

ORDER ON PETITION FOR CONSISTENCY REVIEW

DIVISION RECORD NO: 22-1027

DATE OF DIVISION DECISION: October 27, 2022

DATE OF DIVISION RECEIPT OF PETITION: November 16, 2022

DATE OF EXECUTIVE DIRECTOR'S RECEIPT OF PETITION: November 22, 2022

DATE OF THIS ORDER: December 12, 2022

INTRODUCTION

In November 2017, Lake Restoration Solutions, Inc. ("LRS")¹ filed an application for a land exchange ("Application") with the Division of Forestry, Fire & State Lands ("the Division"). A four-page attachment to the application described a proposed Utah Lake Comprehensive Restoration Project ("Project") that included dredging Utah Lake to create artificial islands, some of which LRS proposed for private sale to help pay for costs associated with the Project.

On October 27, 2022, the Division issued a Record of Decision ("ROD") cancelling LRS's Application and finding the Division was "precluded from recommending disposal of the[] lands" because the creation of almost 18,000 acres of new islands within a navigable water body like Utah Lake "amounts to a per se impermissible infringement of the public's right to access the entirety of Utah Lake" and permanent fee simple disposal of part of those sovereign lands, thus depriving current and future generations of their use, "would be a gross infringement of the public trust[.]"² The Division accordingly determined "cancellation of the pending applications is both appropriate and required."³

On November 16, 2022, LRS filed a timely Petition for Consistency Review ("Petition") with the Division and, after reviewing the Application to ensure it was complete, the Division forwarded the Petition to me on November 22, 2022. The Division filed a Response to the Petition for Consistency Review on December 1, 2022, and LRS filed a Reply to the Division's Response on December 8, 2022.

¹ While LRS's initial application was filed by LRS, Inc., the administrative record asserts (and LRS's Petition for Consistency Review does not dispute) that subsequent communications with the Division of Forestry, Fire & State Lands was made through representatives of both LRS, Inc. and another organization, LRS, LLC. LRS's Petition for Consistency Review states this is result of a subsequent company name change but the ROD finds the application was never amended to reflect that change. *See* ROD at 16 n.14. This Order does not resolve this issue, however, where the reasoning and decision set out in the Division's Record of Decision, and the reasoning and decision set out in this Order, are applicable regardless of whether the application belongs to LRS, Inc. or LRS, LLC.

² *See* ROD at 15-16.

³ *See id.* at 1.

After reviewing the Record of Decision, the Petition, the Division's Response to the Petition, and LRS's Reply to the Division's Response, and as more fully set out in the below Order, I find the Division's decision is consistent with applicable Division statutes and rules. Contrary to the arguments LRS asserts in its Petition, I find the Division correctly applied Utah law in considering the Application and further find the Division did not err in not analyzing certain factors set out in Utah Administrative Code R652-80-200(2) and Utah Code § 65A-15-201. And I further find that the Division correctly interpreted and applied the public trust doctrine and, pursuant to that interpretation and analysis, determined it could not recommend disposal or exchange of the bed of Utah Lake and, thus, that LRS's application must be cancelled.

DESIGNATION OF STATUTE OR RULE PERMITTING OR REQUIRING REVIEW

As the Executive Director of the Department of Natural Resources, I review this petition pursuant to Utah Code § 65A-1-4(4), which provides “[a]n aggrieved party to a final action by the director may appeal that action to the executive director of the Department of Natural Resources within 20 days after the action” and that “[t]he [E]xecutive [D]irector shall rule on the director's action within 20 days after receipt of the appeal[,]” and also under Utah Administrative Code R652-9-1, which “establishes the procedure through which any party aggrieved by a [D]ivision action [...] may petition the [E]xecutive [D]irector of [DNR] to review the action for consistency with statutes, rules, and [D]ivision policy pursuant to [Utah Code section] [...] 65-1-4([4]).”⁴

STATEMENT OF ISSUES REVIEWED

Consistent with the issues identified in the Petition, I review the following two issues in this Order:

⁴ Utah Administrative Code R652-9-300(4) provides that, among other things, a petition shall set out “the injury realized by the party that is specific to the party arising from the [D]ivision action” and that, “[i]f the injury identified by the petition is not peculiar to the petitioner as a result of the [D]ivision action, the director will decline to undertake consistency review.” Consistent with this requirement, LRS's petition contains a paragraph that states the Division's cancellation of the Application has resulted in an Environmental Impact Statement process to be put “on hold,” thus causing “material financial harm to LRS[,]” and further asserts that the deterioration of certain relationships LRS now enjoys may result in further financial harm. While these may not be the types of injury with which consistency review is concerned (and instead the cancellation of the application could be the “injury” that allows for consistency review under Utah Code § 65A-1-4(4)), because these alleged injuries may be peculiar to LRS as anticipated under R652-9-300(4), the rule does not preclude review of the Petition. This should not, however, be interpreted as any type of finding that LRS's alleged injuries would be cognizable at law. *See* ROD Conclusion of Law ¶ 7 (“[u]ntil a [D]ivision executed instrument of conveyance, lease, permit, or right is delivered or mailed to the successful applicant, applications for the purchase, exchanges or use of sovereign lands or resources shall not convey or rest the applicant with any rights.”). Nor should it be construed as a finding as to the veracity of LRS's claims given the Petition fails to set out any evidentiary detail supporting the alleged injuries.

Issue No. 1: Did the Division improperly cancel the Application without analyzing the factors set forth in Utah Administrative Code R652-80-200(2) and Utah Code § 65A-15-201?

Issue No. 2: Did the Division improperly cancel the Application based on Utah's public trust doctrine?

