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

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UNITED STATES OF AMERICA  
Ex. rel. Mark Christopher Tracy,

Plaintiff,

vs.

EMIGRATION IMPROVEMENT DISTRICT, a Utah Special Service District; BARNETT INTERMOUNTAIN WATER CONSULTING, a Utah corporation; CAROLLO ENGINEERS Inc., a California professional corporation; AQUA ENVIRONMENTAL SERVICES, INC., a Utah corporation; AQUA ENGINEERING INC., a Utah corporation; R. STEVE CREAMER, an individual; FRED A. SMOLKA, an individual; MICHAEL HUGHES (AKA MICHAEL SCOTT HUGHES), an individual; MARK STEVENS, an individual; DAVID BRADFORD, an individual; LYNN HALES, an individual; ERIC HAWKES, an individual; DON A. BARNETT, an individual; JOE SMOLKA, an individual; RONALD R. RASH, an individual; KENNETH WILDE, an individual; MICHAEL B. GEORGESON, an individual;

**THIRD AMENDED COMPLAINT**

Case No.: 2:14-cv-00701-JNP-PMW

District Judge: Jill N. Parrish

Magistrate Judge: Paul M. Warner

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KEVIN W. BROWN, an individual;  
ROBERT ROUSSELLE; an individual;  
LARRY HALL, an individual; THE BOYER  
COMPANY, L.C., a Utah company; CITY  
DEVELOPMENT, INC., a Utah Corporation,  
and DOES 1-145,

Defendants.

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The United States of America, by and through qui tam relator Mark Christopher Tracy, brings this action under 31 U.S.C. § 3729 *et seq.*, to recover all damages, penalties and other remedies established by the False claims Act on behalf of the United States, complains and alleges against Defendants as follows:

#### I. INTRODUCTION

This lawsuit is simple. Mr. Tracy seeks to recover federal funds intended for economically disadvantaged communities suffering from unsafe drinking water – like Flint, Michigan – that Emigration Improvement District (“EID”) and other conspirators fraudulently acquired to build a “preposterously oversized” water system for the benefit millionaire land developers while simultaneously endangering public health and safety and the habitat of a federally protected species.

EID is a special service district created under Utah law to provide water and sewer services to the residents of Emigration Canyon.<sup>1</sup> It is comprised of a three-member board of trustees, a manager, and various other engineers and consultants.<sup>2</sup> It has the power to issue bonds, charge fees

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<sup>1</sup> <https://www.ecid.org/about-us>.

<sup>2</sup> <https://www.ecid.org/contact-us>.

and assessments, and levy taxes on the residents of Emigration Canyon to pay for the water services that it provides.<sup>3</sup>

On or about September 29, 2004, EID received the final disbursement of a twenty-year, \$1.846 million loan for the construction of two large-diameter commercial wells, a reservoir, and multiple water lines in Emigration Canyon for 312 existing households.<sup>4</sup> The loan came from the Utah’s Drinking Water State Revolving Fund, which uses federal funds to finance the construction of water systems for drinking or culinary water, and carried a bargain-basement interest rate of 2.1 percent.

Congress created the Drinking Water State Revolving Fund (the “DWSRS”) program in 1996 via amendments to the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.* (the “SDWA”). The purpose of the SDWA is to protect the quality of drinking water in the United States through the creation and enforcement of minimum standards for culinary or drinking water.<sup>5</sup> The DWSRS furthers this purpose by providing low-interest financing or grants for infrastructure projects that

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<sup>3</sup> Utah Code 17D-1-103(2).

<sup>4</sup> See Exhibit A. The September 29, 2004 payment was a “retainage release” payment. The government disbursed funds for the construction of the well, reservoir and water lines via five progress payments. However, the government retained a portion of each progress payment to assure that EID would satisfy its obligations and successfully complete the construction of the well, reservoir and water lines. Once EID certified that the project was complete, the government disbursed the “retainage.” Accordingly, the September 29, 2004 payment constituted final payment for all work done on the project.

<sup>5</sup> <https://www.epa.gov/laws-regulations/summary-safe-drinking-water-act>.

“address a current violation or will prevent a future violation of health-based drinking water standards.”<sup>6</sup>

Under guidelines from the United States Environmental Protection Agency, states administering federal funds under the DWSRS program must give priority to projects that will ameliorate the most serious risk to public health, enable compliance with the SDWA, and make access to clean water more affordable. Federal and state regulations governing the use of DWSRS funds prohibit their use for projects intended primarily for “fire protection” or to “serve future population growth.”<sup>7</sup> In short, the funds are not for subsidizing wealthy land developers and speculators.

When applying for the \$1.846 million loan, EID made various representations to the government authorities administering the loan. For instance, EID represented that it would use part of the \$1.846 million to build three water lines to connect 67 residents to its then-existing community water system. These 67 residents lived in the Killyon Canyon, Burr Fork, and Young Oaks neighborhoods of Emigration Canyon and, at the time of the loan application, were obtaining drinking water from private wells.

EID also represented that these 67 residents needed access to a community water system because their private wells had problems with bacterial contamination, chemical composition, and

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<sup>6</sup> United States Environmental Protection Agency. Drinking Water State Revolving Fund Program Operations Manual, p. 31. <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=P1007ZKN.txt>, last accessed January 27, 2018.

<sup>7</sup> 40 C.F.R. § 35.3520(e)(3) and (e)(5); *see also* 40 C.F.R. § 35.3520(a)(2)(5) (“Capacity to serve future population growth cannot be a substantial portion of a project”); Utah Admin. Code § 309-705-4(3)(c) (“Projects which are ineligible for financial assistance include ... [a]ny project meant to finance the expansion of a drinking water system to supply or attract future population growth”).

low water supply. Finally, EID represented that it would use the remainder of the \$1.846 million to build a large-diameter commercial well (the “Brigham Fork Well”) and a commercial reservoir (the “Wildflower Reservoir”) to ensure that it had capacity to provide water to these 67 new customers.

Based on EID’s representations when applying for the \$1.846 million loan, the proposed project appeared to fall within the parameters of the DWSRF program, as it appeared to be intended to bring clean water to 67 existing households within Emigration Canyon. As discussed below, EID’s story amounted to nothing more than a front to use federal funds for the benefit of wealthy developers, including the Boyer Company, L.C. (“Boyer Company”) and Steve Creamer (“Mr. Creamer”), with whom it had conspired.

Both Boyer Company and Mr. Creamer were instrumental in EID acquiring the \$1.846 million loan from the DWSRF. For the loan to close, EID needed a \$650,000 down payment (the total project cost was \$2,400,000) and land for the proposed commercial well and reservoir. Boyer Company paid the \$650,000. Mr. Creamer provided the land. Each had a financial interest to do so.

In the case of Boyer Company, the construction of the Brigham Fork Well and Wildflower Reservoir rescued it from potential legal liability for a defunct water system it had built in Emigration Canyon. In the late 1980s, Boyer Company and City Development, Inc. created a large residential development in Emigration Canyon called Emigration Oaks. Rather than incur the enormous costs of connecting the development to Salt Lake County’s existing water and sewer infrastructure, Boyer Company decided to supply water to the development by building two commercial wells and a 355,000 gallon reservoir in Emigration Canyon.

There were two problems with this plan. The Boyer Company/City Development did not have the legal right to pump the amount of water needed to supply all the 223 parcels in Emigration Oaks, and the wells, reservoir and water distribution lines were insufficient to do so in any event. One of the wells pumped dry in 1994. If the entire Emigration Oaks' water system went dry, Boyer Company/City Development would face potential legal action from property owners who had purchased vacant lots within Emigration Oaks.

Boyer Company turned to EID trustees Hughes and Smolka for help. It convinced EID to take ownership of the Emigration Oaks water system, relieving Boyer Company of legal liability should the system run out of water. In exchange Boyer Company deeded 300 acres of land to EID. However, for EID to fulfill the needs of its existing customers and future residents of Emigration Oaks, it needed the additional water infrastructure purchased with the \$1.846 million federal loan.

Additionally, at the time of the \$1.846 million loan, the Emigration Oaks development was incomplete and EID diverted at least \$72,000.00 to pay for the installation of water distribution lines for 57 vacant parcels within "Phase 6" and "Phase 6A" of the Emigration Oaks development.

In the case of Mr. Creamer, the \$1.846 million loan presented an opportunity to install water infrastructure with the capacity to support future development on land owned by him, Siv and Charles Gillmor (the "Gillmors"), and David Neuscheler ("Mr. Neuscheler"), and to do so at taxpayer expense. The \$1.846 million was a low-interest loan to EID, not Mr. Creamer. As a result, payments made to service the loan have come from the residents of Emigration Canyon in the form of increased taxes, assessments and fees – a masterclass in privatizing profits while socializing costs and economic risk.

Mr. Creamer and EID currently own approximately 500 acres of vacant, developable land within Emigration Canyon, while the Gillmors own 172 acres in an area of the canyon called Spring Glenn and Mr. Neuscheler own 124 in an area of the canyon called Little Mountain. After having exhausted all funds once EID had completed construction of the Brigham Fork Well and Wildflower Reservoir with the \$1.846 million in DWSFR funds, it completed the remainder of the project with additional funds from the State of Utah in 2007, 2013 and 2015 that it used to finance a second large-diameter commercial well called the “Upper Freeze Creek Well” on property owned by Mr. Creamer, and a pipeline connecting the Upper Freeze Creek Well to a 3-mile section along the Emigration Canyon Road. EID also used the 2007 and 2013 funds to finance oversized pipelines that run from the Wildflower Reservoir to the vacant, developable land owned by Mr. Creamer, the Gillmors and Mr. Neuscheler, where the pipelines, curiously, dead-end. Like the \$1.846 million loan, repayment of the funds obtained in 2007 and 2013 comes from taxes, fees, assessments on the residents of Emigration Canyon.

Based on the foregoing, Mr. Tracy seeks recovery under the False Claim Act, 31 U.S.C. §§ 3729 *et seq.*, which provides the federal government with a right of action against persons or entities who acquire federal funds via fraud on the government or its agents.<sup>8</sup> The False Claim Act contains a *qui tam* and reverse *qui tam* provision,<sup>9</sup> which allows private citizens, called relators or whistleblowers, to bring an action under the False Claim Act on behalf of the United States government.<sup>10</sup> On a successful claim brought by a relator, the government is entitled to treble

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<sup>8</sup> See generally 31 U.S.C. §§ 3729 *et seq.*

<sup>9</sup> The term *qui tam* is short for the Latin phrase *qui tam pro domino rege quam pro se ipso in hac part sequitur*, which means “he who brings an action for the king as well as for himself.”

<sup>10</sup> See 31 U.S.C. § 3730(b).

damages and penalties, which it must share with the relator,<sup>11</sup> while the relator is entitled to costs and attorney fees.<sup>12</sup>

Mr. Tracy's theories of recovery under the False Claim Act are twofold. First, Mr. Tracy alleges that EID and its co-conspirators made misrepresentations to the federal government or its agents that induced the federal government or its agents to disburse the \$1.846 million loan. Second, Mr. Tracy alleges that, after disbursement of the \$1.846 million, EID not only failed to comply with certain conditions of the \$1.846 million loan but also failed to report the noncompliance despite having a duty to do so.

For instance, as part of the terms of its loan from DWSRF, EID assumed a duty to comply with conditions and requirements set forth in a January 3, 2001 letter from the Utah Department of Environmental Quality, Division of Drinking Water captioned "Federal SRF Loan Authorization and Procedures for Committal of Funds" ("Commitment of Funds Letter") throughout the loan repayment schedule.<sup>13</sup> Under the terms of the letter EID had to do the following: First, EID had to certify that it would comply with state and federal DWSRF regulations. Second, EID had to obtain "firm commitments" from at least 57 of the 67 homeowners that EID anticipated would participate in the project; the letter defined "firm commitment" as "actual payment of a connection fee and a signed contract to pay water utility bills." Third, EID had to certify that it had sufficient water rights to operate the system. Fourth, EID had to adopt a Water Management and Conservation Plan. Fifth, EID had to comply with "cross-cutting" federal

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<sup>11</sup> 31 U.S.C. § 3729(a)(1).

<sup>12</sup> 31 U.S.C § 3730(d)(1).

<sup>13</sup> A copy of the letter is attached as Exhibit B.



statutes, including the Clean Water Act, the Endangered Species Act, and the Safe Drinking Water Act.

EID and its coconspirators made multiple misrepresentation to obtain the \$1.846 million loan. First, EID and its coconspirators misrepresented that they intended to use \$1.846 million for the benefit of 67 existing households within the canyon, when, in fact, they intended to use the funds to build “capacity” for future growth and development. As discussed above, EID has built oversized pipelines that run from the Wildflower Reservoir to the vacant, developable land owned by Mr. Creamer, the Gillmors and Mr. Neuscheler while installing insufficient pipelines to existing Canyon residents. While these pipelines evidence an intent to use the infrastructure built with the \$1.846 million to facilitate growth and development at the expense of existing residents, this is not the only evidence of such intent.

In a memorandum dated October 18, 2002, a staff engineer for the Utah Division of Drinking Water, Steve Onysko, opined that the Wildflower Reservoir only needed capacity of 300,000 gallons to serve EID’s existing customers and the proposed 67 new customers and that the proposed 1-million-gallon capacity was “preposterously oversized.”<sup>14</sup> After Mr. Onysko submitted his memorandum, Mr. Creamer met with the EID board and EID’s attorneys to discuss the “recommendation for smaller reservoir”<sup>15</sup> As built, the Wildflower Reservoir’s actual capacity exceeds 1 million gallons.

In a meeting held on February 19, 2013, the trustees of one of the homeowners associations within Emigration Canyon discussed an agreement the association had reached with Mr. Creamer

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<sup>14</sup> A copy of the memorandum is attached as Exhibit C.

<sup>15</sup> A copy of a billing statement from EID’s attorneys is attached as Exhibit D.

concerning the subdivision of Mr. Creamer's property into multiple lots.<sup>16</sup> After the filing of the current lawsuit, the association scuttled the agreement. Additionally, via legislation enacted in 2015, Emigration Canyon became a "metro township," which vested five elected officials with authority to establish zoning requirements in the canyon. One of the township's first orders of business was to remove a previously-established, 725-home limit on the amount of homes allowed to be built in the canyon.

Second, EID misrepresented that 57 households from the Killyon Canyon, Burr Fork, and Young Oaks neighborhoods had committed to connect to the EID's system, paid the connection fee, and agreed to make monthly water payments. To be sure, fourteen years later, no more than 30 households from these neighborhoods have connected to the system. EID perpetrated the fraud by convincing 57 residents and owners of vacant parcels to sign "standby" agreements, which gave the resident and/or property owner the option to connect to the system at a later date but did not require them to do so. EID then altered the "standby" agreements so that, when presented to government officials for review, the agreements appeared to require connection to the system. EID also misrepresented that, at the time of the \$1.846 million loan, households from these neighborhoods were having problems with well contamination. There only was one well that actually had contamination issues. All this only reinforces Mr. Tracy's claim that, far from using the \$1.846 million for the benefit of 67 existing canyon residents, EID used the funds to put in infrastructure for land developers like Mr. Creamer and Boyer Company.

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<sup>16</sup> A copy of the meeting minutes is attached as Exhibit E.

Third, EID withheld material information about the ability of Emigration Canyon to sustain the operation of large-diameter commercial wells. In 1966, one of EID's hydrologists, Jack Barnett, published a master's thesis concerning Emigration Canyon's hydrology. The thesis concluded that the canyon could not sustain large-diameter commercial wells and, even if such wells were to successfully draw large quantities of water from the canyon's riparian system, impairment of private wells within the canyon "would be almost a certainty." EID did not disclose this information when applying for the \$1.846 million loan.

This nondisclosure was material. When EID was applying for the \$1.846 million loan, in addition to the 67 households in Killyon Canyon, Burr Fork, and Young Oaks that drew water from private wells, most all other households within Emigration Canyon obtained drinking water from private wells. If a commercial well decreased the water within these private wells, the wells would become more susceptible to contamination, as wells with low water flows are prone to bacterial contamination and chemical imbalances. In short, EID failed to inform the government that construction of a commercial well most likely would result in contamination of the water supplies of many canyon residents. As of today, at least twenty-seven canyon residents have reported no or low water flows in their wells since installation of the Brigham Fork Well.

Fourth, when applying for the \$1.846 million loan, EID misrepresented that its water rights had priority over all other water rights in the canyon. This misrepresentation was material. In Utah, water rights are allocated according to the doctrine of prior appropriation.<sup>17</sup> If the overall water supply in a riparian system decreases due to drought, overuse or any other reason, holders of

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<sup>17</sup> <https://waterrights.utah.gov/wrinfo/default.asp>.

superior rights have first priority to the water.<sup>18</sup> EID's water rights originally had a point of diversion at the mouth of Emigration Canyon. To operate the Brigham Fork Well, EID had to change the point of diversion to the wellsite, which caused the EID's water rights to lose priority and become inferior to all other water rights of canyon residents. To this day, EID operates the Brigham Fork Well under a "temporary use permit," which it must renew on a yearly basis. If the Brigham Fork Well were to interfere with water flows of private wells of canyon residents who have water rights superior EID's water rights, any one of those residents would have a legal right to shut down EID's entire system.

As discussed above, since obtaining the \$1.846 million loan, EID has failed to comply with certain conditions of the loan. First, as discussed above, EID promised not to use the funds to create "capacity" for future population growth. However, since obtaining the loan, EID has taken action in derogation of that promise. It built a "preposterously oversized" reservoir. It built the Upper Freeze Creek well and connected it to the Wildflower Reservoir. It ran oversized water lines from the Wildflower Reservoir to vacant land owned by Mr. Creamer and others while providing undersized, undersized deficient water lines to existing residents who are or chose to connect to the EID water system.

Second, EID promised to comply with crosscutting environmental statutes, including the Clean Water Act, Safe Drinking Water Act, and Endangered Species Act. EID has failed to comply with this promise. By pumping water sufficient to fill the "preposterously oversized" Wildflower Reservoir, EID has depleted the water flows in the canyon. This has diminished water flows in

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<sup>18</sup> *Id.*

private wells within the canyon and in Emigration Creek. The impaired private wells are more susceptible to water contamination, which frustrates the purposes of the Clean Drinking Water Act. Low flows in Emigration Creek threatens the habitat of the Utah Cutthroat Trout, which frustrates the purposes of the Endangered Species Act.

Moreover, EID's system has created environmental hazards. Due to flaws in the design and construction of the Brigham Fork Well and Upper Freeze Creek well, water supplied by EID is prone to iron bacterial contamination. Residents have reported foul, red tap water, which frustrates the purposes of the Safe Drinking Water Act. Due to undersized waterlines maintained at excessive pressure and structural defects of the Wildflower Reservoir, there are numerous leaks in EID's water system with an estimated loss of 1-million gallons per month causing chlorine levels in groundwater and Emigration Creek to skyrocket, which violates the purposes of the Clean Water Act.

Finally, because the \$1.846 million loan involved federal funds, EID could not receive the funds unless and until applicable federal agencies complied with the exigencies of the National Environmental Policy Act ("NEPA")<sup>19</sup> NEPA generally requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions.<sup>20</sup> To comply with NEPA, before disbursement of the \$1.846 million, the Utah Department of Environmental Quality Division of Drinking Water created what's called an "Environmental Assessment" that evaluated the impact that the proposed Brigham Fork Well and Wildflower Reservoir would have on the environment. The Environmental Assessment also evaluated the effect that a proposed future well

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<sup>19</sup> 42 U.S.C. § 4321 et seq.

<sup>20</sup> <https://www.epa.gov/nepa/what-national-environmental-policy-act>.

intended to tie into the Wildflower Reservoir would have on the environment. The division subsequently issued a finding that the Brigham Fork Well, Wildflower Reservoir, a 3-mile water distribution line and the proposed future well would have no significant adverse impact on the environment.

