FRIENDS of GREAT SALT LAKE

150 South 600 East, Suite 5D • Salt Lake City, UT 84102 • (801) 583-5593 • www.fogsl.org

April 30, 2026

Teresa Wilhelmsen
State Engineer
Utah Division of Water Rights
1594 West North Temple, Suite 220
P.O. Box 146300
Salt Lake City, UT 84114-6300

Re: **Protest** of Water Right **Application # A54385** (**Water Right: 13-4148**), **Bar H Ranch**

Submitted electronically

I. Introduction

FRIENDS of Great Salt Lake (FRIENDS) is an interested party pursuant to Utah Code Ann. § 73-3-7 and hereby protests **Application Number A54385** (**Water Right: 13-4148**) made by **Bar H Ranch** to appropriate 1,900 acre-feet of groundwater in the Great Salt Lake Basin for "Industrial Use: Data Center Water Use." As outlined in detail below, there is no legal basis for the State Engineer to approve this application given the complete lack of detailed information regarding this proposed change.

As the State Engineer is fully aware, the local, national and international value of Great Salt Lake, its open water, islands, associated wetlands, playas, mudflats and uplands provide critical habitat for over 10 million migratory birds, represented by nearly 338 different avian species. These birds rely on the Lake and its critical food sources such as brine shrimp, brine flies, and aquatic vegetation while they rest, stage and nest during their migratory journeys.

Approximately 30 percent of the waterfowl migrating along the Pacific Flyway depend upon Great Salt Lake wetlands. For these migrants, the Lake provides a critical food supply, allowing them to restore depleted energy reserves and fuel up for the rest of their migrations, sometimes doubling their body weight before they leave. In recognition of its role in these international flights, Great Salt Lake is designated as one of only eight sites with a "hemispheric" designation – as opposed to regional or international designation – of the 40 Western Hemisphere Shorebird Reserve Network sites in the United States.

The importance of Great Salt Lake to the birds of the Americas is borne out by the sheer numbers that depend on its resources, including:

- 60 to 80 percent of the world's population of Wilson's Phalaropes;

- One of the two largest staging concentrations of Eared Grebes in North America;
- The world's largest breeding population of White-faced Ibis and California Gulls;
- Over half of the entire breeding population of Snowy Plovers west of the Rocky Mountains;
- More than three quarters of the entire western population of Tundra Swan;
- One of the three largest breeding colonies of American White Pelicans; and,
- One of the ten largest wintering populations of Bald Eagle in the lower 48 states.

Not surprisingly, hundreds of thousands of bird watchers comb the shores of Great Salt Lake to be rewarded with incredible views of feeding, flying and nesting birds that journey thousands of miles to gorge on the bounty of our nation's largest inland "sea." The Lake also attracts recreationists enjoying other water-based activities such as sailing, boating, rowing, floating, wading and kayaking. Others hike, ride horseback and mountain bike to enjoy scenery, solitude and wildlife. Great Salt Lake also supports a robust community of waterfowl enthusiasts who not only enjoy hunting but are working to preserve and protect Utah's waterfowl, its unique and rich habitat and its rich heritage.

II. FRIENDS of Great Salt Lake

FRIENDS of Great Salt Lake has, as its mission, the preservation and protection of the Great Salt Lake ecosystem and seeks to increase public awareness and appreciation of the Lake through education, research, advocacy and the arts. The organization has long been involved in the protection and restoration of Great Salt Lake and its ecosystems, advocating for ways in which the public may enjoy these resources by fishing, birdwatching, boating, photographing, hiking and studying these natural areas. On behalf of its members, FRIENDS of Great Salt Lake frequently participates in agency processes related to the management of the Lake, including protesting applications for appropriation of water from the Great Salt Lake watershed. FRIENDS considers this participation to be critical to its mission and to be valuable as a means of influencing the administration of the Lake and of protecting and preserving the Lake ecosystem and opportunities for recreation that depend on the health of that ecosystem.

FRIENDS of Great Salt Lake has staff and members who regularly use and enjoy and will continue to use and enjoy Great Salt Lake for bird-watching, boating, photographing, hiking and studying natural areas. FRIENDS, its staff and its members are harmed and will be harmed by the State Engineer's approval of this application. As such, FRIENDS' staff and members are "persons interested" for the purposes of Utah Code Ann. § 73-3-7. *See Bonham v. Morgan*, 788 P.2d 497, 502 (1989) ("Section 73-3-7 permits 'any person,' not just a water user or an owner of vested rights, to protest the granting of an application under title 73"). The organization protests this application because it fails to meet the basic requirements necessary for approval pursuant to Utah Code Section 73-3-8(1).

