



State of Utah

SPENCER J. COX  
Governor

DEIDRE M. HENDERSON  
Lieutenant Governor

Department of Natural Resources  
Division of Forestry, Fire & State Lands

JOEL FERRY  
*Executive Director*

JAMIE BARNES  
*Director/State Forester*

JASON CURRY  
*Deputy Director*

November 22, 2022

Director Joel Ferry  
Executive Director  
Utah Department of Natural Resources

Director Ferry,

On October 27, 2022, the Division of Forestry, Fire & State Lands (“FFSL”) issued a Record of Decision (“ROD”) canceling a pending application submitted by Lake Restoration Solutions, Inc. and/or Lake Restorations Solutions, LLC (“LRS”). The legal authority supporting FFSL’s decision is contained in the ROD. FFSL also provided in the ROD the legal authority referencing the next procedural processes if LRS elected to pursue its administrative remedies.

On November 16, 2022, LRS timely submitted a “Petition for Consistency Review” (“Petition”) to FFSL. Upon receipt of the Petition, the undersigned is tasked with the following:

The director shall review the petition form as soon as reasonably possible to assure completeness and, upon determination that the petition is complete, shall promptly forward the petition to the executive director.

Utah Admin. Code R652-9-400(2).

In order to determine whether the Petition is complete, the undersigned utilized Utah Admin. Code R652-9-300 as guidance. That rule specifies what is required to be contained in the Petition. Specifically,

The petition shall state:

1. the statute, rule, or policy with which the division action is alleged to be inconsistent;
2. the nature of the inconsistency of the division action with the statute, rule, or policy;
3. the action the petitioner feels would be consistent under the circumstances with statute, rule, or policy; and
4. the injury realized by the party that is specific to the party arising from division action. If the injury identified by the petition is not peculiar to the petitioner as a result of the division action, the director will decline to undertake consistency review.

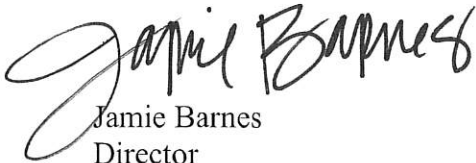
Utah Admin. Code R652-9-300.



After reviewing the Petition, I have determined the Petition satisfies the above-referenced requirements subject to the reservation of rights contained herein. Pursuant to Utah Admin. Code R652-9-400, I am forwarding the Petition (attached) to you.

Although the Petition, on its face, satisfies the criteria required under the above-referenced rules, FFSL reserves, and expressly does not waive, the right to assert any and all arguments (factual, legal, administrative, equitable, etc.) regarding any of the assertions and/or arguments in the Petition.

Sincerely,



Jamie Barnes  
Director  
Forestry, Fire & State Lands



## PETITION FOR CONSISTENCY REVIEW

November 16, 2022

Jamie Barnes  
Director  
Utah Division of Forestry, Fire & State Lands  
1594 West North Temple, Suite 3520  
Salt Lake City, UT 84116

Re: *Petition for Consistency Review of the Record of Decision issued by the Utah Division of Forestry, Fire & State Lands on October 27, 2022 under Record No. 22-1027 pursuant to Utah Admin. Code R652-9-200*

Dear Ms. Barnes:

On March 22, 2017, the Utah Legislature issued House Concurrent Resolution 26, H. Con. Res. 26, 62d Leg., Gen. Sess., 2017 Utah, dated March 22, 2017 (the “Resolution”), which directed and encouraged state agencies to work to restore Utah Lake. Indeed, the Resolution expressly instructs this Agency to pursue “all reasonably available solutions to accelerate comprehensive and lasting restoration of Utah Lake.” *See* Resolution, at 57–60.

The Utah Lake Restoration Act (the “Act”), codified as Utah Code §§ 65A-15-101 to -202, further evidences the legislature’s intent to restore Utah Lake. The Act recites the legislature’s findings that restoration of Utah Lake requires “additional and significant conservation investments” and “there is not a reasonable public funding source to undertake the comprehensive solutions needed to restore Utah Lake.” Utah Code § 65A-15-103(3)–(4). Recognizing that the problems with Utah Lake are too large to be resolved through public funding, the Act provides a framework for restoring the lake through private investment.