FINDINGS OF FACT⁵

I. Findings of Fact as to Issue No. 1

1. On November 13, 2017, the Division received an application for a land exchange from Lake Restoration Solutions, Inc. Accompanying the LRS Application was a four-page document that cites to [House Concurrent Resolution 26, H. Con. Res. 26, 62d Leg., Gen. Sess., 2017 Utah], identifies concerns with Utah Lake, and describes the "Utah Lake Comprehensive Restoration Project" proposal to restore Utah Lake through dredging the lake and creating one or more islands. The four-page document states, "[s]ome of the new real-estate will remain open to the public while a portion will be exchanged to generate revenues to help pay for the costs of restoration activities."⁶

2. On September 28, 2022, the Division received a document, by email, entitled "First Supplement to Exchange Application Dated November 13, 2017[.]" The following day, September 29, 2022, the Division met with agents of and legal counsel for LRS, LLC, at which time a copy of the same document was hand delivered to the Division, the First Supplement was discussed, and issues with the Application were discussed.⁷

3. Utah law mandates "[t]he [D]ivision is the management authority for sovereign lands, and may exchange, sell, or lease sovereign lands but only in the quantities and for the purposes as serve the public interest and do not interfere with the public trust."⁸

4. House Concurrent Resolution 26 became effective on March 22, 2017 [and] addresses challenges facing Utah Lake (algal blooms, loss of native vegetation, invasive fish and plant species, loss of littoral zones, suspended silt on the lake bottom and reduced water clarity), and states a "comprehensive and extensive restoration investment" is needed to address the issues, and urges acceleration of comprehensive solutions to restore Utah Lake and improve its water quality.⁹

⁵ The Petition does not dispute any of the Record of Decision's factual findings and instead asserts only that many of those findings are irrelevant to the disposition of LRS's Application. Given this lack of dispute, and because many of the facts set out in the Petition are similar to factual findings set out in the Record of Decision, this Order presents facts in substantially the same format as they appear in the Record of Decision.

⁶ ROD Findings of Fact ¶ 2; Petition Factual Background ¶¶ 1-2.

⁷ ROD Findings of Fact ¶ 34, Petition Factual Background ¶ 9.

⁸ Utah Code Ann. § 65A-10-1(1).

⁹ ROD Findings of Fact ¶ 1.

5. During the 2018 General Session of the Utah Legislature, H.B. 272, 26th Leg., Gen. Sess., “Utah Lake Restoration Act,” was enacted (codified as Utah Code §§ 65A-15-101 to - 202). The Utah Lake Restoration Act became effective on May 8, 2018. The Act provides for the disposal of appropriately available state land in and around Utah lake as compensation for the comprehensive restoration of Utah Lake under a restoration proposal if the Division finds the restoration project will enhance an exhaustive list of public benefits.¹⁰

6. During the 2022 General Session of the Utah Legislature, H.B. 240, “Utah Lake Amendments,” amended the Utah Lake Restoration Act (H.B. 272). H.B. 240 became effective on May 4, 2022.¹¹

II. Findings of Fact as to Issue No. 2

1. On November 13, 2017, the Division received an application for a land exchange from Lake Restoration Solutions, Inc. Accompanying the LRS Application is a four-page document that cites to HCR 26, identifies concerns with Utah Lake, and describes the “Utah Lake Comprehensive Restoration Project” proposal to restore Utah Lake through dredging the lake and creating one or more islands. The four-page document states, “[s]ome of the new real-estate will remain open to the public while a portion will be exchanged to generate revenues to help pay for the costs of restoration activities.”¹²

2. In January 2018, the Division received a 252-page proposal, titled “Utah Lake Restoration Project Proposal” from LRS, Inc. The Division did not receive any other proposals.¹³

3. The Division accepted LRS, Inc.'s Application and Proposal on May 2, 2018 via a letter sent to Mr. [Ben] Parker. This letter explicitly states the acceptance of the LRS Proposal “in no way constitutes an endorsement of the project, nor a guarantee that an exchange and/or lease will occur.”¹⁴

4. Throughout 2017 and 2022, the Division received meeting requests from Ryan Benson, Jon Benson, and/or Mr. [Jeff] Hartley. The Division met with at least one of these individuals on multiple occasions to receive status updates on the Utah Lake Restoration Project.¹⁵

5. On January 6, 2022, LRS, LLC submitted an application to the U.S. Army Corps of Engineers for the Utah Lake Restoration Project proposing to dredge Utah Lake and create artificial islands out of the dredged material.¹⁶

¹⁰ *Id.* ¶ 11.

¹¹ *Id.* ¶ 28.

¹² *Id.* ¶ 2; Petition Factual Background ¶¶ 1-2.

¹³ ROD Findings of Fact ¶ 8.

¹⁴ *Id.* ¶ 10.

¹⁵ *Id.* ¶ 17.

¹⁶ *Id.* ¶ 20; Petition Factual Background ¶ 6.

6. The LRS Proposal received by the Division contemplates the dredging of 998,787,742 cubic yards of lakebed material and using the material to create one or more islands in the lake. Of the newly formed land, the LRS Proposal suggests more than 10,200 acres will be held for “public access and conservation.”¹⁷

7. The LRS Corps Application proposes to hydraulically or mechanically dredge 62,400 acres of lakebed to an average increased depth of 7 feet. The LRS Corps Application states the dredging will remove an estimated 957,710,915 cubic yards of dredged material which will be placed into 34 constructed containment areas, or “islands,” totaling 17,988.56 acres of islands. Of that acreage, 15,927.30 acres are to be “development islands.” 2,062 acres of islands are proposed as “recreation” or “estuary” islands.”¹⁸

8. The LRS Corps Application states development islands provide the funding mechanism to enable the proposed ecosystem restoration and enhancement. The islands will be developed for single-family and multi-family residential use, including attainable housing, commercial/retail, mixed use, amusement/hospitality, public/institutional, cultural, recreation, and open space land uses.¹⁹

9. On September 28, 2022, the Division received a document, by email, entitled “First Supplement to Exchange Application Dated November 13, 2017[.]” The following day, September 29, 2022, the Division met with agents of and legal counsel for LRS, LLC, at which time a copy of the same document was hand delivered to the Division, the First Supplement was discussed, and issues with the Application were discussed.²⁰

10. In October of 2022, LRS, LLC requested the [Army] Corps temporarily pause their permit request and the Corps’ review of the LRS Corps Application while LRS, LLC compiles supporting documentation, materials, and studies.²¹

11. On October 25, 2022, the Division received a document, via email, entitled “Second Supplement to Exchange Application Dated October 24, 2022.” Assistant Attorneys General met with attorneys representing LRS, LLC the day before this submission explaining the ROD was forthcoming and generally discussing the legal underpinnings requiring issuance of the ROD.²²

¹⁷ *Id.* ¶ 23.

¹⁸ *Id.* ¶ 24.

¹⁹ *Id.* ¶ 25.

²⁰ *Id.* ¶ 34.

²¹ *Id.* ¶ 35.