The Environmental Assessment assumed EID would construct a 3-mile water distribution line along Emigration Canyon Road and the proposed future well in an area of Emigration Canyon called the Nugget Formation. When EID obtained funding for the future well in 2007 and 2013, however, it did not build it in the Nugget Formation. Instead it used the funds to build the Upper Freeze Creek Well on property owned by Mr. Creamer. In short EID built the Upper Freeze Creek well without first having the environmental impacts of the well assessed by the federal government as required by NEPA.

Third, EID failed to comply with its Water Management Plan, which required EID to measure water levels in “5 monitor wells” to “determine whether there are changes in the aquifers upon which [c]anyon residents are dependent for their culinary water supply.”<sup>21</sup> Since obtaining the \$1.846 million loan, EID has failed to measure water levels in the five monitoring wells and otherwise has failed to ensure that operation of the Brigham Fork Well, Upper Freeze Creek Well, and the Wildflower Reservoir are not depleting aquifers relied upon by other canyon residents.

Of course one question remains. Why would EID, a governmental entity, participate in a conspiracy to divert federal funds for the benefit of wealthy land developers? The answer is simple. EID’s trustees, engineers and contractors personally benefitted from the construction of the water

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<sup>21</sup> Water Management and Conservation Plan, dated November 14, 2002, p. 3.

infrastructure and enlargement of EID's system and revenue. The more money coming into EID through taxes, fees and assessments, the more money the trustees can divert to family, friends and themselves through lucrative government contracts.

Since January of 2000, EID has made payments to Fred Smolka totaling \$594,613.47. Historically, Mr. Smolka has worked for EID in a variety of positions, including trustee and general manager. Mr. Smolka currently works for EID as an "independent contractor," receiving an annual salary of \$120,000. Since 2004, EID has paid over \$150,000 to Fred Smolka's family and friends for services rendered to EID.

Other trustees have received similar financial benefits. In November 2014, EID awarded a \$60,000 contract to a company owned by Hughes to construct a septic system within Emigration Canyon. Between 2004 to present, EID has waived impact and water usage fees for the personal benefit of Scott Hughes, David Bradford and Mark Stevens. Finally, since 2004, two firms that EID hired to do engineering and hydrological work for EID, Carollo and Aqua, have received over \$1 million in payments from EID.

In conclusion, everything that EID has done with the \$1.846 million loan frustrates the purpose of the DWSRF program. Rather than using it to provide 67 existing residents with clean water as promised, EID built a 12-million dollar water system to serve future population growth. Why else build a "preposterously oversized" reservoir and oversized water lines to three separate tracts of vacant, developable land? Rather than heighten the overall water quality within the canyon, EID's system delivers water contaminated with iron bacteria to residents connected to the system since 2003, while simultaneously drying up the private wells of residents not connected to the system. As water levels in private wells go down, the risk of bacterial or mineral contamination

go up. Rather than making drinking water more affordable, EID has levied exorbitant fees, taxes and assessments to service the \$1.846 million loan.

In short, this case presents a masterclass in public corruption. Rather than protect its constituents, EID has forced them to shoulder the costs of water infrastructure, while EID's trustees and developers like Boyer Company and Mr. Creamer reap the windfall.

## **II. THE PARTIES**

1. Relator is a resident of Salt Lake County, State of Utah.

2. On information and belief, Defendant Emigration Improvement District ("EID") is a special service district organized under the laws of the State of Utah, endowed with governmental authority to provide water and sewage service to residents of the Emigration Canyon. EID's headquarters are located within Salt Lake County, State of Utah.

3. On information and belief, Defendant Barnett Intermountain Water Consulting ("BIWC") is a corporation organized and existing under the laws of the State of Utah, with its headquarters located within Davis County, Utah.

4. On information and belief, Defendant Carollo Engineers, Inc. ("Carollo Engineers") is a California professional corporation headquartered in Walnut Creek, State of California.

5. On information and belief, Defendant Aqua Environmental Services, Inc. ("AES") is a corporation organized and existing under the law of the State of Utah, with its headquarters located within Davis County, State of Utah.



6. On information and belief, Defendant Aqua Engineering, Inc. (“Aqua Engineering”) is a corporation organized and existing under the law of the State of Utah, with its headquarters located within Davis County, State of Utah.

7. On information and belief, Defendant R. Steve Creamer (“Mr. Creamer”) is a former Environmental Engineer with the Utah Department of Environmental Quality, is the former CEO of Energy Solutions, is the current Chairman of the “EID Advisory Committee,” is the former President of Emigration Oaks, and is a resident of Salt Lake County, State of Utah.

8. On information and belief, Defendant Fred A. Smolka, CPA (“Mr. Smolka”) is the former EID Trustee Chairman, former EID Clerk, former EID General Manager, former EID Election Specialist, current EID Treasurer, current EID Consultant, former member of the EID Engineering, Finance and Audit Committee, current principle of Management Enterprises, and a resident of Salt Lake County, State of Utah.

9. On information and belief, Defendant Michael Scott Hughes (“Mr. Hughes”) has been a Co-Chairman Trustee of EID since January 2000 and is the principle of Ecosens and a resident of Salt Lake County, State of Utah.

10. On information and belief, Defendant Mark H. Stevens (“Mr. Stevens”) is a former Co-Chairman and Trustee of EID (elected in November 2005), a former member of EID’s Audit Committee, and a resident of Salt Lake County, State of Utah.

11. On information and belief, Defendant David C. Bradford (“Mr. Bradford”) has been a Trustee Clerk of EID, is a former member of the EID’s Finance Committee, and is a resident of Salt Lake County, State of Utah.

12. On information and belief, Defendant Lynn B. Hales (“Mr. Hales”) is the former Chairman and Trustee of EID (elected in January 2000) and is the current Chairman of the EID’s Engineering Committee and a resident of Salt Lake County, State of Utah.

13. On information and belief, Defendant Eric L. Hawkes (“Mr. Hawkes”) is EID’s current District Manager, Financial Manager, Election Specialist and is the principle of Simplifi and a resident of Salt Lake County, State of Utah.

14. On information and belief, Defendant Don A. Barnett, P.E. (“Don Barnett”) is the current EID Hydrologist, a principal of BIWC, and a resident of Davis County, State of Utah.

15. On information and belief, Defendant Joseph D. Smolka (“Joe Smolka”) is a member of the EID Advisory Board (appointed December 16, 2010), the current EID Operations Manager (appointed October 14, 2004), a former member of the Emigration Canyon Community Counsel, the current chairman of the Metro Council, the brother of Fred Smolka, a principal of Smolka Construction, and a resident of Salt Lake County, State of Utah.

16. On information and belief, Defendant Ronald L. Rash, P.E. (“Mr. Rash”) is a shareholder of Carollo Engineers and is a resident of Salt Lake County, State of Utah.

17. On information and belief, Defendant Kenneth Wilde, P.E. (“Mr. Wilde”) is a former Engineering Section Manager of DDW and a resident of West Valley City, State of Utah.

18. On information and belief, Michael B. Georgeson, P.E. (“Mr. Georgeson”) is a former Engineering Section Manager with DDW and a resident of American Fork, State of Utah.

19. On information and belief, Defendant The Boyer Company, L.C. (“Boyer Company”) is a corporation organized and existing under the law of the State of Utah, with its headquarters located within Salt Lake City, State of Utah.

20. On information and belief, Defendant City Development, Inc. (“City Development”) is a corporation organized and existing under the law of the State of Utah, with its headquarters located within Salt Lake City, State of Utah.

## **II. JURISDICTION**

21. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331, and 31 U.S.C. §3732, the latter of which specifically confers jurisdiction on this Court for actions brought pursuant to 31 U.S.C. §§ 3729 and 3730.

22. On information and belief, there have been no public disclosures of the allegations or transactions contained herein that bar jurisdiction under 31 U.S.C. §3730(e).

23. This Court is the proper venue for this action pursuant to 31 U.S.C. §3732(a) because at least one of the Defendants resides in this federal district.

24. This Court has personal jurisdiction over all Defendants because each is a resident of this district, or has its headquarters in this district, or conducts substantial business within this district.

## **III. GENERAL ALLEGATIONS**

### **A. General Background**

#### **1. Emigration Improvement District.**

25. EID is a special service district created under Utah law to provide water and sewer services to the residents of Emigration Canyon.

26. It is comprised of a three-member board of trustees, a manager, and various other engineers and consultants.

27. It has the power to issue bonds, charge fees and assessments, and levy taxes on the residents of Emigration Canyon to pay for the water services that it provides.

28. EID is comprised of a three-member board of trustees, a manager, and various other engineers and consultants.

29. EID's charter does not grant it authority to use taxpayer funds to finance development in Emigration Canyon for private profit.

30. EID does not fall within the authority of the Utah Public Utilities Commission.

31. Since 1985 EID has collected property tax revenue for all real properties located within the Canyon

32. Prior to 1998, EID did not own or operate any drinking water or sewage systems.

## **2. Applicable Utah Water and Zoning Laws**

33. In the State of Utah, any change to the point-of-diversion (geographic point where water is extracted) or the point-of-use (geographic area where water may be used) of a water right requires the approval of the State Engineer in the form of either a permanent or temporary change application.

34. Under current building regulations of Salt Lake County, any new home constructed within Emigration Canyon must prove legal access to water with either a water share approved by the State Engineer or a promise of future water service issued by a Special Service Water District such as EID and be within 600 feet of a fire hydrant.

35. A domestic unit of 0.45 acre feet of water rights is needed for the culinary water use of one single-family residence in Emigration as mandated by the State Engineer (excluding exterior irrigation).

36. A domestic unit of 0.75 acre feet of water rights is needed for the culinary water use of one single-family residence in Emigration Canyon as mandated by the State Engineer (including exterior irrigation).

37. Under Utah Code Sec. 73-3-8 (b) and (c), “if the state engineer has reason to believe that an application [for water use] will interfere with the water's more beneficial use ... or will unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare, the state engineer shall withhold approval or rejection of the application until the state engineer has investigated the matter” whereby “[i]f an application does not meet the requirements of this section, it shall be rejected.”

38. Under Utah Code 73-3-55, any right to divert water under a temporary change permit is inferior to any right to divert water under a permanent change permit or any perfected water rights.

39. Under Utah Code 73-3-5.5(d)(i) and (d)(ii), unlike permanent change applications, temporary change applications expire automatically after one year and cancel according to its own terms.

## **B. The \$1.846 Million Loan**

### **1. EID received at least some of the \$1.846 million on or after September 29, 2004.**

40. On or about September 29, 2004, EID received the final disbursement of a twenty-year, \$1.846 million loan intended for the construction of two large-diameter commercial wells, a reservoir, and multiple water lines in Emigration Canyon for 312 existing households who would eventually connect to the water system.

41. The September 29, 2004 payment was the final release of “retainage” funds. The government disbursed the \$1.846 million in funds for the construction of the well, reservoir and water lines via five progress payments.

42. However, the government retained a portion of each progress payment to assure that EID would satisfy its obligations and complete the construction of the well, reservoir and water lines.

43. Once EID’s engineer – Carollo Engineering – certified that the project as complete, the government disbursed the “retainage.” The September 29, 2014 payment constituted final payment for all work done on the project.

## **2. The Drinking Water State Revolving Fund Program**

44. Congress created the Drinking Water State Revolving Fund (the “DWSRS”) program in 1996 via amendments to the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.* (the “SDWA”).

45. The purpose of the SDWA is to protect the quality of drinking water in the United States through the creation and enforcement of minimum standards for culinary or drinking water.

46. The DWSRS furthers this purpose by providing low-interest financing or grants for infrastructure projects that address a current violation or will prevent a future violation of health-based drinking water standards.

47. Under guidelines from the United States Environmental Protection Agency, states administering federal funds under the DWSRS program must give priority to projects that will ameliorate the most serious risk to public health, enable compliance with the SDWA, and make access to clean water more affordable.

48. Federal and state regulations governing the use of DWSRS funds prohibit their use for projects intended primarily for fire protection or to serve future population growth. In short, the funds are not for subsidizing wealthy land developers and speculators.

### **3. Terms of the \$1.846 Million Loan**

#### **a. Financial Terms.**

49. On October 13, 2000, EID secured a commitment of funds from DDW for the sale of federally-backed bonds administered under the authority of the Safe Drinking Water Act at 2.01% in the amount of \$1,256,000.00.

50. EID subsequently requested three amendments to the loan agreement, which increased the commitment of funds to \$1,846,000.00, for the total project cost of \$2,400,750.00 (as a condition of getting the loan, EID had to secure the remaining portion).

51. Upon closing of the bond sale, all federal, matching state and EID's own co-payment were to be placed in an escrow account administered by DDW.

52. The funds were disbursed in six actual payments, the last of which occurred on or after September 29, 2004.

53. EID agreed to repay the funds over a twenty-year period at 2.01 percent interest.

54. In applying for the loan, EID represented that it would use the funds to build a reservoir, two large-diameter commercial wells, and three water lines.

55. In applying for the loan, EID represented that it intended to use Brigham Fork Well and the Wildflower Reservoir to bring clean water to 67 residents purported to be residing in the Killyon Canyon, Burr Fork, and Young Oaks neighborhoods of Emigration Canyon.

56. DDW gave Fred Smolka complete and plenary control over the \$1.846 million loan and allowed him to receive the disbursement of funds without requiring a second signature on the applicable negotiable instruments.

**b. Commitment of Funds Letter.**

57. As a condition of the loan, EID agreed to abide by the conditions and requirements set forth in a January 3, 2001 letter from the Utah Department of Environmental Quality, Division of Drinking Water captioned “Federal SRF Loan Authorization and Procedures for Committal of Funds” (“Commitment of Funds Letter”).<sup>22</sup>

58. The Commitment of Funds Letter required EID had to certify that it would comply with state and federal DWSRF regulations.

59. The Commitment of Funds Letter required EID to obtain “firm commitments” from at least 57 of the 67 homeowners that EID anticipated would participate in the project; the letter defined “firm commitment” as “actual payment of a connection fee and a signed contract to pay water utility bills.”

60. The Commitment of Funds Letter required EID had to certify that it had sufficient water rights to operate the system.

61. The Commitment of Funds Letter required EID had to adopt a Water Management and Conservation Plan.

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<sup>22</sup> A copy of the letter is attached as Exhibit A.



62. The Commitment of Funds Letter required EID had to comply with “cross-cutting” federal statutes, including the Clean Water Act, the Endangered Species Act, and the Safe Drinking Water Act.

**c. Compliance with NEPA.**

63. As a condition of obtaining the \$1.846 million loan, EID had to cooperate with state and federal authorities in their efforts to comply with the National Environmental Policy Act (“NEPA”).

64. This cooperation included providing state and federal authorities with complete, truthful, and accurate information about the proposed project.

65. NEPA generally requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions.

66. The first step in the NEPA process is the creation of an Environmental Assessment, which determines whether or not a federal action has the potential to cause significant environmental effects.

67. If state and federal authorities determine that a project using federal funds does not have the potential to cause significant environmental impacts, the authorities issue a Finding of No Significant Impact, which has the effect of greenlighting the project allowing for actual construction to begin.

68. As a condition of receiving the \$1.846 million loan, EID had to wait for completion of an Environmental Assessment and issuance of a Finding of No Significant Impact.

**C. EID builds a preposterously oversized water system with \$1.846 million loan.**

**1. Environmental Assessment and Finding of No Significant Impact.**

69. To comply with NEPA, before disbursement of the \$1.846 million loan, the Utah Department of Environmental Quality Division of Drinking Water in conjunction with applicable federal agencies evaluated the impact that the proposed wells and reservoir would have on the environment.

70. Based on information submitted by EID and Carollo Engineering, an engineering firm that EID had hired to assist with the NEPA process, federal and state authorities created an Environmental Assessment that evaluated what impact the proposed large-diameter commercial wells, reservoir and water lines would have on the environment (the “EA”).

71. When evaluating the environmental impacts of the Brigham Fork Well, the Wildflower Reservoir, and the proposed future well, the government relied on plans, reports, data and representation created or made by EID or Carollo Engineering.

72. In an email to Don Hayes, Environmental & Water Resources Engineering Leader, at the Department of Civil & Environmental Engineering, University of Utah on July 22, 2002, Mr. Wilde reported that EID trustees were “vague and evasive” during public meetings and EID “has never sent us any of the documents and letters they have been giving to the people...they have been vague and have given conflicting answers and dodging questions/answers in the 2 public meetings I have attended.” Mr. Wilde also expressed concern that “a couple of the things [EID] stated in the letters and documents were probably illegal.”

73. Mr. Wilde however concluded that federal and state agencies “have little influence in development” due to the fact that “the NEPA processes ... give[] us very little ability to evaluate what will happen in the canyon.”

74. During the public comment period held on the Environmental Assessment in 2002, several residents of Emigration Canyon informed Mr. Brown, Mr. Georgeson and Mr. Wilde that the proposed project expressly violated federal-funding requirements under the Safe Drinking Water Act.

75. Despite these reservations, federal and state authorities – acting through Mr. Wilde – issued a Finding of No Significant impact on August 5, 2002 for the development of the two commercial wells, the reservoir and various commercial lines. This infrastructure was intended to service 312 households within Emigration Canyon.

76. Mr. Brown subsequently approved issuance of the \$1.846 million loan, despite the fact that Environmental Protection Agency Rule 62-552.370 provided for construction grants only for “Financially Disadvantaged Communities” and not the multi-million dollar homes of Emigration Oaks, Young Oak, Pinecrest PUD and Killyon Canyon. EID through Carollo Engineering certified successful project completion on September 2004.

77. On September 29, 2004, the retainage funds were release to EID.

78. On May 5, 2005, the project was closed after EID falsely certified that it had obtained a federally-mandated post-construction inspection and all necessary permits for the operation a public-drinking water system under the Safe Drinking Water Act.

## **2. Construction of the Brigham Fork Well.**

79. On November 16, 2001, Creamer agreed to purchase 135 acres of prime, developable property on the east side of Emigration Oaks from the Gillmor(s).

80. On December 14, 2001, Steve Creamer and EID – acting through Mr. Hughes and Mr. Hales – executed an agreement under which Mr. Creamer agreed to allow EID to construct the Brigham Fork Well in exchange for \$75,000.00.

81. Earlier that same year, EID had created a plan that called for the Brigham Fork Well to be built at a different location.

82. EID disregarded thirty-three other possible well site previously approved by the State Engineer under permanent change applications.

83. To build the well on Mr. Creamer's property, EID was required to file temporary change applications subject to yearly review and approval of the State Engineer.

84. On December 14, 2001, EID agreed to employ Mr. Creamer as the contractor for the construction of water-system infrastructure in direct violation of federal bidding and procurement requirements.

85. Fred Smolka paid Mr. Creamer \$119,652.33 for construction work that Mr. Creamer allegedly performed on the Brigham Fork Well.

86. Mr. Wilde allowed construction of the Brigham Fork Well to begin before issuance of the FONSI, in violation of the federal funding requirements of the Safe Drinking Water Act.

87. Due to shoddy workmanship, the Brigham Fork Well was built with a cracked casing.

88. Although the EAR and FONSI assumed the Wildflower Reservoir would be underground and made of concrete, on September 9, 2002, EID submitted invitations to bid for an above-ground steel tank.

**3. Construction of the Wildflower Reservoir with \$1.846 million.**

89. Both the EA and FONSI assumed that EID would construct the Wildflower Reservoir on a specific parcel of flat ground belonging to Salt Lake City.

90. Instead, EID actually built the Wildflower Reservoir on property owned by Mr. Creamer, which is located within 60 feet of the proposed reservoir site and is steeply graded.

91. During construction, Mr. Creamer personally supervised the excavation of a 150-foot cut into the south hilltop in order to place the reservoir on property belonging to him.

92. Although EID had rendered payment to Salt Lake City on August 30, 2001 in the amount of \$14,500.00 for a permanent easement for an underground, concrete tank, EID never built an underground tank on the property.