On November 13, 2017, Lake Restoration Solutions, LLC, a Delaware limited liability company (“LRS”)<sup>1</sup> submitted an exchange application (as supplemented and supported by additional documentation, the “Application”)<sup>2</sup> together with a comprehensive restoration plan to

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<sup>1</sup> At the time the Application was submitted, LRS was known as Lake Restoration Solutions, Inc., a Delaware corporation. Since the time the Application was submitted, LRS’s corporate structure has been modified consistent with law. On September 15, 2020, LRS’s name was changed to Lake Restoration Solutions, LLC, a Delaware limited liability company. A Delaware certificate of good standing is attached hereto as Exhibit A, and a Utah certificate of existence is attached hereto as Exhibit B. The Utah Division of Corporations regulates companies doing business in Utah by statute, and all other relevant documentation showing LRS’s ability to do business in the state is on file with that division.

<sup>2</sup> The ROD questions the completeness of the Application, however representatives of the Division have regularly communicated and represented to LRS that the application process is an iterative one and that the Application could

restore Utah Lake through dredging and creating islands (the “Project”). The Division accepted the Application on May 2, 2018. The Project and the Application fit squarely within the vision and ideals that the Resolution expressed and recognize the reality that “restoration of Utah Lake will require tremendous financial and infrastructure investments to implement the comprehensive solutions needed.” Similarly, the Project is exactly what the legislature intended under the Act.

Over the past several years, LRS has worked closely with Utah’s Division of Forestry, Fire and State Lands (the “Division”) to refine the Application and Project and to implement the Resolution. Unfortunately, on October 27, 2022, the Division cancelled the Application and entered its Record of Decision (“ROD”) concluding that cancelling the Application was appropriate and required by Utah law. In doing so, the Division violated its own regulations and Utah law. Moreover, the Division based its decision on a fundamental misunderstanding of Utah’s public trust doctrine. Accordingly, LRS respectfully submits this Petition for Consistency Review (“Petition”) requesting that the Executive Director of Utah’s Department of Natural Resources (the “Executive Director”) review the Division’s action pursuant to Utah Admin. Code Rule 652-9 *et. seq.*

Pursuant to Utah Admin. Code Rule 652-9-400, please promptly forward this Petition to the Executive Director.

### **QUESTIONS PRESENTED**

1. Did the Division improperly cancel the Application without analyzing the factors set forth in Utah Admin. Code R652-80-200(2) and Utah Code § 65A-15-201?
2. Did the Division improperly cancel the Application based on Utah’s public trust doctrine?

### **FACTUAL BACKGROUND<sup>3</sup>**

1. On November 13, 2017, LRS submitted the Application that contains a description of the Project.

2. The Application and Project propose restoring Utah Lake by dredging the lakebed to deepen the lake and using the dredged material to create several islands located throughout the lake. Some of these islands would be developable and will generate revenues to help pay for the restoration costs. However, much of the land on the developable or “community” islands and

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be supplemented and supported by additional scientific data acquired through the Corps’s (defined below) permitting and EIS (defined below) processes. LRS has relied on these representations from the Division. LRS does not understand why the Division is now cancelling the Application before the public permitting process is complete. <sup>3</sup> The ROD’s Findings of Fact are largely irrelevant to the issues herein. For example, many of the ROD’s findings discuss LRS’s corporate structuring, restructuring, and officers, that are completely irrelevant to the ROD’s conclusions of law and analysis. As such, LRS has not addressed them herein, but reserves the right to do so should such facts become relevant at a later date.

nearly all the shoreline on those islands will be publicly accessible. All remaining islands and the entirety of the lake and shorelines will also be publicly accessible.

3. On January 18, 2018, LRS submitted a more complete explanation of its proposed Project in a document entitled Utah Lake Restoration Project – Proposal.