²² *Id.* ¶ 36; Petition Factual Background ¶ 10

CONCLUSIONS OF LAW²³

I. Conclusions of Law as to Issue No. 1

1. The LRS Application is in the form of an “exchange application.” Sovereign land exchanges must be in the best interest of the public trust as documented in a record of decision by the division.²⁴

2. LRS's Application is subject to the administrative rules governing application evaluation and processing.²⁵

3. In order for a restoration proposal to be “comprehensive” as required by the [Utah Lake Restoration] Act, the following public benefits must be “enhanced” as a result:

- i. restoring the clarity and quality of the water in Utah Lake;
- ii. conserving water resources in and around Utah Lake;
- iii. preserving the water storage and water supply functions of Utah Lake;
- iv. removing invasive plant and animal species, including phragmites and carp, from Utah Lake;
- v. restoring littoral zone and other plant communities in and around Utah Lake
- vi. restoring and conserving native fish and other aquatic species in Utah Lake, including Bonneville cutthroat trout and June Sucker;
- vii. increasing the suitability of Utah Lake and its surrounding areas for shorebirds, waterfowl, and other avian species;
- viii. improving navigability of Utah Lake;
- ix. maximizing, enhancing, and ensuring recreational access and opportunities on Utah Lake;
- x. preserving current water rights related to water associated with Utah Lake;
- xi. otherwise improving the use of Utah Lake for residents and visitors;
- xii. substantially accommodating an existing use on land in or around Utah Lake; and
- xiii. providing any other benefits identified by the division.²⁶

4. The list of public benefits that are required to be “enhanced” is conjunctive: each of the above identified public benefits must be enhanced in order for the restoration to be considered comprehensive.²⁷

²³ Because as explained in this Order I find the Division’s decision is consistent with Utah law, the Order recites the below conclusions of law in substantially the same format as they are set out in the Record of Decision.

²⁴ ROD Conclusions of Law ¶ 1.

²⁵ *Id.* ¶ 5

²⁶ *Id.* ¶ 39.

²⁷ *Id.* ¶ 40.

5. The Act specifies that “[t]he Legislature and governor may, through the adoption of a concurrent resolution, authorize the disposal of state land in and around Utah Lake as compensation for the comprehensive restoration of Utah Lake under a restoration proposal if: the division recommends the disposal as provided in Subsection (1); and the Legislature and governor make a determination, in a concurrent resolution adopted under this Subsection, that: the restoration project will accomplish the objectives listed in Subsection (1)(a); and the disposal is a fiscally sound and fair method of providing for the comprehensive restoration of Utah Lake; and constitutionally sound and legal.”²⁸

6. The Act requires the Division to report to the Natural Resources, Agricultural and Environment Interim Committee regarding the “standards, criteria, and thresholds” to specifically define the restoration objectives of the designated public benefits and whether the disposal is a fiscally sound and fair method of providing for the comprehensive restoration of Utah Lake; and whether the disposal is constitutionally sound and legal.²⁹

II. Conclusions of Law as to Issue No. 1 and Issue No. 2³⁰

1. “Sovereign lands” refers to those lands lying below the ordinary high-water mark of navigable bodies of water at the date of statehood and owned by the state by virtue of its sovereignty.³¹

2. The Legislature has delegated the management of sovereign lands to the Division.³²

3. Utah law in effect at the time of the application filing and thereafter states the Division is the “management authority for sovereign lands” and directs it “may exchange [or] sell” sovereign lands, such as those underlying Utah Lake, “only in the quantities and for the purposes as serve the public interest.” This statute also states the Division “may” exchange or sell lands where they “do not interfere with the public trust” and directs the Division to make a determination regarding land quantities, the public interest, and the public trust as the management authority for sovereign lands.³³

4. All applications for lease, sale, or exchange shall be subject to cancellation by the division prior to execution if in the best interest of the beneficiaries of that land.³⁴

5. Utah Lake is a navigable water body and title to the bed of Utah Lake passed to the state of Utah upon its admission into the Union by virtue of the equal footing doctrine.³⁵

²⁸ *Id.* ¶ 41.

²⁹ *Id.* ¶ 42.

³⁰ Because the following Conclusions of Law are applicable to both Issue No. 1 and Issue No. 2 the Order recites the following facts only once in an effort to avoid duplication.

³¹ ROD Conclusions of Law ¶ 2.

³² *Id.* ¶ 3.

³³ Utah Code §65A-10-1(1)

³⁴ ROD Conclusions of Law ¶ 8.

³⁵ *Id.* ¶ 9.

6. Because all States [admitted to the Union after the original thirteen] enter on an "equal footing" with the original thirteen States, they too hold title to the land under navigable waters within their boundaries upon entry into the Union.³⁶

7. On January 4, 1896, Utah entered the Union with the Utah Enabling Act of July 16, 1894, which provided that Utah was to be "admitted into the Union on an equal footing with the original States."³⁷

8. Utah's Constitution provides:

All lands of the State that have been, or may hereafter be granted to the State by Congress, and all lands acquired by gift, grant or devise, from any person or Corporation, or that may otherwise be acquired, are hereby accepted, and, except as provided in Section 2 of this Article 7, are declared to be the public lands of the State; and shall be held in trust for the people, to be disposed of as may be provided by law, for the respective purposes for which they have been or may be granted, donated, devised or otherwise acquired.³⁸

9. The Utah Supreme Court has provided specific guidance in determining whether state lands are protected by Article XX, Sec. 1 of the Utah Constitution and whether a contemplated "disposal" of state lands would run afoul of the constitutional protections afforded.³⁹

10. In determining whether the bed of Utah Lake is a real property interest protected by Article XX, and concurrently, and in determining whether a statutory scheme impacting that real property interest passes constitutional muster, the Utah Supreme Court has enunciated the following test:

(1) Is the real property at issue an "interest in land" and/or "lands of the state" protected by Article XX?; (2) if so, does the contemplated "disposal" trigger the protections of the public trust doctrine enshrined in the Utah Constitution?; (3) if the "disposal" does trigger the public trust doctrine, an independent identification of the scope of the State's public trust duties under *Illinois Central v. Illinois* [146 U.S. 387 (1892),] is required; and (4) was the real property interest "acquired" and "accepted" by the State in a manner that would qualify under the terms of Article XX?⁴⁰

11. *Illinois Central* is the lodestar in determining the scope of the public trust component of Article XX of the Utah Constitution. In interpreting the phrase "and shall be held in trust for the people," the Utah Supreme Court opined, "[a]s a decision handed down just three

³⁶ *Id.* ¶ 14.

³⁷ *Id.* ¶ 15.

³⁸ *Id.* ¶ 16.

³⁹ *Id.* ¶ 17.

