affirm the district court's holding that ECHO did not own the Mather Right during the protest period. A water right evidenced by a certificate of appropriation must be transferred by deed in the same manner as real estate. Utah Code § 73-1-10(1)(a). And a real estate deed does not transfer ownership unless it is "in writing, signed by the creator, supported by consideration, and delivered to the grantee." *Julian v. Petersen*, 966 P.2d 878, 881 (Utah 1998) (citations omitted). Ownership does not change until the completion of the last step. *Id.; Wiggill v. Cheney*, 597 P.2d 1351, 1352 (Utah 1979). So a water right, like real estate, cannot be conveyed until the deed is delivered. *See Wiggill*, 597 at 1352 ("The rule is well settled that a deed, to be operative as a transfer of the ownership of land or an interest or estate therein, must be delivered."). And that means the "grantor must part with possession of the deed or the right to retain it." *Id.*

Following those authorities, the district court concluded that Mr. Mather did not transfer ownership of the Mather Right until he delivered the deed to ECHO. R. 753 (citing *Wiggill*, 597 P.2d at 1352). The district court then found that Mr. Mather delivered the deed to ECHO on February 11,

2019. R. 751-53. Mr. Mather signed the deed on that date, so that is the earliest day he could have delivered it. *See* R. 531-32, 753-54. Mr. Mather thus could not have conveyed ownership of the Mather Right to ECHO until after the protest period ended and the State Engineer granted the Change Applications in January 2019. R. 753-54.

ECHO has not challenged those findings and conclusions. ECHO does not argue that the district court made a legal error when it determined that the Mather Right could only be conveyed by delivery of the deed.[2] It also has not argued that the district court erred when it determined that the deed was executed and delivered on February 11, 2019 based on the copy of the recorded deed. In fact, ECHO's brief seems to concede the deed in the record is correct. Aplt. Br. at 10, n.14 (admitting he recorded the deed on February

[2] As the State Engineer noted in its motion to dismiss, the State Engineer file number for the Mather Right (57-8947) was once a single share in a now-defunct water company. R. 539 n.3. At some point in the past, the owner of that right filed a change application on the share. The State Engineer approved that application and assigned it a water right number. The Mather Right became certificated at that time. *Id.* Because it is now a certificated right, it must be transferred by a deed. Utah Code § 73-1-10(1)(a). No party challenged that below. The parties, and the district court, have all proceeded as if the Mather Right is a certificated water right that requires a deed. R. 612-13, 751-54. ECHO's opening brief does not argue otherwise, and it cannot challenge whether the Mather Right is a certificated water right that had to be transferred by a deed now. *See Allen v. Friel*, 2008 UT 56, ¶¶ 7-8, 194 P.3d 903 (explaining that issues not raised in an opening brief are waived). But if the Mather Right were still merely a share in a water company, ECHO still would not have standing since only the irrigation company could have challenged that decision, *Badger I,* 922 P.2d at 749-51.

21, 2019). ECHO's failure to dispute those findings and conclusions in its brief means it has waived any challenge to them in this appeal. *See Allen v. Friel*, 2008 UT 56, ¶¶ 7-8, 194 P.3d 903; *Chard v. Chard*, 2019 UT App 209, ¶ 34, 456 P.3d 776. For that reason alone, this Court can affirm the district court's holding that ECHO did not own the Mather Right until after the protest period. *See Chard*, 2019 UT App 209, ¶¶ 32-35 (affirming district court's conclusion where party's opening brief failed to challenge the legal basis for that decision).

Rather than engaging with the district court's decision, ECHO's brief points to conclusory statements that it bought the Mather Right on September 27, 2018. Aplt. Br. at 10, 13, 21. ECHO's support for those statements are two declarations it filed in opposition to the motions to dismiss. R. 568, 575. ECHO then accuses the district court of relying on "baseless conjecture" because it ignored those statements. Aplt. Br. at 13.

ECHO's accusation does not show the district court was wrong. The district court did not base its decision on a factual finding or other "conjecture" about when Mr. Mather agreed to sell his right to ECHO. The district court instead made a legal conclusion that Mr. Mather did not transfer ownership of the Mather Right until he delivered the deed, which could not have occurred before Mr. Mather signed it. R. 753-54. And there was no dispute that Mr. Mather signed the deed after the protest period

ended. So Mr. Mather's and ECHO's intentions before that date, including the date Mr. Mather agreed to convey the right to ECHO, are irrelevant. *See Wiggill*, 597 P.2d at 1352 n.5.

ECHO also argues the district court had to accept his statement that Mr. Mather transferred the right to ECHO on September 27 because the matter was before the court on a motion to dismiss. Aplt. Br. at 13, 22 n.27. That argument fares no better. ECHO's petition does not identify when it acquired the Mather Right. ECHO simply alleges that, as of the date of the petition, ECHO owned it. R. 4.

To be sure, courts generally do not consider documents outside the pleadings on a motion to dismiss. *Oakwood Village LLC v. Albertsons, Inc.*, 2004 UT 101, ¶ 12, 104 P.3d 1226. But if a complaint refers to a document that is central to the plaintiff's claim, a "defendant may submit an indisputably authentic copy" of the document for consideration. *Id.* ¶ 13 (quoting *GFF Corp. v. Assoc. Wholesale Grocers, Inc.*, 130 F.3d 1381, 1384 (10th Cir. 1997)). For example, in *BMBT, LLC v. Miller*, this Court held the district court could consider a recorded deed on a motion to dismiss because the deed was reliable and formed the basis of the plaintiff's claims of ownership, even though the complaint did not expressly mention the deed. 2014 UT App 64, ¶ 7, 322 P.3d 1172.

The district court's decision in this case was consistent with those cases. The basis of ECHO's claim of aggrievement is that it owns the Mather Right. While ECHO's petition does not specifically reference the deed, that document is central to ECHO's allegation that it owns the impaired right. The deed is also a publicly recorded document whose authenticity cannot be (and has not been) challenged. ECHO, in fact, never objected to its submission before the district court. ECHO instead responded by asking the courts to also consider the irrelevant statements in the declarations it submitted with its response. R. 556.

Additionally, Rule 12(b)(1) of the Utah Rules of Civil Procedure specifically authorizes motions to dismiss a complaint for lack of subject matter jurisdiction. Utah R. Civ. P. 12(b)(1). On those motions, courts can consider outside evidence going to jurisdiction and are not bound to accept as true the allegations in the complaint. *See Spoons v. Lewis*, 1999 UT 82, ¶¶ 4-5, 987 P.2d 36; *Myers v. Utah Transit Authority*, 2014 UT App 294, ¶ 13 n.2, 341 P.3d 935.

The parties did not cite Rule 12(b)(1) in their initial motions to dismiss. EID cited only Rule 12(b)(6), R. 511-12, and the State Engineer joined that motion without citing a specific provision of its own, R. 536-546. But it is clear that both parties were asking the Court to rule based on lack of standing—a subject matter jurisdiction requirement. R. 510-22, 536-47.

ECHO responded to that argument, the district court held a hearing on that argument, and the district court allowed supplemental briefing about when the deed conveyed ownership. R. 751. The district court then dismissed the case for lack of jurisdiction without citing Rule 12(b)(6). R. 751-53. So while the parties styled the motions to dismiss as a Rule 12(b)(6) motions, the parties and the court treated their substance as motions to dismiss for lack of jurisdiction under Rule 12(b)(1). The district court's consideration of the deed was appropriate under that rule.

Regardless of whether the motion to dismiss is viewed under Rule 12(b)(6) or 12(b)(1), the district court properly considered the recorded deed—and its dates—when it held that ECHO did not own the Mather Right during the protest period. ECHO's attempts to show it acquired the Mather Right earlier are not legally relevant to that holding. This Court should affirm.

2. ECHO did not acquire standing by buying a water right from a party who failed to exhaust his remedies.

Because Mr. Mather owned the Mather Right during the protest period, he was the only person with a particularized risk of injury if the Change Applications impaired that right. So too, he was the only person who could have exhausted a claim based on that injury. Indeed, an owner whose water right may be injured has the obligation to bring its vested right, and the possible impairment of that right, to the attention of the State Engineer or

waive any further claim on that right. *See Badger I,* 922 P.2d at 751 ("failure to make known one's vested rights before the State Engineer constitutes a waiver of those rights"); *Badger II*, 966 P.2d at 848 (holding private well plaintiffs failed to "make known the nature of *their* rights" to the State Engineer). It is undisputed, however, that Mr. Mather never did so. R. 751-52. He did not exhaust his remedies by filing a protest or participating in the State Engineer's informal administrative proceedings to make his injury known. R. 5-7 (listing protestors).

ECHO could not have exhausted Mr. Mather's claim for him. In *S&G*, for example, the petitioner sold a water right to a power plant with the agreement that the amount of consideration would be determined by the State Engineer's approval of the power plant's change application. 797 P.2d at 1087-88. The petitioner did not participate in the change application process, instead relying on the power plant to represent its interests. *Id.* But when the State Engineer did not approve as much water as anticipated, the power plant did not seek judicial review. *Id.* The petitioner attempted to do so, but the Court dismissed the petition because the petitioner's failure to participate in the administrative proceedings "waived its right to judicial review." *Id.* at 1087. Just as that petitioner could not rely on another party to raise its claims, Mr. Mather could not rely on ECHO to exhaust or preserve his claims that the Mather Right would be impaired.

Because Mr. Mather did not exhaust his remedies, he would not have standing to challenge the State Engineer's decisions. *Id.* It follows that ECHO could not have acquired standing to do so by purchasing Mr. Mather's Right. For one, there is no indication in the record that Mr. Mather assigned any claims to ECHO. And, in any event, Mr. Mather could not assign claims he did not have. *Sunridge Dev. Corp. v. RB&G Eng'g, Inc.*, 2010 UT 6, ¶¶ 11, 15, 230 P.3d 1000. So too, by purchasing Mr. Mather's right, ECHO did not somehow gain rights to challenge the State Engineer's decisions that Mr. Mather would not have if he had kept his water right. ECHO bought a right from an owner who did not exhaust his remedies or raise a claim based on that right to the State Engineer. ECHO's subsequent acquisition of the Mather Right does not now give ECHO the right to obtain judicial review based on an injury to that right.

3. ECHO's protest did not exhaust or preserve any claim about the Mather Right.

ECHO argues it still has standing because Mr. Mather signed the title transfer documents before ECHO filed the petition for de novo review, which ECHO says secured any remaining standing requirements. Aplt. Br. at 20-22. As far as the State Engineer can tell, no Utah case has addressed this exact circumstance. But the authorities don't support ECHO's argument. Instead,

they show that a claimant cannot create standing by filing a general protest as an interested party and then later acquiring an impaired water right.

To begin with, an aggrieved party must participate in the State Engineer's protest proceedings, but participation alone does not confer standing. Recall that "any person interested" may file a protest. Utah Code § 73-3-7(1). An interested person thus does not become an aggrieved party with standing. *Washington Cnty.,* 2003 UT 58, ¶¶ 15-16. They must also suffer a particularized injury. *Haik*, 2018 UT 39, ¶ 20. Otherwise, courts have cautioned, uninjured parties would be able to "insert [their] foot into an otherwise closed jurisdictional door" by using de novo review to bring claims they otherwise would not have standing to bring. *Washington Cnty.*, 2003 UT 58, ¶¶ 15-16.

The reverse is true, too. A person who is aggrieved does not have standing unless they also properly participated in the administrative proceedings. *Utah Alunite Corp.*, 2016 UT App 11, ¶¶ 7-9. They must file a protest. But not just any protest will preserve a right to review. The Utah Supreme Court has recognized that protestors must expressly "make known the nature of [their] rights." *Badger I*, 922 P.2d at 751. Protestors who fail "to make known [their] vested rights before the State Engineer" waive "those rights." *Id.*

Consistent with those declarations, the Supreme Court held in *Badger II* that water right owners waived their claims when their protests only raised general concerns and did not identify what specific rights they had to the wells at issue or how the wells would be impaired. *Badger II,* 966 P.2d at 848. Those protestors thus waived judicial review, even though (1) they filed protests in the State Engineer's proceedings; (2) they owned the private well rights when they petitioned for judicial review; and (3) they argued their water rights would be impaired. *See Badger I*, 922 P.2d at 747-48 (noting that some plaintiffs owned private well rights that they argued would be impaired by State Engineer's decision); *Badger II*, 966 P.2d at 847-48 (holding those same private well owners' protests didn't raise their well rights to the State Engineer).