4. On May 2, 2018, the Division accepted the Application.

5. Since the Application was submitted, representatives of LRS have collaborated with agencies and stakeholders including many within the Department of Natural Resources and the Division in the form of meetings, information sharing, brainstorming, and review of plans and concepts. For example, representatives of LRS presented to the Department of Natural Resources on three separate occasions in January 2019 to discuss water quality, engineering and technical issues, and recreation and wildlife.

6. In reliance on the Division’s acceptance of the Application, LRS requested a permit (“Corps Permit Application”) from the United States Army Corps of Engineers (“Corps”) in early January 2022 to analyze key aspects of the Project.

7. In connection with the Corps Permit Application, and in order to provide the Division with sufficient scientific support for the key elements of the Application, LRS also initiated the process of obtaining an Environmental Impact Statement (“EIS”) from the Corps.

8. The Corps started the process required by federal law to determine the appropriate contents of the EIS, and LRS intends to use the data derived from the EIS process to further supplement the Application.

9. On September 28, 2022, LRS submitted to the Division that certain First Supplement to Exchange Application Dated November 13, 2017, in which LRS clarified certain information and requested that the Division prepare the recommendations for standards, criteria, and thresholds as required by Utah Code § 65A-15-201(4)(a).

10. On October 25, 2022, LRS submitted to the Division that certain Second Supplement to Exchange Application Dated November 13, 2017, in which LRS provided additional information and scientific data in support of the Project’s ability to conserve water resources in and around Utah Lake.

11. Since the Division accepted the Application in 2018, LRS has invested millions of dollars into scientific research, engineering, and design to better understand the problems facing Utah Lake, develop potential solutions, and inform both the Application and the Corps Permit Application.

## ANALYSIS

Utah Admin. Code R652-9-500 requires that the Executive Director review this Petition and determine whether the Division's actions were "reasonably consistent with the applicable statutes and rules . . ." If the Division failed to follow the applicable statutes and rules, the Executive Director should modify or rescind the Division's actions. *See* Utah Admin. Code R652-9-500(4).

The Executive Director should rescind the Application's cancellation because the Division: (1) failed to comply with its own rules and other statutory requirements, and (2) fundamentally misunderstands Utah's public trust doctrine. The Executive Director should require the Division to comply with the statutorily required procedural process in assessing the Application.

### **1. The Division Failed to Comply with its Own Rules and Other Statutory Requirements.**

Utah law has long recognized that a state agency must follow its own regulations as regulations "cannot be ignored or followed by the agency to suit its own purposes." *Utah Dep't of Cmty. Affairs v. Merit Sys. Council*, 614 P.2d 1259, 1263 (Utah 1980). An agency's failure to follow its own regulations "is the essence of arbitrary and capricious action" and is grounds alone for rescinding an agency's decision. *See R.O.A. General, Inc., v. Utah Dep't of Transp.*, 966 P.3d 840, 842 (Utah 1998). Similarly, an agency is required to comply with state statutes. *John Kuhni & Sons Inc. v. Labor Comm'n, Occupational Safety and Health Div.*, 2018 UT App 6, ¶ 20, 414 P.3d 952 (concluding that a state agency must comply with statutorily required notice provisions).

The Division failed to comply with its own regulations and the Utah Code. Such failure warrants a rescission of the Application's cancellation.

#### **A. The Division Failed to Analyze the Application Under the Factors in Utah Admin. Code R652-80-200(2)**

When analyzing an exchange application, the Division must assess whether the exchange is "in the best interest of the public trust as documented in a record of decision by the division." Utah Admin. Code R652-80-200(2). The record of decision shall address:

- (a) the value of the affected lands or other assets as determined by a certified general appraiser, county tax assessment records, market analysis conducted by the division, or other method approved by the director;
- (b) an assessment of the degree to which the exchange of sovereign land for land or other assets to be acquired may enhance commerce, navigation, wildlife habitat, public recreation, or other public trust value;