⁴⁰ *Id.* ¶ 18.

years before the ratification of the Utah Constitution, we think that *Illinois Central* may help inform the search for the historical understanding of the public trust principles embedded in the Utah Constitution.”⁴¹

12. Of the various classifications of public lands, the beds of navigable lakes and rivers are categorically the most legally protected. Further elaborating on the unique character of these lands, the United States Supreme Court pronounced[:]

[t]hat the state holds the title to the lands under the navigable waters of Lake Michigan, within its limits, in the same manner that the state holds title to soils under tide water, by the common law, we have already shown; and that title necessarily carries with it control over the waters above them, whenever the lands are subjected to use. But it is a title different in character from that which the state holds in lands intended for sale. It is different from the title which the United States hold in the public lands which are open to pre-emption and sale. It is a title held in trust for the people of the state, that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, freed from the obstruction or interference of private parties.⁴²

13. The State of Utah's public trust responsibilities over sovereign lands includes the fiduciary obligation to prevent obstruction or interference of public navigation and/or access on and/or over navigable water bodies.⁴³

14. *Illinois Central* set forth a standard for assessing the propriety of a disposition of public land under the common law public trust doctrine. And it made reference to certain dispositions of property that may constitute a “valid exercise of legislative power consistent with the trust to the public.”⁴⁴

15. As interpreted by the Utah Supreme Court, “[t]hose permissible dispositions included 'grants of parcels of land under navigable waters that may afford foundation for wharves, piers, docks, and other structures in aid of commerce, and grants of parcels which, being occupied, do not substantially impair the public interest in the lands and waters remaining.’”⁴⁵

16. While dispositions of property for “the erection of wharves, docks, and piers” would be consistent with the public trust, the “abdication of the general control of the state over lands under the navigable waters of an entire harbor or bar, or of a sea or lake” would be impermissible.⁴⁶

⁴¹ *Id.* ¶ 19.

⁴² *Id.* ¶ 20.

⁴³ *Id.* ¶ 21.

⁴⁴ *Id.* ¶ 22.

⁴⁵ *Id.* ¶ 23.

⁴⁶ *Id.* ¶ 24.

17. According to the Utah Supreme Court, “the latter sort of disposition seemingly is viewed as a gross infringement of the public trust doctrine. And that kind of disposition—of restriction of public access to an entire waterway or significant portions thereof—seems to be presented as a classic infringement of the public trust.”⁴⁷

18. Unless the disposition is adjacent or upland of navigable waters, or the disposition is for the erection of “wharves, docks, and piers,” fee simple disposition of sovereign land is impermissible. “The control of the state for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interest of the public therein, or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining.”⁴⁸

19. “The trust devolving upon the state for the public, and which can only be discharged by the management and control of property in which the public has an interest, cannot be relinquished by a transfer of the property.”⁴⁹

20. “The control of the state for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining.”⁵⁰

21. “The state can no more abdicate its trust over property in which the whole people are interested, like navigable waters and soils under them, so as to leave them entirely under the use and control of private parties, [...] than it can abdicate its police powers in the administration of government and the preservation of peace.”⁵¹

22. “So with trusts connected with public property, or property of a special character, like lands under navigable waters; they cannot be placed entirely beyond the direction and control of the state.”⁵²

23. In administering sovereign lands, the state, through the division, acts as a trustee.⁵³

24. “All trustees owe fiduciary duties to the beneficiaries of the trust. The duty of loyalty requires a trustee to act only for the benefit of the beneficiaries and to exercise prudence and skill in administering the trust. These are legally binding duties, enforceable by those with a sufficient interest in [sovereign lands] to have standing.”⁵⁴

⁴⁷ *Id.* ¶ 25.

⁴⁸ *Id.* ¶ 26.

⁴⁹ *Id.* ¶ 27.

⁵⁰ *Id.* ¶ 28.

⁵¹ *Id.* ¶ 29.

⁵² *Id.* ¶ 30.

⁵³ *Id.* ¶ 31.

⁵⁴ *Id.* ¶ 32.

25. The Utah Supreme Court has made it clear the value of school trust lands cannot be used to further other legitimate governmental objectives, even if there is some indirect benefit to the public schools. [...] By logical extension, the same principle applies to sovereign lands.⁵⁵

26. Trust obligations take priority and must first be met before consideration can be given to other incidental benefits that serve other legitimate governmental objectives or other multiple use-sustained yield principles.⁵⁶

27. The Utah Legislature has essentially codified *Illinois Central* in directing when the division can dispose of sovereign lands: “[t]he Division is the management authority for sovereign lands, and may exchange, sell, or lease sovereign lands but only in the quantities and for the purposes as serve the public interest and do not interfere with the public trust.”⁵⁷

28. Based on continuing ecological concerns over Utah Lake, the Legislature enacted legislation—the Utah Lake Restoration Act—to seek solutions for the comprehensive ecological and environmental restoration of Utah Lake.⁵⁸

29. Among the legislative findings the Legislature made in enacting the [Utah Lake Restoration] Act, the Legislature found: “it is in the interest of the state to undertake a comprehensive restoration of Utah Lake for the benefit of the public trust uses on the lake.”⁵⁹

30. Accordingly, the [Utah Lake Restoration] Act provides: “[t]he division may recommend the disposal of appropriately available state land in and around Utah Lake as compensation for the comprehensive restoration of Utah Lake under a restoration proposal if the division find that the restoration project enhance[s] [the proscribed] public benefits.”⁶⁰

31. If sovereign lands are to be disposed, the language in the enabling legislation needs to be clear and unequivocal.⁶¹

32. In line with the foregoing legal principles, I conclude the Division correctly determine[d] the [Utah Lake Restoration] Act does not contain the requisite intent language authorizing the scale of sovereign land disposition proposed by the LRS Application and Proposal. Even if the requisite intent language were apparent, the proposed dispositions would be found to violate the public trust doctrine and the Utah Constitution by the Utah courts.⁶²

⁵⁵ *Id.* ¶ 33.

⁵⁶ *Id.* ¶ 34.

⁵⁷ *Id.* ¶ 35.

⁵⁸ *Id.* ¶ 36.

⁵⁹ *Id.* ¶ 37.

⁶⁰ *Id.* ¶ 38.

⁶¹ *Id.* ¶ 44.

⁶² *See id.*

REASONS FOR DISPOSITION

The Utah Legislature has explicitly designated the Division as the “management authority for [Utah’s] sovereign lands [...]”⁶³ Pursuant to this mandate, the Legislature has instructed the Division that it may dispose of sovereign land only when it is “appropriately available”⁶⁴ and only where disposal is for the quantities and purposes “as would serve the public interest and [...] not interfere with the public trust.”⁶⁵

In this case, I find the Division appropriately evaluated the application under its public trust responsibilities and, pursuant to Utah law, correctly concluded the Application did not propose an exchange of appropriately available lands and that, as a result, analysis of factors set out in R652-80-200(2) and Utah Code § 65A-15-201 were not required by Utah statutes or rules. I further find that the Division correctly determined the proposal violated Utah’s public trust doctrine because it would not serve the public interest and would interfere with the public trust. Accordingly, I find the Division’s decision as set out in the Record of Decision is consistent with Utah law.