93. When surveying the boundaries of the Salt Lake City property in August 2002, Carollo Engineering – acting through Mr. Rash – failed to place permanent markers on the site and failed to register the survey with Salt Lake County, thereby actively concealing the fact that EID intended to build the Wildflower Reservoir on land owned by Mr. Creamer.

94. Although construction drawings provided for a 1-million gallon steel tank at 71 foot in diameter and 31 foot in height, under supervision of Carollo Engineering, ABCO Construction Inc. – upon information and belief a company owned or controlled by Creamer – completed a 100-foot diameter tank at a height between 23 and 30 feet, which yields a capacity between 1.3 and 2 million gallons.

95. Current records of DDW record the volume of the Wildflower Reservoir at 1.3 million gallons.

96. In an EID document dated “November 2003,” Fred Smolka references a “2mil tank” when describing mechanical operations of water facilities operated by EID.

97. During the subsequent plan review, DDW staff engineer Steve Onysko in a memorandum dated October 18, 2002, informed Mr. Georgeson that the planned 1-million gallon Wildflower Reservoir was “preposterously oversized” beyond the 300,000 gallon capacity needed to fulfill the federal requirements and once again repeated that the Safe Drinking Water Act “prohibit[s] the use of State Revolving Funds (SFR) monies for construction of water system infrastructure for future growth.”

98. Mr. Onysko concluded that, “I will not jeopardize my Utah Professional Engineering license by preparing an approval letter for the subject project under these circumstances. If you believe that approval of the subject project is appropriate, you will have to assign the task of approval letter preparation to someone other than myself.”

99. On October 29, 2002, EID’s attorney met with Mr. Creamer, Fred Smolka, Mr. Hales, and Mr. Rash to discuss “DWD [i.e., DDW] staff issues... concerning recommendation for smaller reservoir, economics [sic] of project and related issues,” but then failed to report Mr. Onysko’s objections to other EID trustee or report Onysko’s objections to canyon residents in the following EID Trustee meeting on November 14, 2002.

100. Carollo Engineering – acting through Rash – “refused” to consider a cost savings of \$500,000.00 by engineering an appropriately sized 300,000 gallon reservoir.

101. Because EID built an oversized, tank with a capacity between 1.3 and 2 million gallons, the overall project experienced “unforeseen cost overruns,” which prevented EID from using the \$1.846 million loan to build a second well within the canyon.

102. In 1995, Carollo prepared a report indicating that a 500,000 gallon reservoir would be sufficient to service 700 households within the Emigration Canyon.

103. Although hired by EID sometime prior to October 9, 2003 to inspect and supervise the construction of the Wildflower Reservoir, Carollo Engineering failed to report that the reservoir had not been constructed according to the submissions made during the NEPA process, i.e., Carollo Engineering failed to report that the reservoir was larger than planned and built on Mr. Creamer’s property.

104. EID allowed the temporary operating permit for the use of the Wildflower Reservoir as a drinking-water source to expire on February 1, 2004 by failing to secure a post-construction inspection and permanent operating permit in violation of the Safe Drinking Water Act.

105. Under the Commitment of Funds Letter, EID had a duty to certify “valid legal title to the rights-of-way both for the project to be constructed and the remainder of the existing water system.”

106. EID did not record the easements showing EID had placed the Wildflower Reservoir on Mr. Creamer’s property, thereby actively concealing the fact that the reservoir was on Mr. Creamer’s property.

107. EID failed to record easements showing that the water lines running from and to the Brigham Fork Well crossed Mr. Creamer’s property.

108. Relator reviewed the documents submitted in connection with the \$1.8 million loan on August 12, 2015; the documents did not include certification that EID had rights of way for the Wildflower Reservoir, the Brigham Fork Well, or the water lines that connected the reservoir and well to the remainder of the system.

**4. Construction of water lines with the \$1.846 million loan.**

109. During construction of the Wildflower Reservoir, on November 19, 2002, EID contracted with Mr. Creamer to construct an 8-inch water supply line between the Wildflower Reservoir, the Brigham Fork Well and the existing water system in Emigration Oaks to the west of the Wildflower Reservoir, in violation of federally-mandated open bidding requirements.

110. Mr. Onysko informed EID that the 8-inch water lines could not provide adequate fire flow to all 312 houses.

111. EID asked the fire marshal to approve a minimum of 1,000 gallons per minute but the fire marshal refused to drop it that low.

112. EID failed to contract with licensed engineers to inspect the work performed by Mr. Creamer and failed to inform Salt Lake County that construction of the water-supply lines by Mr. Creamer would not be inspected by a licensed engineer.

113. Rather than construct an 8-inch water-supply line, sometime in the year 2004, Mr. Creamer placed a 10-inch line through his property and hastily covered the trench;

114. On August 22, 2003, Carollo Engineering issued a change order to Condie Construction Co. for “2-inch waterline used in Killyon Canyon and Muddy Hallow,” despite the fact that construction drawings in these areas required the installation of 8-inch water lines.



115. On the same date, Carollo Engineers issued a change order to Condie Construction to “[c]hange from 8-inch to 4-inch PVC C-900 waterline on Quad Road,” despite the fact that construction drawings in this area required the installation of 8-inch water lines.

116. Carollo Engineering – though Rash – refused to consider upsizing the water distribution lines in the main canyon from 8 inches to 10 inches at a cost of \$119,000.00 despite the fact that Mr. Onysko refused to certify compliance with Regulation R309-510-9 regulating the size of the distribution system need for adequate fire protection.

**5. False Certification re \$1.846 million project.**

117. Despite the aforementioned, on September 22, 2004, Mr. Rash reported that the project as completed in compliance with the pre-construction plans.

118. On May 3, 2005, Mr. Maculey, then DDW staff engineer and current DDW Deputy Director, recorded in the DDW database that “[a]ll project components have received operating permits,” despite the fact that the Wildflower Reservoir had not received a permanent operating permit following the federally mandated post-construction inspection.

119. Wildflower Reservoir, Boyer Well No. 2 and the chlorinator for the Brigham Fork lack federally mandated operating permits to date.

120. The aforementioned certification of project completion was itself expressly refuted by former EID Trustee Bowen who personally confronted Rash at the Carollo office in Midvale, Utah shortly thereafter.

## **D. Completion of the EID's water system.**

### **1. The 2007 bond.**

121. EID used state grants to build a 3.3 mile waterline down Emigration Canyon a second well, both of which connected to the Wildflower Reservoir and Brigham Fork Well.

122. As part of the NEPA process conducted before issuance of the \$1.8 million loan, the state and federal authorities evaluated what impact construction of a future 3.3-mile water line (located in the main canyon for the purported benefit of 312 households) and a future well (located in a section of Emigration Canyon called the Nugget Formation) would have on the environment.

123. The government's evaluation assumed that the future 3.3-mile water line and the future well would connect to the Wildflower Reservoir and other infrastructure built with federal funds. The government evaluated the impacts of these future projects at the insistence of Fred Smolka and Mr. Creamer.

124. On September 15, 2006, EID secured another commitment of funds from the State of Utah for the amount of \$2,860,000.00 for the purpose of constructing the 3.3-mile water line along Emigration Canyon Road (the primary thoroughfare through the canyon).

125. EID subsequently built the waterline.

### **2. The 2013 bond.**

126. On October 11, 2012, EID secured another commitment of funds in the amount of \$1,600,000.00 from the Utah Division of Water Rights for the construction of the second large-diameter commercial well.

127. Though the EA and the FONSI assumed that EID would build any future well connected to the Wildflower Reservoir in the "Nugget Formation," EID actually built the well (the

“Upper Freeze Creek Well”) on property owned by Mr. Creamer and located two miles from the Nugget Formation.

128. In a correspondence to canyon resident Irons on April 28, 2014, EID through Hawkes reported that “the District was required to get another loan for \$1.6 million (0% interest) to provide some added protection or ‘redundancy’ in the system.”

129. Despite concerns expressed in a 1994 report that two wells in the canyon – the Boyer Well No. 1 and Boyer Well No. 2 – were placed in close proximity and in the same drainage area and would therefore prove to be unproductive water sources, BIWC – acting through Barnett – insisted that the Upper Freeze Creek Well also be placed in close proximity with Boyer Well No. 1 and Boyer Well No. 2.

130. On October 8, 2013, EID recorded the purchase of a 20-acre parcel for the Upper Freeze Creek Well from land developer Walter Plumb of City Development for \$140,000.00 – an amount well above what Walter Plumb expected to receive for a property without water rights and well above market value.

131. On November 7, 2013, EID obtained approval from the State Engineer to provide water to 69 new homes “yet to be constructed in the [c]anyon” under permanent change application #a18651 for water share #57-7479, which EID had acquired from Walter Plumb and City Development on December 28, 2017.

132. Relator is informed and believes that EID verbally promised to bring water service to an area directly north of the UFC Well identified as “Emigration Peaks LLC,” which owned and controlled by Ira Sachs and Walter Plumb.

133. EID failed to have the value of the property appraised before closing.

134. Meeting minutes prepared by EID failed to record the terms of the agreement or the title transfer.

135. EID did not have authorization to purchase the property for construction of the Upper Freeze Creek Well, but rather was required to obtain easements for placement of the well.

136. In the construction documents from January 17, 2014 submitted to DDW by Aqua Engineering through Mr. Rousselle, EID reported to have secured an easement from developer Walter Plumb despite the fact that no such easement agreement had been recorded with Salt Lake County. Walter Plumb recorded fee simple title transfer to EID on September 13, 2013.

137. In a letter dated April 19, 2013, Fred Smolka stated that the site for the Upper Freeze Creek Well was chosen because EID wanted to stay as “far away from [a popular walking] trail as possible with the road to keep this treasure as pristine as possible.”

138. Both the trail and well site are currently protected by no less than six no-trespassing signs warning of “criminal prosecution to the fullest extent of the law.”

139. EID made no effort to obtain an easement from Salt Lake City although the actual well site of the Upper Freeze Creek Well is located within 10 feet of property belonging to the city.

140. Contrary to the construction drawings prepared by Aqua Engineering indicating that Walter Plumb had granted EID a permanent easement for the construction of the Upper Freeze Creek Well, on October 8, 2013, EID recorded a permanent easement to Rocky Mountain Power on the property previously belonging to Walter Plumb.

141. Contrary to construction drawings submitted by Aqua Engineering through Mr. Rousselle to DDW, Aqua Engineering completed the easement documents submitted to Salt Lake County for the benefit of Rocky Mountain Power.

142. Under the construction oversight by Aqua Engineering and Joseph Smolka, EID installed four electrical “pullboxes” allowing for future development of the property formerly belonging to Walter Plumb.

143. The electrical conduit installed for operation of the Upper Freeze Creek Well far exceeds the power requirements of a large-diameter commercial well but was rather intended to service multiple single-family residents.

144. Contrary to the site plan submitted to DDW by Aqua Engineering through Mr. Rousselle, EID under the construction oversight of Aqua Engineering and Joe Smolka installed several water connections for individual water meters.

145. Despite the aforementioned deficiencies, on January 14, 2014, Mr. Rousselle falsely certified that the Upper Freeze Creek Well was compliant with all requirements of the 2013 Bond Agreement.

146. While pump testing the proposed Upper Freeze Creek Well in 2013, BIWC and Don Barnett failed to observe the five existing monitoring wells owned by EID and installed at tax-payer expense in the early 1990’s, as required by the Water Conservation Management Plan.

147. In June 2014, Don Barnett informed Canyon resident and Geophysicist Dr. Irons that he had wanted to install monitoring wells during the development of the Upper Freeze Creek Well, but he [Don Barnett] had been “admonished” by Fred Smolka, Mr. Hughes, Mr. Stevens

and Mr. Bradford for making such a suggestion due to “prohibitive costs” and thus dropped the issue.

148. On October 31, 2010 at a presentation of the Geological Society of America in Denver, Colorado, Don Barnett and Dr. Yonkee concluded, “[t]hus, development of fractured bedrock aquifers should include detailed hydrogeological [sic] mapping, and long term monitoring of water levels and chemistry from production wells...such an inclined well drilled in 2004 [the Brigham Fork Well] has provided a consistent water source for the upper Emigration Canyon area.”

149. To date, there is no evidence that hydrological mapping or recording of water levels from monitoring wells was completed by Don Barnett or BIWC during development of the Upper Freeze Creek Well and no age-testing of ground water was completed.

150. In an open letter to Canyon residents from August 6, 2013, Fred Smolka, Mr. Hughes, Mr. Bradford and Mr. Stevens reported that EID had spent “years of due diligence, research and preparing a master plan,” EID had hired “professionals, a hydrologist, a geologist, and engineers to assure the best possible plan and to implement the current system expansion,” EID had decided that a new well was quickly needed and EID had gone “through a long and arduous process of deciding to add the new well, where to locate it and all the resulting detail.”

151. Organizational minutes reveal that BIWC and Don Barnett first recommended a new well on April 19, 2012.

152. On November 17, 2011, Steve Creamer inquired if EID had “any written information regarding what water sources the EID [sic] is looking at [sic].”

153. No hydrological data or study supported the placement of the new well on the property previously owned by Walter Plumb.

154. The EAR and FONSI approved by Wilde on August 5, 2002 expressly concluded that the Brigham Fork Well would be sufficient for 312 connections.

155. To date, EID reports to service only 233 connections with the Utah State Division of Water Rights.

156. Upon inquiry as to the reason for the inflated purchase price of \$140,000 for Walter Plumb's property, Mr. Hughes responded that EID "didn't like dealing with easement issues" and if EID did not purchase the property, Walter Plumb would be "put under pressure to develop the property."

157. On October 8, 2013, after the Upper Freeze Creek Well became operational, EID transferred title of the 20 acres on which the well sits to Mr. Creamer.

158. During construction of the water and electrical supply lines, EID – acting through Joe Smolka – installed four water and electrical connection hubs, thereby allowing unhindered sale of later parceled lots as "buildable." On December 12, 2010, EID reported to the State Engineer that over \$12,000,000.00 dollars of public funds had been expended on the large-diameter well system at that time.

159. With the completion of the Upper Freeze Creek well at a cost of \$2,069,000.00 in June 2014, the large diameter well system operated by EID has cost the taxpayers of Emigration Canyon over \$14,000,000.00 to date.

**E. EID used the \$1.846 million to benefit wealthy land developers.**

**1. EID uses the \$1.846 million to rescue developers with failed water systems.**

**a. Boyer Company.**

160. In a bond election held in November 1995, the residents of Emigration Canyon residents rejected EID's proposal to construct a canyon-wide drinking water system proposed by Fred Smolka, Mr. Hales and Jack Barnett.

161. During the late 1980's, Boyer Company and City Development created the Emigration Oaks development, which consisted of 223 residential lots.

162. Boyer Company and City Development not only acquired 94.04 acre feet of surface water rights from Mt. Olivet Cemetery (water right #57-8865), which had a surface point-of-diversion near the University of Utah, but also obtained the consent of the State Engineer to draw water from underground sources higher up the canyon.

163. Under water right #57-8865, Boyer Company and City Development owned sufficient water rights for only 125 residential units (including irrigation) under water right #57-8865; nonetheless, under permanent change application #a12710b, the State Engineer approved water service to 188 domestic units.

164. The water rights held by Boyer Company and City Development were inferior to some of the water rights held by residents of Emigration Canyon who owned and obtained culinary water from private wells.

165. Boyer Company and City Development constructed a large-diameter, commercial well and a 355,000 gallon tank to supply water to the Emigration Oaks development.



166. Even though the well and tank were undersized to provide water service to all 223 residential units Boyer Company and City Development had sold as “buildable,” Salt Lake County approved the Emigration Oaks plat, which prevented Boyer Company and City Development from having to incur the \$4,200,000.00 cost of having to bring water and sewer services from the base of the canyon.

167. Sometime in January 1993, the well that Boyer Company and City Development had installed pumped dry, potentially causing permanent damage to Emigration’s Canyon’s riparian system.

168. Sometime in the early 1990’s, the US Forest Service designated the area of Emigration Oaks as a “Wildfire Danger Zone” leading to exorbitant monthly fire insurance premiums of \$1,000.00 for affluent residents of Emigration Oaks, including Mr. Hales.

169. To remedy the deficient water infrastructure, in 1994 Boyer Company and City Development constructed a second large-diameter, commercial well in Emigration Canyon.

170. Though Boyer Company and City Development owned and operated the well, for unknown reasons, the State Engineer approved construction and operation of the well under water right #57-7796, which was owned by EID. The point-of-diversion for the second well was not listed on EID’s original permanent change application filed with the State Engineer, and there is no record of a lease agreement between Boyer Company and EID on file with the State Engineer or recorded in EID’s meeting minutes.

171. As of 1998, 105 multi-million dollar homes had been constructed in Emigration Oaks, and Boyer Company was obligated to supply water to another 118 vacant properties it had sold as “buildable.”

172. Boyer Company and City Development also had failed to construct a water distribution system in Phases 6 and 6A of the Emigration Oaks development designated as the luxurious Emigration Estates.

173. Many of the water distribution lines constructed in Emigration Oaks by Boyer Company were undersized and incapable of providing adequate water service and fire protection.

174. Boyer Company and City Development did not own water rights sufficient to provide water to the residential parcels they sold as “buildable” to affluent private investors, a fact which both Boyer Company and City Development knew.

175. The second well, tank and water distribution lines were insufficient for the 105 homes already built, also a fact which both Boyer Company and City Development knew.

176. The water rights held by other residents within Emigration Canyon were superior to the Boyer Company’s and City Development’s water rights, a fact which both Boyer Company and City Development knew.

177. The operation of large-diameter commercial wells in the Canyon would impair existing private wells with superior water rights “with almost certainty,” a fact which both Boyer Company and City Development knew.

178. Because Boyer Company and City Development had sold lots without putting in place sufficient water infrastructure, Boyer Company and City Development faced potential legal liability exposure to those who had purchased lots and built multi-million dollar homes within the Emigration Oaks development.

179. In 1998, EID agreed to assume ownership and legal liability of Boyer Company's and City Development's incomplete, dilapidated and deficient large-diameter commercial well system.

180. EID also assumed Boyer Company's and City Development's legal obligation to provide water service to the additional 130 vacant lots within Emigration Oaks.

181. In exchange, Boyer Company gave EID 300 acres of vacant, developable land.

182. Boyer Company and City Development also agreed to pay a \$650,000 towards construction of new well and water tank, which allowed EID to obtain a \$1.846 million loan from the Utah Drinking Water State Revolving Fund.

183. Although EID publicly announced that it would place the 300 acres into trust to prevent future development, it never did so.

184. As part of the exchange with Boyer Company and City Development, EID assumed operation of both wells and water tank, even though EID knew that Boyer Company and City Development had been operating the second well without a valid operating permit, which cannot be obtained. The lack of a valid operating permit had been published in DDW's 1996 Sanitation Survey.

185. On May 25, 2000, Utah State Environmental Health Division informed Mr. Hughes and Fred Smolka that the Boyer Tank was improperly sized at 355,000 gallons instead of the required capacity of 415,500 gallons for 225 single-family units.

**b. Pinecrest PUD.**

186. Similar to Emigration Oaks, sometime in the early 1980's, the Pinecrest PUD was constructed by an unknown developer.

187. Despite having water rights sufficient for only one (single-family resident under permanent change application #a19606 under water right #57-10005, Pinecrest PUD under the direction of Mr. Steve Hook connected five affluent homes to a single, large-diameter commercial well.

188. Shortly after construction, the Pinecrest PUD Well proved deficient, producing “barely 3 ½ gallons per hour.”

**c. Young Oak.**

189. Similar to Emigration Oaks and Pinecrest PUD, sometime in the early 1980s, the luxurious Young Oak development was constructed by an unknown developer.

190. The Young Oaks Water Company supplied water service to 35 homes from a single, large-diameter commercial well and small reservoir.

191. By 2003, more homes had connected to the Young Oak Water System than allowed under Safe Drinking Water regulations thereby requiring substantial system expansion at great expense to the affluent homeowners of the Young Oak.