III. Legal Framework

In evaluating this application, the State Engineer must first determine if "there is unappropriated water in the proposed source" pursuant to Utah Code Ann. § 73-3-8(1)(a)(i) and whether or not "the proposed use will [] impair existing rights or interfere with the more

beneficial use of the water." Utah Code Ann. § 73-3-8(1)(a)(ii). Next, the State Engineer must determine whether the proposed plan "is physically and economically feasible" and "would not prove detrimental to the public welfare," pursuant to Utah Code Ann. § 73-3-8(1)(a)(iii). Further, the State Engineer must determine whether "the applicant has the financial ability to complete the proposed works," and whether "the application was filed in good faith and not for purposes of speculation." Utah Code Ann. § 73-3-8(1)(a)(iv) & (v).

On top of the Subsection (1)(a) requirements, Subsection 73-3-8(1)(b) states that on the basis of "information in the state engineer's possession obtained either by the state engineer's own investigation or otherwise," the State Engineer is obligated to withhold approval of an application that may "unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare" until she investigates the matter fully. Furthermore, if the evidence suggests that the application "does not meet the requirements of this section" – if it unreasonably affects public recreation or the natural stream environment, or proves detrimental to the public welfare, for instance – the application "shall be rejected." Utah Code Ann. § 73-3-8(1)(c).

These provisions put the burden of persuasion on the applicant throughout the application process to prove to the State Engineer that no harm will result from appropriation of this water. *Searle v. Milburn Irrigation Company*, 2006 UT 16, ¶ 53, 133 P.3d 382, 395. In *Searle*, the Utah Supreme Court determined that an applicant bears the burden of establishing that a requested change in water use meets the criteria of Utah Code Ann. § 73-3-8(1)(a). *Id*. Specifically, the applicant must persuade the State Engineer that there is no reason to believe that the appropriation will fail to satisfy the Subsection (1)(a) factors. 2006 UT 16, ¶¶ 45, 53, 57. This is true even if the application is unopposed. *Id*. at ¶ 57. If the applicant cannot meet this burden, or if a protestor produces evidence that undermines the reasonableness of the applicant's "no reason to believe" assertions, the application must be rejected. *Id*. at ¶ 56.[1]

IV. Argument: The Bar H Ranch Application Must be Rejected.

As outlined below, the Bar H Ranch application falls well short of the statutory requirements and must be rejected. The application states that the purpose of the change is to construct a 7.5-Gigawatt natural gas power plant, along with a data center. However, given the complete absence of details in the application regarding the specifics of this project, and given that the applicant cannot demonstrate its ability to meet the Section 73-3-8 provisions, there is no legal basis for the State Engineer to approve this application.

[1] The Utah Supreme Court has also confirmed that the State Engineer's consideration of the public interest trumps any determination of whether unappropriated waters are available. *Tanner v. Bacon*, 136 P.2d 957, 962 (Utah 1943) ("[O]ur statutes expressly provide that the State Engineer shall reject applications under specified conditions, in the interest of the public welfare, even though all of the waters of the stream covered by the application have not been appropriated.").

A. There is No Unappropriated Water in the Great Salt Lake Basin.

In the application, the applicant states that of the 1,900 acre feet applied for, the proposed change does not increase the quantity of water historically "diverted." However, this fails to address what the actual consumption will be and whether there will be an increase in the amount consumed beyond what is presently being used. Given that the existing usage is an agricultural operation on the very shore of Great Salt Lake, the return flow to the Lake from that operation would represent a significant portion of what has been diverted. Further, although the State Engineer's website does not contain any water use reporting for this water right, the satellite imagery map provided by the Division does not show evidence of usage within the area associated with Water Right 13-4148. The State Engineer should therefore consider the possibility that the applicant has abandoned all or a portion of this water right pursuant to § 73-1-4.

That aside, beyond sweeping statements in the press regarding how this water is to be used, the applicant provides no details to support the assertion that water use will be "minimal" or even what constitutes minimal usage. Because of the lack of specifics in the application, the State Engineer must assume that the entire 1,900 acre feet will be consumed, which would represent a significant increase in the consumption rate over current usage. Before the State Engineer may approve this application, she must first have reason to believe that there is unappropriated water in the source. Utah Code Ann. § 73-3-8(1)(a)(i). However, the point of diversion for this water right is located in the Curlew Valley, where the State Engineer's water policy states that only filings for a single-family domestic supply will be considered. *See* waterrights.utah.gov/wrinfo/policy/wrareas/area13.asp. Further, because all new appropriations in the Great Salt Lake Basin have been suspended, the application must be denied.