I. The Division Did Not Improperly Fail to Analyze the Factors Set Out in Utah Administrative Code R652-80-200(2) and Utah Code § 65A-15-201(1) and (2)

The Record of Decision properly analyzed Utah law and correctly applied it to the exchange application and the Division was not required to apply the factors set out in Utah Administrative Code R652-80-200(2) and Utah Code § 65A-15-201.

A. The Division Is Required to Analyze the Application Under All Applicable Provisions of Utah Law

Utah law recognizes that the Legislature may empower administrative agencies like the Division with regulatory authority over areas in which they have expertise.⁶⁶ While empowerment does not provide an agency with discretion to substitute its own legal opinions in lieu of the statutes’ requirements, it does provide agencies with the mandate “to administer portions of the code.”⁶⁷ This distinction is important because, on the one hand, an agency must apply the law as

⁶³ Utah Code Ann. § 65A-10-1(1); *Friends of Great Salt Lake v. Utah Dep’t of Nat. Res.*, 2017 UT 15, ¶ 7 n.5, 393 P.3d 291 (“The division is the management authority for sovereign lands, and may exchange, sell, or lease sovereign lands but only in the quantities and for the purposes as serve the public interest and do not interfere with the public trust.” (quoting Utah Code Ann. § 65A-10-1(1))).

⁶⁴ See *id.* § 65A-15-201(1)(a) (“The division may recommend the disposal of *appropriately available* state land in and around Utah Lake [...]” (emphasis added)).

⁶⁵ *Id.* § 65A-10-1(1).

⁶⁶ See Findings of Fact as to Issue No. 1 ¶ 3; Conclusions of Law as to Issue No. 1 and No. 2 ¶¶ 2-3; see also, e.g., *Utah Chapter of the Sierra Club v. Bd. of Oil, Gas, & Min.*, 2012 UT 73, ¶ 10, 289 P.3d 558 (“The Legislature has given the Board explicit authority and wide latitude in interpreting the operative provisions of the Mining Act.”).

⁶⁷ See *Murray v. Utah Lab. Comm’n*, 2013 UT 38, ¶ 29, 308 P.3d 461 (quoting *Belnorth Petroleum Corp. v. State Tax Comm’n of Utah*, 845 P.2d 266, 268 n.5 (Utah Ct. App. 1993)).

the Legislature intended while, on the other hand, it must interpret the law such that it can effectively apply it in areas over which the Legislature has instructed it to act.

The Petition misunderstands this distinction and, in doing so, does not recognize the Division's duty to consider the Application in accordance with provisions of Utah law other than R652-80-200(2) and Utah Code § 65A-15-201. And it further does not recognize that the Legislature has explicitly provided the Division with the discretion to make statutory determinations.⁶⁸

The Record of Decision correctly acknowledges that the Legislature has delegated the power and authority to manage sovereign lands to the Division through statute.⁶⁹ This delegation is recognized in multiple sections of the Utah code. In Utah Code § 65A-10-1, the Legislature charges the Division with "management authority for sovereign lands" with the power to "exchange [...] sovereign lands[,] but only to the extent (regarding quantities and purposes) such exchanges "serve the public interest and do not interfere with the public trust." Similar to and in line with this delegation of authority, the Legislature has provided the Division with the discretion to "recommend the disposal of appropriately available state land in and around Utah Lake [...]"⁷⁰ These statutory grants of authority are in line with Article XX, Section 1 of the Utah Constitution's mandates that sovereign lands "shall be held in trust for the people, to be disposed of as may be provided by law, for the respective purposes for which they have been or may be granted, donated, devised or otherwise acquired."

Taken together, these statutory and constitutional provisions set the boundaries of the Division's authority to dispose of sovereign lands. And because these provisions limit disposal only to appropriately available lands and in instances that serve the public and do not interfere with the public trust, LRS's Application can only be approved if the exchange satisfies conditions in line with these limitations.

B. LRS's Proposed Exchange is Contrary to Utah Law

LRS contends that the Division improperly cancelled the Application because it "failed to comply with its own regulations and the Utah Code."⁷¹ This contention is incorrect because it does not fully realize the Division's duty to consider all law applicable to the Division's consideration of the Application.

⁶⁸ See *Ellis-Hall Consultants v. Pub. Serv. Comm'n*, 2016 UT 34, ¶ 26, 379 P.3d 1270 (noting that "deference to agencies is limited to circumstances prescribed by statute [...] such as] when [...] the Legislature directs an agency to engage in [discretionary] decisionmaking." (third alteration in original) (quoting *Hughes Gen. Contractors, Inc. v. Utah Lab. Comm'n*, 2014 UT 3, ¶ 25 n.4, 322 P.3d 712)).

⁶⁹ See ROD at 1; see also Utah Code Ann. § 65A-10-1 ("The Division is the management authority for sovereign lands [...]").

⁷⁰ Utah Code Ann. § 65A-15-201(1)(a).

⁷¹ Petition at 4.

As set out in the Record of Decision, the Division concludes the Application must be cancelled because the land proposed for exchange is not “appropriately available” for disposal under Utah Code § 65A-15-201(1)(a).⁷² The Division bases this conclusion on the fact that the only land proposed for exchange is dredged lakebed land, nearly 16,000 acres of which would ultimately be conveyed via fee simple title into private hands.⁷³ “[I]nterpret[ing] the identified Utah authority on state trust lands[,]” the Division concludes that such a disposal would “violate[] the primary purpose of the trust protecting the subject trust land” and, as a result, would make any incidental public benefits inconsequential.⁷⁴

This reasoning is not only sound, it is also consistent with Utah law. In cancelling the Application, the Division correctly applied provisions of the law the Legislature has explicitly instructed it to apply and, in doing so, found that the land proposed for exchange was not appropriately available given its disposal would violate the public trust doctrine. This decision falls squarely within the Division’s duty, as the manager of Utah’s sovereign lands, to ensure exchanges are approved only where disposals do not interfere with the public trust.

Despite this, the Petition contends the Division should have considered factors set forth in R652-80-200(2) and § 65A-15-201(1) and (2) in deciding the Application. But, as discussed above, this contention too narrowly construes the Division’s task in considering exchange applications.