Notably, if protestors fail to expressly make their rights known during the protest period, it does not matter what the State Engineer might or should have known. Utah courts have held that the State Engineer is not obligated to "divine the source of a protestor's claim." *Badger II,* 966 P.2d at 840. So in *Badger II*, the protestors waived their claims when they did not identify their well rights even though the State Engineer had a record of those rights in the state water rights files. *Id.* The Court held that the State Engineer was not obligated to research and investigate "the source of a protester's claim by sifting through his/her records." *Id.* This Court reached a

similar conclusion in *Utah Alunite Corp*. It held appellants lacked standing because they did not participate in the State Engineer's hearing, even though the claimants argued the State Engineer knew about their claims and interests because they were parties before him in a parallel administrative matter. *Utah Alunite Corp.*, 2016 UT App 11, ¶ 10.

Together, those cases show that an aggrieved party cannot obtain judicial review unless it files a protest and expressly brings an injury to its water rights to the State Engineer's level of consciousness. ECHO did not satisfy those requirements. Although ECHO filed a protest that mentioned the alleged impairment of the Mather Right, ECHO did not own that right at any point during the protest period. ECHO was thus not aggrieved at that time because the Change Applications would not impact ECHO in any "direct or particularized way." *See Haik,* 2018 UT 39, ¶20. So while ECHO could voice its general concerns as an interested party, it could not raise them as an aggrieved one. In other words, ECHO had no claims, or remedies, to exhaust when it protested.

But beyond that issue, ECHO's protest was also insufficient to preserve ECHO's claim of impairment because it did not raise it to the State Engineer's level of consciousness. ECHO's protest did not disclose to the State Engineer that ECHO owned any water rights. The protest instead expressly told the State Engineer that the Mather Right was the "property right of

Canyon resident Mather." R. 91. And that reference was buried among other general complaints about the Change Applications, including that they would impair "substantially more surface and underground sources" and affect "other water rights" that service the Hogle Zoo, Mt. Olivet Cemetery, and This is the Place State Park. R. 91. ECHO did not assert that it had any interest in any of those rights or sources.

None of those general complaints could have alerted the State Engineer that ECHO had a potential injury from the Change Applications. The State Engineer had no way to know that ECHO owned any water right that the Change Applications might impair. And while ECHO's protest mentioned the Mather Right, ECHO's protest didn't alert the State Engineer to any possibility that the impairment of Mather Right might injure or even affect ECHO. ECHO also did not inform the State Engineer of any other injury it might suffer from the changes proposed by the applications. Having failed to raise any particularized injuries to the State Engineer, ECHO has waived its right to have the courts hear a claim that it is now aggrieved by the Mather Right's impairment or the State Engineer's decisions.

A holding that ECHO's general protest exhausted or preserved a claim based on a water right ECHO did not yet own would require the State Engineer to become a diviner, something *Badger II* expressly said the State Engineer shouldn't have to be. 966 P.2d at 849. Under ECHO's theory, the

State Engineer would have had to somehow know to consider potential impairment to the Mather Right even though that right's owner was a stranger to the proceedings. That would have required the State Engineer to assume, unreasonably, that Mr. Mather would be injured even though he hadn't bothered to file a protest. Alternatively, ECHO's theory would require the State Engineer to somehow realize that Mr. Mather did not actually own the Mather Right or to predict that ECHO might acquire that right later. None of that follows what the Utah courts have said the State Engineer should be required to do, or what the courts have said it takes to exhaust remedies or preserve issues for review.

ECHO does not address any of those problems. It argues the statutory difference between interested and aggrieved parties delineates two separate points of time—the protest and the lawsuit—and only requires a petitioner show an injury before the lawsuit is filed. Aplt. Br. at 20-21. That argument misunderstands standing. To be sure, an interested party does not need to show an injury to voice concerns in the State Engineer proceedings. Utah Code § 73-3-17; *Washington Cnty.*, 2003 UT 58, ¶¶ 11, 14. But such participation does not mean a petitioner can obtain judicial review unless the petitioner raises its specific rights, claims, and injuries to the State Engineer. *Washington Cnty.*, 2003 UT 58, ¶ 16; *Badger II*, 966 P.2d at 847. ECHO did not have any of those to raise when it filed its protest.

If ECHO's legal theory were correct, the Court would have decided the *Badger* cases differently. Like ECHO, those claimants filed protests. And, like ECHO, they owned water rights when they filed their petitions for review. Under ECHO's theory, the Court should have heard their claims because they owned well rights at the time they filed their petition in court. Yet the Court held that those protestors had waived their claims because they failed to raise their specific rights and claims to the State Engineer's level of consciousness. If those petitioners—who actually owned their water rights when they filed their protests—didn't have a right to judicial review, ECHO certainly does not. ECHO's reliance on a right it acquired on the eve of litigation is no more than an attempt to "insert [its] foot into an otherwise closed jurisdictional door." *Washington Cnty.*, 2003 UT 58, ¶ 16.

For all those reasons, ECHO has no right to judicial review of its claim that the Mather Right has been impaired. ECHO's waiver of that claim is fatal because the impairment of the Mather Right is the only possible particularized claim in ECHO's petition. Without that claim, ECHO cannot show that it is aggrieved by an order of the State Engineer. ECHO thus does not have standing under section 73-3-14(1)(a), and this Court should affirm the district court's dismissal of ECHO's petition.

C. ECHO does not have standing as an unincorporated association.

On appeal, ECHO suggests that it has standing because the district court found that it is an unincorporated association which represented multiple water right protestants at a hearing before the State Engineer. Aplt. Br. at 15-16. ECHO is wrong.

After ECHO filed its pro se appeal of the district court's dismissal order, this Court remanded the matter for the limited determination of whether ECHO is a d/b/a entity of Mr. Tracy—as it alleged—that could proceed pro se or whether it is an unincorporated association that must be represented by counsel. R. 803-04. The court conducted an evidentiary hearing and found that ECHO is an unincorporated association. Supp. R. 1041.

The State Engineer takes no position on whether ECHO is a d/b/a entity or is an unincorporated association.[3] It also took no position on this issue below. ECHO lacks standing regardless of its corporate form. To the

[3] ECHO's brief contains a footnote suggesting that EID and the State Engineer "argue before this Court that The ECHO-Association has always had legal standing to protest permanent changes" to EID's water right "as a non-profit unincorporated association of water right protestants." Aplt. Br. at 17 n.20. That footnote is a misrepresentation. The State Engineer does not assert (and has not ever asserted) that ECHO is a non-profit unincorporated association of water rights protestants or that it has standing because it is such an association. The State Engineer has not taken a position about whether ECHO is an unincorporated association at all.

extent that ECHO is a d/b/a of Mr. Tracy, it lacks standing for the reasons already discussed.

ECHO also lacks standing if it is an unincorporated association. ECHO appears to be suggesting it has standing as a "non-profit 'unincorporated association'" of other water rights protestors. Aplt. Br. at 15. This is a new theory that ECHO's petition does not plead. But if ECHO is such an association, ECHO does not have standing merely because it notes that unincorporated associations can sue or be sued in their own name. Aplt. Br. at 17. To have standing as an association of members, at least one of ECHO's individual members must have standing and the participation of the individual members must not be necessary to the resolution of the case. *Sierra Club. v. Utah Air Quality Bd.*, 2006 UT 74, ¶ 21, 148 P.3d 960. So ECHO does not have standing unless it can show that one of its members has standing because they are aggrieved and they raised their claim to the State Engineer. Utah Code § 73-3-14(1)(a); *see supra* 11-13.

ECHO has not made that showing. ECHO argues it has standing because the district court determined it represented nine ascertainable members at the protest hearing and "thus had exhausted administrative remedies necessary for de novo judicial review of the permanent change applications." Aplt. Br. at 16. But the district court held only that ECHO was an unincorporated association that needed to be represented by counsel.

Supp. R. 1041. The court did not make any findings that ECHO or those nine parties had exhausted the remedies necessary for judicial review.

ECHO also asserts that those other owners have "unquestionable legal standing to petition the court for judicial review." Aplt. Br. at 16. The district court did not find that either, and ECHO cites nothing in the record to support its assertion. ECHO cites nothing, for example, about the nature of those owners' rights, whether those owners adequately raised their rights to the State Engineer, or whether those rights have been or will be injured by the State Engineer's decisions. ECHO merely asks this Court to take its word that they have standing. What's more ECHO's protest did not identify the rights of any of those nine owners. If those owners did exhaust their remedies, they did so in their own names. That suggests the members' individual participation would be necessary, meaning ECHO does not have standing to seek judicial review on their behalf.

Additionally, ECHO cannot rely on any of the water rights owned by those nine parties to save its petition from dismissal. ECHO does not identify any of those "ascertainable" members of ECHO in its petition. It also does not identify any of their rights. And it does not allege whether those owners hold their rights for the benefit of ECHO and its members as opposed to in their own private capacities. ECHO cannot use unpled claims and unidentified water rights to show the district court's dismissal of its case was wrong.

ECHO is thus left with only the Mather Right. ECHO's brief seems to suggest that those nine members share ownership of that right because property owned by an unincorporated association is owned by its members. Aplt. Br. 16. But those members have no more standing to litigate a claim based that right than Mr. Tracy d/b/a ECHO would because Mr. Mather owned that right during the protest period. And, tellingly, Mr. Mather is not identified as one of those "ascertainable members." Beyond that failure, ECHO's petition does not allege that the impairment of Mr. Mather's right will specifically harm ECHO or any of those members it names in its brief.

Regardless of its corporate form, ECHO cannot obtain de novo review of the State Engineer's decisions. This Court should affirm the district court's dismissal of ECHO's petition.

II. ECHO's Petition Cannot Proceed Under Public Interest Standing.

The district court correctly concluded that ECHO does not have public interest standing to challenge the State Engineer's decisions. The court made that decision because ECHO did not assert issues of sufficient public interest. But after the district court dismissed ECHO's petition, the Supreme Court clarified that parties cannot use public interest standing to bypass statutory standing requirements. This Court can affirm on that ground. But even

without that clarification, this case does not satisfy the test for public interest standing.

A. Public interest standing cannot skirt statutory standing requirements.

Because ECHO is not an aggrieved party under section 73-3-14, it may not proceed under public interest standing. The Supreme Court has held that a "statutory claimant must have statutory standing." *McKitrick*, 2021 UT 48, ¶ 2. A claimant cannot rely on traditional or alternative standing—including public interest standing—to cure a statutory standing deficiency. *Id.* ¶¶ 2, 15 n.5, 50.

In *McKitrick*, the subject of a GRAMA records request filed a petition to challenge the city review board's release of those records. *Id.* ¶ 9. The Court held the petitioner was a "statutory claimant" because the provisions of GRAMA governed judicial review of the review board's decision. *Id.* ¶ 18. But GRAMA did not give the claimant standing to petition for judicial review. *Id.* ¶ 43. GRAMA only gave that right to the person who requested the records or the political subdivision asked to produce them. *Id.*

The claimant argued that his lack of statutory standing didn't matter because he could proceed under the traditional or alternative standing tests. *Id.* ¶ 45. While the Court agreed the claimant would have satisfied the traditional standing test because he could show a particularized injury, *id.* ¶

44, the Court still held his case was barred because GRAMA had not granted him standing, *id.* ¶ 49.

Because the Court found the claimant would have satisfied the traditional standing test, it did not address whether he had public interest standing. *Id.*¶ 15 n.5. But it made clear that the claimant's lack of statutory standing would have stopped his case from proceeding under that doctrine too. *Id.* The Court's holding was clear: a "statutory claimant may not overcome a lack of statutory standing by satisfying the elements of some other doctrine of standing." *Id.* ¶ 50.

McKitrick is dispositive here. ECHO is a statutory claimant. The right to judicial review of a State Engineer's decision flows through Utah Code § 73-3-14. And that course is limited to parties who are both aggrieved and who satisfy UAPA. Utah Code § 73-3-14(1)(a). ECHO must thus satisfy those standing requirements to proceed. Having failed to do so, it cannot use public interest standing to bypass the statute.