**2. EID used the \$1.846 million loan to build “capacity” for future development on Mr. Creamer’s property.**

192. After having been thwarted in the 1995 Bond Election, between January 1, 1998 and October 13, 2000, Mr. Creamer, Boyer Company, City Development and EID – acting through Fred Smolka, Mr. Hughes and Mr. Hales – conspired to acquire federal funds from the Drinking Water State Revolving Fund to construct a water system for the benefit of Mr. Creamer, Boyer Company, City Development, David Neuscheler and Siv and Charles Gillmor.

193. Indeed, sometime prior to June 14, 2000, EID – acting through Fred Smolka, Mr. Hughes and Mr. Hales – and Mr. Creamer agreed that Mr. Creamer would allow EID to build two

commercial wells on 130 acres that Mr. Creamer would acquire from Siv and Charles Gillmor. In exchange, EID would use funds obtained from the Drinking Water State Revolving Fund to construct a water system with the capacity to provide water to a future residential development on 560 acres of land that Mr. Creamer and EID owned within Emigration Canyon.

**a. EID never intended to use the \$1.846 million to provide clean water to canyon residents.**

194. In a letter to Canyon residents dated June 2014, EID purported that it was providing water service to 273 homes within the canyon; however, EID recently reported to DDW that it provides water services to 236 residents within the canyon.

195. The State Engineer has approved water service to only 233 homes in Emigration Canyon under EID's permanent and temporary change applications. Accordingly, if EID is in fact delivering water to 273 homes, it is doing so without the approval of the State Engineer.

**b. Land acquisition.**

196. Prior to January 2000, Mr. Creamer and David Neuscheler did not own any property in Emigration Canyon.

197. Sometime before November 16, 2001, Steve Creamer agreed to purchase 135 developable property on the east side of Emigration Oaks from Siv and Charles Gillmor.

198. In exchange for the Gillmors' selling 170 acres to Mr. Creamer, EID – acting through Fred Smolka, Mr. Hughes and Mr. Hales – agreed to bring water service to 170 acres of land (located in Spring Glen) owned by the Gillmors.

199. In exchange for Mr. Creamer buying 170 acres from the Gillmors, the Gillmors agreed to sell 59 acres of developable real estate to David Neuscheler in the area known as “Little Mountain.”

200. Mr. Creamer and EID currently owns approximately 500 acres of vacant, developable land within Emigration Canyon, while the Gillmors own 172 acres in an area of the canyon called Spring Glenn and Mr. Neuscheler own 124 in an area of the canyon called Little Mountain.

**c. Zoning for development.**

201. Most undeveloped properties within the EID’s water service area are zoned as “FR-20” thereby requiring 20 acres of land for a single-family residence.

202. Prior to January 1, 2017, all changes to zoning laws within the Emigration Canyon fell within the final authority of Salt Lake County.

203. In 2001, the Emigration Canyon Community Counsel and Emigration Township Planning Commission under the direction of Fred Smolka approved rezoning of a single 80-acre parcel now owned by Mr. Creamer from FR-20 to FR-5 thereby quadrupling the number of single family residents which could be developed on the property.

204. Since 2002, the Emigration Canyon Community Counsel and Emigration Township Planning Commission have attempted to similarly down-zone all undeveloped property located within Emigration Canyon without success.

205. On January 1, 2017, Emigration Canyon became a Metro Township controlled by five elected officials.

206. On January 11, 2017, in an undisclosed meeting, the Metro Township Council passed a new land-use ordinance, which eliminated the previous 725-unit limit on the number of domestic residences within Emigration Canyon, paving the way for massive new building development within the Canyon. Joe Smolka, Mr. Brems, and Jennifer Hawkes, the spouse of EID manager Eric Hawkes were member of the council and voted in favor of the new ordinance.

**d. Express statements of intent to develop.**

207. On November 18, 2002, DDW executed the project approval letter in order for EID “to meet future demands since building additional storage would be extremely difficult given the sensitive nature of the canyon environment.”

208. During the EID Trustee meeting on August 20, 2015, EID Hydrologist Don Barnett voiced no objection to the construction of 5,000 new homes within the Canyon, misrepresenting that he “was unaware of any maximum number” of residential units the Canyon hydrology could support.

209. During the presentation of the aforementioned Waste Water Study by Aqua through Rasmussen at the EID Trustee meeting in September 2014, Rasmussen falsely reported that the total Canyon buildout was limited to 685 domestic units, despite the fact that, on August 20, 2015, EID through Don Barnett reported that there was no objection to the construction of 5,000 additional homes in the Canyon and at that date 677 homes had already been constructed. Moreover, on information and belief, EID has assumed contractual obligations to provide water service to an additional sixty (60) vacant lots in Emigration Oaks alone.

210. Sometime in 2002, unaware of Onysko’s objections to the project, one of EID’s trustees demanded that Don Barnett draft a memo stating that the 1-million gallon Wildflower

Reservoir far exceeded the needs of the existing Canyon homeowners. Citing the fact that his profession was “directed toward development,” Don Barnett refused.

**e. Water lines to vacant, developable land.**

211. EID constructed pipelines that run from the Wildflower Reservoir to vacant, developable land owned by Mr. Creamer, the Gillmors and Nuescheler using federal funds.

**i. T-converter to Mr. Creamer’s 500-plus acres.**

212. In 2013, during construction of the Upper Freeze Creek Well supervised by Joseph Smolka and Aqua Engineering, EID diverted loan proceeds in order to retrofit an additional 10-inch t-valve diverter to supply water service to vacant, developable property owned by Mr. Creamer.

213. Meeting minutes prepared by EID failed to record the additional water-system changes.

214. During construction of the Upper Freeze Creek Well in 2013, Mr. Creamer or EID – acting through Joseph Smolka – and Aqua Engineering covered the 1-ton, t-valve-diverter with a manhole cover labeled “SEWAGE” in order to conceal the actual purpose of bringing water service to Creamer’s property to the immediate north via a 10-inch, water supply pipe and connection flange.

215. Under the express direction of Mr. Creamer on October 18, 2013 EID connected the 335,000 gallon Boyer Tank to the water distribution lines on Pioneer Fork Road via a 4-inch water supply line in order to increase pressure for future water service on property belonging to Mr. Creamer.



**ii. Spring Glen Development (Gillmors' 172 acres)**

216. Sometime in the year 2007, during completion of the water-supply line along the main-Canyon road, EID constructed an additional 1 mile of water-supply lines through an area of Emigration called Spring Glen, a small community with a water system of its own already in place. The system consisted of a small well, reservoir and fire hydrants.

217. The diameter of the water supply line at 8 inches far exceed the capacity needed for 17 potential water users.

218. EID built the line with the intent to provide water service to future development of 130 acres owned by Charles and Siv Gillmor located above Spring Glen.

219. EID installed fire hydrants between 2 and 20 feet from the existing fire hydrants already servicing the Spring Glen community.

220. Despite the enormous cost of adding one mile of supply lines and four fire hydrants, of the 17 households connected to the Spring Glen water system at that time, only Mr. Bradford and resident TJ Winger had requested water service from EID.

221. Sometime in 2007, Fred Smolka waived the water-right lease fees for the benefit of Mr. Bradford and TJ Winger in violation of 14.2 of the Uniform Rules and Regulations for Water Service of Emigration Improvement District from June 11, 1998 as amended January 14, 1999.

222. In addition to placing redundant fire hydrants right next to already existing fire hydrants, EID extended an additional 8-inch water supply line approximately one-fourth of a mile to provide water service to the single residence of Catherine Gillmor and placed a fire hydrant on her vacant, private property protected by a no-trespassing sign and private gate.

223. In January 2014, Larry Gillmor purchased an additional 47 acres above the Spring Glen Community.

224. To date, Gillmors collectively own 172 contiguous acres of vacant, developable land near the Spring Glen community.

225. Sometime in the year 2007, EID constructed an 8-inch water supply line to the Gillmors' 172 acres at a substantial cost.

226. Contrary to the Utah Open Meetings Law requiring proper notice and scheduling of public meetings, EID scheduled a "trustee work meeting" on January 12, 2015. At the meeting, Mr. Hughes, Mr. Bradford, Mr. Stevens, Fred Smolka and Mr. Hawkes agreed to waive water connection and impact fees in order to induce the 17 residents of Spring Glen to relinquish their superior water rights to EID and connect to EID's system.

**iii. Little Mountain Development (Neuscheler).**

227. During construction of the main-canyon water line in the year 2007, EID – acting through Fred Smolka – diverted funds in order to extend an 8-inch water supply line into the area known as "Little Mountain." The water line included placement of two fire hydrants at a cost of \$4,000.00 each.

228. Despite the enormous cost of constructing water lines and two fire hydrants, only two residents on private wells resided in the area of Little Mountain.

229. Fred Smolka induced a resident of Little Mountain to request EID service, by promising to waive impact fees.

230. To date, the only other resident in the area of Little Mountain remains on a private well.

231. In the plans submitted as part of its application for the \$1.846 million loan, EID did not indicate any plan of extending water service into the area of Little Mountain.

232. The EA did not contemplate the extension of a water service line into the Little Mountain area.

233. The EA did not contemplate any stream crossings in the area of lower Pinecrest Canyon despite the fact no less than six stream crossings occurred.

234. On April 28, 2013, Catherine Gillmor agreed to the sale of 59 acres of prime developable property to Neuscheler immediately adjacent to property belonging to Neuscheler, thus providing the Neuscheler with a total of 124.18 contiguous acres in the area of Little Mountain.

235. In the EID Trustee meeting on March 12, 2015, Mr. Bradford insisted that the 8-inch water supply line constructed in 2007 be extended another 1,200 feet in order to provide water service to Neuscheler's "single home."

236. When questioned as to the enormous costs of extending a water-service line to otherwise vacant property by canyon resident S. Plumb, Mr. Bradford insisted that "several" fire hydrants were needed for "fire protection" all along property belonging to Neuscheler.

237. Mr. Bradford required at least an 8-inch water-supply line before EID would provide water service to Neuscheler's single home.

**f. Efforts to prevent other developers from getting in the game.**

238. Sometime prior to July 2, 2009 a private investor approached EID with plans to develop a property in Emigration Canyon known as "Skycrest Ranch."

239. During the trustee meeting, EID – acting through Hughes – verbally informed the developer that EID had “a master plan that designates specific numbers of connections for certain areas, and they have to work within that plan.”

240. Mr. Hughes further verbally informed the developer that there existed certain “pressure problems related to putting a large development on the water system in that area.”

241. Mr. Hughes is not a licensed engineer nor a member of EID’s “Engineering Committee.”

242. On December 19, 2002, EID instructed Don Barnett to prepare a hydrology report for a remuneration of \$1,500.00 supporting the effort of Utah Open Lands to acquire a conservation easement of all property owned by Salt Lake City in Emigration Canyon.

243. In November 2005, 190 acres immediately west of the Spring Glen Community appraised at \$2,400,000.00 known as “Perkins Flats” was purchased by Utah Open Lands for \$1,400,000.00.

244. Among other donors, Envirocare Environmental Foundation, a company owned and controlled by Mr. Creamer, contributed an unknown amount to the cost of removing the entire area from future development.

245. In the year 2011, 265 acres located in upper Killyon Canyon area was purchased and then donated to Utah Open Lands at a reduced cost of \$1,800,000.00.

246. Relator is informed and believes that the anonymous donor who contributed \$500,000.00 toward the purchase price was Mr. Creamer.

247. In November 2017, with a financial contribution of \$250,000.00 from Salt Lake County, Utah Open Lands purchased a single parcel of 4.6 acres designated as “Owl Meadows” for \$700,000.00 from an undisclosed property owner.

248. In making the purchase, a representative of Utah Open Lands argued that channeling \$700,000.00 of funds to a confidential seller was necessary because “[t]his highly visible piece of bird habitat, ... will most likely be replaced by high-end human dwellings if the group fails to meet the deadline.”

**g. Road access to Mr. Creamer’s property.**

249. Between September 2002 and May 2005, EID – acting through Fred Smolka – diverted an unknown portion of the \$1.846 million loan to purchase and construct an unknown number of fire hydrants and individual water meters on Mr. Creamer’s vacant, developable property.

250. In a homeowners association meeting held in February 2013, there was open discussion concerning the subdivision of property belonging to Mr. Creamer and incorporation into the Emigration Oaks development. Since the federal seal on the First Amended Complaint of the present action was lifted on June 12, 2015, no such open discussion has occurred.

251. Mr. Creamer attempted to have a road built in Emigration Canyon that would have provided better access to his vacant, developable land. The purported reason for the road was to provide a “fire escape” for canyon residents. The road would not have served as an effective fire escape, but would have created road access to Mr. Creamer’s vacant, developable land.

252. After the plan for a “fire escape” and access through the Emigraiton Oaks development fell through, Mr. Creamer purchased the vacant “Sun and Moon Café,” which will allow him to create road access to his vacant, developable land.

**F. EID has known all along that Emigration Canyon cannot support large-commercial wells and private wells.**

253. In the Master’s Thesis presented to the Department of Geology, University of Utah in 1966, Jack Barnett concluded that the hydrology of Emigration Canyon is not conducive to the operation of large-diameter commercial wells and, even if such wells were to successfully draw large quantities of water from the canyon’s riparian system, impairment of private wells within the canyon “would be almost a certainty.”

254. Because the stream that runs down Emigration Canyon is part of the same riparian system as the canyon’s groundwater, Jack Barnett also predicted that impairment of one would negatively impact the other.

255. Finally, Jack Barnett predicted that reduced flows in either the streams or groundwater would substantially increase bacterial levels in the stream and in private wells in the canyon.

256. Jack Barnett’s thesis concluded that “development [in Emigration Canyon] should be limited to small-diameter domestic wells” for a single-family residences.

**G. EID built its preposterously oversized water system on a bedrock of lies, misrepresentations, and cover ups.**

**1. Misrepresentations during the NEPA process.**

257. In order to appear to have fulfilled the requirements to obtain the \$1.8 million loan, EID – acting through Fred Smolka, Mr. Hughes, Mr. Hales, BIWC, Carollo Engineering and Mr.

Rash – made the following false and misleading statements on behalf of EID to the government prior to the certification of successful project completion by Maculey on May 3, 2005.

258. During the NEPA process, EID failed to inform the government that, back in 1983, the State Engineer had denied EID’s request to divert water under its water rights on grounds that, in so doing, EID would interfere with the private wells of canyon residents holding superior water rights.

259. During the NEPA process, EID failed to inform the government that its legal right to draw water from the Brigham Fork Well had been secured under temporary change application “t26672” (57-7796) filed on May 14, 2002, which required annual review and approval of the State Engineer, the last of which occurred on February 13, 2017 under “t42153.”

260. During the NEPA process, EID failed to inform the Government that EID’s authorization to operate the Brigham Fork Well would automatically lapse every year under applicable state law.

261. EID failed to inform the Government that, on March 18, 2003, EID began a program to purchase superior water rights from Canyon residents with public funds “in an attempt to get as much paper water off the stream as possible,” as recorded in the meeting minutes on the aforementioned date.

262. EID expressly assured the Government that federally-backed funds would not be used to cure deficiencies of the Emigration Oaks development such as the completion of water supply line in the Phase 6 and Phase 6A section of Emigration Oaks.

263. EID failed to inform the Government that federally-backed fund would be used to cure the deficiencies of the affluent Pinecrest PUD and Young Oak developments.

264. During the NEPA process, EID falsely reported that many private wells in the service area were contaminated with coliform bacteria; however, upon inquiry from EID Trustee Bowen, in 2001, Mr. Wilde clarified that only one well was contaminated with coliform bacteria to his knowledge.

265. During the NEPA process, EID falsely represented that the Young Oak Water System was producing 50 gallons per minute as a part of the existing EID water system, when the well was in fact was not connected to the Emigration Oaks Water system and remains to date under the ownership and control of the Young Oak Water Company for exterior irrigation.

266. Even though the Young Oak had conveyed its water rights to EID on June 24, 2004, EID reported to the State Engineers that it leased water rights to Young Oaks on June 2, 2006.

267. During the NEPA process, EID falsely represented that 67 existing household were located within the proposed service area when, in fact, less than 50 properties had been developed within the areas.

268. During the NEPA process, EID falsely represented that the 67 households that the Brigham Fork Well and Wildflower Reservoir would service had private wells, when, in fact, a substantial portion of the households were part of exclusive private urban developments supplied with water from large-diameter wells of Young Oak, and Pinecrest PUD or were vacant lots with no well at all.

269. Homes within the Silver Oak area of the Canyon did not connect to the EID system once it became operational and remain on individual wells to date.



270. Of the 57 households required to sign firm commitment contracts, no household within the extended service area actually complied with all federally-backed loan requirements.

271. Sometime in 1988, BIWC acquired 649 acre feet of surface water rights from Emigration Dam and Ditch Company for the benefit of EID (water right #57-7796).

272. In its Memorandum Decision from October 8, 1982, the State Engineer approved EID's permanent change application "a-6538" to change the point-of-diversion of 628.87 acre feet from a surface water right located at the mouth of Emigration Canyon to a single underground point-of-diversion located high in Emigration Canyon under water right #57-7796, which had the legal effect of reducing the 1873 priority date of the water share to a priority date of 1983.

273. In the aforementioned decision, the State Engineer expressly rejected two points-of-diversion due to potential inference with existing water shares.

274. EID through BIWC has been diverting water pursuant to temporary change permits obtained on an annual basis from the State Engineer.

275. On August 3, 1993, EID through BIWC submitted a permanent change application under the designation "a17521" for the operation of Boyer Well #2 to the DWR in order to "develop an adequate water supply for canyon residents," despite the fact that most canyon residents at that time were on private-wells and Boyer Well #2 remained under the ownership of the Boyer Company and City Development until May 2003.

276. The application was approved on December 14, 1995.

277. With over 583 households located within the Canyon possessing individual water rights to date, when applying for the \$1.846 million loan, EID failed to report to federal authorities that a single impairment of one private well with an earlier priority date carried the risk of complete

forfeiture of water service and total loss of federal funds under the applicable Utah State Water laws.

278. EID represented to the public that only water users who wished to connect to the system would pay for system expansion.

279. However, a fiscal study prepared by Carollo Engineers assumed that all vacant and developed property within the extended service area to the east and west of the existing Emigration Oaks water system would be charged a flat fee.

280. At a September 9, 2000 trustee meeting, EID represented to the public that connection to the EID system would be “entirely voluntary” for those households wishing to connect to the water system once operational.

## **2. Forgery of firm commitment contracts.**

281. In order to obtain 57 executed “firm commitment contracts” from 57 households, and 57 negotiable instruments for the amount of \$500.00 as required by the Commitment of Funds Letter, Fred Smolka executed two contracts with each resident wishing to “go on stand-by.”

282. Although the language on the contract clearly indicated an unconditional obligation to connect to the water system once operational, Fred Smolka amended the agreement by handwriting the word “STANDBY.”

283. On a second exact replica of the aforementioned contract, Fred Smolka omitted the handwritten amendment believed to have been presented to the Government at the time of the bond sale review.

284. Other than the aforementioned handwritten amendment by Fred Smolka, the “stand-by” and “firm commitment” contracts were identical.

285. In order to obtain a negotiable instrument for \$500.00, Fred Smolka verbally informed Canyon resident Eckert sometime between September 2001 and May 2005 that a special “water connection hub” would have to be purchased by the property owner; however, no such water connection hub was installed nor does it exist.

286. Between September 10, 2002 and May 3, 2005, Fred Smolka executed firm commitment contracts for vacant lots with Mr. Creamer and Walter Plumb.

287. Actual payment was never received from Steve Creamer.

### **3. Failure to comply with Water Management and Conservation Plan.**

288. Under the express terms of the Commitment of Funds Letter, EID was required to adopt a Water Management and Conservation Plan.