- (c) management costs and opportunities; and
- (d) the criterion that the exchange promotes the interest of the public without any substantial impairment of the public interest in the lands and waters remaining. *Id.*

Here, the ROD is devoid of any analysis for factors (a)–(c) under R652-80-200(2). At no point has the Division analyzed 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 value, or how it affects management costs and opportunities. Instead—and contrary to the Division’s own regulations—the ROD myopically focused on the last factor and concluded that the exchange is not in the public’s interest. The Division was required to analyze the Application holistically under each factor in R652-80-200(2). Its failure to do so is arbitrary, capricious and contrary to law. The Executive Director should remand and require the Division to analyze the Application under all of the R652-80-200(2) factors.

**B. The Division Failed to Analyze the Application under the Thirteen Public Trust Factors in Utah Code § 65A-15-201(1).**

Utah Code § 65A-15-201(1)(a)<sup>4</sup> authorizes the Division to recommend to the governor and legislature that state land in and around Utah Lake be conveyed to a third-party as compensation for a comprehensive restoration of Utah Lake. In making this determination the Division must analyze whether a potential project will enhance the following public benefits:

- i. restoring the clarity and quality of the water in Utah Lake;
- ii. conserving water resources in and around Utah Lake;<sup>5</sup>
- 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 shore birds, waterfowl, and other avian species;
- viii. improving navigability of Utah Lake;
- ix. maximizing, enhancing, and ensuring recreational access and opportunities on Utah Lake;

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<sup>4</sup> When the Application was submitted, the 2018 version of the Utah Code applied. The Utah Legislature recently amended the Utah Lake Restoration Act, but such amendments do not materially change this analysis.

<sup>5</sup> The Division completely failed to consider the additional information and scientific data LRS provided as evidence of the Project’s ability to conserve water resources in and around Utah Lake. This data was submitted to the Division, as part of that certain Second Supplement to Exchange Application Dated November 13, 2017 and was also shared in numerous presentations attended by the Division.

- 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.

Utah Code § 65A-15-201(1)(a).

The Division failed to analyze the Application under the foregoing statutorily established factors. Notably, the foregoing factors are specifically targeted at whether the subject lands may be conveyed consistent with the public trust doctrine. For example, the Division was required to determine whether the proposed Project would improve water quality and usability by the public (Utah Code § 65A-15-201(1)(a)(i)–(vii), make Utah Lake more navigable (Utah Code § 65A-15-201(1)(a)(viii), and increase the public’s recreation opportunities (Utah Code § 65A-15-201(1)(a)(ix)–(xi).

Instead of analyzing the Application under the statutorily established public trust factors, the Division created its own unwritten public trust rules based on its own mistaken interpretation of Utah public trust law. The Division is not free to substitute its own view and interpretations in place of the state legislature’s.

The Application’s denial must be rescinded, and the Executive Director should remand and require the Division to analyze the Application under the factors set forth in Utah Code § 65A-15-201(1)(a).

**C. The Division Also Failed to Analyze the Additional Factors in Utah Code § 65A-15-201(2)**

In addition to the 13 public trust factors set forth in Utah Code § 65A-15-201(1), the Division is required by clear Utah law to consider:

- (a) the potential that the restoration project presents for additional revenue to state and local government entities;
- (b) the ability of the proposed use of the state land given in exchange for the restoration project to enhance state property adjacent to Utah Lake;
- (c) the proposed timetable for completion of the restoration project;
- (d) the ability of the person who submits a restoration project to execute and complete the restoration project satisfactorily; and
- (e) the desirability of the proposed use of Utah Lake and the surrounding areas as a result of the restoration project.”



Utah Code § 65A-15-201(2).

Section 65A-15-201(2) leaves the Division with no discretion as to the standards under which it must analyze the Application. *See* Utah Code § 65A-15-201(2) (“In determining whether to recommend the disposal of state land . . . the division *shall* consider . . . .”) (emphasis added). The Division failed to analyze these factors, and as is par for the course for the ROD, the Division improperly assessed the Application under its own interpretation of the public trust doctrine. The Division lacks authority to ignore state law.