ECHO cannot rely on any language in *Haik* or *Washington County* to suggest otherwise. Aplt. Br. at 23-24. *McKitrick* expressly referenced both of those cases. The Court acknowledged that *Washington County* may have created some confusion because the statute governing review of the State Engineer's decision grants a right to judicial review consistent with the traditional standing requirement, "blurring the distinction between the

statutory and constitutional standing analysis." *McKitrick*, 2021 UT 48, ¶ 47. But the Court concluded that any language in *Washington County* suggesting a plaintiff without statutory standing could rely on traditional standing or public interest standing was only dicta because the Court found "all three types of standing lacking." *Id.*

The Court similarly dispelled any notion that *Haik* leaves room for ECHO to rely on public interest standing to challenge the State Engineer's decisions. *McKitrick* acknowledged that *Haik* had not answered whether "a statutory claimant who lacks statutory standing [may] proceed on the basis of traditional or alternative standing." *McKitrick*, 2021 UT 48, ¶ 2. *McKitrick*, however, declared that it would answer that question. *Id.* And the answer is no. *Id.* ¶¶ 2, 50.

Following *McKitrick*, there is no room for ECHO to argue that it has public interest standing to seek judicial review of the State Engineer's decisions. This Court can thus affirm the district court's refusal to allow ECHO to proceed under that doctrine.

B. ECHO does not satisfy the requirements for public interest standing.

Even absent *McKitrick*, this Court could still affirm the district court's decision because ECHO does not qualify for public interest standing. Utah courts have sometimes allowed parties who otherwise don't have standing to

proceed anyway under the public interest standing doctrine.[4] When it applies, that doctrine permits a party to "gain standing if they can show that they are an appropriate party raising issues of significant public importance." *Gregory v. Shurtleff*, 2013 UT 18, ¶ 18, 299 P.3d 1098. "[T]his test breaks down to two elements." *Id.* (internal quotation marks omitted). First, the claimant must be an "appropriate party." *Id.* ¶ 28. Second, the issue must be of "significant public importance." *Id.* ¶¶ 27–28.

1. ECHO is not an appropriate party.

First, ECHO is not an appropriate party. A party is appropriate if it has "the interest necessary to effectively assist the court in developing and reviewing all relevant legal and factual questions," and if the "issues are unlikely to be raised if the party is denied standing." *Gregory*, 2013 UT 18, ¶ 18 (quoting *Sierra Club*, 2006 UT 74, ¶ 36). Whether a party is appropriate "is a question of *competency*" to assist the Court. *Gregory*, 2013 UT 18, ¶ 29

[4] The public interest standing is on shaky ground. The Supreme Court has counseled that "[a]ny invocation of the public standing doctrine should come with a warning label that two members of [that] court have expressed serious doubt about the intellectual underpinnings of the doctrine . . . ." *Haik*, 2018 UT 39, ¶ 23 n.5; *see also Haik*, 2018 UT 39, ¶ 37 ((Lee, A.C.J., concurring in part and concurring in the judgment) (stating public interest standing "doctrine rests on shaky constitutional footing" (citing *Gregory*, 2013 UT 18, ¶¶ 87–91 (Lee, J., concurring in part and dissenting in part, joined by Durrant, C.J.) (concluding that the public interest standing doctrine is incompatible with the judicial power clause of article VIII of the Utah Constitution)).

(italics in original). For example, the Court determined the Sierra Club was an appropriate party because it was an "entity focused on protecting the environment" with "the interest and expertise necessary to investigate and review all relevant legal and factual questions." *Sierra Club*, 2006 UT 74, ¶ 42.

ECHO is not the Sierra Club. While the district court held ECHO was an unincorporated association, ECHO's brief insists it is really just Mr. Tracy and has no members. Aplt. Br. at 19. ECHO has not shown it has a demonstrated history or expertise of advocating for causes like this outside of its ongoing disputes with EID. If ECHO is an appropriate party, then any party may become an appropriate party so long as they have money and a lawyer.

ECHO argues it is an appropriate party because it has "collected and reviewed thousands of pages of documents related to the Canyon and its water-related issues, spanning" a 145-year period and retained a hydrologist in 2015. Aplt. Br. 28. Those arguments, however, show precisely why ECHO will not effectively assist the court. 145 years of water history are not at issue in this case. Nor is whatever decision the State Engineer made in 2015 when ECHO retained a hydrologist. All that is at issue in a de novo review is whether the Change Applications EID filed in 2018 met the criteria for approval under Utah Code sections 73-3-8(1)(a)(ii) through (vi). ECHO cannot

litigate EID's water rights, past State Engineer decisions, or water policy in this case. Its apparent desire to flood the court with that information shows it cannot competently assist the Court with the narrow issues on de novo review.

2. ECHO does not raise issues of sufficient public importance.

Finally, ECHO does not have public interest standing because this case does not raise issues of sufficient importance. A party arguing that an issue is of significant importance must show not only that the "issues are of a sufficient weight but also that they are not more appropriately addressed by another branch of government pursuant to the political process." *Haik*, 2018 UT 39, ¶ 24 (quoting *Cedar Mtn. Envtl., Inc. v. Tooele Cnty. ex rel. Tooele Cnty. Comm'n*, 2009 UT 48, ¶ 18, 214 P.3d 95). Before *McKitrick*, the Court opined that a water rights issue might meet that standard if a "large number of people would be affected by the outcome." *Haik*, 2018 UT 39, ¶ 25 (quoting *Washington Cnty.*, 2003 UT 58, ¶ 27). Yet the Court has also cautioned that the "more generalized the issues, the more likely they ought to be resolved in the legislative or executive branches." *Id.* ¶ 24 (quoting *Cedar Mtn.*, 2009 UT 48, ¶ 18).

ECHO has not shown that the Change Applications affect a large enough group of people to qualify ECHO for public interest standing. This

case is not about whether EID can take water from Emigration Canyon. EID already has water rights—dating back more than 100 years—to take and use water. R. 47-48, 59. The Change Applications did not, and could not, increase the amount of water EID has the right to take. This case is only about the Change Applications asking the State Engineer to change the location of certain points of diversion for that water. And even before it filed the Change Applications, EID had authority to take water from multiple points of diversion. *Id.* The amount of water EID has the right to take, the source of that water, and the uses to which it can put that water, will remain the same regardless of the Change Applications.

Additionally, the State Engineer published notice of the applications and the administrative proceeding in the local newspaper. And while any party concerned about the applications could have filed a protest, Utah Code § 73-3-7(1), only 39 protests were filed.[5] R. 5-7. That does not even come close to the "415 private wells" ECHO asserts are at risk. Aplt. Br. at 24. That small number of protests suggests this issue is not of great enough public importance to justify public interest standing.

ECHO also argues that this Court should hear the case because the area in question has historic significance and the water affects the Hogle Zoo

[5] Some of the protests identified two protestors, who for the most part appear to be married couples. The total number of protestors is 45. R. 5-7.

and Mt. Olivet Cemetery. Aplt. Br. at 24-25. But the issues here weren't significant enough for any of those parties to petition for review. ECHO's generalized interest in the area doesn't mean the issues here are of sufficient public importance. And if anything, the importance of that area and the surrounding landmarks mean it is the State Engineer—and not the judiciary—who is best situated to make determinations about water use and points of diversion in that area. Indeed, that is precisely what the legislature has asked the State Engineer to do. *See* Utah Code § 73-2-1(3)(a) (charging the State Engineer with "the general administrative supervision of the waters of the state and the measurement, appropriation, apportionment, and distribution of those waters") A claimant who is not aggrieved and who did not preserve any claim should not be able to second guess the State Engineer's expertise.

Finally, ECHO argues it has public interest standing because the action raises a statutory and constitutional issue of public import. Aplt. Br. 24-27. Those arguments fail too. ECHO has not even asserted a constitutional claim in this matter. Besides, "[n]ot every constitutional provision . . . is of such importance that a claim of its violation will . . . rise to the level of 'significant public importance.'" *Gregory*, 2013 UT 18, ¶ 27 (quoting *Cedar Mtn.*, 2009 UT 48, ¶ 8).

ECHO's argument that the public has an interest in ensuring the State Engineer follows "Utah statutory law . . . to investigate permanent change applications" is similarly weak. Aplt. Br. at 25. The legislature has expressly rejected the proposition that anyone in the public has an interest in asking the courts to review State Engineer decisions. That is precisely why it limited de novo review petitions to aggrieved parties. Utah Code § 73-3-14(1)(a). Ignoring that legislative limitation would not serve the public interest. It would instead open the floodgates for any person to challenge State Engineer decisions. Change applicants and water rights owners would be exposed to unpredictable risks of litigation from uninjured parties. Such litigation would increase costs and prevent parties from obtaining certainty about their rights or the ability to put those rights to beneficial use.

Outside of State Engineer proceedings, if statutory compliance were enough to warrant public interest standing, then any person dissatisfied with the government's application of a law would have standing, even if that application would not directly affect that claimant. Applying the public interest doctrine that way would greatly expand standing beyond what the Supreme Court has allowed. It would allow the public interest exception to swallow the traditional, particularized injury requirements meant to keep courts from issuing advisory opinions and entering legislative and executive

waters. This Court should thus reject ECHO's argument that ensuring statutory compliance is enough to confer public interest standing.

In short, ECHO does not have public interest standing. ECHO is a statutory claimant that must proceed under the statute or not at all. But even if *McKitrick* hadn't blocked ECHO's reliance on that doctrine, ECHO still does not raise issues of significant enough public interest to proceed. This Court should affirm the district court's order holding that ECHO does not have public interest standing.

Conclusion

Based on the foregoing, this Court should affirm the district court's holding that ECHO does not have standing to request de novo review of the State Engineer's decisions granting EID's Change Applications.

Respectfully submitted,

/s/ Erin T. Middleton
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Certificate of Compliance

1. This brief complies with the total type-volume limitations of Utah Rule of Appellate Procedure 24(g)(1) because this brief contains 10,728 words, excluding the parts of the brief exempted by Rule 24(g)(2).

2. This brief complies with the typeface requirements of Utah Rule of Appellate Procedure 27(a) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 13-point Century Schoolbook font.

3. This brief complies with the non-public information requirements of Utah Rule of Appellate Procedure 21(h) because this brief contains no non-public information.

/s/ Erin T. Middleton

Certificate of Service

I hereby certify that on March 25, 2021 a true, correct and complete copy of the foregoing Response Brief of the State Engineer was filed with the Court and served via United States mail or electronic mail as follows:

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Addenda

A. Utah Code § 73-3-14

B. Memorandum Decision and Order Granting Motions to Dismiss

C. Memorandum Decision, Findings of Fact and Conclusions of Law and Order

D. Order of the State Engineer, January 16, 2019

E. Order of the State Engineer, January 25, 2019

F. Quitclaim Deed

Addendum A

West's Utah Code Annotated
Title 73. Water and Irrigation
Chapter 3. Appropriation

U.C.A. 1953 § 73-3-14

§ 73-3-14. Judicial review of state engineer order

Currentness

(1)(a) A person aggrieved by an order of the state engineer may obtain judicial review in accordance with Title 63G, Chapter 4, Administrative Procedures Act, and this section.

(b) Venue for judicial review of an informal adjudicative proceeding is in the county in which the water source or a portion of the water source is located.

(2) The state engineer shall be joined as a respondent in a petition to review the state engineer's decision, but no judgment for costs or expenses of the litigation may be rendered against the state engineer.

(3) A person who files a petition for judicial review as authorized in this section shall:

(a) name the state engineer as a respondent; and

(b) provide written notice in accordance with Subsection (5) to each person who filed a protest in accordance with Section 73-3-7 of:

(i) the filing of the petition for judicial review; and

(ii) the opportunity to intervene in accordance with Utah Rules of Civil Procedure, Rule 24.

(4) In addition to the requirements of Subsection (3), a protestant in the adjudicative proceeding who files a petition for judicial review shall also name as a respondent the person:

(a) who requested the adjudicative proceeding; or

(b) against whom the state engineer brought the adjudicative proceeding.

(5) The written notice required by this section shall:

(a) be mailed:

(i) within the time provided for by Utah Rules of Civil Procedure, Rule 4(b); and

(ii) to the address on record with the state engineer's office at the time the order is issued; and

(b) include:

(i) a copy of the petition; and

(ii) the address of the court in which the petition is pending.