289. On November 14, 2002, EID – acting through Mr. Hughes and Mr. Hales –adopted the plan, thereby noting, “[a]fter substantial investigation, it was determined that the Canyon hydrology could not support more than approximately 700 homes without meaningful impacts to the flows in Emigration Creek,” and assured the Government that “EID will continue to monitor both the monitoring wells owned by EID, stream flows, and use by our customers to determine if there is a deterioration in our conservation program.”

290. Notwithstanding the foregoing, on August 20, 2015, EID through BIWC reported that the five monitoring wells constructed and owned by EID had not been observed for the past ten years, EID had no data on the flow of the creek running through Emigration Canyon, and there was no hydrological data preventing the addition of 5,000 new homes in the Canyon.

291. EID failed to properly meter water discharge from the Brigham Fork Well and individual water leases contrary to the express requirements of temporary change application t41129.

**4. Failure to comply with crosscutting environmental statutes and coverup.**

**a. Mr. Creamer polluted Emigration Canyon's creek during installation of water pipes in derogation of the Clean Water Act.**

292. During installation of water pipes in 2002, Mr. Creamer disposed construction waste directly in the Emigration Canyon Creek.

293. Mr. Creamer willfully concealed the disposal of construction waste in Emigration Canyon creek by hiding debris under concrete encasements.

294. Canyon residents Law and McCallum reported the disposal of debris in the Emigration Canyon Creek to Mr. Wilde who conducted an on-site inspection of the complaint shortly thereafter.

295. Despite personally removing construction debris from the creek, Mr. Wilde failed to inform federal authorities and failed to record the incident in the case file.

296. Despite complaints from canyon residents Law and McCallum directly to Fred Smolka, Mr. Hughes and Mr. Hales, EID failed to record the violation in the organizational meeting minutes.

297. Despite the foregoing, the documents submitted by Carollo Engineering as part of the NEPA process stated that "the construction work" relating to the stream crossing had been "accomplished in an acceptable manner."

298. Despite this false representation, Mr. Wilde issue the FONSI on August 9, 2002.

299. EID – acting through Fred Smolka, Mr. Hughes, and Mr. Hales – Mr. Creamer, and Mr. Wilde actively concealed the disposal of construction waste by Mr. Creamer.

**b. EID allowed a canyon resident to cross-contaminate its system with well water in derogation of the Safe Drinking Water Act.**

300. To induce canyon resident S. Plumb to connect to the EID water system, sometime in 2007, Fred Smolka allowed S. Plumb to have a “t-valve” installed by Joe Smolka of Smolka Construction, which made it possible for S. Plumb to alternate between his private well and EID’s system.

301. Such a mechanical device is strictly forbidden under the terms of the Safe Drinking Water Act due to its inherent possibility of contamination of the entire public drinking water system from a single private well.

302. Aware of the t-diverter, Mr. Hughes, Mr. Bradford, Mr. Stevens and Mr. Hawkes did not report it in the 2015 Sanitation Survey, the 2015 Water Quality Report or the 2016 Water Quality Report prepared by Aqua Engineering and mandated under the Safe Drinking Water Act.

**c. Mr. Creamer and EID contaminated the Wildflower Reservoir in derogation of the Clean Water Act.**

303. Under the Commitment of Funds Letter, EID assumed the contractual obligation to comply with all provisions of the Clean Water Act.

304. EID failed to report that, due to the substantial divergence from the original design and placement of the Wildflower Reservoir, the reservoir’s structure proved deficient and immediately began leaking water after it became operational sometime before October 2003.

305. After canyon resident Law informed DDW that the structure was leaking sometime before October 23, 2003, Creamer immediately covered the entire structure with large amounts of construction debris including petroleum asphalt waste.

306. When EID Trustee Bowen asked Mr. Creamer to stop dumping hazardous material on the construction site, Mr. Creamer ignored the request.

307. In a letter dated October 9, 2003, canyon resident McCallum requested the DDW supervise the cleanup of the reservoir site. EID did not heed the request.

308. Instead, Fred Smolka reported that Mr. Creamer and five other people spent five hours cleaning asphalt out of the fill and “did a great job.”

**d. EID – working in concert with Aqua Engineering and AES – repeatedly failed to report contamination in its water system in derogation of the Safe Drinking Water Act.**

309. Under the Safe Drinking Water Act, EID has an obligation to report contamination of drinking water delivered to canyon residents to both federal authorities and canyon residents.

310. Due to the placement of the Brigham Fork Well on property owned by Mr. Creamer without sufficient hydrological study, the well pump began pulling gravel into the system when put into operation sometime in 2003.

311. Several Canyon residents reported to EID Trustee Bowen that contaminated water ruined clothing and had an unpleasant odor.

312. In order to conceal the fact that Brigham Fork Well had been constructed prior to the issuance of the FONSI in September 2002, EID never secured a permanent operating permit for the well as a source of drinking water under the Safe Drinking Water Act.

313. On December 19, 2007, EID reported in its trustee meeting minutes that “[e]ven though the Brigham Fork well has been a ‘workhorse,’ complaints about colored water have been minimal.”

314. During the EID Trustee meeting on March 12, 2015, Mr. Hawkes revealed that the Brigham Fork well was pumping water into EID’s system three times per week despite the fact that water from the well was contaminated with iron bacteria.

315. On January 16, 2016 EID discontinued the use of the Brigham Fork Well “due to due to complaints of turbidity in the water and sulfur odor.”

316. In a letter from May 5, 2014, DDW informed Fred Smolka of EID that AES had violated the State of Utah Public Drinking Water Rules by failing to test for radionuclides in the Upper Freeze Creek Well during the compliance period from 1/1/2014 through 3/31/2014 and that the Section 220-7 required EID to inform all customers within one year of the violation. EID never reported the violation.

317. EID instead reported on June 4, 2014 that EID was “supplying high quality water tested three times a week.”

318. In a letter from August 8, 2014, DDW informed Fred Smolka of EID that AES had again violated the State of Utah Public Drinking Water Rules by failing to test for radionuclides in the Upper Freeze Creek Well from the period from 4/1/2014 through 6/30/2014 as well as Gross Alpha, Radium 226, Radium 228 and Uranium in Boyer Well # 2. EID was again required to inform all customers within one year of the aforementioned violation. EID never reported the violation.

319. Between June 3, 2008 and August 8, 2014, EID has received 10 violations issued by DDW for various water testing and monitoring violations.

320. During the EID Trustee meeting from March 12, 2015, canyon residents John and Carrol Massion reported that they disliked the taste of EID water and preferred to stay on their own private wells.

321. In July 2015, canyon resident Crombie reported that water supplied by EID frequently “smelled like rotten eggs” and had a reddish-brown color which would not be consumed by her household pets.

322. Upon inquiry by canyon resident White during the EID trustee meeting on July 9, 2015 as to water-testing violations, Mr. Hawkes admitted that EID had received two violations for the “same violation” in the past, but AES has assured EID that the State of Utah simply “lost” the water tests.

323. Since initial testing of the Brigham Fork Well on November 1, 2002, water samples have been collected solely by Mr. Hall who travels 80 miles between the AES office, the Emigration well test sites, and the water testing facility for the collection of a single water sample.

324. Canyon resident FitzGerald asked Mr. Hall about the Utah State Drinking Water Rules sometime in 2013. Mr. Hall informed her that the state requirements were “nothing to worry about” because her water testing was fine.

325. On August 8, 2015 a canyon resident J. Edwards requested that EID publicly discuss removing Mr. Hall and AES from conducting tests of drinking water supplied by EID during the August 20, 2015 trustee meeting. EID refused.



326. EID, AES, Fred Smolka, Mr. Hughes, Mr. Stevens, Mr. Bradford, Mr. Hawkes and Mr. Hall failed to report the contamination of the drinking water to federal authorities.

**e. EID failed to fix leaks to or obtain an operating permit for the Wildflower Reservoir in derogation of its duties under the Safe Drinking Water Act.**

327. Under the Commitment of Funds Letter, EID has a continuing obligation to comply with the Clean Water Act.

328. Due to the substantial divergence from the original design and placement of the Wildflower Reservoir, the reservoir's structure proved deficient and immediately began leaking water after it became operational sometime before October 2003.

329. Canyon resident McCallum informed Mr. Wilde that the structure was leaking sometime before October 23, 2003 and provided photographs of water escaping from mortar patches in no less than six areas of the reservoir wall.

330. A few days after informing Mr. Wilde, Mr. Creamer immediately covered the entire structure with large amounts of construction debris including petroleum asphalt waste under a thin layer of seeded top soil.

331. In a letter to EID from March 3, 2004, Mr. Brown granted a temporary operating permit for the reservoir until October 1, 2004 at which time EID was to submit proof that the "construction defects responsible for substantial leakage from the tank ... have been corrected."

332. EID never provided proof that the leaks had been fixed.

333. Mr. Wilde made no official record of the complaint by Canyon resident McCallum and did not include the photographs provided in the case file.

334. Despite the aforementioned deficiencies, on September 22, 2004, Mr. Rash of Carollo Engineering falsely certified that the Wildflower Reservoir and Brigham Fork Well had

been constructed according to plans and specifications submitted as part of the loan application process and NEPA review.

335. To date, no permanent operating permit has been issued by DDW for the continued operation of the reservoir in violation of the Safe Drinking Water Act.

**f. EID's well has leached chlorine into Emigration Canyon's riparian system in derogation of the Clean Water Act.**

336. Due to the substantial divergence from the original design and placement of the Brigham Fork Well, the well began pulling gravel into the pump immediately upon commencement of operation sometime in 2003.

337. Upon replacement of the well pump in 2004, the well began pumping a "slime-like substance," requiring the replacement of the well casing.

338. During the EID Trustee meeting of March 12, 2015, Mr. Hawkes informed Mr. Hughes, Mr. Stevens and Mr. Bradford that the water from the Brigham Fork Well was being pumped "out" three times a week in order to "clear out the system."

339. The well house for the Brigham Fork Well is located immediately adjacent to the Brigham Fork Creek – a federally protected waterway.

340. EID, AES and Mr. Hall have failed to report the tri-weekly discharge of contaminated water into the canyon's since initial operation sometime in 2003.

341. The private well of Canyon resident McCallum, who resides directly below the Brigham Fork Well, no longer can be cleared of iron bacteria.

342. Despite the aforementioned deficiencies, on September 22, 2004, Mr. Rash of Carollo Engineering falsely certified that the Wildflower Reservoir and Brigham Fork Well had

been constructed according to plans and specifications submitted as part of the loan application process and NEPA review.

**g. EID destroyed habitat of a sensitive species.**

343. Under the Commitment of Funds Letter, EID had a duty to adopt a Water Management and Conservation Plan.

344. As part of the plan, EID agreed to monitor stream flow and observe the five monitor wells within the canyon to ensure “as little impact as possible on the animals, flora, fauna.”

345. The Bonneville cutthroat trout is a “sensitive species” (due to the fact that it was a possible “99% pure, core population”) inhabiting the proposed project area.

346. Mr. Wilde knew that building the Wildflower Reservoir and Brigham Fork Well would cause degradation or loss of the Bonneville cutthroat habitat.

347. In a letter to Wilde from March 29, 2001, David N. Hintz of the Utah State Department of Natural Resources Division of Wildlife Resources also expressed “serious concern” for the core population of Bonneville cutthroat, a designated “Conservation Species” under the Conservation Agreement and Strategy for Bonneville Cutthroat Trout in the State of Utah (1997), which identified water development and diversion of stream flows as one of the “greatest concerns of habitat loss or degradation for this species.”

348. In the aforementioned letter, Hintz recited that the proposal “does not indicate the current and historical flow patterns in the Emigration Creek and its Burr Fork, Killyon Canyon and other tributaries, and future flow patterns under the proposed housing and water development, and their effects on the stream and riparian environment. Information is also lacking regarding sources of water for the future development.”

349. Sometime in May 2002, EID through Creamer installed water lines across the Emigration Canyon Stream, even though it was identified as a habitat for the Bonneville cutthroat trout, a federally protected species.

350. In a letter from May 15, 2002, DDW informed EID that the construction costs for the stream crossing were ineligible for federal funds because construction had commenced before the FONSI had been issued by DDW.

351. Construction methods used by EID proved grossly inadequate and “caused negative impacts to the riparian habitat” that “impacted [the] spawning habitat” of the Bonneville cutthroat trout.

352. Despite the aforementioned, the EA concluded that “the construction work [for the stream cross] itself may have been accomplished in an acceptable manner.”

353. EID, BIWC and Don Barnett willfully failed to observe water levels of the five monitoring wells during the development of the Brigham Fork Well in 2002.

354. During the Trustee meeting from January 20, 2015, Barnett admitted to Canyon resident Irons that the five monitoring wells were not used during the pump test of the Upper Freeze Creek Well in 2013 and “had not been used for a long period of time” even though Emigration Canyon Creek had been identified as a federally protected habitat for the Bonneville cutthroat trout.

355. During the meeting, Don Barnett conceded that BIWC had not performed testing to determine the age of the ground water during the development of the Upper Freeze Creek Well, even though canyon groundwater was in direct communication with Emigration Canyon Creek, which provided habitat for the Bonneville cutthroat trout.

356. In the June 18, 2015 EID Trustee meeting, Don Barnett reported Emigration Creek was flowing only at 25% of average even though snowpack in Northern Utah was between 130 % and 150 % of normal.

357. Upon inquiry of canyon resident S. Plumb in June 2015 as to the reason for decreased stream flow, Mr. Hughes responded that S. Plumb “should take that up with the Utah Legislature” because stream flow has “nothing to do with EID.”

358. Upon inquiry of Canyon resident J. Edwards, in June 2015 as to decreased stream flow, Don Barnett responded that “there is no way EID was affecting stream flow” despite the fact that Mr. Hawkes reported minutes earlier that the four wells controlled by EID had drawn over 9 million gallons of water from Canyon groundwater since January 2015 and thirteen million gallons as of August 2016.

359. Since completion of the Brigham Fork Well and Upper Freeze Creek Well, the Bonneville cutthroat trout has ceased spawning in and around the area of the creek where EID and Mr. Creamer constructed the stream crossing..

360. Relator is informed and believes that Mr. Creamer, EID, BIWC, Don Barnett, Fred Smolka, Mr. Hughes, Mr. Hales, Mr. Stevens, Mr. Bradford, and Mr. Hawkes have actively destroyed the habitat of the Bonneville cutthroat trout by improper construction methods and due to willful refusal to comply with the aforementioned provisions of the 2005 Bond Agreement and Water Conservation Plan.

**5. EID has concealed its efforts to build a water system for the benefit of land developers.**

**a. Influencing *The History of Emigration Canyon*.**

361. As set forth in the Commitment of Funds Letter, if DDW had determined that there was “sufficient public opposition” to the construction of the Brigham Fork Well and the Wildflower Reservoir, a bond election would have been required.

362. On October 1, 2003, Dr. Furse published book called *The History of Emigration Canyon: Gateway to Salt Lake Valley*.

363. Under footnote 80 of the section entitled “Pains of Progress,” Dr. Furse recorded that EID had assumed the Emigration Oaks water system but that property development was limited to “105 homes,” when in fact EID had assumed the legal liability of 223 individual properties.

364. In the book, Dr. Furse included a diagram from Jack Barnett’s master’s thesis concerning the general geologic makeup of the Emigration Canyon; however, Dr. Furse makes no mention of Jack Barnett’s ultimate conclusion that Emigration Canyon could not sustain large-diameter commercial wells.

365. Since the publication of *The History of Emigration Canyon: Gateway to Salt Lake Valley*, EID has not collected water-right lease fees from Dr. Furse.

**b. Impeding access to public records.**

366. EID published no meeting minutes between May 2001 and March 2002.

367. During a visit to the State Engineers office by canyon resident D. Jones sometime in June 2014 concerning the priority date of EID water shares, an employee under the direction of Jones stated that any questions regarding EID should be answered by EID hydrologist Don Barnett.

368. In a preliminary meeting with Ryan Roberts of the Utah State Auditor's Office in June 2014, EID – acting through Mr. Bradford – responded that EID owned “useless, undevelopable property” when questioned about EID's extensive property holdings.

369. In response to the GRAMA request submitted by Relator on October 25, 2017, EID refused to provide copies of all “standby contracts.”

370. Immediately following the December 17, 2015 EID Trustee meeting, the EID “Advisory Committee” members, including Mr. Creamer and Joseph Smolka, convened in closed session in violation of the Utah Open Meetings Law and failed to voice record the meeting as required under Utah State law.

371. On December 12, 2013 Canyon resident S. Plumb placed a GRAMA request with Mr. Hawkes for EID's financial records.

372. When Canyon resident S. Plumb inquired as to the status of the GRAMA request on January 29, 2014, EID – acting through Mr. Hawkes – posted a letter signed by Fred Smolka threatening to discontinue water service in two days, if S. Plumb failed to bring his account current within two days.

373. During the initial review of the EID project file by the Relator in August 2014, the memorandum in which Mr. Onysko called the Wildflower Reservoir “preposterously oversized” was not discovered in the EID project file; the memorandum was only recovered after Onysko filed a GRAMA request with DDW.

374. The aforementioned Onysko memorandum does not appear to have been scanned into the electronic record of the DDW database.

375. On August 7, 2015, Relator learned from the DDW records manager Copfer that the EID project file was unavailable because it was “being cataloged” by Mr. Grange.

376. The contract between EID and Creamer was discovered by the Relator on August 2014, but appears to have been removed by unknown person after the seal on this action was lifted on June 12, 2015. Moreover, the contract does not appear to have been scanned into the electronic record of the DDW database.

377. Mr. Hughes refused to comply with a GRAMA request for records of water lease payments from individuals who had leased water rights from EID.

**c. Denying public inspection of water infrastructure.**

378. Both the Wildflower Reservoir and Brigham Fork Well are only accessible through a 12-foot, French style, steel gate owned and controlled exclusively by Mr. Creamer.

379. On August 6, 2015 in an email to Mr. Hawkes, canyon resident McCallum requested to inspect the water lines located on Mr. Creamer’s property.

380. In an email dated August 11, 2015, Mr. Hawkes refused to allow access, citing “security issue or other concerns” that must first be addressed by the EID Board of Trustees before access to Mr. Creamer’s property could be granted.

381. During the August 20, 2015 Trustee Meeting, Mr. Hughes and Mr. Stevens again denied access to EID water lines located on Mr. Creamer’s property citing “security concerns.”

**d. Potential interference with EPA investigation.**

382. Sometime in January 2014, the EPA Office of Inspector General initiated an investigation of the allegations contained in Relator’s original complaint in this action.



383. In a subsequent telephone conversation, Mr. Grange, the DDW construction assistance section manager, assured Daniel Hawthorn of the EPA Office of the Inspector General that he would “investigate” the allegations with the “readily available” documents and provide the EPA with his findings.

384. During the telephone conversation, Mr. Grange falsely reported that the EID project file was located in the state archives, when, in fact, it had been already retrieved at the request of Relator in August 2014 and was in the custody of the DDW records manager.

385. Mr. Grange subsequently provided EPA Investigator Hawthorn with a screenshot of the following note from DDW’s files: “[o]n 9/23/2003 the final inspection was completed. Pumphouse [sic] and waterline appear to have been constructed according to plan and compliance [sic] with Drinking Water Rules.”

386. Carollo Engineers did not certify the project as complete until September 22, 2004.

387. In an email from Mr. Grange to Mr. Hawthorn, Mr. Grange stated that, apart from the “loan in 2000,” “[a]ny other monies were unrelated to the feds,” even though any infrastructure subsequently connected to the Brigham Fork Well or the Wildflower Reservoir had to comply with the terms of the Commitment of Funds Letter and the Water Conservation and Management Plan.

388. In the email, Mr. Grange failed to report that the EID project file comprising “one and one-half file boxes” located “in the state archives” had been duplicated in electronic form in August 2014 and could have been easily searched and transmitted via computer.