While LRS is correct that R652-80-200(2) provides the Division “shall address” certain provisions when considering exchange applications, it incorrectly interprets this to mean the Division must consider these provisions in every instance. Instead, the public trust strictures outlined in Section 65A-10-1, and reiterated in R652-80-200(2), must be understood as a condition precedent to examining the application under subsequent requirements. LRS’s interpretation abrogates the agency’s statutory mandate and the wording of R652-80-200(2) that “[s]overeign land exchanges must be in the best interest of the public trust.” Given the Division’s determination that the Application’s proposed exchange is not in the best interest of the public trust, application of the remaining R652-80-200(2) factors would run contrary to well-settled principles of statutory interpretation requiring statutes be read as a whole and “in accordance with the[ir] legislative intent and purpose.”⁷⁵ The Division accordingly did not sidestep its duty to apply the law when it declined to apply the R652-80-200(2) factors; rather, it properly recognized application of the factors was unnecessary when the Application could not be approved because it did not propose an exchange that is in the best interest of the public trust.

⁷² See ROD at 16-17.

⁷³ See *id.* at 17.

⁷⁴ See *id.* at 18.

⁷⁵ *Mariemont Corp. v. White City Water Imp. Dist.*, 958 P.2d 222, 225 (Utah 1998) (quoting *Beynon v. St. George–Dixie Lodge # 1743*, 854 P.2d 513, 518 (Utah 1993)); see also *Jensen v. Intermountain Health Care, Inc.*, 679 P.2d 903, 906 (Utah 1984) (“The meaning of a part of an act should harmonize with the purpose of the whole act. Separate parts of an act should not be construed in isolation from the rest of the act.”); *Matter of Childers-Gray*, 2021 UT 13, ¶ 48, 487 P.3d 96 (noting courts interpret statutes by harmonizing their “provisions in accordance with the legislative intent and purpose”).

Likewise, LRS's reading ignores the immediately preceding rule provision that states the Division can only "exchange sovereign land for land or other assets."⁷⁶ The Record of Decision is clear the Application did not propose any exchange of sovereign lands for *any* other land and the Petition does not dispute this point, instead asserting only that the Division did not "analyze[] how the Project would *affect* the value of the *affected* lands or other assets, how it would increase and enhance commerce, navigation, wildlife habitat, public recreation or other public trust values or how it *affects* management costs and opportunities."⁷⁷ While it is true the Record of Decision does not analyze these potential effects or benefits, the Petition fails to establish or even assert that such effects constitute the "lands or other assets" requisite to a land exchange and thus predicate to the Division's consideration of the R652-80-200(2) factors. Accordingly, the Division was not positioned such that it could exchange the sovereign lands at issue, thus rendering the R652-80-200(2) factors inapplicable to the Division's analysis in this instance.⁷⁸

Similarly, the Petition does not recognize the Division can only apply the § 65A-15-201 factors where "appropriately available" land is the subject of the proposed exchange.⁷⁹ This recognition is evidenced by the text of the statute itself, which provides the Division "*may* recommend disposal of *appropriately available* state land."⁸⁰ This discretionary language demonstrates the legislature's recognition that the Division must initially consider whether the land is "appropriately available." The factors set out in the remainder of the statute are only applicable to the extent the condition precedent in section 65A-15-201(1)(a) is satisfied and the land is "appropriately available." Here, the Division determined the land was not appropriately available and therefore did not apply the remaining conditional factors. A contrary reading of this mandate would have the effect of requiring the Division to apply a set of factors that, regardless of their application, could never transform the lakebed into "appropriately available state land." Such a reading fails to consider other sections of the statute applicable to the Division's role as manager of Utah's sovereign lands—and in doing so fails to give effect to the Legislature's intent.

The Petition characterizes the omissions of this analysis not as an exercise of the Division's statutory duty but instead as the Division "don[ning] its judicial robes" and "masquerading as a judge and final arbiter." This argument once again misses the mark because, as discussed above, the factors in § 65A-15-201 are not the only law applicable to the Division's consideration of the application and thus cannot be read in a vacuum. In doing so, the argument also fails to recognize that, in considering the full scope of legal authority applicable to review of the Application, the Division is doing precisely what LRS contends it should do; specifically, "stay[ing] in its lane" by considering and applying *all* law the Legislature has explicitly charged the Division with

⁷⁶ See Utah Admin. Code R652-80-200(1).

⁷⁷ See Petition at 5 (emphasis added).

⁷⁸ See ROD at 17 ("The LRS Application and Proposals do not identify any "state land" that would be utilized other the bed of Utah Lake.").

⁷⁹ See Utah Code Ann. § 65A-15-201(1)(a) ("The division may recommend the disposal of appropriately available state land in and around Utah Lake as compensation for the comprehensive restoration of Utah Lake under a restoration proposal if the division finds that the restoration project will enhance the following public benefits [...]").

⁸⁰ Utah Code § 65A-15-20(1)(a) (emphasis added).

administering.⁸¹ Far from electing to “forego[] [the consideration of] factors [that] are specifically targeted at whether the subject lands may be conveyed consistent with the public trust doctrine,” or rendering portions of the statute superfluous, such an application harmonizes the various statutes in a way consistent with the Legislature’s delegation of the Division as the entity charged with administering Utah’s sovereign lands.⁸²

II. The Division Did Not Improperly Cancel the Application based on Utah’s Public Trust Doctrine

The Division correctly interpreted the public trust doctrine based on well-established precedent and Utah law and determined the doctrine requires the Application’s cancellation.

A. The Division’s Interpretation and Application of the Public Trust Doctrine is Consistent with Utah Law

As a navigable body of water, the title to Utah Lake passed to the State of Utah under the equal footing doctrine when Utah entered the Union in 1896.⁸³ By virtue of the fact these lands passed to Utah under the equal footing doctrine when Utah entered the Union, the lands are subject to Article XX, Section 1 of the Utah Constitution, which provides:

⁸¹ See ROD at 17-18 (finding that adverse impacts to the public trust protecting sovereign lands must be considered before any public interest benefits because, “if a contemplated disposal violates the primary purpose of the trust protecting the public lands in the first instance, then an evaluation of any resulting incidental public benefits would be irrelevant and/or inconsequential in the final analysis.”).