(6) If a person who files a petition for judicial review fails to provide notice as required by this section, the court shall dismiss the petition without prejudice upon:

(a) the motion of a party;

(b) the special appearance of a person who:

(i) participated in the adjudicative proceeding; and

(ii) is not a party; or

(c) the court's own motion.

(7) A person who files a petition for judicial review is not required to:

(a) notwithstanding Subsection 63G-4-401(3)(b), name a respondent that is not required by this section; and

(b) notwithstanding Subsection 63G-4-402(2)(a)(iv), identify all parties to the adjudicative proceeding.

Credits
Laws 1919, c. 67, § 54; Laws 1937, c. 130, § 1; Laws 1986, c. 47, § 35; Laws 1987, c. 161, § 295; Laws 2008, c. 165, § 1, eff. May 5, 2008; Laws 2008, c. 382, § 2143, eff. May 5, 2008.

Codifications R.S. 1933, § 100-3-14; C. 1943, § 100-3-14.

U.C.A. 1953 § 73-3-14, UT ST § 73-3-14
Current with laws through the 2021 Second Special Session. Some statutes sections may be more current, see credits for details.

End of Document

Addendum B

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

EMIGRATION CANYON HOME OWNERS ASSOCIATION, Petitioner, vs. KENT L. JONES, Division Director of the Utah State Division of Water Rights, and EMIGRATION IMPROVEMENT DISTRICT, Respondents.	**MEMORANDUM DECISION AND ORDER** Case No. 190901675 Judge Su Chon

This matter is before the Court on Defendants' Motions to Dismiss. Oral arguments were held July 9, 2019. The parties submitted additional briefing and a renewed notice to submit on July 29. In addition, Plaintiff filed a Motion for Leave to Submit Additional Briefing in which it requests leave to brief the issue of "backdating," as it claims it has been denied the opportunity to make that defense. Contemporaneously, however, Plaintiff filed the supplemental brief requested by the Court, in which it squarely addresses backdating. The Court therefore considers Plaintiff's motion for additional briefing moot and denies the same. However, the Court also believes that it gave the parties the opportunity to address that issue after the hearing, and there was no further need for additional briefing.

This case is a petition for de novo judicial review of the State Engineer's issuance of change applications for water usage. As background, Nelson Mather, who is not a party in this case, owned water right # 57-8947. The protest period for a change application regarding that water right ran from September 10, 2018 through

January 25, 2019. Mr. Mather did not file a protest. On October 17, ECHO did file a timely protest, although at the time it did not own any water rights of record. On either September 27 or November 8, 2018, ECHO claims it purchased the water right from Mr. Mather by quitclaim deed. During the hearing, ECHO stated that the sale had occurred earlier, but Mr. Mather was not in town to sign the documents. On February 11, 2019, the quitclaim deed was signed by Mr. Mather, notarized, and conveyed to ECHO. The quitclaim deed states: "On November 08, 2018 THE GRANTOR(S)... conveys, releases and quitclaims to the GRANTEE(S)...." On February 21, 2019, ECHO recorded the quitclaim deed.

Defendants move the Court to dismiss the petition, arguing that plaintiff ECHO lacks standing, both individualized standing and the public policy exception. They first argue that ECHO was not an "aggrieved" party who participated in the administrative proceeding and exhausted its administrative remedies.

> (1) A party aggrieved may obtain judicial review of final agency action, except in actions where judicial review is expressly prohibited by statute.
> (2) A party may seek judicial review only after exhausting all administrative remedies available, except that:
> (a) a party seeking judicial review need not exhaust administrative remedies if this chapter or any other statute states that exhaustion is not required;
> (b) the court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if:
> (i) the administrative remedies are inadequate; or
> (ii) exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

Utah Code § 63G-4-401(1) and (2). Standing requires a palpable ad particularized injury that gives rise to a personal stake in the outcome of the dispute. *Washington Cty. Water Conservancy Dist. v. Morgan*, 2003 UT 58, ¶ 14, 82 P.3d 1125 ("The commonly

understood meaning of the term "aggrieved" is consistent with our traditional standing requirement that a plaintiff show particularized injury."). Without ownership of a water right affected by the change applications, a party generally does not have standing in a dispute.

The issue here is when ECHO acquired the water rights. "The rule is well settled that a deed, to be operative as a transfer of the ownership of land, or an interest or estate therein, must be delivered." *Wiggill v. Cheney*, 597 P.2d 1351, 1351 (Utah 1979) *See* Utah Code Ann. § 73-1-10 ("[a] water right ... evidenced by ... a certificate of appropriation ... shall be transferred by deed").

ECHO claims the transfer of the water right occurred in either September or November 2018 when Mr. Mather conveyed the water right to ECHO. ECHO relies on non-Utah cases that retroactively applied ownership of deeds of trust out of equity. *See Deutsche Bank Nat'l Trust Co. v. Burke*, 655 Fed. App'x. 251, 254 (6th Cir. 2016), *Baird v. Comm'r of Internal Revenue*, 68 T.C. 115 (1977). But these cases cited by ECHO are distinguishable as not dealing with foreclosures and outside of Utah's jurisdiction, which is clearly delineated by statute.

The conveyance in this case occurred on February 11, after the protest period expired. "In Utah, a quitclaim deed has the effect of a conveyance only when executed as required by law. This has been interpreted to mean that a deed must be in writing, signed by the creator, supported by consideration, and delivered to the grantee." *Julian v. Petersen*, 966 P.2d 878, 881 (Utah App. 1998) (cleaned up). *See Wiggill v. Cheney*, 597 P. 3d 1351 (Utah 1979) ("It is well settled that a deed, to be operative as a transfer of the ownership of land, or an interest or estate therein, must be delivered.") A quit

claim deed "when executed as required by law shall have the effect of a conveyance of all right, title, interest and estate of the grantor in and to the premises therein described and all rights, privileges and appurtenances thereunto belonging, at the date of such conveyance." Utah Code Ann. § 57-1-13. Here, ECHO did not own the water right when it protested the change applications, and therefore it is not an aggrieved party.

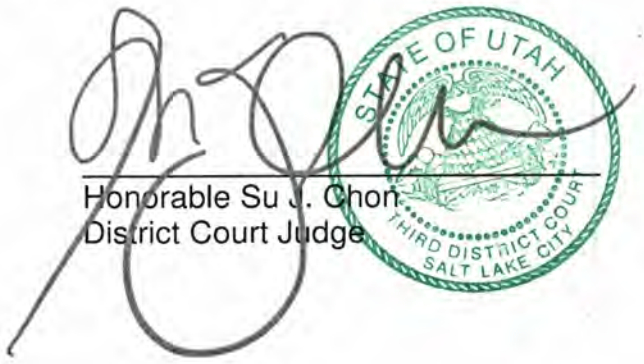
Second, Defendants argue that ECHO is not a valid corporation or dba and thus cannot own a water right or sue and be sued. It appears that on May 23, 2018, Mark Christopher Tracy registered "Emigraiton" Canyon Home Owners Association as a dba of himself. Clearly there was a typo, and Defendant's argument isn't well taken.

Lastly, ECHO claims it has standing under the public interest exception. But the issues here are not "so unique and of such great importance to Utah that they ought to be decided in furtherance of public interest." Utah Code Ann. § 63G-4- 402. "A party can acquire standing to litigate an important public issue if no one else has a greater interest in the outcome, the issues are unlikely to be raised at all unless that particular plaintiff has standing to raise the issues, and the legal issues are sufficiently crystallized to be subject to judicial resolution." *Washington Cty.*, 2003 UT 58, ¶ 27 (citations omitted, cleaned up). ECHO argues that the impact of the change applications could impact 415 private wells, the Hogle Zoo, and Mount Olivet Cemetery. It claims that over 40 residents of the canyon have reported substantial impairment of their water rights, and the change applications could have catastrophic consequences to the aquifers in the area. But under *Washington County* and *Haik v. Jones*, it is clear that the instant case is not the type of situation to invoke public interest exception to standing. The Utah Supreme Court has stated: "We remain open to the possibility that some issues

concerning water rights might present questions of great public importance. That importance, however, likely would be found in a case where a large number of people would be affected by the outcome." *Washington County*, 2003 UT 58 at ¶ 27. If anything, ECHO has even fewer grounds to assert the public interest exception than the parties in *Washington County* and *Haik*.

In sum, ECHO does not have standing to challenge the change applications because he was not an aggrieved party at the time, given that he did not acquire the water right until after the protest period. The Court grants the Defendants' motions. No further order is needed.

DATED this 29th day of August, 2019.



Honorable Su J. Chon
District Court Judge

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 190901675 by the method and on the date specified.

EMAIL: JEREMY COOK JCOOK@CK.LAW
EMAIL: WILLIAM GARBINA WGARBINA@CK.LAW
EMAIL: NORMAN JOHNSON NORMANJOHNSON@AGUTAH.GOV
EMAIL: STEPHEN KELSON STEPHEN.KELSON@CHRISJEN.COM
EMAIL: JULIE VALDES JVALDES@AGUTAH.GOV

Date: 08/29/2019 /s/ REFUGIO RANGEL

Deputy Court Clerk

Addendum C

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

EMIGRATION CANYON HOME OWNERS ASSOCIATION, Petitioner, vs. KENT L. JONES, Division Director of the Utah State Division of Water Rights, and EMIGRATION IMPROVEMENT DISTRICT, Respondents.	**MEMORANDUM DECISION, FINDINGS OF FACTS AND CONCLUSIONS OF LAW AND ORDER** Case No. 190901675 Judge Su Chon

This matter is before the Court on the Utah Court of Appeals' July 16, 2020 Order of remand for this Court to determine whether Petitioner Emigration Canyon Home Owners Association ("ECHO") is an "unincorporated association" which must obtain counsel, or whether ECHO is simply a DBA of Mark Christopher Tracy who may represent ECHO pro se. *See Graham v. Davis Cty. Solid Waste Mgmt. & Energy Recovery Special Serv. Dist.*, 1999 UT App 136, ¶ 14, 979 P.2d 363 (noting the "well-established rule that an unincorporated association, like a corporate entity, may not be represented by a nonlawyer."). The Court enters the following Memorandum Decision, Findings of Fact and Conclusions of Law based on the evidence heard before the Court.[1]

[1] The Court was notified on June 11, 2021 that this decision was not uploaded to the docket. The Court recalls that it had given this ruling to a staff member that is no longer with the courts. The Court does not know what happened and reissues this ruling today. We apologize for the delay.

FINDINGS OF FACTS:

1. Mark Christopher Tracy is currently a resident of Salt Lake County, Utah.

2. He used to own real property in Emigration Canyon, and now owns a separate water right located therein.

3. Mr. Tracy is currently the owner of a DBA called Emigration Canyon Homeowners Association ("ECHO"). He registered this DBA with the Division of Corporations and Commercial Code on May 23, 2018. See Exhibit 4.

4. Mr. Tracy initially started ECHO in January 2014 while he was an owner of real property in Emigration Canyon.

5. He noticed issues involving Emigration Improvement District (EID) and notices that were sent out as well as the Minutes of the Trustees' meetings. Mr. Tracy thought that there was something wrong going on and he created ECHO at that time.

6. Mr. Tracy began communicating with other residents about EID.

7. He started receiving documents from Jack Plumb and Sam Plumb regarding EID's meetings. Sam Plumb provided copies of documents and transcribed his own minutes of the EID meetings.

8. Mr. Tracy also obtained documents from Joanne Edwards and other people in the community.

9. Mr. Tracy and Trevor Irons were both residents of Emigration Canyon. Mr. Irons helped Mr. Tracy to create the ECHO website. Mr. Irons was not paid for his services. Mr. Irons also did research for Mr. Tracy, reviewed hydrological reports and provided him with additional information. Mr. Irons has since sold his property and is no longer a resident.

10. Mr. Tracy also filed seven (7) informational complaints with the State Auditor's Office with respect to EID.

11. In 2014, ECHO and Mr. Tracy sent out a letter with a postcard asking people to communicate with them and join the association. Mr. Tracy claimed that the association was never formed.

12. However, the exhibits provided to the Court indicate otherwise. The association appear to have been formed sometime in 2014. And there were email correspondences to various persons within the Emigration Canyon community informing them of the association. See Exhibit 2 and Exhibit 6.