**D. The Division is Not Statutorily Authorized to Assess the Constitutionality or Legality of the Proposed Land Exchange.**

When analyzing statutes, the Executive Director must presume that the “legislature chooses its words carefully requir[ing] every word of a statute to be given effect so that no part of the statute will be inoperative or superfluous.” *John Kuhni & Sons Inc.*, 2018 UT App 6, ¶ 17 (alteration in original) (internal citation marks omitted). Importantly, “when the legislature elects not to include certain language in a statute . . . [courts] seek to give effect to that decision by presuming all omissions to be purposeful.” *Id.* (internal citation marks omitted). This is especially true when the legislature “includes particular language in one section of a statute but omits it in another . . . .” *Alliant Techsystems, Inc. v. Salt Lake Bd. of Equalization*, 2012 UT 4, ¶ 23 n.27, 270 P.3d 441.

Here, the legislature did not authorize the Division to assess the constitutionality or legality of the Application. Pursuant to Utah Code § 65A-15-201, the Division was required to recommend to the legislature and governor the disposal of state lands if the factors set forth in Sections 65A-15-201(1) and 65A-15-201(2) favor such disposition. The Division was also required to “prepare recommendations for standards, criteria, and thresholds to define more specifically the objectives listed in Subsection (1)(a) and (3)(b)(ii) and how and when those objectives are to be met.” Utah Code § 65A-15-201(4)(a).

Separate from the Division’s responsibilities, the governor and legislature are responsible for authorizing the disposition of state land in and around Utah Lake if:

- (a) the division recommends the disposal as provided in Subsection (1); and
- (b) the Legislature and governor make a determination [that]:
  - (i) the restoration project will accomplish the objectives listed in Subsection (1);  
and
  - (ii) the disposal is:
    - (A) a fiscally sound and fair method of providing for the comprehensive restoration of Utah Lake; and
    - (B) constitutionally sound and legal.

Utah Code § 65A-15-201(3).

Notably absent from Utah Code § 65A-15-201 is any provision authorizing the Division to assess the constitutionality or legality of the Application, and such authorization is reserved specifically to the legislature and governor. This statutory omission must be presumed to be intentional by the legislature, as the legislature intended for it and the governor—not the Division—to determine the constitutionality and legality of the Application.

Despite lacking any statutory authority, the Division has masqueraded as a judge and final arbiter of whether the Application and Project is constitutional. Specifically, on August 17, 2022, the Division presented to the Natural Resources, Agriculture, Environment Interim Committee meeting at the Utah Legislature. And instead of reporting on the Division’s efforts to promulgate standards, criteria, and thresholds as required by Utah Code § 65A-15-201(4)(a)–(b), the Division seized the opportunity to don its judicial robes and opined as to the Application’s and Project’s constitutionality, and endeavored to create law where the Utah Supreme Court has chosen not yet to speak.<sup>6</sup> The Division improperly employed the same analysis in cancelling the Application. In short, the Division lacks authority to assess the constitutionality and legality of the Application.

Furthermore, the ROD refers to Article VI, Section 26 of the Utah Constitution, presumably to support the Division’s decision not to promulgate the standards, criteria, and thresholds required by Utah Code § 65A-15-201(4)(a). *ROD* at 14. Article VI, Section 26 provides: “No private or special law shall be enacted where a general law can be applicable.” Whether or not Utah Code § 65A-15-201(4)(a) is a “private or special law” is irrelevant to the Division’s evaluation of the Application. Unless and until the judiciary deems the statute to be unconstitutional or the state legislature otherwise amends it, the statute is the law, and the Division must follow it. The Executive Director should rescind the unlawful cancellation of the Application and instruct the Division to stay in its lane and promulgate the standards, criteria, and thresholds required by Utah Code § 65A-15-201(4)(a).