⁸² See Petition at 6. The Petition also argues the Legislature did not give the Division “discretion as to the standards under which it must analyze the Application[,]” asserting instead that the law gives that discretion solely to the Legislature and the governor. See *id.* at 7; see also § 65A-15-201(3) (providing the Legislature and the governor “may [...] authorize the disposal of state land in and around Utah lake [...] if [...] the [D]ivision recommends the disposal [...] and [...] the disposal is [...] constitutionally sound and legal.” (emphasis added)). This argument ignores the plain language of § 65A-15-201(3), which provides the Division must make a recommendation for disposal *in conjunction* with any action by the Legislature and the governor—a recommendation that could not happen here given there are no appropriately available lands for disposal. And it also ignores the fact that the Legislature has charged the Division with just this type of discretion, such as under Utah Code §65A-10-1(1). See pp. 12-16 *supra*. In other words, while § 65A-15-201(3)’s broad mandate to the Legislature and governor does anticipate an additional layer of review to ensure any Division recommendation is constitutionally and legal sound, this statute gives no indication that this additional check and balance in any way alters, let alone abrogates, the Division’s duty to perform similar analyses the Legislature has statutorily directed it to undertake. If anything, it punctuates the Legislature’s concern that both the executive and legislative branches may make determinations that any disposal is consistent with Utah law and the Utah Constitution.

⁸³ See Conclusions of Law as to Issues No. 1 and No. 2 ¶¶ 5-7.

All lands of the State that have been, or may hereafter be granted to the State by Congress, and all lands acquired by gift, grant or devise, from any person or Corporation, or that may otherwise be acquired, are hereby accepted, and [...] are declared to be the public lands of the State; and shall be held in trust for the people, to be disposed of as may be provided by law, for the respective purposes for which they have been or may be granted, donated, devised or otherwise acquired.⁸⁴

The Division recognized the Utah case applicable to the analysis required here is the 2019 case *Utah Stream Access Coalition v. VR Acquisitions, LLC*, 2019 UT 7, 439 P.3d 593.⁸⁵ And it also correctly recognized the *Utah Stream Access Coalition* decision is guided in large part by the public trust compass revealed in *Illinois Central Railroad Company v. State of Illinois*, 146 U.S. 387 (1892).⁸⁶

Under *Illinois Central*, the lakebed of Utah Lake is “held in trust for the people of [Utah], that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, freed from the obstruction or interference of private parties.”⁸⁷ And while certain dispositions of land are consistent with maintenance of these trust obligations, “abdication of the general control of [Utah] over lands under navigable water of an entire harbor or bar, or of a sea or lake” is impermissible.⁸⁸ Instead, only those dispositions that “do not substantially impair the public interest in the lands and waters remaining” after disposition are consistent with Utah’s public trust obligations.⁸⁹

Applying the principles found in Article XX, Section 1 of the Utah Constitution and elucidated in *Illinois Central*, the Division correctly recognized the four-part inquiry the Utah Supreme Court identified as applicable to determining whether a proposed disposition of trust lands is consistent with the Utah Constitution:

(1) Is the real property at issue an “interest in land” and/or “lands of the state” protected by Article XX?; (2) if so, does the contemplated “disposal” trigger the protections of the public trust doctrine enshrined in the Utah Constitution?; (3) if the “disposal” does trigger the public trust doctrine, an independent identification of the scope of the State’s public trust duties under *Illinois Central v. Illinois* is required; and (4) was the real property interest “acquired” and “accepted” by the State in a manner that would qualify under the terms of Article XX?⁹⁰

And the Division then correctly determined that the project proposed in the Application does not pass muster under this inquiry.

⁸⁴ See *id.* ¶¶ 7-8.

⁸⁵ See *id.* ¶ 9.

⁸⁶ See *id.* ¶¶ 10-11.

⁸⁷ See *id.* ¶ 12.

⁸⁸ See *id.* ¶ 16 (quoting *Illinois Central*, 146 U.S. at 452).

⁸⁹ See *id.* ¶ 15 (quoting *Illinois Central*, 146 U.S. at 452-53).

⁹⁰ See *id.* ¶ 10.

As to the first part, the Division correctly determined this element is satisfied because “Utah Lake is a navigable water body and title to the [lakebed] passed to Utah” under the equal footing doctrine upon the State’s admission to the Union.⁹¹ As to the second part, the Division correctly determined the Application triggered the protections afforded by Article XX, Section 1 given the project would result in disposal of sovereign land through “a permanent alienation and/or sale or transfer of fee title to [that] land [...]”⁹² As to the third part, the Division again correctly determined that, under *Illinois Central*, the “creation of artificial islands, particularly islands that will be disposed of by the State into private ownership,” would impede the public’s access to the entirety of Utah Lake, and impairment to the public’s interest in the lands and waters remaining, and that the permanent disposition of nearly 16,000 acres of lakebed land would far exceed the narrow categories of disposition allowed under *Illinois Central* and “would [thus] be a gross infringement of the public trust doctrine.”⁹³ And finally, the Division correctly determined the fourth part is met where the State both acquired and accepted title to the lakebed.⁹⁴

B. The Public Trust Doctrine Requires the Application’s Cancellation

Under the principles applicable to disposition of Utah’s sovereign lands, the Division correctly concluded LRS’s proposed project cannot be carried out consistent with Utah law and that the Application should accordingly be cancelled. As set out in the Record of Decision, Utah acquired and accepted title to the bed of Utah Lake and the creation of artificial islands using this lakebed land would be a “per se infringement of the public’s right to unimpeded access to the entirety of Utah Lake” and would “substantially impair the public interest in the lands and waters remaining.”⁹⁵ Further, the permanent disposition of “15,927.30 acres (62,400 dredged acres) of sovereign land for the development of artificial islands in Utah Lake would be a gross infringement of the public trust doctrine.”⁹⁶ Accordingly, I find the Division’s conclusion that “[t]he scale and scope of the [...] Application is far in excess of serving any incidental public interest” is consistent with Utah law and that, as a result, the application must be cancelled.⁹⁷

In so finding, I recognize the Petition takes the position that, because no Utah court has ever explicitly set out a “rule or test for when the state can lawfully convey public lands under Utah’s public trust doctrine,” the Division erred in applying *Illinois Central*.⁹⁸ But this argument is not persuasive because, as the Division explains in the Record of Decision, the Utah Supreme Court’s decision in *Utah Stream Access Coalition* thoroughly examined the case and indicated the scope of Utah’s public trust doctrine would likely be analyzed through the lens of *Illinois Central* and the Petition does not argue otherwise.⁹⁹ I therefore find that, contrary to LRS’s assertions that

⁹¹ See ROD at 18-19.

⁹² See *id.* at 19.

⁹³ See *id.* at 19-20.

⁹⁴ See *id.* at 21.

⁹⁵ See *id.* at 19-21.

⁹⁶ See *id.* at 20.

⁹⁷ See *id.* at 22.

⁹⁸ Petition at 9.