13. Exhibit 6 is an email dated October 18, 2018, that ECHO Association sent to the attorney representing them in the federal case as well as to certain reporters. The email letter indicated that there was open enrollment into the association and it provided membership guides as well an application to complete to join the association. ECHO through Mr. Tracy held a meeting to discuss joining the association for any persons who had issue with the EID. Mr. Tracy testified that no one joined. Mr. Tracy stated that people were afraid of the EID and that they did not want to come forward.

14. In Exhibit 5, there is an email from Patrick Hogle to Ms. Wilhelmsen, the Water Rights Engineer for the State of Utah, and informed her that ECHO Association was representing Tierra Investments, LLC. Mr. Hogle indicated that he was the managing member of this entity.

15. Also, in Exhibit 5 is an email to Ms. Wilhelmsen from ECHO Association indicating that ECHO Association was going to speak for Tierra Investments, LLC, Jack Samuel Plum, Jamie White, Karen Penske, Margot McCallum, Michael Terry, Patricia

Sheya, Robert J. Reed, IV, and Michael Martin. Mr. Tracy testified that he was only trying to consolidate the time that the parties each had to allow them more time to speak. However, looking at the plain language of that email, it appears that these persons' intended for ECHO Association to represent them to protest the Water Right at issue.

16. There is an email in Exhibit 7 between Michael Terry and ECHO Association where ECHO Association removed Mr. Terry from their membership lists. They seemed to have a disagreement. However, Exhibit 5 indicates that ECHO Association was representing Michael Terry as referenced in both Exhibit 5 and Exhibit 7.

17. Mr. Tracy also created a bank account through Bank of America in which he listed himself as Mark Christopher Tracy, sole prop DBA Emigration Canyon Homeowners Association. On April 5, 2019, ECHO and Mr. Tracy received a check for $25,000 paid by Patrick Hogle. On April 12, 2019, those funds were transferred to Christensen & Jensen for payment of legal fees. *See* Exhibit 11.

18. Mr. Tracy also received donations from people indicating that it was for ECHO Association. *See* Exhibits 13 and 14.

19. Mr. Tracy now claims that he is the sole person involved in ECHO. He states that he is only arguing his Water Right that he owns.

20. Exhibit 2 shows a letter that was sent to a Doctor Gilbert. The letter dated June 12, 2015, stated the following: "As previously announced, the above association has been formed to protect the interest of property owners within Emigration Canyon." The letter notified the property owner that the organization had changed their name to

ECHO. The letter also stated and provided information regarding the Qui Tam action against EID for improper assessments of property taxes, fire hydrant rental fees, improper inducement of water connection and standby contracts, incorrect billing, improper use of property tax revenue, failure to report iron, bacterial contamination in drinking water supply by EID.

21. As noted in Exhibit 6, the letter to Emigration Canyon property owners stated that they were holding a membership meeting and would welcome questions regarding actions being taken against EID. The guide to ECHO Association membership benefits is two-pages long, and it talks about litigating against EID, some of these issues regarding water depletion and the permit change application. Also contained in Exhibit 6 is the ECHO Association membership fees. It lists that current ECHO Association members for $1 and then gives other amounts in the thousands for membership, depending on the type of property. Mr. Tracy stated that no one had paid these fees. However, he was unable to explain the $25,000 payment that he received from Patrick Hogle, and he admitted that he had used that money to pay the attorney fees.

CONCLUSIONS OF LAW:

The Court has jurisdiction over this matter and the parties and incorporates its legal analysis below.

ANALYSIS:

Graham cites Rule 17(d), Utah Rules of Civil Procedure, defining what makes an unincorporated association: "When two or more persons associated in any business either as a joint-stock company, a partnership or *other association, not a corporation,*

transact such business under a common name, whether it comprises the names of such associates or not, *they may sue* or be sued by such common name." *Id.* at ¶ 12. *Graham* also states:

> In this case, the Committee, as an unincorporated, voluntary environmental watch-dog association, falls within the purview of the "other association" language of Rule 17(d). Although Utah courts have not articulated a test to determine when a party is transacting business for purposes of Rule 17(d), we note that the Committee, apparently acting under a common name for several years in monitoring and working to improve air quality in Davis County, was likely engaged in transacting business.

Id. (citations omitted). *Graham* cites to other cases regarding incorporated associations, one of which noted that Rule 17(d) contemplates two factors: "(i) parties transacting business, and (ii) transacting such business *under a common name.*" *Hebertson v. Willowcreek Plaza*, 923 P.2d 1389, 1392 (Utah 1996) (emphasis in original). The Utah Court of Appeals has noted,

> In fact, no Utah statutes or cases have defined what constitutes transacting business under a common name pursuant to Rule 17(d). However, for jurisdictional purposes, non resident corporations are considered to be doing business in Utah if they negotiate and enter into contracts within the state. Other factors in determining whether an entity is doing business in the state and thus is subject to its jurisdiction include: (1) whether there are local offices in the state; (2) the presence of employees in the state; (3) how the business holds itself out to the public; (4) the presence of real or personal property in the state. Thus, if two or more entities together negotiate and enter into contracts, have offices, hire employees, or own property in this state, they are within the jurisdiction of Utah courts. If they also transact such business under *a common name,* then, pursuant to Rule 17(d), those entities could be subject to suit under that name.

Hebertson v. Willowcreek Plaza, 895 P.2d 839, 840–41 (Utah Ct. App. 1995) (citations omitted). Another court cited in *Graham* had found an unincorporated association

based on the following: the membership was too large to feasibly join all defendants, there were officers and an organization, accumulation of funds, it had chosen a name under which to do business, it held itself out as capable of contracting in that name, and it was engaged in business under that name. *Askew v. Joachim Mem'l Home*, 234 N.W.2d 226, 236 (N.D. 1975).

Mr. Tracy argues that he is a DBA as evidenced by the DBA registration and the bank account and therefore able to represent himself. However, the Court must consider whether the parties were transacting business under a common name and transacting business under a common name. The Court finds that both factors are met that ECHO was an unincorporated association. ECHO recruited people to join the association and to help with their efforts. The Plumbs provided minutes, transcripts and other information to ECHO to further the cause. Mr. Irons did research, created a website for ECHO and reviewed reports to aid Mr. Tracy. He was also engaged in the work that ECHO was involved in.

Mr. Tracy admits that ECHO did try to recruit other property owners to join their group, but he denies that anyone joined ECHO. ECHO held informational meetings, and perhaps from those meetings, Mr. Tracy may have received no response. However, there are third party emails to the state that demonstrate that ECHO was representing individual property owners at the State Engineer's hearing. The plain language of those emails indicate that the parties understood that Mr. Tracy and ECHO were appearing on their behalf. Mr. Tracy on behalf of ECHO used the allotted time to address all of the interested parties' concerns regarding the change application. Additionally, the bank statements show that other property owners were donating money ECHO and those

funds were deposited into the ECHO bank account. Mr. Tracy applied those donations to the payment of the incurred attorney's fees with his prior counsel. For all of those reasons, it appears that ECHO is an unincorporated association under the caselaw. The Court orders that ECHO is required to have an attorney represent ECHO in these matters. No further order is needed.

DATED this 21st day of January, 2021.

REISSUED this 11th June, 2021.

HONORABLE SU J. CHON
DISTRICT COURT JUDGE

STATE OF UTAH
THIRD DISTRICT COURT
SALT LAKE CITY

Addendum D

GARY R. HERBERT
Governor
SPENCER J. COX
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

MICHAEL R. STYLER
Executive Director

KENT L. JONES
State Engineer/Division Director

JAN 16 2019

ORDER OF THE STATE ENGINEER
For Permanent Change Application Number 57-7796 (a44045)

Permanent Change Application Number 57-7796 (a44045) in the name of Emigration Improvement District (EID) was filed on September 12, 2018, to add points of diversion of 28.00 cubic feet per second (cfs) or 600.00 acre-feet of water as evidenced by Water Right Number 57-7796. Heretofore, the water has been authorized to be diverted from the following points located: (1) Surface - South 3200 feet and East 1300 feet from the NW Corner of Section 14, T1N, R2E, SLB&M (Emigration Cr. springs, groundwater); (2) Surface - South 2900 feet and East 2200 feet from the NW Corner of Section 14, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (3) Surface - South 1500 feet and West 1800 feet from the E¼ Corner of Section 15, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (4) Surface - North 500 feet and East 1200 feet from the SW Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (5) Surface - North 4950 feet and West 2150 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Thomas Spring (Location corrected in hereafter)); (6) Well - South 300 feet and West 400 feet from the NE Corner of Section 33, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (7) Well - South 2200 feet and West 100 feet from the NE Corner of Section 33, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (8) Well - North 1450 feet and West 2250 feet from the SE Corner of Section 1, T1S, R1E, SLB&M (20-inch well, 100-1000 feet deep); (9) Well - North 1850 feet and West 2100 feet from the SE Corner of Section 1, T1S, R1E, SLB&M (20-inch well, 100-1000 feet deep); (10) Well - South 2000 feet and East 750 feet from the NW Corner of Section 6, T1S, R2E, SLB&M (20-inch well, 100-1000 feet deep); (11) Well - South 1750 feet and East 1600 feet from the NW Corner of Section 6, T1S, R2E, SLB&M (20-inch well, 100-1000 feet deep); (12) Well - North 1010 feet and East 2130 feet from the SW Corner of Section 6, T1S, R2E, SLB&M (20-inch well, 100-1000 feet deep); (13) Well - South 2400 feet and West 100 feet from the NE Corner of Section 21, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (14) Well - South 1250 feet and West 600 feet from the NE Corner of Section 21, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (15) Surface - North 300 feet and West 200 feet from the E¼ Corner of Section 21, T1N, R2E, SLB&M (Emigration Cr., Springs, groundwater); (16) Surface - South 1850 feet and East 2400 feet from the NW Corner of Section 21, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (17) Surface - North 2150 feet and West 300 feet from the SE Corner of Section 22, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (18) Surface - South 1226 feet and West 2200 feet from the NW Corner of Section 22, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (19) Well - North 750 feet and East 700 feet from the SW Corner of Section 22, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (20) Well - North 2050 feet and East 200 feet from the SW Corner of Section 22, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (21) Surface - North 1200 feet and East 1450 feet from the SW Corner of Section 27, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (22) Well - North 1200 feet and East 800 feet from the SW Corner of Section 28, T1N, R2E, SLB&M (existing 8-inch well, 500 feet deep); (23) Well - North 1200 feet and West 850 feet from the SE Corner of

Section 29, T1N, R2E, SLB&M (existing 10-inch well, 792 feet deep); (24) Surface - North 1343 feet and West 708 feet from the SE Corner of Section 29, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (25) Well - North 350 feet and West 800 feet from the SE Corner of Section 31, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (26) Well - South 2500 feet and East 1450 feet from the NE Corner of Section 32, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (27) Well - North 1100 feet and West 1150 feet from the SE Corner of Section 32, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (28) Well - North 2050 feet and East 1000 feet from the SW Corner of Section 33, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (29) Well - North 1950 feet and East 1500 feet from the SW Corner of Section 33, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (30) Well - South 750 feet and West 850 feet from the NE Corner of Section 33, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (31) Surface - North 4700 feet and West 1050 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Secret Spring (Location corrected in hereafter)); (32) Surface - South 670 feet and West 1710 feet from the E¼ Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (33) Surface - North 2500 feet and West 1750 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (34) Surface - North 1700 feet and West 1700 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (35) Surface - North 1850 feet and West 2580 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (36) Well - North 600 feet and West 1300 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (37) Surface - North 400 feet and West 750 feet from the SE Corner of Section 20, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (38) Surface - North 4600 feet and West 2200 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (39) Surface - North 4400 feet and West 2130 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., Springs, groundwater); (40) Well - North 300 feet and West 900 feet from the SE Corner of Section 20, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (41) Well - North 1100 feet and West 1900 feet from the SE Corner of Section 21, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep). The water has been authorized to be used for year-round municipal purposes within the service area of Emigration Improvement District. The water has been used in all or portion(s) of Sections 14, 15, 16, 21, 22, 23, 27, 28, 29, 31, 32, 33, & 34, T1N, R2E, SLB&M; Sections 1, 2, 3, 10, & 11, T1S, R1E, SLB&M; and Sections 4, 5, 6, & 7, T1S, R2E, SLB&M.