## **2. The Division Misapplied and Misconstrued the Public Trust Doctrine.**

Instead of analyzing the Application under the factors set forth in Utah Code § 65A-15-201 and Utah Admin. Code R652-80-200(2), the Division unlawfully focused the entirety of its ROD on whether the Application and Project complied with its interpretation of Utah’s public trust doctrine. Even if the Division was authorized to opine on whether the Project passed constitutional muster, the Division’s guess as to the proper interpretation of Utah’s public trust doctrine is wrong.

The Utah Constitution provides that public 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.” Utah Const. art. XX, § 1. In its capacity as trustee, the state must meet its duty of loyalty to the trust beneficiaries, exercising prudence and skill in administering the trust in ways that benefit the beneficiaries’ interests. *Nat’l Parks and Conservation Ass’n v. Bd. of State Lands*, 869 P.2d 909, 918 (Utah 1993).

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<sup>6</sup> Notably, the Division’s unlawful actions were not a victimless crime. Such improper public comments threaten the Project’s capital commitments which cannot be easily replaced once lost.

No Utah Court has set forth a rule or test for when the state can lawfully convey public lands under Utah’s public trust doctrine. In *Utah Stream Access Coalition v. VR Acquisitions, LLC*, the Utah Supreme Court seemed to indicate that Utah law on this subject may be informed by the seminal case *Illinois Central Railroad Co. v. State of Illinois*, 146 U.S. 387 (1892), but stopped short of adopting *Illinois Central* outright.<sup>7</sup> 2019 UT 7, ¶ 78, 439 P.3d 593 (“We decline to announce a square holding on this issue . . .”).

Here, the ROD’s public trust analysis relies almost exclusively on the Division’s guess as to how Utah courts would interpret Article XX, § 1 and *Illinois Central*. The Division’s guess as to the nuances of Utah law should not be grounds for cancelling the Application.<sup>8</sup> Moreover, assuming Utah law mirrors *Illinois Central*, that case actually supports the Application’s approval.

In *Illinois Central*, the Illinois legislature conveyed certain submerged islands in Chicago Harbor to a railroad company, and later challenged that conveyance under the public trust doctrine. *Illinois Central*, 146 U.S. at 433–44. The court struck down the disposition and set forth the appropriate standard “for assessing the propriety of a disposition of public land under the common law public trust doctrine.” *Utah Stream Access Coalition*, 2019 UT 7, ¶ 74. Permissible dispositions under *Illinois Central* include “grants of parcels of lands 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.” *Id.* (quoting *Illinois Central*, 146 U.S. at 452. Dispositions that “do not substantially impair the public interest in the lands and waters remaining” are those that “enhance the public’s use and enjoyment of the property” and “help the public enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein.” *Utah Stream Access Coalition*, 2019 UT 7, ¶ 75 (internal quotation marks omitted).

The Application and Project comply with Article XX § 1 and *Illinois Central* 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. Specifically, the Project involves dredging the lakebed and using the dredged material to create several islands throughout the lake. The islands will be strategically shaped and positioned to promote the flow of water throughout the lake and protect boats and other craft from strong winds. The islands will also create miles of publicly accessible shoreline for public recreation including fishing. Dredging will also deepen the lake, thus allowing larger vessels to navigate the waters and carry out commerce thereon. Finally, the Project’s intended benefit to the public is that Utah Lake is restored to a healthy state. This restoration involves improving water

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<sup>7</sup> Similarly, in *Colman v. Utah State Land Board*, the Utah Supreme Court indicated that *Illinois Central* informs Utah’s public trust doctrine law but stopped short of wholeheartedly adopting the analysis therein. 795 P.2d 622, 635–36 (Utah 1990).

<sup>8</sup> When Utah law is unclear as to a particular issue, even federal courts decline to guess as to the nuances of Utah law because such determinations are uniquely within the purview of the Utah legislature and Utah state courts. See *Andersen v. Brigham Young Univ.*, 879 F. Supp. 1124, 1130 (Utah D. Ct. 1995) (“this Court is not inclined to make an ‘eerie guess’ that the Supreme Court of Utah will do so.”). The division would be wise to follow suit.

quality, decreasing evaporation,<sup>9</sup> preventing algal blooms, removing invasive fish and plant species, and restoring native fish. The restoration enhances the public's use and enjoyment of the property, as contemplated by the Resolution.