On November 3, 2022, Utah Governor Cox issued a proclamation "Suspending New Appropriations of Surplus and Unappropriated Waters in Great Salt Lake Basin" (Proclamation). *See* Utah-Proclamation-No.-2022-01.pdf. The Proclamation cites the "significant financial investments" that the state has undertaken to address declining water levels of Great Salt Lake and suspends the right to appropriate both surface and groundwater in the Great Salt Lake Basin. In the past, the State Engineer has interpreted the Proclamation as excluding tributaries to the North Arm (Gunnison Bay), which significantly undermines the effectiveness and intent of the Proclamation. However, there are no factual or policy justifications for concluding that the Proclamation does not apply to those tributaries.

First, Gunnison Bay constitutes sovereign land that falls within the surveyed meander line of the Lake and is an integral part of Great Salt Lake. Not only are Gunnison Bay and Gilbert Bay (the South Arm) physically connected through the breach in the Union Pacific causeway, the water levels of the two arms are required by law to be conjunctively managed by the State. In 2024, the Legislature directed the Division of Forestry, Fires & State Lands to manage the UP berm "with an objective of equalizing the elevations of Gilbert Bay and Gunnison Bay to be within two feet of each other." HB453, Lines 1224-27; *see also* 65A-17-201(14)(b). Because of that connection, water removed from tributaries supplying water to Gunnison Bay, especially groundwater tributaries, will also clearly have a direct negative impact on the water and salinity levels of Gilbert Bay.

Second, the State Engineer has acknowledged that a direct connection exists between the groundwater hydrogeology north of Gunnison Bay and the springs that feed into that bay. Specifically, she noted that "extensive groundwater pumping in the nearby Curlew Valley has led to declining groundwater levels and a substantial reduction in discharge from the Locomotive Springs complex," which lies on the northern edge of Gunnison Bay. *See, e.g.* Order of the State Engineer for Application to Appropriate Water Number 13-4105 (A84064) (rejecting that application); *see also* rejection orders related to water rights 13-4106, 13-4107, 13-4108, and 13-4110. In that Order, the State Engineer noted that the proposed point of diversion was roughly 15 miles away from Locomotive Springs; in this case, the point of diversion is roughly 2 miles away.

Third, while our understanding of the groundwater connections to the Lake, including Gunnison Bay, is incomplete, both the Utah Geological Survey (UGS) and the U.S. Geological Survey continue to undertake significant efforts to better understand both the groundwater contribution to the Lake and the negative impacts to the Lake of continued withdrawal of groundwater within the Great Salt Lake Basin. In a January 2024 publication of the Utah Geological Association, geologists from UGS revised the estimated amount of groundwater contribution to the Lake upwards by as much as 750% from previous estimates, to a total of 560,000 acre-feet annually. *See* View of Estimate of groundwater flow and salinity contribution to the Great Salt Lake using groundwater levels and spatial analysis (utahgeology.org). Given the critical role that this groundwater plays in the overall water budget of the Lake, and given our incomplete knowledge of how the various aquifers are connected to the Lake, the State Engineer must take a conservative approach to the management of this water and recognize the necessity of protecting and preserving this critical resource.

B. The Proposed Use Will Impair Existing Rights and the More Beneficial Use of the Water.

A requirement for approval of the application is the determination by the State Engineer that the proposed use will not impair existing rights or interfere with the more beneficial use of the water. Utah Code Ann. § 73-3-8(1)(a)(ii); *see also* § 73-3-8(1)(b). Regarding the first consideration, because of the certainty that the proposed groundwater source is connected to Gunnison Bay, and that water levels in Gunnison Bay and Gilbert Bay are managed conjunctively, the impact on existing water rights is likely to result in impairment. Further, in the context of an ever-shrinking Lake, in a year where the vast majority of the Lake's watershed is in either severe or extreme drought, and in an area where extensive groundwater pumping has led to "a substantial reduction" in a major spring complex that supplies water to the Lake, the State Engineer must use best professional judgment and assume that granting this water right would not only negatively impact Great Salt Lake but would also impair existing water rights.

In addition to determining whether this proposal will impair existing water rights, the State Engineer must also determine whether it will interfere with the more beneficial use of the water. Utah Code Ann. § 73-3-8(1)(a)(ii); *see also* § 73-3-8(1)(b). As the Governor made clear in his Proclamation, the state has spent years' worth of effort and hundreds of millions of dollars investing in a variety of measures to bring more water to Great Salt Lake, which will be nullified

by continued additional withdrawals from the Lake. Because approving this application will undermine the State's current objective of getting more water to the Lake, it must be denied as interfering with the more beneficial use of that water.