Hereafter, it is proposed to divert 28.00 cfs or 600.00 acre-feet of water from the same points as heretofore and from additional points located: (1) Well - South 1840 feet and East 145 feet from the NW Corner of Section 28, T1N, R2E, SLB&M (existing 12-inch well, 1140 feet deep); (2) Well - North 1280 feet and West 2028 feet from the E¼ Corner of Section 28, T1N, R2E, SLB&M (existing 10-inch well, 1200 feet deep); (3) Surface - North 735 feet and East 448 feet from the W¼ Corner of Section 11, T1S, R1E, SLB&M (Emigration Creek (Corrected Location)); (4) Well - South 1330 feet and West 1245 feet from the NE Corner of Section 16, T1N, R2E, SLB&M (20-inch well, 800-1200 feet deep); (5) Surface - North 455 feet and West 2220 feet from the SE Corner of Section 9, T1N, R2E, SLB&M (Thomas Spring (Corrected Location)); (6) Well - South 2340 feet and West 190 feet from the NE Corner of Section 21, T1N, R2E, SLB&M (20-inch well, 800-1200 feet deep); (7) Well - North 2100 feet and West

1890 feet from the SE Corner of Section 21, T1N, R2E, SLB&M (20-inch well, 800-1200 feet deep); (8) Well - North 1460 feet and East 75 feet from the SW Corner of Section 22, T1N, R2E, SLB&M (20-inch well, 800-1200 feet deep); (9) Well - North 740 feet and West 1465 feet from the SE Corner of Section 21, T1N, R2E, SLB&M (20-inch well, 800-1200 feet deep); (10) Surface - North 850 feet and West 1535 feet from the SE Corner of Section 9, T1N, R2E, SLB&M (Secret Spring(Corrected Location)). The nature of use of the water will remain the same as heretofore. The place of use of the water will remain the same as heretofore.

Notice of the application was published in the Deseret News on September 20 and 27, 2018, and protests were received from Margot McCallum, Eric M. Simon, Patricia [Pat] Sheya, Larry and Susan Henchel, Laura Gray, Daniel Walker, Brett Wheelock, Robert Jordan, Mary Jo Sweeney, Steve Pinecrest Pipeline Operating Company, Donald L. Clark, Melinda McIlwaine, John Porcher, Barbara Babson and Ben Dobbin, David L Phillips, Michael Martin, Jamie White, Jack Samuel Plumb, Emigration Canyon Home Owners Association, Jessica Lucas (late protest), Lowell Miyagi, Phil Davis (late protest), Dr. Jessica Kramer (late protest), Dr. Sarah K. and Mr. Jason P. Hall, Andrew B Walker (late protest), Stephen B and Michelle D Andersen, Ronald Hallett, Dinko Duheric, Caroline Biggs, Daniel Craig, Michael Terry, Robert J Reid IV, Chris and Kirtly Jones, Tierra Investments, LLC, Karen Penske, Kate and James Bert Bunnell, Gregory Palis, Salt Lake City, and Willy Stokman. A combined hearing was held for change application numbers a44045 (57-7796) and a44046 (57-10711) on December 19, 2018.

The protestants have expressed concern for a myriad of issues both in their written protests and at the hearing through oral presentations. These issues ranged from land planning concerns, wildfire, water quality, stream flows, and system construction standards, to concerns about sustainability given changing climatic conditions, conflicts in water right ownership, and potential for interference with existing water rights in streams, springs and wells. This order, however, only addresses those issues pertinent to the change application decision making criteria (Utah Code §73-3-3 and §73-3-8).

Utah Code Ann. §73-3-3(3)(a), states that a person entitled to the use of water may, through the change application process, make a permanent change to an existing water right. The State Engineer is to approve a change application if it meets the provisions of §73-3-3 and criteria listed in §73-3-8. A primary consideration for a change application to be approved is that it not impair an existing water right without just compensation or adequate mitigation.

The subject change application is based on existing water right 57-7796, which is a portion of a right to use water established prior to 1903 by diverting water from Emigration Creek to use for irrigation, domestic, and stockwatering purposes in the Salt Lake Valley. Change application a17521 (55-7796), approved December 31, 1996, authorizes the use of 33.0 cfs or 649.99 acre-feet of water from the same base water right to be diverted for municipal purposes inside the EID service area. Said change application grants EID the authorization to divert water from 19 surface sources and 22 wells located upstream from the historical point of diversion, which was located near the mouth of the canyon. This prior change application has been in place for twenty-two years. To accommodate additional well locations (including individual wells of homeowners

not presently connected to the EID water system), EID has filed temporary change applications most years from 1988 to 2017. These additional wells were to either be abandoned as EID's delivery system expanded, or permanently added as part of the EID water delivery system. No additional quantity of water beyond what has already been approved for diversion under a17521 is being contemplated under this application and change application a44046 (57-10711). This current change application proposes no additional change in place of use or nature of use.

The protestants' opposition to this application focuses on declining stream flows in Emigration Creek as an unreasonable affect on the natural stream environment or public recreation; along with concerns that development and use of the canyon are proving detrimental to the public welfare. Utah Code §73-3-8 directs the State Engineer to investigate such issues in connection with application approval. However, the State Engineer was unable to reasonably connect the concerns expressed with the proposal presented in the change application and therefore does not have reason to believe approving the application will interfere with the more beneficial use of water, unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare. Changes in population density, climate, and land development choices may affect the environment and may at times be unpopular, but these changes are more connected to the protestants' opposition than the approval or rejection of a particular water right application. Nothing in the State Engineer's statutory authority allows him to construe an entity's desire to secure a water supply for future and current residents, such as the applicant here proposes, as detrimental to the public welfare. If the protestants believe as a matter of public policy it would be best to restrict further development in Emigration Canyon, they should work through other appropriate means to achieve that goal.

The State Engineer has evaluated the water right record with regard to the applicable statutory decision-making criteria for change applications and concludes the following:

1) From information provided by Salt Lake City representative Dr. David Hansen it is apparent that average late summer stream flows in Emigration Creek are declining. The applicant's representative and hydrogeologist, Mr. Don Barnett, rejects any assertion that EID's diversion of water is causing the flow reduction in Emigration Creek and points out that Red Butte Creek, located just North of Emigration Canyon, has also experienced a significant reduction in stream flow and attributes the flow reduction in both creeks to climatic changes, particularly the drought conditions currently encumbering this area of the state. Mr. Barnett describes the geology in the area as being a syncline which is directionally fractured and compartmentalized, and asserts the use of multiple underground diversion points as proposed in the application is designed to minimize impact to other rights. The applicant is also operating a groundwater monitoring network along the streambed which indicates no change in water levels due to the applicant's current pumping. Bearing in mind that no additional water diversion above the volume that has already been approved under previous change application a17521 is requested in this change application, the State Engineer believes that the incorporation of strategically located points of diversion

would allow for flexibility and can serve to reduce any future demonstrated localized interference issues due to the applicants current pumping.

2) Protestants have asserted climatic change is having an impact on the runoff characteristics of the Emigration Canyon drainage basin making it uncertain just what use of water may be sustainable. Utah's water laws anticipate changing climatic conditions and anticipate priority distribution as the solution to those issues rather than State Engineer approval/rejection of change applications. Should it prove necessary in the future, the State Engineer is authorized under statute to develop a groundwater management plan which would limit groundwater diversions in the canyon by priority to a scientifically established safe-yield notwithstanding the fact a right has been established.

3) Groundwater in the Emigration Canyon area would benefit from continued study to dispel fears over unknowns as uses approach the limits of the resource. While the State Engineer does not feel statutorily compelled to require the applicant undertake such a study as a condition of approval, all parties in this proceeding are urged to consider participating cooperatively in such a venture to better inform about the resource. The State Engineer signals his support by offering to contribute financially to any suitable cooperative study of the basin consistent with Utah Code Section 73-2-17.

Previous change application a17521 (55-7796) quantified the historical diversion quantities of the underlying right, but did not quantify the historical depletion limitations. The State Engineer believes it is appropriate to examine the rates and amounts of hydrologic diversion and depletion associated with the historical water use as compared to the proposed use to assure that there is no enlargement of the underlying water right. In this case, it is believed that the historical water uses would have incurred the following rates and amounts of hydrologic diversion and depletion:

Prior Beneficial Use	Allowed Diversion	Rate of Depletion	Amount of Depletion
Irrigation: 146.5025 acres	586.010 acre-feet	48.875%[1]	286.410 acre-feet
Domestic: 17.0 EDU	7.650 acre-feet	20.0%	1.530 acre-feet
Stockwatering: 226.0 ELU	6.328 acre-feet	100.0%	6.328 acre-feet
Total:	600.0 acre-feet		294.300 acre-feet

To ensure no enlargement of the underlying right occurs, this change can be made if certain conditions are observed.

[1] *Consumptive Use of Irrigated Crops in Utah*," Research Report 145, Utah Agricultural Experiment Station, Utah State University, Logan, Utah, October 1994, Table 25" University of Utah Station, p342. The benchmark crop for the referenced calculation is alfalfa, the most typical and consumptive crop evaluated in the study, (23.46-inches or 1.95 feet/5.0 feet duty = 48.875%.)

In evaluating the various elements of the underlying rights, it is not the intention of the State Engineer to adjudicate the extent of these rights, but rather to provide sufficient definition of the rights to assure that other vested rights are not impaired by the change and no enlargement occurs.

It is, therefore, **ORDERED** and Permanent Change Application Number 57-7796 (a44045) is hereby **APPROVED** subject to prior rights and the following conditions:

1) This change application is limited to the amount of water necessary to deplete no more than 294.3 acre-feet of water annually and to divert no more than 600.0 acre-feet annually for year-round municipal purposes within the service area Emigration Canyon Improvement District. The applicant shall maintain records to demonstrate the stated depletion and diversion limits are not exceeded.

2) Any new wells drilled by EID that were not approved under the prior permanent change application and any new wells approved under this application must include the implementation of a monitoring plan approved by the State Engineer which is intended to detect potential for interference with springs, the creek, and other wells in the canyon. Start cards to drill any new well will not be issued until a plan specific to the location of such well has been approved. No water may be withdrawn from any new well to be drilled unless a monitoring plan has been implemented and data required by the plan submitted to the State Engineer in accordance with the approved plan.

3) Approval of this permanent change application requires cessation of the use of 28.00 cfs or 600.00 acre-feet at the historical point of diversion and place of use.

4) The applicants shall install and maintain measuring and totalizing recording devices to meter all water diverted from all sources pertaining to this application and **shall annually report this data to the Division of Water Rights Water Use Program.**

5) Inasmuch as this application seeks to divert water from numerous points of diversion, it is necessary that detailed information be provided to the State Engineer to show which sources of supply are actually developed and used and the extent of their usage under this application. Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicant must identify every source of water used under this application and the amount of

water used from that source. The proof must also show the capacity of the sources of supply and demonstrate that each source can provide the water claimed to be diverted under this right as well as all other water rights which may be approved to be diverted from those sources.

6) Whereas this change application has been filed to entirely replace and supercede prior approved Change Application Number 57-7796 (a17521), with this approval that prior application is AMENDED AND SUPERCEDED.

The State Engineer has statutory responsibility to create and maintain water right records based on an administrative process outlined in statute. The State Engineer is not authorized by statute to adjudicate water right title or the validity of established water rights. It is noted that failure to exercise a water right within the statutory period could render all or a portion of a water right invalid through forfeiture. Parties who wish to challenge the validity of a water right are advised that a declaration of forfeiture is a judicial action.

As noted, this approval is granted subject to prior rights. The applicant shall be liable to mitigate or provide compensation for any impairment of or interference with prior rights as such may be stipulated among parties or decreed by a court.

The applicant is strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the applicant to determine the applicability of and acquisition of such permits. Once all other permits have been acquired, this is your authority to develop the water under the above referenced application which under Sections 73-3-10 and 73-3-12, Utah Code Annotated, 1953, as amended, must be diligently prosecuted to completion. The water must be put to beneficial use and proof must be filed on or before **January 31, 2029**, or a request for extension of time must be acceptably filed and subsequently approved; otherwise the application will be lapsed. This approval is limited to the rights to divert and beneficially use water and does not grant any rights of access to, or use of land or facilities not owned by the applicant.