The ROD, however, concludes that the proposed islands will infringe on "the public's right to unimpeded access to the entirety of Utah Lake," presumably because the islands would "obstruct or interfere with navigation." *ROD* at 19. This position is plainly and irrefutably inconsistent with *Illinois Central*, as that case never held that a state must keep all public trust lands entirely unimpeded and open to public access. Conversely, *Illinois Central* expressly contemplated that states could dispose of public trust lands, for wharfs, docks, piers, and other structures, provided that such disposition benefits and enhances the public's use of the remaining lands. See *Utah Stream Access Coalition*, 2019 UT 7, ¶ 75. The Division's contrary interpretation misconstrues *Illinois Central*. Furthermore, it completely ignores the enhancements created by deeper water and more land area for recreation and public use.

The public trust doctrine does not prohibit the state from exchanging submerged lands under Utah Lake as compensation for the restoration activities proposed in the Application because the Project significantly enhances and improves the public's use and enjoyment of the property. Further, public land is held in trust for the public, and the public speaks through its elected representatives. Here, the Division is ignoring the public, the elected representatives, and the law.

### **INJURY AND IRREPARABLE HARM**

By arbitrarily cancelling the Application, the Division has forced LRS to put the EIS process on hold, thus undermining the Project and causing material financial harm to LRS. Moreover, in reliance on the Act and the Division's fulfilment of the provisions therein, LRS has secured relationships with key lenders, underwriters, and investment banks to fund the billions of dollars in project capital needed to effectuate the restoration of Utah Lake. Unless the Division's improper actions are remedied by the Executive Director, these relationships will deteriorate and the restoration of Utah Lake will lack the billions in private funding contemplated by the Act. The Project is the archetype of project contemplated by the Act, and the Division should not impede the fulfilment of the legislature's intent that a private company receive "state land in and around Utah Lake as compensation for the comprehensive restoration of Utah Lake." Utah Code § 65A-15-201(1)(a).

### **REQUEST FOR RELIEF**

LRS has invested millions of dollars into scientific research, engineering, and design to better understand the problems facing Utah Lake and develop potential solutions. The Division's arbitrary action described above inhibits Utah Lake's restoration and the implementation of the Project.

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<sup>9</sup> Again, the Division has not analyzed the studies showing that deepening the Utah Lake will save Utah precious water resources, which will have a positive benefit on both Utah Lake and the Great Salt Lake.

LRS respectfully requests that the Application's cancellation be rescinded, and that the Executive Director remand the Application with instructions that the Division (i) evaluate the Application as required by Utah Admin. Code R652-80-200(2) and Utah Code § 65A-15-201; (ii) promulgate the standards, criteria, and thresholds required by statutory injunction in Utah Code § 65A-15-201(a); and (iii) refrain from cancelling the Application until receiving and evaluating a completed EIS from the Corps.

**EXHIBIT A**

[See attached Delaware Certificate of Good Standing]

# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "LAKE RESTORATION SOLUTIONS, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE EIGHTH DAY OF NOVEMBER, A.D. 2022.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.



6614014 8300

SR# 20223966556

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

A handwritten signature in black ink, appearing to read "JBULLOCK", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed in a small font.