389. In the email from Mr. Grange to Mr. Hawthorn, Mr. Grange represented that the “Date Closed” was “12/5/2002,” despite the fact that DDW had first approved the construction design on November 15, 2002.

390. In the email exchange from Mr. Grange to Mr. Hawthorn, Mr. Grange specifically emphasized that the “Date Closed” was “12/5/2002,” despite the fact that federally-backed funds were first distributed to EID from the DDW escrow account sometime after May 7, 2003 and continued through September 29, 2004.

391. In the aforementioned email correspondence from Mr. Grange to Mr. Hawthorn, Mr. Grange emphasized that the “Date Closed” was on “12/5/2002,” but failed to mention that the project closed out on May 3, 2005.

392. Shortly after Mr. Hawthorn reported that the federal government would not further investigate the present action “based upon information provided by [Mr. Grange] and [his] office,” Mr. Grange assured Mr. Hawthorne that he had provided the government with “appropriate and relevant information” as a result of Grange’s “investigation” of the allegations filed under court seal.

393. On January 20, 2015, Mr. Grange informed EID that DDW had been contacted by Danial Hawthorne of the EPA’s Office of the Inspector General regarding the present litigation filed by Relator on September 29, 2014 and provided Fred Smolka all email correspondence between DDW and EPA Investigator Hawthorne regarding the matter filed under federal court seal.

**e. Failure to report cross connection in the 2015 Sanitation Survey.**

394. In August 2015, EID had to submit a federally mandated Sanitation Survey of the EID Water System.

395. Prior to receiving the sanitation survey, Mr Hughes, Mr. Bradford, Mr. Stevens and Mr. Hawkes that learned that EID’s water system had a single valve at one of its connections,

which allowed the homeowner to simultaneously receive water from both his private well and EID's water system, potentially exposing EID's system to bacterial contamination. EID did not report the cross connection in the 2015 sanitation survey.

**H. EID's trustees and employees used EID for personal enrichment.**

396. Of the six payments dispersed under the \$1.8 million loan, Fred Smolka rendered payments for individual personal gain as follows: \$106,993.00 to himself (\$26,993.00 over budget); \$7,915.75 to Joe Smolka for unknown services;; \$34,145.30 to Steve Creamer for placing water lines; \$400.00 to Tyson and Ryan Creamer for unknown services; and \$1,140.00 to Mr. Hughes for dirt bags and snow removal.

397. Mr. Hughes, Mr. Hales, Mr. Bradford and Mr. Stevens permitted Fred Smolka to render payments on behalf of EID in excess of \$150,000.00 to Fred Smolka's family, including his wife (Marilyn Smolka), his brother (Joe Smolka), his daughter (Tanya Bergstrom), his son-in-law, his daughter, and his grandson.

398. EID – acting through Fred Smolka – leased water rights without remuneration to the following: Mr. Bradford in 2002; Steve Creamer in 2013 for the construction of a large pond in front of his personal residence; and Dr. Furse, which allowed her to purchase property at a reduced price and then immediately obtain building permits from Salt Lake County with a water right leased from EID.

399. Between 2004 to present, EID – acting through Fred Smolka – waived impact and water usage fees for the personal benefit of Mr. Hughes, Mr. Bradford, Mr. Stevens, Mr. Creamer, and Dr. Furse.

400. Fred Smolka's draws an annual salary of \$120,000.00 from EID.

401. After the 2001 EID trustee election, Fred Smolka stepped down as EID Trustee Chairman and assumed the position of EID's general manager. EID did not publicly announce Fred Smolka's appointment, nor did EID allow other members of the public to apply for the position.

402. According to EID financial records, EID has rendered direct payments to Fred Smolka totaling \$594,613.47 since January 2000.

403. According to EID financial records, EID has rendered direct payments to Marilyn Smolka totaling \$6,836.86 since January 2000.

404. In its yearly budget since 2004, EID has designated payments to Carollo Engineering, BIWC and Aqua Engineering in excess of \$1,000,000.00 for engineering and hydrological studies.

405. On February 13, 2014, despite EID's financial inability to service its debt obligations, Mr. Hughes, Mr. Bradford and Mr. Stevens unanimously voted to increase their yearly compensation from \$2,000.00 to \$5,000.00.

406. EID gave Mr. Bradford a water right for the construction of his private residence, but failed to collect lease and impact fees totaling \$11,000.00 from Mr. Bradford.

407. Kem Gardner of the Boyer Company had hired Mr. Hughes to complete the community septic system in the area of Emigration Oaks known as "Emigration Estates" through the company Ecosens even though Mr. Hughes had diverted the funds for another project, Kem Gardner had waived recovery of fees paid to Mr. Hughes.

**1. Construction contract awarded to Aqua without bidding.**

408. In December 2014, when questioned by canyon resident S. Plumb why proposed projects were not being submitted to competitive bidding, EID responded that EID prefers to work with people who “know Emigration Canyon.”

409. In January 2015, EID announced during its trustee meeting the construction of a waste-water system to service seventeen “existing and future” homes.

410. In February 2015, EID confirmed that Aqua Engineering would complete the “Request for Statement of Qualifications” needed for the competitive bidding of engineering services.

411. When questioned by Canyon resident S. Plumb as to the appropriateness of having Aqua Engineering perform such a task if it would be in fact one of the bidders for the project, Mr. Neeley responded that Aqua “had no interest” in submitting a statement of qualifications necessary to bid the project.

412. Aqua Engineering submitted the only statement of qualifications.

413. In February 2015, Mr. Hawkes failed to return calls from Engineer Greg Olsen who intended to present a statement of qualifications necessary to bid the project.

414. Despite having received only one statement of qualification from Aqua Engineering, EID – acting through Mr. Stevens and Mr. Bradford – awarded Aqua Engineering the contract for engineering services on March 12, 2015.

## **2. The \$60K planning grant and Hughes septic system.**

415. On June 24, 2015, DEQ Water Quality Board unanimously awarded EID a \$60,000.00 federally-backed planning grant to study the coliform pollution of the stream that runs down Emigration Canyon.

416. A 1981 study by two University of Utah experts found that only five percent of the coliform pollution in the stream was coming from underground disposal systems such as septic and holding tanks.

417. Fred Smolka, Mr. Hawkes, Aqua Engineering, Carollo Engineering, and Mr. Rasmussen participated in the application process for the grant.

418. During the 2015 EID trustee election for the reelection of incumbents Mr. Hughes and Mr. Bradford, Fred Smolka, Mr. Hughes and Mr. Bradford cited the grant as evidence that EID was taking necessary steps to prevent contamination of the canyon stream.

419. On information and belief, EID intended to use the grant funds to service the \$1.8 million loan.

420. During the EID Trustee meeting on November 8, 2014, Mr. Hughes insisted that the proposed septic-system project be completed by his company Ecosens – also called High Science – although Mr. Hughes is not a licensed contractor.

421. Mr. Hughes is listed under the email address “highscience@gmail.com” in the official EID correspondence from October 25, 2017.

422. The company “Ecosens” registered with the Utah Department of Commerce is listed under defendant Hugh’s current cell phone number, but reflects a non-existent address in Holiday, Utah as its primary place of business.

423. On the EID website, Mr. Hughes's email address is listed as "highscience@gmail.com."

424. Sometime in 2001, Boyer Company – acting through Kem Gardner – hired Mr. Hughes to construct a community septic system in the area of Emigration Oaks known as "Emigration Estates."

425. Even though Mr. Hughes did not complete the project, and Boyer Company allowed Hughes to retain all monies rendered for the project.

426. In a EID correspondence to canyon residents from June 2014, Mr. Hughes, Mr. Stevens and Mr. Bradford insisted that Fred Smolka and Mr. Hawkes were "independent contractors" and thus exempt from Utah state nepotism regulations.

427. Contrary to the aforementioned, in June 2015, Mr. Hughes, Mr. Stevens and Mr. Bradford approved using EID public funds to pay for the legal expenses of Fred Smolka and Mr. Hawkes in the present action. EID did not record this decision in its organizational minutes.

428. Mr. Hughes insisted that his company Ecosens be awarded contracts for the DWQ grant of \$60,000.00 during the November 2014 EID Trustee meeting.

**I. EID has abused its power to detriment of canyon residents.**

429. With 677 United States postal mailboxes in Emigration Canyon, EID provides water service to less than 34% of the households as reported to the State Engineer; however, EID taxes every developed and vacant property owner at the highest rate allowed under Utah law.

**1. EID has misled residents into giving up their water rights.**

430. In order to coerce 57 households to agree to connect to the expanded water system, EID – acting through Fred Smolka, Mr. Hales, Mr. Hughes, Carollo Engineering, and BIWC – made the following false and misleading statements to canyon resident.

431. At numerous public meetings, Fred Smolka told canyon residents that EID possessed superior water rights to those of all existing homes on private wells.

432. At a public meeting held on March 7, 2002, Mr. Hales told canyon residents that it was “impossible” for EID to transfer water rights from Salt Lake Valley to Emigration.

433. At a public meeting held on March 18, 2002, Fred Smolka told canyon residents that the primary purpose of the construction of the 1-million-gallon Wildflower Reservoir was for “fire protection.”

434. At a meeting held on March 18, 2002, Mr. Hughes told canyon residents that, while the planned size of the 1-million gallon Wildflower Reservoir was excessive, it was the best decision based on “the economies of scale” and not for future development.

435. At a meeting held on March 7, 2002, Don Barnet of VIWC told canyon residents that, if smaller wells were replaced by one large-diameter commercial well, impact on the canyon “aquifer” would be the same.

436. In 2003, Fred Smolka told a canyon resident by the name of Eckert that private wells might “go bad” or “dry up” in the future, and if Mr. Eckert did not sign a “firm commitment contract,” or at least a “stand-by agreement,” the home would be without essential water service.



437. During trustee meetings held in 2002, Fred Smolka, Mr. Hughes and Mr. Hales told canyon residents that private water rights in the Canyon were “worthless” due to EID’s superior water shares.

438. In 2003, Fred Smolka told Eckert that, for residents who signed a “stand-by agreement,” payment in the amount of \$500.00 was necessary in order to purchase a special “water connection hub” even though no such hub was installed nor does it exist.

439. EID told canyon residents by the names of McCallum, Biggs, and Block that, if a resident refused to participate in the water system, EID would encumber title thereto, so that any future owner would be unable to connect to the EID water system in the future, thereby decreasing the resale and appraised value of the home.

440. At a public meeting held on March 7, 2002, Fred Smolka told property owners unwilling to sign either a “firm-commitment contract” or a “stand-by agreement” that they would not be required to pay for the system expansion and maintenance because it was “entirely voluntary.”

441. In a letter dated May 31, 2002, Fred Smolka told canyon residents that, if 57 households signed water-connection agreements, water fee assessments “would stay the same no matter how many people join the system.”

442. In a letter dated May 31, 2002, Fred Smolka told canyon residents that the proposed system would not increase future development in the Canyon due to the fact that current zoning restrictions controlled development in the Canyon and not access to a readily available water system.

443. EID told canyon residents that it would not take any action which would “accommodate connections that will cause demand on the canyon’s resources in excess of 700 equivalent residential units.”

444. Upon inquiry of Canyon resident McCallum in 2002 as to the possible impact of the Brigham Fork Well on her private well located in the area of lower Pinecrest Canyon, Don Barnett responded that McCallum’s well was located in a “different aquifer” than that of the Brigham Fork well even though the actual distance between the two underground water sources was less than 1 mile.

445. Since August 16, 1988, forty-six residents of Emigration Canyon have relinquished water rights to EID in order to connect to a water system that EID has constructed in the canyon. Residents did so because they mistakenly believed that their water rights were inferior to EID’s water rights. In 2007, EID through Fred Smolka informed single-mother and canyon resident Ross during the purchase of a home located within the canyon that she would forfeit her “leased” water right from EID if she did not sign a “stand-by contract” and render immediate payment of \$750.00 prior to closing of the home purchase.

446. Fearing that she would be without water from her private well, Canyon resident Ross rendered full payment as well as monthly payments of \$40.00 per quarter until 2012.

447. During the sale of the property in 2012, EID informed canyon resident Ross sometime in 2012 that she must discontinue use of her private well as stipulated under the express terms of the “stand-by contract.”

448. After placing a lien on the residence shortly prior to closing, the impact fee for connecting to the EID water system of \$6,250.00 was collected from the escrow account of the title company upon closing.

449. No such lease contract was executed by the previous owner nor does it exist.

450. Canyon Ross discontinued use of her private well and connected to the EID water system shortly thereafter.

451. A search of the Utah Division of Water Rights records reveals that Canyon resident Ross possessed a superior water right to that owned by EID.

452. Sometime prior to March 12, 2015, EID informed Canyon residents Massion and Duheric along with 6 other unidentified Canyon residents that they had “leased” water rights from EID and were therefore contractually obligated under the “lease contract” to discontinue use of their private wells and to connect to EID’s water system.

453. During the Trustee meeting of March 12, 2015, Mr. Stevens and Mr. Bradford ordered EID’s counsel to enforce the aforementioned “lease contracts.”

454. Mr. Duheric’s water rights were superior to those held by EID.

455. On August 13, 2015, Mr. Hawkes informed Duheric that he had to connect to EID’s system by September 16, 2016 or face criminal charges.

456. Mr. Bradford neither leased nor relinquished water rights upon connection to the EID water system.

457. In an interview with Salt Lake Tribune reporter Brian Maffly sometime between June 12 and 18, 2015, Mr. Hawkes reported that EID held “the canyon’s most senior water right dating back to 1872.”

458. On December 13, 2013, EID – acting through Don Barnett – failed to prevent the permanent change application “a12710b” for 94.04 acre feet supplying water to 188 families from lapsing under water right #57-8865.

459. Having failed to file a timely extension to the aforementioned water right, all 188 families supplied with water from EID now have a priority date of January 2014.

460. Any impairment of a single water right perfected prior to January 30, 2014, could lead to discontinuance of water service to all 188 homes should the holder of the perfected water right bring legal action against EID.

461. EID through BIWC and Don Barnett purposefully allowed the permanent-change application to lapse in order to secure a better priority date for the 649 acre feet under water right #57-7796 to be utilized for the massive planned development of property belonging to Mr. Creamer, the Gillmors and Neuscheler.

462. During the EID trustee meeting of March 12, 2015, Mr. Bradford reported that the Emigration Creek was down 50% of its normal flow due to high-water consumption within the area of Emigration Oaks.

463. Since 2014, canyon residents Irons, McCallum, Penske, Terry and Karrington have reported substantial decrease in the productivity of their private wells and have issued complaints with the DWR for the impairment of superior water rights.

464. To date, over 27 private wells with superior water rights have reported impairment due to the extraction of water via large-diameter commercial wells operated by EID as predicted in the 1966 Barnett Thesis.

## **2. EID's trustees meddled in an election to remain in power.**

465. On May 11, 2011, Mr. Hughes, Mr. Bradford and Mr. Stevens unanimously appointed Fred Smolka as the EID's "Election Specialist."

466. During the November 2013 EID-trustee election, Fred Smolka and his spouse Marilyn Smolka inappropriately supported the re-election of Mr. Stevens by encouraging voters during balloting to cast their vote for Mr. Stevens, even going so far as commenting, "thank-you for voting for Mark [Stevens]. He really needs your vote"; withholding ballots from residents antagonistic to the management of EID; improperly asking a canyon resident Terry how he intended to vote before giving a replacement ballot; improperly sending ballots outside of Emigration Canyon to non-existent mailing addresses; and improperly collecting and opening ballots prior to ballot counting by election judges.

467. Mr. Hughes, Mr. Bradford and Mr. Stevens agreed to compensate Fred Smolka over \$6,000.00 to conduct the trustee election despite the fact that the same service provided by Salt Lake County would have cost canyon taxpayers \$1,594.60.

## **3. EID has serviced the debt on its "preposterously oversized" water system by levying exorbitant fees and taxes on canyon residents.**

468. On May 11, 2011, EID's attorney opined that EID could not retire federally-backed debt with general property taxes.

469. Despite this unequivocal legal opinion, on July 7, 2011, EID, through Mr. Bradford and Mr. Hughes, approved a "loan" of \$135,000.00 from the "General Fund" to the "Emigration Oaks Fund."

470. On December 13, 2007 EID through Fred Smolka deposited an impact payment of \$6,100.00 into the Emigration Oaks account despite the fact that Canyon resident White did not reside in the Emigration Oaks development.

471. On December 6, 2012, EID combined the Emigration Oaks and General accounts in order to conceal the diversion of property taxes to service EID's massive federally-back debt obligations.

472. In the Trustee meeting from March 12, 2015, Mr. Stevens revealed that revenue from general property taxes was being used to service EID's debt obligations.

473. During the EID Trustee meeting from June 18, 2015, Mr. Hughes, Mr. Stevens and Mr. Bradford approved moving \$50,000.00 from the "operation and maintenance" budget to "legal expenses" for the current legal action.

474. Sometime in June 2105, EID's insurance carrier denied coverage for legal expenses associated with the present litigation.

475. Salt Lake City charges an impact fee of \$3,000.00 for a new residential home located within the limits of Salt Lake City.

476. By contrast, in 2007, EID raised the water connection impact fee from \$5,500.00 to \$17,000.00 for all homeowners not "on stand-by." There is no record in EID's meeting minutes that EID's trustees ever voted on this issue.

477. Every year since 2007, EID has set property taxes at the highest rate allowed under Utah law.

478. For example, in 2014, S. Plumb's property taxes skyrocketed from \$40.74 to \$290.90 due to the taxes and fees imposed by EID.

479. To increase water usage fees, EID has refused to install valves on its water system that would decrease water pressure. Higher water pressure leads to higher water consumption.

480. As measured in April 2013, the water pressure at S. Plumb's residence was twice that of a residence with normal water pressure, which led to the rupture of a water tank and extensive water damage possible due to the 4-inch water supply line placed by EID in violation of federal construction standards.

481. In 2007, EID intentionally installed pressure reducing valves on fire hydrant supply lines instead of domestic water connections in order to maintain high water pressure thereby increasing consumption rates and water usage fees.

482. EID has issued monthly water bills to canyon resident S. Plumb in excess of \$2,500.

483. On June 1, 2013, EID proposed raising "base" and "stand-by" fees by \$25.00 per month to include a new monthly surcharge of \$1,400.00 for excessive water use despite the fact that EID through Fred Smolka has assured Canyon residents in a letter dated May 31, 2001 that water fee assessments would never change.

484. On June 1, 2013, EID proposed a "fire-hydrant-rental fee" of \$15.00 per month to eight-six households on private wells "who pay nothing" for the water service provided by EID.

485. All 17 residents of Spring Glen who already owned four fire hydrants in their community before EID installed 4 additional hydrants have all been charged a "fire-hydrant rental fee" of \$15.00 per month since September 2013.

486. In June 2013, Joseph Smolka, informed Canyon resident Karrington that EID intended to raise the fire-hydrant rental fee to \$50.00 per month "as soon as possible."

487. Despite the clear language of the correspondence from June 1, 2013 requiring fire-hydrant rental fee payments from “households,” EID – acting through Fred Smolka – levied fees not only for developed properties but also numerous vacant lots.

488. In the period from September 2013 to September 2014, EID assessed a \$520.00 fire-hydrant rental fee on a single vacant parcel belonging to a 86 year-old, widowed resident on a private well.

489. In June 2015, EID though Eric Hawkes billed canyon resident O’Connor for \$320.00 for a “water base fee,” even though the aforementioned resident was on a private well and did not receive any water service from EID.

490. On November 14, 2013, six unidentified Canyon residents on fixed-monthly incomes requested relief from the fire-hydrant rental fees under Salt Lake County’s “circuit breaker program.”

491. Even though the \$1.8 million loan was intended to make water more affordable for these six residents, EID – acting through Mr. Hughes – refused to waive the fire-hydrant rental-fees.

492. When canyon residents protected EID’s exorbitant fees, Mr. Hughes replied that Canyon residents who “didn’t like EID fees ... were welcome to move out of Emigration Canyon.”