⁹⁹ See *Utah Stream Access Coal.*, 2019 UT 7. The Utah Supreme Court’s final disposition in *Utah Stream Access Coalition* did not turn on *Illinois Central*’s public trust analysis because the court

the Division's application of *Illinois Central* constitutes a "guess as to how the Utah courts would interpret Article XX, § 1" the Division's actions, analysis, and application of the public trust doctrine are consistent with its mandate to determine whether the quantities and purposes of a disposal complies with the public trust, are consistent with Utah law, and thus were not arbitrary.¹⁰⁰

The Petition then moves on to argue that, if *Illinois Central* does apply, it supports approval of the Application. Acknowledging *Utah Stream Access Coalition* "set[s] forth the appropriate standard" applicable to "assessing the propriety of a disposition of public land under the common law public trust doctrine," the Petition argues the standard is met in this case because:

the Project will enhance the public's use and enjoyment of the property, help the public navigate Utah Lake, improve commerce thereon, preserve valuable and scarce water resources, and increase fishing opportunities.¹⁰¹

The Petition states that the islands, created from dredged lakebed material, will promote water flow and protect boats from winds, will "create miles of publicly accessible shoreline[.]" will deepen the lake to allow the use of larger vessels for commerce, and will restore the lake to a healthy state.¹⁰² These benefits, the Petition concludes, "enhance the public's use and enjoyment of the property" and, as a result, are consistent with the public trust doctrine. In essence, LRS argues that the disposal of state sovereign land is beside the point where it proposes to enhance the remaining water and land. However, although the enhancements may benefit future generations (assuming the project were successful), the public trust *is* the point at issue. The proposed enhancements cannot appropriately compensate current and future generations for the permanent impairment to the land and water remaining and the permanent deprivation of thousands of acres of state sovereign land. The Division correctly determined that this impairment and deprivation did not comply with the public interest or public trust.¹⁰³

found the lower court had erred by failing to make certain factual determinations pertaining to the scope of the state's interest in the land at issue. *See id.* 2019 UT 7, ¶ 90 ("That question [related to the acquisition of a public easement] was not resolved by the district court and it is not adequately presented for our disposition on appeal. We therefore reverse and remand to allow the parties to present further argument and analysis of this question to the district court in the first instance.").

¹⁰⁰ *See* Petition at 9-10.

¹⁰¹ *See* Petition at 9.

¹⁰² *See id.*

¹⁰³ A significant portion of the Petition also argues that the Division gets the public trust doctrine wrong because it neglects to take into account various environmental benefits LRS contends the project will serve to advance. *See id.* 9-10. But, again, this argument avoids the fact that environmental benefits alone can only be relevant to the Division's consideration to the extent the project itself can be completed in a manner consistent with the public trust doctrine. In other words, no potential environmental benefit—regardless of how beneficial it may turn out to be—can serve to alleviate the fatal and fundamental conclusion that LRS's application violates Utah's public trust doctrine. *See* ROD at 17 ("Sovereign lands are public lands protected by a trust and the trust must be fully protected irrespective of any claimed and/or resulting public interest benefits.").

I accordingly find the Division's reasoning on these points to be both persuasive and consistent with Utah law. As set out in the Record of Decision, any purported benefits must be measured against the limitations imposed by the public trust doctrine, specifically those that restrict fee simple disposal of sovereign lands and dispositions that would impair the public's interest in the land and waters remaining. In this case, the benefits the Petition identified do not change the fact the LRS's proposal would result in the fee simple sale of nearly 16,000 acres of sovereign land into private hands and, at the same time, significantly and permanently alter and limit the navigation of and interest in Utah Lake the public now enjoys. Because both of these outcomes would amount to a "gross interference and infringement of the public trust," the Division correctly determined the Application must be cancelled.¹⁰⁴

EFFECT ON AGENCY DECISION

Based on the foregoing, because it is consistent with applicable statutes and rules the Division's October 27, 2022 Record of Decision cancelling LRS's exchange application is **AFFIRMED** in its entirety. No portion of the adjudicative proceeding is remanded.

JUDICIAL REVIEW AVAILABLE

The Utah District Courts have jurisdiction to review informal adjudicative proceedings by trial de novo.¹⁰⁵ Venue for any petition for judicial review shall be "in the county where [LRS] resides or maintains [its] principal place of business."¹⁰⁶ A petition for judicial review:

shall be a complaint governed by the Utah Rules of Civil Procedure and shall include:

- (i) the name and mailing address of the party seeking judicial review;
- (ii) the name and mailing address of the respondent agency;
- (iii) the title and date of the final agency action to be reviewed, together with a copy, summary, or brief description of the agency action;
- (iv) identification of the persons who were parties in the informal adjudicative proceedings that led to the agency action;
- (v) a copy of the written agency order from the informal proceeding;
- (vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review;
- (vii) a request for relief, specifying the type and extent of relief requested; and
- (viii) a statement of the reasons why the petitioner is entitled to relief.¹⁰⁷

¹⁰⁴ See ROD at 22.

¹⁰⁵ See Utah Code Ann. § 63G-4-402.

¹⁰⁶ See *id.* § 63G-4-402(1)(b).

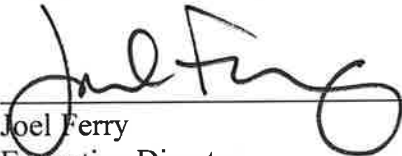
¹⁰⁷ See *id.* § 63G-4-402(2)(a).

“The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in [the Administrative Procedures Act, Utah Code § 63G-4-101 *et seq.*]”¹⁰⁸

TIME PERIODS APPLICABLE TO JUDICIAL REVIEW

Any petition for judicial review must be filed with the Utah District Court within thirty (30) days of the date of this Order.¹⁰⁹

DATED this 12th day of December, 2022.



Joel Ferry
Executive Director
Department of Natural Resources

Approved as to Form and Content:

SEAN D. REYES
Utah Attorney General



S. Shane Stroud
Assistant Attorney General

¹⁰⁸ See *id.* § 63G-4-401(3)(b).

¹⁰⁹ See *id.* § 63G-4-401(3)(a).

CERTIFICATE OF MAILING

I certify that on December 12, 2022, I caused to be mailed a true and correct copy of the foregoing Order on Petition for Consistency Review via U.S. First Class Mail, postage prepaid, to each of the following:

Utah Division of Forestry, Fire & State Lands
Attn: Director
1594 West North Temple St., Suite 3520
Salt Lake City, Utah 84116

Lake Restoration Solutions-Utah LLC
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Renee Fasbender

Legal Secretary

Utah Attorney General's Office, Natural Resources Division