Authentication: 204807063

Date: 11-08-22

**EXHIBIT B**

[See attached Utah Certificate of Existence]





**Utah Department of Commerce**  
**Division of Corporations & Commercial Code**

160 East 300 South, 2nd Floor, PO Box 146705  
Salt Lake City, UT 84114-6705  
Service Center: (801) 530-4849  
Toll Free (877) 526-3994 Utah Residents  
Fax: (801) 530-6438  
Web Site: <http://www.commerce.utah.gov>

11/14/2022  
12896591-016111142022-3567140

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## CERTIFICATE OF EXISTENCE

**Registration Number:** 12896591-0161  
**Business Name:** LAKE RESTORATION SOLUTIONS - UTAH, LLC  
**Registered Date:** June 13, 2022  
**Entity Type:** LLC - Foreign  
**Status:** Current

The Division of Corporations and Commercial Code of the State of Utah, custodian of the records of business registrations, certifies that the business entity on this certificate is authorized to transact business and was duly registered under the laws of the State of Utah. The Division also certifies that this entity has paid all fees and penalties owed to this state; its most recent annual report has been filed by the Division (**unless Delinquent**); and, that Articles of Dissolution have not been filed.



Leigh Veillette  
Director  
Division of Corporations and Commercial Code

DocuSign Envelope ID: A615CB5A-F7BC-4393-9022-81706E1B9263  
 State of Utah  
 Department of Commerce  
 Division of Corporations & Commercial Code  
 Foreign Registration Statement (Foreign Limited Liability Company)

Receipt Number: 9495560  
 Amount Paid: \$145.00

RECEIVED  
 JUN 13 2022

Utah Div of Corp & Comm Code

EXPEDITE

Important: Read instructions before completing form Non-Refundable Processing Fee: \$70.00

1. Exact Name of Foreign Limited Liability Company:		Lake Restoration Solutions, LLC			
2. Jurisdiction of Formation:		Delaware			
3. Principal office address: <small>Street Address Required</small>		3300 N. Triumph Blvd., Suite 100, Lehi, UT 84043 <small>Address City State Zip</small>			
4. The name of the Registered Agent (Individual or Business Entity or Commercial Registered Agent): <small>The address must be listed if you have a non-commercial registered agent. See instructions for further details.</small> CT Corporation System Address of the Registered Agent: 1108 E South Union Avenue <small>Utah Street Address Required, PO Boxes can be listed after the Street Address</small> City: Midvale State: UT Zip: 84047					
5. If the name is not available in Utah the LLC shall use as it's name: Lake Restoration Solutions-Utah LLC <small>Must be the same as number (1) unless the name is not available or permitted in Utah.</small>					
6. Purpose of the Limited Liability Company: <small>(optional)</small>					
7. Manager/Member of the Limited Liability Company: <small>(optional)</small>					
Position	Name	Address	City	State	Zip
MANAGER					
MANAGER					
MEMBER					
MEMBER					
Under penalties of perjury, I declare that this application for authority to transact business has been examined by me and is, to the best of my knowledge and belief, true, correct and complete. <small>Digitally signed by</small> Authorized Signature: <u>Jon Benson</u> Name & Title: Jon Benson, President					
Under GRAMA (63G-2-204), all registration information maintained by the Division is classified as public record. For confidentiality purposes, you may use the business entity physical address rather than the residential or private address of any individual affiliated with the entity.					
Optional Inclusion of Ownership Information: This information is not required.					
Is this a female owned business? <input type="radio"/> Yes <input type="radio"/> No					
Is this a minority owned business? <input type="radio"/> Yes <input type="radio"/> No If yes, please specify: <input type="text" value="Select Type the race of the owner here"/>					

State of Utah  
 Department of Commerce  
 Division of Corporations and Commercial Code  
 I hereby certified that the foregoing has been filed  
 and approved on this 13 day of Jun 20 22  
 In this office of this Division and hereby issued  
 This Certificate thereof.

Examiner CV Date 6/14/22



L. Valette  
 Leigh Valette  
 Division Director

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# Delaware

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Utah Div. of Corp. & Comm. Code

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "LAKE RESTORATION SOLUTIONS, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE THIRTEENTH DAY OF JUNE, A.D. 2022.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "LAKE RESTORATION SOLUTIONS, LLC" WAS FORMED ON THE THIRTEENTH DAY OF NOVEMBER, A.D. 2017.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.



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SR# 20222702667

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

  
Jeffrey W. Bullock, Secretary of State

Authentication: 203661875

Date: 06-13-22

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