493. In a meeting held on January 13, 2015, Mr. Bradford stated that canyon residents living along Emigration Canyon Road were “second-class citizens.” Mr. Hughes commented that the area was like “the ghetto.” Mr. also stated, “if [EID] were giving out gold in Emigration Canyon, they [the canyon residents] would complain about the color.”



494. On February 6, 2003, Canyon resident Christensen informed EID that the water rates charged by EID was twice that of Salt Lake City.

495. In September 2014, under Salt Lake County's "certified delinquent program," EID – acting through Mr. Hawkes – certified forty-eight canyon property owners as delinquent in "fire-hydrant-rental" and "stand-by fees," which had the collateral effect of increasing EID's tax revenues through tax foreclosure despite the fact that on August 7, 2008 EID legal counsel Kinghorn opined that EID may not collect fee through property taxes.

496. In the year 2013, EID certified only three property owners as delinquent to Salt Lake County.

497. EID – acting through Mr. Hawkes – certified a single, vacant parcel belonging to a 86-year old, widowed Canyon resident to Salt Lake County for the amount of \$520.00.

**4. EID's preposterously oversized water system has depleted Emigration Canyon's water reserves.**

498. Since installation of EID's large commercial wells, five residents of the canyon have filed complaints with the State Engineer citing substantial decreases in the productive capacity of their private wells.

499. In April 2015, blind review of Emigration Canyon's hydrology by renowned hydrologist Dr. Hansen revealed that that the stream running down the canyon has not maintained minimum flow in 8 of the past 14 years contrary to the Water Conservation and Management Plan.

500. Since commencement of the present proceedings, eight residents of Emigration Canyon have reported substantial impairment of private wells.

**IV. FIRST CAUSE OF ACTION  
(Direct False Claims under 31 U.S.C. § 3729)**

501. Relator incorporates all preceding paragraphs, including the Introduction.

502. Defendants knowingly presented or caused to be presented a false or fraudulent claim to an officer or employee of the United States Government – or to a contractor, grantee, or other recipient – in order to induce disbursement of \$1.846 million in federal funds.

503. Defendants falsely claimed that they intended to use the funds to bring clean water to 67 canyon residents, when in fact they always intended to use the funds to build water infrastructure for the benefit of wealthy land developers.

504. Defendants falsely claimed that 57 households had signed binding agreements to connect to EID's water system.

505. Defendants falsely claimed that Emigration Canyon's hydrological system could support large-diameter commercial wells.

506. Defendants falsely claimed that its water rights had priority other water rights within Emigration Canyon.

507. Defendants knowingly made, used, or caused to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the United States Government – or by a contractor, grantee, or other recipient – in order to induce disbursement of \$1.846 million in federal funds.

508. Defendants falsely certified that the Brigham Fork Well, Wildflower Reservoir, and water pipelines had been built according to the plans and specifications.

509. Defendants falsely certified that construction of the Brigham Fork Well, Wildflower Reservoir, and water pipelines was done in compliance with crosscutting environmental statutes.

510. Defendants falsely certified that the Wildflower Reservoir had a valid operating permit.

511. Defendants falsely certified that EID had sufficient water rights to operate the Brigham Fork Well.

512. Defendants falsely certified that Emigration Canyon's hydrological system could sustain large-diameter commercial wells.

513. Defendants conspired to defraud the United States Government by fraudulently inducing disbursement of \$1.846 million in federal funds.

514. Defendants false claims damaged the government in an amount to be proven at trial.

**V. SECOND CAUSE OF ACTION  
(Reverse False Claims under 31 U.S.C. § 3729)**

515. Relator incorporates all preceding paragraphs, including the Introduction.

516. EID knowingly made, used, or caused to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the United States Government, or knowingly concealed or knowingly and improperly avoided or decreased an obligation to pay or transmit money or property to the United States Government.

517. Alternatively, Defendants conspired to commit the violation described in paragraph 530.

518. EID obtained a \$1.846 million loan.

519. The loan consists of federal funds.

520. The loan carries a below-market interest rate of 2.1 percent.

521. EID has not paid off the loan's balance and is making ongoing, monthly payments.

522. Because of the below-market interest rate, each and every time EID makes a payment on the loan, EID receives a benefit from the United States Government in the form of a lower monthly payment.

523. EID accepted the loan on condition that it would use the funds to bring clean water to 67 existing residents of Emigration Canyon who had contaminated wells.

524. EID accepted the loan on condition that it would comply with cross-cutting environmental statutes like the Clean Water Act or Endangered Species Act.

525. EID accepted the loan on condition that it would not use the funds for the benefit of land developers or speculators.

526. EID accepted the loan on condition that it would monitor the output of its wells so as not to decrease flows in private wells or the Emigration Canyon stream.

527. EID accepted the loan on condition that it would build its water system in accordance with the plans submitted during the NEPA process and otherwise maintain valid permits for the system under the Safe Drinking Water Act.

528. By accepting the loan, EID created an express or implied contractual relationship.

529. EID defaulted on the loan by failing to comply with the foregoing conditions.

530. Because EID has defaulted on the loan, it has an established duty to transmit or pay money to the United States Government.

531. Defendants concealed or conspired to conceal from the United States Government that EID had defaulted on the loan in order to help EID avoid a duty to transmit or pay money to the United States Government.

532. Defendants conduct has damaged the United States Government in an amount to be proven at trial.

## **VI. PRAYER FOR RELIEF**

WHEREFORE, Relator, on behalf of the United States of America, requests the Court enter the following relief:

A. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the United States has sustained because of Defendants' actions, plus a civil penalty of not less than \$5,500.00 and not more than \$11,000.00 for each violation of 31 U.S.C. § 3729 as well as a forfeiture of any unjust enrichment and/or unlawful profit;

B. That Relator be awarded the maximum amount allowed under § 3730 of the False Claims Act;

C. That Relator be awarded all costs of this action, including attorney fees and expenses; and

D. That Relator and the United States of America recover such other and further relief as the Court deems just and proper.

DATED: 1 February 2018

CHRISTENSEN & JENSEN, P.C.

s/Scot A. Boyd  
Scot A. Boyd  
Stephen D. Kelson  
Bryson R. Brown

# Exhibit A



State of Utah

Department of  
Environmental Quality

Dianne R. Nielson, Ph.D.  
*Executive Director*

DIVISION OF DRINKING WATER  
Kevin W. Brown, P.E.  
*Director*

OLENE WALKER  
*Governor*

GAYLE F. McKEACHNIE  
*Lieutenant Governor*

September 29, 2004

**PAYMENT REQUEST FOR CONSTRUCTION OF SRF PROJECT**

Borrower: **Emigration Improvement District, Utah**

SRF Project Number: **3F011**

Pay Request No.: **Final Payment Request (#6)**

Amount of Requested Payment: **\$188,650.10**

Attached is the final Pay Request (#6) for the Emigration Improvement District project. This payment request is broken down as shown in the attached Exhibit B-3 Payment Schedule. The Emigration Improvement District has certified that the invoices agree with the amount of construction work, engineering services, management and legal fees, and miscellaneous purchases. I have reviewed this payment request and concur with the payment amount equaling the remaining funds for this project. According to Division of Drinking Water (DDW) records, there is approximately \$131,000 available for this project. The remaining fund in this project, after this pay request is paid, is \$ 0.00.

**Release all remaining funds (including retainage transfer) from DDW Escrow Account to Emigration Improvement District Escrow Account for the Emigration Improvement District project.**

Retainage:

**Release all retainage held to Emigration Improvement District.**

Ying-Ying Luo Macauley, P.E.  
Environmental Engineer

09/29/2004  
Date

F:\SRF\Applicants\EmmigrationID\ImmigrationIDPayRequest6.doc

# Exhibit B



DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIVISION OF DRINKING WATER

Michael O. Leavitt  
Governor  
Dianne R. Nielson, Ph.D.  
Executive Director  
Kevin W. Brown, P.E.  
Division Director

150 North 1950 West  
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(801) 536-4211 Fax  
(801) 536-4414 T.D.D.  
www.deq.state.ut.us

**SPEEDY MEMORANDUM**

TO: Mike Georgeson  
FROM: Steve Onysko  
DATE: October 18, 2002  
SUBJECT: Plan Review: Emigration Improvement District Tank & Waterlines, Sys. #18143

On October 16, 2002, I prepared for your review a draft letter to Emigration Improvement District (E.I.D.) in which I concluded that the proposed 8" waterlines do not meet the minimum requirements of **R309-510-9 Distribution System Sizing**:

*R309-203-9. Distribution System Sizing.*

*(1) General Requirements.*

*The distribution system shall be designed to insure that a minimum of 20 psi exists at all points within the system during peak instantaneous demand conditions. If the distribution system is equipped with fire hydrants, the system shall be designed to insure that a minimum of 20 psi exists at all points within the system when needed fire flows are imposed upon the peak day demand flows of the system.*

*(4) Fire Flows.*

*(a) Distribution systems shall be designed to deliver needed fire flows if fire hydrants are provided. The design engineer shall consult with the local fire suppression authority regarding needed fire flows in the area under consideration ...*

You have concluded that the design does meet the requirements of **R309-510-9 Distribution System Sizing** principally on the basis of a letter from Salt Lake County Fire Marshall, Rand Andrus, dated October 7, 2002, in which he states:

Michael B. Georgeson  
October 18, 2002  
Page 2 of 2

*According to Carollo [Engineers, Inc.] all homes in the area would have fire flow of at least 1,300 g.p.m. with a residual of 20 psi with this one home that is over 3,600 square feet being covered with 1,500 g.p.m. The fire department feels that with the installation of an eight-inch line, the system would be in compliance with the State of Utah and Salt Lake County regulations concerning the fire codes.*

*Rand Andrus, Fire Marshall, Salt Lake County*

In my opinion, the Fire Marshall clearly implies that if the Carollo Engineers' representations are assumed to be accurate, then the subject project is in compliance. If you have inferred that the Fire Marshall has reviewed or verified the Carollo Engineers' representations, then your understanding of the situation is different from mine.

My application of engineering principles to review of the Carollo Engineers' representations leads me to a conclusion different from yours. That is, I remain unconvinced that the 8" waterline design complies with **R309-510-9 Distribution System Sizing**. I also remain unconvinced that the 8" waterline design will not result in danger to the public in the event of a fire emergency in the Emigration Improvement District.

I will not jeopardize my Utah Professional Engineer license by preparing an approval letter for the subject project under these circumstances. If you believe that approval of the subject project is appropriate, you will have to assign the task of approval letter preparation to someone other than myself.

The record of the subject project shows that the consultant, Carollo Engineers, has stridently protested my repeated recommendations that the 8" waterlines be upgraded to 10" waterlines at a cost that I have estimated to be \$119,000. The record also shows that I have concluded that the design storage tank capacity of 1 million gallons is preposterously oversized beyond the 300,000 gallon capacity that would fulfill the requirements of **R309-545-5 Size of Tank(s)** and **R309-510-8 Storage Sizing**. The consultant's refusal to consider the \$500,000 cost savings associated with construction of a more appropriately sized tank – an amount more than four times that necessary to upsize the 8" waterlines to 10" – defies all logic. Also, the Safe Drinking Water Act Amendments of 1996 prohibit the use of State Revolving Fund (SRF) monies for construction of water system infrastructure for future growth.

I previously communicated to you that an allegation has been made by a citizen of the Emigration Improvement District that there is a secret agenda to construct excess water storage capacity in Emigration Canyon. This is allegedly for the benefit of developers who wish to promote growth in the Canyon. I have no opinion on this allegation but I am certainly curious over the construction of a 1 million gallon storage tank that would provide E.I.D. with the water storage capacity sufficient to double its present number of service connections in the Canyon.

# Exhibit C



# State of Utah

## DEPARTMENT OF ENVIRONMENTAL QUALITY DIVISION OF DRINKING WATER

Michelle O. Leavitt  
Governor

Dianne R. Nielson, Ph.D.  
Executive Director

Kaylie W. Brown, P.E.  
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**Drinking Water Board**  
Daniel McArthur  
Chairman  
Boyd Workman  
Vice-Chairman  
David Cline  
Anne Erickson, Ed.D.  
Donald F. Hayes, Ph.D.  
Steve Jenkins  
Linda Kruse  
William A. Luce  
Dianne R. Nielson, Ph.D.  
Dale F. Pierson  
Chris Webb

January 3, 2001

Fred Smolka, Chairman  
Board of Trustees  
Emigration Improvement District  
P.O. Box 58945  
Salt Lake City, Utah 84158

Dear Mr. Smolka:

Subject: Federal SRF Loan Authorization and Procedures for Committal of Funds

On October 13, 2000 the Drinking Water Board (hereinafter called the "Board") authorized a loan of \$1,256,000.00 to the Emigration Improvement District, Salt Lake City, Utah (hereinafter called the "Applicant") for the construction of drinking water system improvements (hereinafter called the "Project"). The loan from the Board will be secured by General Obligation bond(s), Non-voted Water Revenue bond(s), or a combination thereof; issued by the Applicant as incremental disbursement bond(s) (hereinafter referred to as the Bond(s) disbursed on a quarterly basis). The Board has determined the retirement period for the Bond to be no more than 15 years, with interest and a hardship grant assessment payable on the unpaid principal from the date of each advance of loan funds. The annual Interest Rate is 1.005% and the annual Hardship Grant Assessment is 1.005% for an annual total effective rate of 2.01%. The Board will require annual principal payments on the Bonds, plus interest and hardship grant assessments totaling approximately \$97,820 (See enclosed proposed bond repayment schedule). If a revenue bond is used, a reserve fund equal to this annual amount must be established by no more than 10 equal annual deposits.

### Special Conditions:

This financial assistance was authorized subject to the availability of funds. The assistance represented by this authorization will be funded, in whole or in part, from the proceeds of a federal SRF Capitalization Grant (Section 1452 SDWA) to the State of Utah. Under the SRF Capitalization Grant Program, federal funds are to be made available to the State by way of authorized draws on a letter of credit over the construction period of the Project. Therefore, this authorization is expressly subject to the continued availability of federal funds through the SRF Capitalization Grant and the letter of credit related thereto.

Fred Smolka

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January 3, 2001

Neither the Board nor the State of Utah shall be bound by this authorization or by any obligation to provide further loan funds to or purchase any bonds from the Applicant if the SRF Capitalization Grant funds to which this authorization relates are not awarded or if payments under the letter of credit are withheld for any reason.

As a condition of this authorization, the Board will require the Applicant to provide a schedule of estimated engineering and construction time for the Project within ninety (90) days of the date of this letter. If the Project has not progressed sufficiently for the Board to purchase the first of the incremental disbursement bond(s) within twelve months of the date of authorization, authorized funding may be withdrawn.

As a condition of this loan, the Board will require the Applicant to establish a capital facilities replacement reserve account. Deposits to that account shall be made at least annually in the amount of five percent (5%) of the Applicant's annual drinking water system budget, including depreciation, and must continue until the Bonds are redeemed. Failure to maintain the reserve account will constitute a technical default on the Bonds and may result in penalties being assessed.

The Bonds may be prepaid, in whole or in part, at any time in minimum amounts of \$1,000 or any integral multiple thereof, with the prepayments applied against the Bond principal in inverse order of maturities. In addition, if any Bond proceeds remain after the Project is completed, those remaining proceeds shall be used to redeem Bond principal in inverse order of maturities. The Bond documents must contain the following provisions:

- i] The Bonds will initially be in the form of a single, fully-registered bond with provisions for incremental advances quarterly, based on a schedule that coincides with the rate at which engineering/construction related costs are expected to be incurred for the Project.
- ii] If revenue bonds are used the Bonds must be secured by a pledge by the Applicant of 100% of the net revenue produced by the Applicant's water system, and the Applicant will be required to warrant and demonstrate that those net revenues equal or exceed 125% of the total annual debt service requirements on the Bonds and any other obligations secured by a pledge of those revenues.
- iii] If interest is payable on the Bonds, that interest must be tax-exempt, and delivery of the Bonds must be accompanied by an opinion of recognized bond counsel that the interest is not subject to state or federal income taxes.

Mr. Fred Smolka  
Page 3  
January 3, 2001

- iv) If a revenue bond is used, and if the Applicant has previously issued bonds or other obligations secured by a pledge of water system revenues, the Bonds to be purchased by the Board should be issued on a parity with those prior bonds or obligations with respect to the revenue. If it is not possible for the Bonds to be issued on a parity basis, the Applicant should contact Michael Georgeson immediately at 536-4197.

Based on the information presented to the Board, the following sources of funding will be available for the construction of the Project:

Cost Sharing

<u>Agency</u>	<u>Share</u>	<u>% of Total</u>
Applicant (Direct Contribution)	\$ 586,000	31.81%
Drinking Water Board (Loan)	<u>1,256,000</u>	<u>68.19%</u>
Total Project Cost	\$1,842,000	100.00%

As a condition to the purchase of the Bonds by the Board, the Applicant must make arrangements for all loan proceeds and all other Project funds to be available for deposit into the escrow account described below at the time the Board delivers its initial disbursement unless other acceptable arrangements have been previously made.

The financial assistance is conditioned upon the availability of funds at the time of closing, satisfaction of the conditions specified in this letter, and adherence to the project schedule approved at that time. If the Project does not proceed according to the project schedule, the Board may withdraw project authorization, so that projects which are ready to proceed can obtain necessary funding. Extensions to the project schedule may be considered by the Board, but any extension requested must be fully justified. After the Project's construction bids have been opened and the below listed requirements have been met, and if the project remains substantially as approved, loan closing will proceed subject to funds available at that time. But, if substantial changes in the project are required, they must be considered by the Board for committal of funds.

As the Applicant you will need to complete the following items before the Board will purchase your Bonds:

1. The State of Utah has assigned Special Assistant Attorney General William L. Prater Esq. the responsibility of reviewing all proceedings and documents relating to the sale of bonds to the Board. His address is 6925 Union Park Center, Suite 265, Midvale, Utah 84047; telephone number (801) 566-8882 or mail to P.O. Box 71368, Salt Lake City, Utah 84171. The Applicant's bond counsel should submit the following items to his office at the times indicated below:

Mr. Fred Smolka

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January 3, 2001

- a. No later than one week prior to the meeting at which the Applicant intends to adopt its Resolution for the issuance of the Bonds, a complete copy of the Resolution shall be submitted for review.
- b. No later than two weeks after the adoption of the Resolution, the following items shall be submitted:
  - i] A true and complete photocopy of the Resolution as adopted, showing signatures of the appropriate officials of the Applicant on the Resolution and on the Notice of Meeting, Acknowledgment of Notice and Consent, Certificate of Publication, Open Meeting Certificate, and other similar documents relating to the Resolution.
  - ii] A true and complete photocopy of the minutes, notices, resolutions, and other documents relating to the Bonds, showing signatures of the appropriate officials.
  - iii] A complete copy of the proposed documents to be signed at Closing, including (but not necessarily limited to) General Certificate, Signature Identification and Non-Litigation Certificate, Receipt, Arbitrage Certificate (if required), Applicant Attorney's Non-Litigation Certificate, Certificate of Clerk (or Recorder) as to contents of Bond Transcript File, Escrow Agreement, and the Bond Attorney's Opinion.
  - iv] A copy of the water rate structure described in paragraph 3 below of this letter.
  - v] A copy of the proposed opinion letter of the Applicant's attorney described in paragraph 7 of this letter. The procedures for bond approval will be substantially the same as required by the Utah Municipal Bond Act as it applies to cities and towns. The opinion of the bond attorney must accompany delivery of the Bonds to the Board before proceeds of the loan will be released.

At or after the Closing, the Applicant will be billed by the Special Assistant Attorney General, and those legal fees must be paid by the Applicant. This is an eligible project expenditure. If the Applicant fails to close the loan after this authorization, it will nonetheless be billed for the actions taken by the Special Assistant Attorney General prior to loan cancellation.