Proof of beneficial use is evidence to the State Engineer that the water has been fully placed to its intended beneficial use. By law, it must be prepared by a registered engineer or land surveyor, who will certify to the location, uses, and extent of your water right. Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicant must identify every source of water used under this application and the amount of water used from that source. The proof must also show the capacity of the sources of supply and demonstrate that each source can provide the water claimed to be diverted under this right as well as all other water rights which may be approved to be diverted from those sources.

Failure on your part to comply with the requirements of the applicable statutes may result in the lapsing of this permanent change application.

It is the applicant's responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address or for assistance in updating ownership. Additionally, if ownership of this water right or the property with which it is associated changes, the records of the Division of Water Rights should be updated. For assistance in updating title to the water right please contact the Division at the phone number below.

Your contact with this office, should you need it, is with the Utah Lake/Jordan River Regional Office. The telephone number is 801-538-7240.

This Order is subject to the provisions of Administrative Rule R655-6-17 of the Division of Water Rights and to Sections 63G-4-302, 63G-4-402, and 73-3-14 of the Utah Code which provide for filing either a Request for Reconsideration with the State Engineer or for judicial review with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Order. However, a Request for Reconsideration is not a prerequisite to filing for judicial review. A petition for judicial review must be filed within 30 days after the date of this Order or, if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 16th day of January, 2019.

Kent L. Jones, P.E., State Engineer

Mailed a copy of the foregoing Order this 16th day of January 2019 to:

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Salt Lake City
c/o Laura Briefer
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Salt Lake City, UT 84115

Willy Stokman
86 S Skycrest Lane
Salt Lake City, UT 84108

Division of Water Rights
Water Use Reporting Program

BY: _____
Doralee Cannon, Applications/Records Secretary

Addendum E

GARY R. HERBERT
Governor
SPENCER J. COX
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

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

ORDER OF THE STATE ENGINEER
For Permanent Change Application Number 57-10711 (a44046)

JAN 2 5 2019

Permanent Change Application Number 57-10711 (a44046) in the name of Emigration Improvement District was filed on September 12, 2018, to change the points of diversion of 5.00 cubic foot per second (cfs) or 49.99 acre-feet of water as evidenced by Water Right Number 57-10711. Heretofore, the water has been authorized to be diverted from the following points located: (1) Surface - South 3200 feet and East 1300 feet from the NW Corner of Section 14, T1N, R2E, SLB&M (Emigration Cr. springs, groundwater); (2) Surface - South 2900 feet and East 2200 feet from the NW Corner of Section 14, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (3) Surface - South 1500 feet and West 1800 feet from the E¼ Corner of Section 15, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (4) Surface - North 500 feet and East 1200 feet from the SW Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (5) Surface - North 4950 feet and West 2150 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (6) Surface - North 4600 feet and West 2200 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (7) Surface - North 4400 feet and West 2130 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., Springs, groundwater); (8) Surface - North 4700 feet and West 1050 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., Springs, groundwater); (9) Surface - South 670 feet and West 1710 feet from the E¼ Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (10) Surface - North 2500 feet and West 1750 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (11) Surface - North 1700 feet and West 1700 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (12) Surface - North 1850 feet and West 2580 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (13) Well - North 600 feet and West 1300 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (14) Surface - North 400 feet and West 750 feet from the SE Corner of Section 20, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (15) Well - North 300 feet and West 900 feet from the SE Corner of Section 20, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (16) Well - North 1100 feet and West 1900 feet from the SE Corner of Section 21, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (17) Well - South 2400 feet and West 100 feet from the NE Corner of Section 21, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (18) Well - South 1250 feet and West 600 feet from the NE Corner of Section 21, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (19) Surface - North 300 feet and West 200 feet from the E¼ Corner of Section 21, T1N, R2E, SLB&M (Emigration Cr., Springs, groundwater); (20) Surface - South 1850 feet and East 2400 feet from the NW Corner of Section 21, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (21) Surface - North 2150 feet and West 300 feet from the SE Corner of Section 22, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (22) Surface - South 1226 feet and West 2200 feet from the NW Corner of Section 22, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (23) Well - North

750 feet and East 700 feet from the SW Corner of Section 22, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (24) Well - North 2050 feet and East 200 feet from the SW Corner of Section 22, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (25) Surface - North 1200 feet and East 1450 feet from the SW Corner of Section 27, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (26) Well - North 1200 feet and East 800 feet from the SW Corner of Section 28, T1N, R2E, SLB&M (existing 8-inch well, 500 feet deep); (27) Well - North 1200 feet and West 850 feet from the SE Corner of Section 29, T1N, R2E, SLB&M (existing 10-inch well, 792 feet deep); (28) Surface - North 1343 feet and West 708 feet from the SE Corner of Section 29, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (29) Well - North 350 feet and West 800 feet from the SE Corner of Section 31, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (30) Well - South 2500 feet and East 1450 feet from the NE Corner of Section 32, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (31) Well - North 1100 feet and West 1150 feet from the SE Corner of Section 32, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (32) Well - North 2050 feet and East 1000 feet from the SW Corner of Section 33, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (33) Well - North 1950 feet and East 1500 feet from the SW Corner of Section 33, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (34) Well - South 750 feet and West 850 feet from the NE Corner of Section 33, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (35) Well - South 300 feet and West 400 feet from the NE Corner of Section 33, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (36) Well - South 2200 feet and West 100 feet from the NE Corner of Section 33, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (37) Well - North 1450 feet and West 2250 feet from the SE Corner of Section 1, T1S, R1E, SLB&M (20-inch well, 100-1000 feet deep); (38) Well - North 1850 feet and West 2100 feet from the SE Corner of Section 1, T1S, R1E, SLB&M (20-inch well, 100-1000 feet deep); (39) Well - South 2000 feet and East 750 feet from the NW Corner of Section 6, T1S, R2E, SLB&M (20-inch well, 100-1000 feet deep); (40) Well - South 1750 feet and East 1600 feet from the NW Corner of Section 6, T1S, R2E, SLB&M (20-inch well, 100-1000 feet deep); (41) Well - North 1010 feet and East 2130 feet from the SW Corner of Section 6, T1S, R2E, SLB&M (20-inch well, 100-1000 feet deep). The water has been authorized to be used for year-round municipal purposes within the service area of Emigration Improvement District. The water has been authorized to be used in all or portion(s) of Sections 14, 15, 16, 21, 22, 23, 27, 28, 29, 31, 32, 33, & 34, T1N, R2E, SLB&M; Sections 1, 2, 3, 10, & 11, T1S, R1E, SLB&M; and Sections 4, 5, 6, & 7, T1S, R2E, SLB&M.

Hereafter, it is proposed to divert 5.00 cfs or 49.99 acre-feet of water from points of diversion changed to: (1) Well - North 922 feet and West 2251 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (existing); (2) Well - North 275 feet and West 1065 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (existing 5.5-inch well, 145 feet deep, drilled in 1999); (3) Well - North 1030 feet and East 40 feet from the S¼ Corner of Section 1, T1S, R1E, SLB&M; (4) Well - North 1425 feet and West 1350 feet from the NE Corner of Section 21, T1N, R2E, SLB&M (existing); (5) Well - South 280 feet and East 1200 feet from the NW Corner of Section 5, T1S, R2E, SLB&M; (6) Well - South 165 feet and East 610 feet from the NW Corner of Section 5, T1S, R2E, SLB&M (existing); (7) Well - South 195 feet and West 975 feet from the NE Corner of Section 6, T1S, R2E, SLB&M (originally proposed as an 8-inch well, constructed in 1994 as a 6-inch well, 105 feet deep); (8) Well - South 5 feet and East 1228 feet

from the NW Corner of Section 27, T1N, R2E, SLB&M (constructed in 1994 as a 6-inch well, 285 feet deep); (9) Well - South 40 feet and East 605 feet from the N¼ Corner of Section 27, T1N, R2E, SLB&M (existing); (10) Well - South 1000 feet and East 1340 feet from the NW Corner of Section 27, T1N, R2E, SLB&M (existing); (11) Well - South 715 feet and East 255 feet from the N¼ Corner of Section 27, T1N, R2E, SLB&M (existing); (12) Well - North 1950 feet and East 1400 feet from the SW Corner of Section 33, T1N, R2E, SLB&M (existing); (13) Well - North 1370 feet and East 2875 feet from the SW Corner of Section 1, T1S, R1E, SLB&M (existing); (14) Well - South 1555 feet and West 1060 feet from the E¼ Corner of Section 32, T1N, R2E, SLB&M (existing); (15) Well - North 578 feet and East 529 feet from the S¼ Corner of Section 32, T1N, R2E, SLB&M (existing 6-inch well, 120 feet deep, drilled in 1996); (16) Well - South 1220 feet and West 1140 feet from the NE Corner of Section 33, T1N, R2E, SLB&M (existing); (17) Surface - South 1000 feet and East 1400 feet from the NW Corner of Section 27, T1N, R2E, SLB&M (Emigration Creek); (18) Well - North 492 feet and West 1850 feet from the E¼ Corner of Section 28, T1N, R2E, SLB&M; (19) Surface - South 1995 feet and West 1810 feet from the NE Corner of Section 33, T1N, R2E, SLB&M (Contract Holder: Mather (6392 Emigration)); (20) Well - North 310 feet and East 1280 feet from the W¼ Corner of Section 33, T1N, R2E, SLB&M (originally proposed as a 6-inch well, 0-110 feet deep, but constructed in 1993 as a 4.5-inch well, 110 feet deep); (21) Well - South 852 feet and West 1684 feet from the E¼ Corner of Section 1, T1S, R1E, SLB&M (8-inch well,); (22) Well - North 565 feet and West 713 feet from the S¼ Corner of Section 1, T1S, R1E, SLB&M (existing); (23) Well - North 210 feet and West 300 feet from the SE Corner of Section 31, T1N, R2E, SLB&M (existing); (24) Well - North 170 feet and East 710 feet from the SW Corner of Section 32, T1N, R2E, SLB&M (6-inch well); (25) Well - North 793 feet and West 2427 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (existing); (26) Well - South 295 feet and West 315 feet from the NE Corner of Section 33, T1N, R2E, SLB&M (6-inch well, 100-500 feet deep). The nature of use of the water will remain the same as heretofore. The place of use of the water will remain the same as heretofore.

Notice of the application was published in the Deseret News on September 20 and 27, 2018, and protests were received from Patricia [Pat] Sheya, Margaret Armstrong, Larry and Susan Henchel, Brett Wheelock, Jamie White, Robert Jordan, Mary Jo Sweeney, Steve Pinecrest Pipeline Operating Company, Daniel Walker, Emigration Canyon Home Owners Association, Michael Martin, Dr. Jessica Kramer (late protest), Dr. Sarah K. and Mr. Jason P. Hall, Stephen B and Michelle D Andersen, Chris and Kirtly Jones, Donald L. Clark, Michael Terry, Ronald A Hallett, Tierra Investments, LLC, Karen Penske, Gregory Palis. Kate and James Bert Bunnell, Caroline Biggs, and Salt Lake City. A combined hearing was held for change application numbers a44046 (57-10711) and a44045 (57-7796) on December 19, 2018

The protestants have expressed concern for a myriad of issues both in their written protests and at the hearing through oral presentations. These issues ranged from land planning concerns, wildfire, water quality, stream flows, and system construction standards, to concerns about sustainability given changing climatic conditions, conflicts in water right ownership, and potential for interference with existing water rights in streams, springs and wells. This order,

however, only addresses those issues pertinent to the change application decision making criteria (Utah Code §73-3-3 and §73-3-8).

Utah Code Ann. §73-3-3(3)(a), states that a person entitled to the use of water may, through the change application process, make a permanent change to an existing water right. The State Engineer is to approve a change application if it meets the provisions of §73-3-3 and criteria listed in §73-3-8. A primary consideration for a change application to be approved is that it not impair an existing water right without just compensation or adequate mitigation.

