

# Emigration Improvement District (EID) vs. Mark C. Tracy's Allegations

September 21, 2015

## To Emigration Canyon residents:

The Emigration Improvement District (EID) has received numerous inquiries from Canyon residents regarding the lawsuit filed by Mark Christopher Tracy against the District and various individuals associated with EID. Like us, you may have first read about the allegations in an article by Brian Maffly that was published in the Salt Lake Tribune titled "We Don't Need Your Water."

The District has not previously issued a formal response to the allegations in the lawsuit, and some residents have construed EID's silence regarding the allegations as an admission of guilt. Quite the opposite is true. EID is extremely confident that the allegations in the lawsuit are completely meritless and that EID will prevail in the lawsuit. However, EID is a public entity that is paid for by you and other residents in the Canyon, and the primary concern of EID's board of trustees is to protect your assets and minimize the financial impact of the lawsuit on the District. Therefore, EID has reluctantly refrained from formally responding to the allegations in order to minimize Mr. Tracy's opportunities to use EID's response to delay resolution of the lawsuit, thereby increasing the cost of litigation. The lawsuit has now progressed to the point that EID's silence is no longer a strategic advantage, and EID would like to set the record straight.

The lawsuit was filed under a federal law called the False Claims Act, which allows an individual to sue on behalf of the federal government to recover money that was fraudulently obtained from the federal government. If successful, the person bringing the lawsuit is entitled to a portion of any recovery and the remainder is paid to the federal government. Thus, the lawsuit was not brought by the federal government, and the federal government has denied the opportunity to intervene in the lawsuit to date.

Although it is difficult to make sense of Mr. Tracy's allegations, Mr. Tracy's primary theory appears to be that in or about 2001, EID, together with EID's current and former trustees and managers, and multiple professional consultants and engineering firms, conspired with Steve Creamer, Larry, Siv and Charles Gillmor, and David Nuescheler to defraud the federal government as part of a loan from the Utah Division of Drinking (which utilized federally-backed grant money) by overbuilding EID's water system to enable large scale development in the Canyon. Mr. Tracy alleges that the scheme has increased the commercial value of property owned by EID (which is of course owned by all residents in the Canyon since EID is a public entity), Mr. Creamer, the Gillmors and Mr. Nuescheler in excess of **\$500,000,000.00**. Although the District is certainly proud of the District's public water system and the District thinks that all property owners in the Canyon benefit from a reliable public water system and robust fire protection in the Canyon, the assertion that property owned by those individuals has increase in value by half a billion dollars is obviously absurd. Moreover, if the District's 2002 loan was just an elaborate scheme to enable large scale development in Emigration Canyon, it was the most poorly executed scheme in history. Apart from the Emigration Place (which uses Salt Lake City water), no significant new developments have been constructed in the Canyon in the last 13 years, and EID has not received any requests for water service for future large scale developments. In fact, the opposite is true. Unlike Mr. Tracy, who is not a long time Canyon resident, EID's trustees and the other parties that are accused of this scheme have been in support of and instrumental in efforts to preserve open space and limit development in the canyon for years.

Mr. Tracy also alleges that on January 3, 2001, the Utah Division of Drinking Water (DDW) issued a commitment of funds letter that required EID to comply with the Clean Water Act as part of the \$1,400,000 loan EID obtained from DDW to fund the drilling of the Brigham Fork well and construction of EID's one million gallon storage tank. Tracy alleges that EID violated the Clean Water Act, and therefore EID is liable to the federal government for damages caused by EID's breach of the bond requirements. EID did not violate the Clean Water Act. In fact, EID recently obtained a \$60,000 grant from the Utah Division of Water Quality (which is responsible for enforcing the Clean Water Act in Utah), to conduct a pilot program to address possible contamination in Emigration Creek.

Likewise, although the inaccuracies in the lawsuit would take pages to fully rebut, the following are a few examples of the many clear inaccurate facts. Mr. Tracy claims that EID has borrowed \$6,306,000 of federally-backed funds. In fact, of the three loans EID has obtained since 2002, only one involved federal funds. The other two loans were through the Utah Division of Water Resources and did not involve any federal funds. Mr. Tracy alleges EID purchased an easement from Salt Lake City for \$14,500 to build a one million gallon storage tank, but EID never recorded the easement and instead built a two million gallon storage tank on property owned by Steve Creamer. The storage tank is in fact one million gallons, and was built on the easement purchased from SLC, which easement is recorded as Entry No. 7994211. Mr. Tracy alleges EID obtained its primary water right in 1988 from the Emigration Dam and Ditch Company. EID actually obtained the water rights in 1975 from the Utah Department of Transportation. Mr. Tracy alleges that no hydrological data or study supported the placement of EID's new Upper Freeze Creek Well, which was drilled in 2014. In fact, EID has spent years studying the geology in the Canyon to determine the best possible location for future wells, and to date, the Upper Freeze Creek Well has performed far better than anyone could have imagined. Thus, although it is unclear where Mr. Tracy is obtaining his information, it is clear that the information is simply not accurate.

We offer one more as further evidence of the lack of seriousness it conveys. Mr. Tracy alleges the District installed an 8-inch supply line to the Skycrest Community in order to provide water to potentially 17 homes with four fire hydrants placed within 2 and 20 feet of Spring Glen Water Company fire hydrants. Mr. Tracy claims the 8" supply line far exceeds the capacity needed for 17 homes, and it was installed for the future development of a large 130 acre parcel located at the top of Skycrest Lane. The District did install an 8" water line to the Skycrest Community, partly to service current and future subscribers and partly to provide adequate fire flow. An 8" water line is necessary to meet the current fire flow code requirements (1500 gallons per minute for two hours at 20 psi). Recognizing that the Spring Glen system was insufficient to meet code (a 60,000 gallon tank with a recharge of 35 gpm), the Trustees decided to place EID fire hydrants there. As for the Gilmore property, you should know that Bob and Franci not only have no plans to develop their 42.5 acres (not 130 acres, as Mr. Tracy alleges), they have discussed establishing a conservatorship to preclude its future development. All these facts could have been easily verified, but obviously were not.

Finally, some of you may have heard that EID has budgeted \$40,000 to defend EID's current and former trustees who were individually named in the lawsuit. This is not true. In order to defend the District in the lawsuit, EID recently increased the 2015 budget for attorney's fees from \$15,000 to \$55,000. Obviously, due to EID's limited budget, EID would have definitely preferred to utilize this money for improvements in EID's system to benefit residents. Like all public employees, EID is required by Utah law to defend the trustees against any claims for actions brought against them in their official capacity. However, to date, EID has not filed any additional motions or taken any additional action to defend the trustees that EID would not have taken to defend EID and EID's assets.

In summary, Mr. Tracy, and any other individuals that funded or supported the lawsuit, brought the action against EID for their own political and financial gain at significant expense to the taxpayers in Emigration Canyon. Accordingly, we hope all residents will take the time to review the allegations and assist EID in its continued efforts to dispose of the lawsuit without EID being required to spend even more of your money. For more details regarding the lawsuit, EID activities, meetings, questions, and documentation, please visit EID's website ([www.ECID.org](http://www.ECID.org)) or contact the District Manager or any of the Trustees.

Sincerely,

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