2. Consistent with requirements of the law and the covenants of applicable bond resolutions, the actual payment of funds by the Board to the Applicant will not take place until the Board has assurance the funds will be used for Project costs and the Project will actually be completed. To assure this, all monies to be expended on the project, including the Applicant's share, shall be

Mr. Fred Smolka

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placed in an escrow account supervised by the Applicant and the Board. The Board will make incremental advances into the account on a quarterly basis. A copy of the proposed escrow agreement shall be submitted to the Board and the Special Assistant Attorney General for Review.

It is anticipated that the Applicant will spend some of its share of funds prior to bond closing to develop an additional water source(s) as required by item 18. Money spent by the Applicant on approved work prior to bond closing will be subtracted from the amount of funds required for deposit into the escrow account.

3. At the time of the adoption of the bond resolution, the Applicant shall have passed an ordinance or resolution establishing reasonable water use rates and collection enforcement remedies, taking into account many factors including the need to have sufficient revenue income for all outstanding water system debts, operation and maintenance costs, and any reserve funds. It will then be necessary to implement effective collection procedures. A copy of the rate ordinance and collection enforcement procedures shall be submitted to the Board and the Special Assistant Attorney General for review.
4. The Applicant's contract with its engineer should include the cost of developing the plans and specifications and the construction inspection of the Project. The contract should be submitted to the Division of Drinking Water for review. (This requirement is to assure the Board that adequate and appropriate arrangements are made for completing and inspecting the project within the guidelines set by the Board.)
5. The project engineer shall submit plans and specifications, bidding documents, and general conditions to the Division of Drinking Water for review prior to soliciting bids on the Project. The engineer should contact Michael Georgeson, Manager, Engineering Section, Division of Drinking Water to arrange for the expeditious review of the plans and specifications. This loan cannot be closed until after the bid opening to assure that sufficient funds are available to complete the project.
6. Rights-of-way and easements for construction, and operation and maintenance of the Project shall be acquired. The Applicant, through its engineer, shall furnish its attorney a right-of-way map showing the location of all sources, buildings, structures, pipelines, and other pertinent facilities not only in the Project but for the entire water system. This map will be signed by the engineer and presiding officer of the Applicant and a copy provided to the Applicant's attorney as a basis for the certification described below.
7. The Applicant's attorney shall certify the following items in writing to the Board:
  - a. The Applicant is a legal entity.



Mr. Fred Smolka

Page 6

January 3, 2001

- b. The Applicant has valid legal title to the rights-of-way both for the project to be constructed and the remainder of the existing water system.
- c. The Applicant has established the ownership of water rights to any and all water used in the system and such rights are summarized with associated water right numbers.
- d. The contract documents for the construction of the Project have the proper and legal format and are in compliance with the Utah Code Annotated 1953 (including, but not limited to Title 34, Chapter 30).
- e. After the completed and executed construction contract, along with the performance and payment bonds and evidence of necessary insurance, has been reviewed by the Applicant's attorney, the Applicant's attorney shall furnish to the Board his legal opinion that all of such items are legal and binding and in compliance with the Utah Code.

As indicated earlier a draft of this letter is to be submitted to the Board and Special Assistant Attorney General two weeks after the adoption of the resolution.

8. The Bonds must be accompanied by a legal opinion of recognized municipal bond counsel that interest on the bond obligations is exempt from federal income taxation. Unless otherwise covered, the opinion must also include a statement that the project to be constructed with the Bond proceeds is not for private activity and that the Applicant has complied with all the requirements of the Board with respect to the Utah Federal State Revolving Fund (SRF) Program (R309-705 of the Utah Administrative Code).
9. The Applicant must obtain and maintain continuously throughout the loan repayment period, a fidelity bond on the positions handling the Applicant's funds, in an amount at least equal to the total amount of funds that will be on hand at any one time, exclusive of loan funds. This amount should be at least \$125,000. This fidelity bond must be obtained and furnished to the Board prior to the loan closing date. The names of the insured on the position fidelity bond will be "Emigration Improvement District and the State of Utah acting through the Drinking Water Board."
10. As a condition of a non-voted revenue bond, either:
  - a. The Applicant must provide to the Board a legal petition signed by a majority of the users of the Applicant's service area approving the issuance of a non-voted revenue bond to the Board: or

b. The Applicant must mail notices to each water user in the Applicant's service area informing them of a public hearing. In addition to time and location of the public hearing the notice shall inform water users of the Applicant's intent to issue a non-voted revenue bond to the Board, shall describe the face amount of the bond, the rate of interest, the repayment schedule and shall describe the impact of the project. User charge rates and connection fees should be noted in the notice. The notice shall state that water users may respond to the Applicant in writing or in the public hearing within ten days after the date of the notice. A copy of all written responses and a certified record of a public hearing shall be forwarded to the Division of Drinking Water. If the Board feels there is significant opposition to the proposed Project, it may require the Applicant to hold a bond election before the Board's funds will be made available.

11. As a condition of this loan, the Board will require the Applicant to complete the attached *Water Management and Conservation Plan* form, submit it for review by the Division of Drinking Water, and adopt the approved plan (completing the *Certification of Adoption*) prior to bond closing. If the Applicant has already adopted such a plan, that plan may be submitted in lieu of this form.

12. There are a number of Federal laws, executive orders and government-wide policies that apply to projects receiving Federal financial assistance. These "cross-cutting Federal authorities" include the following:

Environmental Authorities

- Archaeological and Historic Preservation Act of 1974, Pub. L. 86-523, as amended
  - Clean Air Act, Pub. L. 84-159, as amended
  - Coastal Barrier Resources Act, Pub. L. 97-348
  - Coastal Zone Management Act, Pub. L. 92-583, as amended
  - Endangered Species Act, Pub. L. 93-205, as amended
  - ~~Environmental Justice, Executive Order 12898~~
  - Flood Plain Management, Executive Order 11988 as amended by Executive Order 12148
  - Protection of Wetlands, Executive Order 11990
  - Farmland Protection Policy Act, Pub. L. 97-98
  - Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
  - National Historic Preservation Act of 1966, Pub. L. 89-665, as amended
  - Safe Drinking Water Act, Pub. L. 93-523, as amended
  - Wild and Scenic Rivers Act, Pub. L. 90-542, as amended
- Economic and Miscellaneous Authorities
- Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended, Executive Order 12372
  - Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grant, or Loans
  - Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended

- Debarment and Suspension, Executive Order 12549
  - Social Policy Authorities
- Age Discrimination Act of 1975, Pub. L. 94-135
- Title VI of the Civil Rights Act of 1964, Pub. L. 88-352
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act)
- Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)
- The Drug-Free Workplace Act of 1988, Pub. L. 100-690 (applies only to the capitalization grant recipient)
- Equal Employment Opportunity, Executive Order 11246
- Women's and Minority Business Enterprise, Executive Orders 11625, 12138, and 12432
- Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590
- Anti-Lobbying Provisions (40 CFR Part 30) [applies only to capitalization grant recipients]

The Applicant must agree to comply with the above mentioned Federal laws, executive orders and government-wide policies that apply to the Project and do the following:

- a. Ensure, to the fullest extent possible, that Minority and Women's Business Enterprise procurement requirements are achieved in all procurements for prime contractors, subcontractors, suppliers, and others. Ensure that the six affirmative steps are taken to assure compliance with the State's "fair share goals" in all procurements. The required language and instructions will be supplied by the Division of Drinking Water (Division).
  - i] Bid solicitations shall state that this is a federally funded project requiring compliance with the State's "fair share goals" and federal EEO regulations.
  - ii] The "Special Conditions" or "Supplemental Conditions" in the bid documents shall contain the language and instructions specifying the MBE and WBE procurement requirements, provided by the Division.
  - iii] The same bid documents shall also contain the federal EEO requirements.
- b. Completion and submittal to the Division of Drinking Water of the MBE/WBE utilization form 334 before loan closing for planning design services and two weeks after the end of each quarter during construction for construction services.
- c. Completion of EPA Form 4700-4, Pre-award Compliance Review Report and submittal to the Division of Drinking Water within 45 days before loan closing.
- d. Include the following certification in the bond resolution:

Mr. Fred Smolka

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January 3, 2001

*"The Issuer agrees, in accepting the proceeds of the Series \_\_\_\_\_ Bonds, to comply with all applicable state and federal regulations related to the Utah State Revolving Fund administered by the Drinking Water Board. These requirements include, but are not limited to, Title XIV of the Safe Drinking Water Act of 1996, OMB Circular A-133, the Utah Federal State Revolving Fund (SRF) Program (R309-705 of the Utah Administrative Code), the Utah Municipal Bond Act, the Utah Money Management Act, the Utah Procurement Code and the State of Utah Legal Compliance Audit Guide."*

13. The applicant shall submit a cash draw-down schedule prepared and certified by their consulting engineer to be a schedule which coincides with the rate at which construction related costs are expected to be incurred for the Project.
14. The applicant shall receive "firm commitments" from at least 57 (85%) of the 67 homeowners anticipated as participants under this project. This would include both the payment of the connection fee and a signed contract to pay water utility bills from each homeowner.
15. Provide acceptable evidence it owns sufficient water rights to serve at least 280 homes (213 homes and lots in EID and 67 homes outside of the District).
16. Document how it is organized, including an organizational chart and description of responsibilities.
17. Provide a water system operation plan satisfactory to the Division of Drinking Water, including operation and maintenance duties.
18. Find additional acceptable sources of drinking water. Demonstrate that together the new sources and the two existing wells will adequately serve at least 280 homes. The sources may be wells, springs, and/or extending another acceptable source of water to the service area. The District must also have Division approval of its "Preliminary Evaluation Report" (PER) for its sources.

In order to facilitate the timely completion of the financial assistance requirements outlined in this letter, the Applicant and its attorney and engineer should submit to the Division of Drinking Water all of the items listed in numbered paragraphs 2 through 18 above prior to seeking committal of funds from the Board and no later than 30 days before the bond closing, and the Applicant's bond attorney should submit to the Special Assistant Attorney General the items listed in subsection "b" of paragraph 1 on or before this date. As much as possible, this information should apply to the Project in general to allow a single review.

Mr. Fred Smolka

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January 3, 2001

These requirements must be completed on or before September 15, 2001. If the Applicant fails to reasonably comply with the Project schedule, the Authorization may be withdrawn in accordance with R309-705-7.

The Division of Drinking Water must be reimbursed for its expenses in preparing this loan and for those expenses administering the construction contract. The loan preparation expenses will be billed to the Applicant shortly after the loan closing. The contract administration costs will be billed to the Applicant periodically through the life of the construction contract. These costs are eligible project expenses. If the Applicant fails to close the loan after its authorization, the Applicant will also be billed for the Division's expenses.

These requirements will probably not cover all the matters pertaining to the Project. We anticipate that specific questions on matters relating to your Project will arise, and we are confident that a joint cooperative effort can resolve the issues.

If you have any questions concerning these requirements, please contact Michael Georgeson of the Division of Drinking Water.

Sincerely,

DRINKING WATER BOARD



Michael B. Georgeson  
Assistant Executive Secretary

KEW:kew

Enclosures:

cc: William Prater, Esq., William L. Prater, LLC, P.O. Box 71368, S.L.C., UT 84171  
Rick Wheadon, Carollo Engineers, 1935 E. Vine Street, Suite 200, Salt Lake City, UT 84121  
Shirl D. Clarke, Adm., P.C.I.B. Fund, Div. Comm. Dev., 324 So. State St. Suite 500 S.L.C., UT 84111  
Richard E. Walker, Adm., CDBG, Div. Comm. Dev., 324 So. State St. Suite 500 S.L.C., UT 84111  
John R. Cox, USDA, Rural Development, P.O. Box 11350, Room 4431, S.L.C., UT 84147  
Steven L. Wilde, Div. Water Resources, DNR, P.O. Box 146201, SLC, UT 84114

# Exhibit D

Emigration Improvement District

Page: 3  
October 31, 2002  
Client No: 8031-00M  
Statement No: 131035

General

	Hours		
10/28/02			
LTO telephone conference with D. Gee regarding changes to agreements;	0.20	40.00	<i>GEN</i>
10/29/02			
GHK Review information from Mr Rash; confer with Mr Hales regarding DWD staff issues; conference with Mr Hales, Mr Smolka, Mr Rash and Creamers concerning recommendation for smaller reservoir, economics of project and related issues.	3.00	555.00	<i>EXP</i>
10/30/02			
GHK Confer with Mr Smolka and evaluate proposal for Boyer funding of project and repayment.	0.20	37.00	<i>EXP</i>
GHK Review materials from Mr Rash; confer with Mr Smolka regarding Boyer Co funding.	0.25	46.25	<i>EXP</i>
LTO receipt and review of documents from D. Gee;	0.20	40.00	<i>GEN</i>
10/31/02			
GHK Review materials received from Mr Rash and reply; confer with Mr Smolka concerning meeting with DWD and use of funds; confer with Mr Owen concerning status of Boyer documents.	0.40	74.00	<i>GEN</i>
For Current Services Rendered	17.85	2,974.00	

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Total</u>
Langdon T. Owen, Jr.	2.70	\$200.00	\$540.00
Gerald H. Kinghorn	2.75	63.64	175.00
Gerald H. Kinghorn	12.15	185.00	2,247.75
Janelle Dannemueller	0.25	45.00	11.25

10/01/02 Photocopy expense.		4.00
10/01/02 Runner Service - Clyde Latta.	Special runner service to	15.00
10/03/02 Photocopy expense.		1.20

# Exhibit E



# EMIGRATION OAKS PROPERTY OWNERS ASSOCIATION

## BOARD OF TRUSTEES MEETING MINUTES

**February 19, 2013**

Emigration Canyon Fire Station

### **Call to Order:**

Roger Bird, President, called the meeting to order at 6:30 p.m. at the Emigration Canyon Fire Station.

**Roll Call-** A quorum was present with the following trustees in attendance:

Officers present: Roger Bird, President, Bob Staggers, Vice President, and Sue Bird, Secretary/Treasurer

Current Board Members Present: Kathy Christensen, John Davis, April Isani, Mike McHugh, and Richard Mosen.

Manager: Jack Christensen

### **Approval of Minutes**

Bob moved approval of the January 15, 2013 Board Meeting minutes. Unanimously approved.

### **Presidents Comments**

The Board reviewed the easement agreement with Steve Creamer. We discussed the wording of Lots and Dwellings to make sure that each dwelling (if the parcel is subdivided) would be subject to assessments. Each parcel is not considered a Lot until a grading permit is obtained and Lots are changed to Lots with a Living Unit once a building permit is obtained. They would also be subject to a security deposit or road impact fee when construction begins. Jack will send the Easement to Steve Creamer for review.

### **Property owner items and follow-up from earlier meetings**

EID Maintenance/Storage building- Roger met with Fred and Joe to review the plans and site of the proposed building near Well #1. Kathy also provided the architectural drawings of the building for our review. EID has asked for another easement from the EOPOA for a water line from the new proposed well in Upper Freeze Creek to the new storage building that will also house the chlorination building. This will eliminate the need for the easement previously granted for the chlorination building and pipeline to the storage tank that was proposed off of the spur road. After review it was decided that we would have the EID modify the previous easement to include the new water line and eliminate the separate chlorination building and water line up to the storage tank.

EID has scheduled a public meeting for March 14, 2013 to discuss and approve the bond issuance, water rates and fees. This meeting will also provide the public with information on the proposed storage building. Jack will send a notice to all of the property owners so that they are aware of the meeting.

### **Financial and Manager's report**

We reviewed the accounts receivables. There are only 2 property owners that have yet to pay. Both have been turned over to our attorney for collections. These property owners are responsible for all legal fees that result in the collection.

### **Committee Reports**

#### **Architecture**

Mike has received inquiry from a few property owners in regards to a few new projects. He referred them to our Architect.

#### **CC&R's**

The recent tagging of garbage cans appears to have been very successful at obtaining better compliance for getting the cans put away promptly. We decided to continue to tag the cans for a few more weeks. April and Bob will divide up the streets. Since Jack's last notice to the property owners on the dogs, it appears that we have not had any recent complaints or issues with dogs chasing the deer or roaming off leash.

#### **Roads**

Troy is continuing to work, as time permits, to fill in some of the deep road edges.

#### **Safety**

Kathy reported that she will be giving a class on the use of goats for fire mitigation at a Firewise conference this fall. Kathy is starting to prepare for Fire Day but has not scheduled a date. The county will pay for chipping again this year.

#### **Security**

John is still working on the map and designated Block Captains for each area. They want to continue with the Block Captains specifically to notify neighbors in the event of an emergency if communications are shut off. John will work on the emergency procedures. and will present these for discussion at our next meeting. These will include what to do in the event of different issues such as, a fire, power loss, and etc. Jack will add the Block Captain information to our new website.

#### **Snow Removal**

The area around most of the fire hydrants has been cleared. It was reported that several large piles of salt were left after the last storm. We need to report the location of these to Jack so that he can have our snow removal contractor clean these up.

#### **Unfinished Business**

Website-Jack has been very busy getting the new website up. He has imported a great deal of information and provided us with a demo. He has included a few photos, a calendar of up-coming events, the directory, the financials, board meeting minutes, Policies and Procedures and the Governing documents. There is also a Welcoming section that includes links for additional information. The residents will be able to update their current information as well as add their photo. There are different authority levels so that Jack and the board members can up-load information and keep it current.

Jack said he would have it ready to go live within a few weeks and will provide the board members with a link so that we can review and test the site.

**Community News from ECCC, EID, and other Township meetings**

The County has been working on bank erosion and flood control on the stream along the main canyon road. Some of the property owners are very upset saying they are causing considerable damage in the process while others are very happy with the project.

The County is also starting to enforce the cleanup from property owners that have septic tanks that are causing contamination of the stream.

Stabilization of the roadsides will continue in the spring. They will be planting to prevent continued erosion of the hillsides.

**Action Items**

John will work on a list of expectations for the Block Captains and present to the Board next month.

Roger will talk to Fred about modifying the previously granted easement to include the new waterline and take out the free standing chlorination building and waterline to the storage tank.

April and Bob will continue to tag garbage cans for another month.

Jack will send out notice of the EID public meeting on the Bond.

Jack will also send notice to solicit new board members.

**Adjournment:** 9:05 pm

**Next Scheduled Meeting:** Tuesday, March 19, 2013, 6:30 pm at the Fire Station.

**Minutes prepared by:** Susan Bird, Secretary/Treasurer

# Exhibit B



State of Utah

Department of  
Environmental Quality

Dianne R. Nielson, Ph.D.  
*Executive Director*

DIVISION OF DRINKING WATER  
Kevin W. Brown, P.E.  
*Director*

OLENE WALKER  
*Governor*

GAYLE F. McKEACHNIE  
*Lieutenant Governor*

September 29, 2004

**PAYMENT REQUEST FOR CONSTRUCTION OF SRF PROJECT**

Borrower: **Emigration Improvement District, Utah**

SRF Project Number: **3F011**

Pay Request No.: **Final Payment Request (#6)**

Amount of Requested Payment: **\$188,650.10**

Attached is the final Pay Request (#6) for the Emigration Improvement District project. This payment request is broken down as shown in the attached Exhibit B-3 Payment Schedule. The Emigration Improvement District has certified that the invoices agree with the amount of construction work, engineering services, management and legal fees, and miscellaneous purchases. I have reviewed this payment request and concur with the payment amount equaling the remaining funds for this project. According to Division of Drinking Water (DDW) records, there is approximately \$131,000 available for this project. The remaining fund in this project, after this pay request is paid, is \$ 0.00.

**Release all remaining funds (including retainage transfer) from DDW Escrow Account to Emigration Improvement District Escrow Account for the Emigration Improvement District project.**

Retainage:

**Release all retainage held to Emigration Improvement District.**

Ying-Ying Luo Macauley, P.E.  
Environmental Engineer

09/29/2004  
Date

F:\SRF\Applicants\EmmigrationID\ImmigrationIDPayRequest6.doc