The subject change application is based on existing water right 57-10711 which is a segregated portion of 57-7796. Water Right Number 55-7796 is a right to use water established prior to 1903 by diverting water from Emigration Creek to use for irrigation, domestic, and stockwatering purposes in the Salt Lake Valley. Change application a17521 (55-7796), approved December 31, 1996, authorizes the use of 33.0 cfs or 649.99 acre-feet of water from the same base water right to be diverted for municipal purposes inside the EID service area. Said change application grants EID the authorization to divert water from 19 surface sources and 22 wells located upstream from the historical point of diversion, which was located near the mouth of the canyon. This prior change application has been in place for twenty-two years and this change application is based on a segregated portion of parent change a17521, namely a17521a. To accommodate additional well locations (including individual wells of homeowners not presently connected to the EID water system), EID has filed temporary change applications most years from 1988 to 2017. These additional wells were to either be abandoned as EID's delivery system expanded, or permanently added as part of the EID water delivery system. No additional quantity of water beyond what has already been approved for diversion under a17521 is being contemplated under this application and change application a44045 (57-7796). This current change application proposes no additional change in place of use or nature of use.

The protestants' opposition to this application focuses on declining stream flows in Emigration Creek as an unreasonable affect on the natural stream environment or public recreation; along with concerns that development and use of the canyon are proving detrimental to the public welfare. Utah Code §73-3-8 directs the State Engineer to investigate such issues in connection with application approval. However, the State Engineer was unable to reasonably connect the concerns expressed with the proposal presented in the change application and therefore does not have reason to believe approving the application will interfere with the more beneficial use of water, unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare. Changes in population density, climate, and land development choices may affect the environment and may at times be unpopular, but these changes are more connected to the protestants' opposition than the approval or rejection of a particular water right application. Nothing in the State Engineer's statutory authority allows him to construe an entity's desire to secure a water supply for future and current residents, such as the applicant here proposes, as detrimental to the public welfare. If the protestants believe as a matter of public policy it would be best to restrict further development in Emigration Canyon, they should work through other appropriate means to achieve that goal.

The State Engineer has evaluated the water right record with regard to the applicable statutory decision-making criteria for change applications and concludes the following:

1) From information provided by Salt Lake City representative Dr. David Hansen it is apparent that average late summer stream flows in Emigration Creek are declining. The applicant's representative and hydrogeologist, Mr. Don Barnett, rejects any assertion that EID's diversion of water is causing the flow reduction in Emigration Creek and points out that Red Butte Creek, located just North of Emigration Canyon, has also experienced a significant reduction in stream flow and attributes the flow reduction in both creeks to climatic changes, particularly the drought conditions currently encumbering this area of the state. Mr. Barnett describes the geology in the area as being a syncline which is directionally fractured and compartmentalized, and asserts the use of multiple underground diversion points as proposed in the application is designed to minimize impact to other rights. The applicant is also operating a groundwater monitoring network along the streambed which indicates no change in water levels due to the applicant's current pumping. Bearing in mind that no additional water diversion above the volume that has already been approved under previous change application a17521 is requested in this change application, the State Engineer believes that the incorporation of strategically located points of diversion would allow for flexibility and can serve to reduce any future demonstrated localized interference issues due to the applicants current pumping.

2) Protestants have asserted climatic change is having an impact on the runoff characteristics of the Emigration Canyon drainage basin making it uncertain just what use of water may be sustainable. Utah's water laws anticipate changing climatic conditions and anticipate priority distribution as the solution to those issues rather than State Engineer approval/rejection of change applications. Should it prove necessary in the future, the State Engineer is authorized under statute to develop a groundwater management plan which would limit groundwater diversions in the canyon by priority to a scientifically established safe-yield notwithstanding the fact a right has been established.

3) Groundwater in the Emigration Canyon area would benefit from continued study to dispel fears over unknowns as uses approach the limits of the resource. While the State Engineer does not feel statutorily compelled to require the applicant undertake such a study as a condition of approval, all parties in this proceeding are urged to consider participating cooperatively in such a venture to better inform about the resource. The State Engineer signals his support by offering to contribute financially to any suitable cooperative study of the basin consistent with Utah Code Section 73-2-17.

Previous change application a17521 (55-7796) quantified the historical diversion quantities of the underlying right, but did not quantify the historical depletion limitations. The State Engineer believes it is appropriate to examine the rates and amounts of hydrologic diversion and depletion associated with the historical water use as compared to the proposed use to assure that there is no

enlargement of the underlying water right. In this case, it is believed that the historical water uses would have incurred the following rates and amounts of hydrologic diversion and depletion:

Prior Beneficial Use	Allowed Diversion	Rate of Depletion	Amount of Depletion
Irrigation: 12.4975 acres	49.99 acre-feet	48.875%[1]	24.43 acre-feet

To ensure no enlargement of the underlying right occurs, this change can be made if certain conditions are observed.

In evaluating the various elements of the underlying rights, it is not the intention of the State Engineer to adjudicate the extent of these rights, but rather to provide sufficient definition of the rights to assure that other vested rights are not impaired by the change and no enlargement occurs.

It is, therefore, **ORDERED** and Permanent Change Application Number 57-10711 (a44046) is hereby **APPROVED** subject to prior rights and the following conditions:

1) This change application is limited to the amount of water necessary to deplete no more than 24.43 acre-feet of water annually and to divert no more than 49.99 acre-feet annually for year-round municipal purposes within the service area Emigration Canyon Improvement District. The applicant shall maintain records to demonstrate the stated depletion and diversion limits are not exceeded.

2) Approval of this permanent change application requires cessation of the use of 5 cfs or 49.99 acre-feet at the historical point of diversion and place of use.

3) The applicants shall install and maintain measuring and totalizing recording devices to meter all water diverted from all sources pertaining to this application and **shall annually report this data to the Division of Water Rights Water Use Program.**

4) Inasmuch as this application seeks to divert water from numerous points of diversion, it is necessary that detailed information be provided to the State Engineer to show which sources of supply are actually developed and used and the extent of their usage under this application. Upon the submission of proof as required by Section 73-

[1] *Consumptive Use of Irrigated Crops in Utah*," Research Report 145, Utah Agricultural Experiment Station, Utah State University, Logan, Utah, October 1994, Table 25" University of Utah Station, p342. The benchmark crop for the referenced calculation is alfalfa, the most typical and consumptive crop evaluated in the study, (23.46-inches or 1.95 feet/5.0 feet duty = 48.875%.)

3-16, Utah Code, for this application, the applicant must identify every source of water used under this application and the amount of water used from that source. The proof must also show the capacity of the sources of supply and demonstrate that each source can provide the water claimed to be diverted under this right as well as all other water rights which may be approved to be diverted from those sources.

5) Whereas this change application has been filed to entirely replace and supercede prior approved Change Application Number 57-10711 (a17521a), with this approval that prior application is AMENDED AND SUPERCEDED.

The State Engineer has statutory responsibility to create and maintain water right records based on an administrative process outlined in statute. The State Engineer is not authorized by statute to adjudicate water right title or the validity of established water rights. It is noted that failure to exercise a water right within the statutory period could render all or a portion of a water right invalid through forfeiture. Parties who wish to challenge the validity of a water right are advised that a declaration of forfeiture is a judicial action and the courts are available to pursue such suits. (UCA 73-1-4).

As noted, this approval is granted subject to prior rights. The applicant shall be liable to mitigate or provide compensation for any impairment of or interference with prior rights as such may be stipulated among parties or decreed by a court of competent jurisdiction.

The applicant is strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the applicant to determine the applicability of and acquisition of such permits. Once all other permits have been acquired, this is your authority to develop the water under the above referenced application which under Sections 73-3-10 and 73-3-12, Utah Code Annotated, 1953, as amended, must be diligently prosecuted to completion. The water must be put to beneficial use and proof must be filed on or before **January 31, 2029**, or a request for extension of time must be acceptably filed and subsequently approved; otherwise the application will be lapsed. This approval is limited to the rights to divert and beneficially use water and does not grant any rights of access to, or use of land or facilities not owned by the applicant.

Proof of beneficial use is evidence to the State Engineer that the water has been fully placed to its intended beneficial use. By law, it must be prepared by a registered engineer or land surveyor, who will certify to the location, uses, and extent of your water right. Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicant must identify every source of water used under this application and the amount of water used from that source. The proof must also show the capacity of the sources of supply and demonstrate that each source can provide the water claimed to be diverted under this right as well as all other water rights which may be approved to be diverted from those sources.

Failure on your part to comply with the requirements of the applicable statutes may result in the lapsing of this permanent change application.

It is the applicant's responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address or for assistance in updating ownership. Additionally, if ownership of this water right or the property with which it is associated changes, the records of the Division of Water Rights should be updated. For assistance in updating title to the water right please contact the Division at the phone number below.

Your contact with this office, should you need it, is with the Utah Lake/Jordan River Regional Office. The telephone number is 801-538-7240.

This Order is subject to the provisions of Administrative Rule R655-6-17 of the Division of Water Rights and to Sections 63G-4-302, 63G-4-402, and 73-3-14 of the Utah Code which provide for filing either a Request for Reconsideration with the State Engineer or for judicial review with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Order. However, a Request for Reconsideration is not a prerequisite to filing for judicial review. A petition for judicial review must be filed within 30 days after the date of this Order or, if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 25 day of January, 2019.

Kent L. Jones, P.E., State Engineer

Mailed a copy of the foregoing Order this 25 day of January, 2019 to:

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

Larry and Susan Henchel
3806 Sunnydale Ln
Salt Lake City, UT 84108

Patricia [Pat] Sheya
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Davis, CA 95616-5919

Brett Wheelock
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Salt Lake City Utah 84108

Margaret Armstrong
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Salt Lake City, UT 84108

Jamie White
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Las Cruces NM 88005

Robert Jordan
749 N Emigration Canyon Rd
Salt Lake City UT 84108

Mary Jo Sweeney
Trustee for Michael James Ballantyne
865 N Pinecrest Canyon Road
Salt Lake City UT 84108

Steve Pinecrest Pipeline Operating Co.
c/o Steve Moore
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Salt Lake, UT, 84108

Daniel Walker
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Salt Lake City UT 84108

Emigration Canyon HOA
c/o Scot A Boyd
257 East 200 South Ste 1100
Salt Lake City, UT 84111

Michael Martin
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Salt Lake City, UT 84158

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Salt Lake City, UT 84108

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Salt Lake City, UT 84108

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Salt Lake City, UT 84108

Kate and James Bert Bunnell
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Salt Lake City UT 84108

Caroline Biggs
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Salt Lake City UT 84108

Salt Lake City
c/o Laura Briefer
1530 South West Temple
Salt Lake City, UT 84115

BY: Doralee Cannon
Doralee Cannon, Applications/Records Secretary

Addendum F

3

12938014
02/21/2019 03:30 PM $14.00
Book - 10754 Pg - 6355-6357
RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
CHRISTENSEN & JENSEN PC
257 E 200 S #1100
SLC UT 84111
BY: DCP, DEPUTY - WI 3 P.

Prepared By:
Nelson R. Mather

After Recording Return To:
Christensen & Jensen P.C., 257 E 200 S #1100
Salt Lake City, Utah 84111

SPACE ABOVE THIS LINE FOR RECORDER'S USE

QUITCLAIM DEED

On November 08, 2018 THE GRANTOR(S),

- Nelson R. Mather, a single person,

for and in consideration of: One Dollar ($1.00) and/or other good and valuable consideration conveys, releases and quitclaims to the GRANTEE(S):

- Emigration Canyon Home Owners Association, Mark Christopher Tracy, President residing at c/o Christensen & Jensen P.C., 257 E 200 S #1100, Salt Lake City, _____ County, Utah 84111

the following described real estate, situated in an unincorporated area in the County of Salt Lake, State of Utah

Legal Description:

Water Right #57-8947 (a16183)

Grantor does hereby convey, release and quitclaim all of the Grantor's rights, title, and interest in and to the above described property and premises to the Grantee(s), and to the Grantee(s) heirs and assigns forever, so that neither Grantor(s) nor Grantor's heirs, legal representatives or assigns shall have, claim or demand any right or title to the property, premises, or appurtenances, or any part thereof.

RECEIVED
FEB 21 2019
WATER RIGHTS
SALT LAKE
09501

SCANNED RC

Tax Parcel Number: N/A

Mail Tax Statements To:
Emigration Canyon Home Owners Association
Christensen & Jensen P.C., 257 E 200 S #1100
Salt Lake City, Utah 84111

[SIGNATURE PAGE FOLLOWS]