C. There is No Evidence that the Proposed Plan is Physically and Economically Feasible.

A requirement for approval of the application is the determination by the State Engineer that the proposed use is physically and economically feasible. *See* Utah Code Ann. § 73-3-8(1)(a)(iii)(A). This provision requires the State Engineer to determine whether the proposed plan can actually work as described. However, where questions about the plan's physical plausibility remain, and where the proponents' own admissions show that critical technical systems have not been designed, tested, or even selected, the plan simply cannot satisfy this requirement. And, as with all the § 73-3-8 requirements, the burden of demonstrating feasibility rests with the applicant. Utah Code § 73-3-3(5).

The threshold physical feasibility question for the Stratos Project's water application is how, precisely, the project proposes to cool a facility generating up to 9 gigawatts of power while consuming only the water volumes claimed. At the April 27, 2026 Box Elder County Commission meeting, the Military Installation Development Authority (MIDA) project manager Hilary Venable represented that the project would use "closed-loop cooling systems" that reuse water repeatedly, and that as a result "the long-term water demand is expected to be closer to what you would see from a large office campus, not a traditional industrial use." *Amid Questions and Concerns, Box Elder County Leaders Delay Action on Data Center Proposal,* KSL, April 27, 2026, https://www.ksl.com/article/51489496. Austin Pritchett of project partner West GenCo further represented that only "a very small fraction" of secured water rights would actually be used. *Id.* MIDA Executive Director Paul Morris stated at the April 24, 2026 board meeting that the project would "use less water than was used for ranching." *MIDA, 'Shark Tank' Kevin O'Leary Announce New Data Center Project Area,* KPCW, April 24, 2026, https://www.kpcw.org/state-regional/2026-04-24/mida-shark-tank-kevin-oleary-announce-new-data-center-project-area.

These representations directly conflict with the established science of data center and power plant cooling at this scale. Dr. Robert Davies, a professor of physics at Utah State University, reviewed MIDA's cooling claims and stated that they do not make sense when compared with any known cooling system for power plants or data centers. Specifically, Dr. Davies calculated that the claimed water volume needed to cool a 3-gigawatt facility would be 97% more efficient with water than the most efficient gas plant he could identify — a figure he characterized as "an extraordinary claim." *Scientists Share Concerns Over Proposed Mega Data Center in Box Elder County,* KSL TV, April 29, 2026, https://ksltv.com/environment/scientists-share-concerns-over-proposed-mega-data-center-in-box-elder-county/903505/. Dr. Davies further noted that even a closed-loop system loses water through evaporation, and that heated water returned to the environment also evaporates at elevated rates – undermining the premise that closed-loop cooling avoids consumptive water use. *Id.* Dr. Patrick Belmont, a professor of watershed sciences at Utah State University, also raised concerns about the project's water claims, stating that "there isn't a lot of science to support that this is a good idea." *Id.*

A water right change application tied to a project where proponents' claimed consumption is based on a cooling system that Utah water scientists characterize as physically implausible cannot be deemed physically feasible under § 73-3-8(1)(a)(iii)(A). Because the applicant has failed to submit engineering specifications, third-party technical analyses, or peer-reviewed data supporting its cooling efficiency claims, the State Engineer has no basis to conclude that the proposal is physically feasible.

Further, demonstrating physical feasibility requires more than a conceptual claim that a plan could work. It requires that the proposed plan show a concrete, engineered use of the water applied for. However, the Stratos Project's water-related infrastructure has not been designed. No engineering drawings, construction specifications, or hydrological studies have been submitted in connection with this application or made available to the public. Mr. O'Leary himself, the principal spokesperson for this proposal, stated in an April 2026 CBC News interview that engineering and design work would only begin after permits are issued: "The minute we get the permit, that triggers a whole bunch of other activities in terms of how we finance it, when we start engineering, design, everything else." *No Provincial Environmental Assessment Required for Kevin O'Leary's Proposed Wonder Valley Data Centre,* CBC News, April 10, 2026, https://www.cbc.ca/news/canada/edmonton/wonder-valley-data-centre-environmental-impact-assessment-9.7158526. A plan that will not be engineered or designed until after permitting is approved is, by definition, not a plan that has been demonstrated to be physically feasible at the time of application.

But, even accepting that a closed-loop system will be used, the project faces an unresolved physical problem that goes beyond water consumption – what to do about the amount of heat generated. A 9-gigawatt data center and power generation operation produces an "enormous amount" of waste heat. *KSL TV, supra*. Dr. Davies identified the two mechanisms for dissipating that heat — air cooling and aquifer injection — and noted that neither is without significant environmental and physical consequences at this scale. *Id.* Air cooling 9 gigawatts of thermal load in the arid high desert of western Box Elder County presents physical challenges considering summer temperatures that regularly exceed 85 to 90 degrees Fahrenheit. And aquifer injection of heated water – which would require a discharge permit from the Division of Water Quality – presents its own physical feasibility questions. What, for instance, is the capacity of the local aquifer to accept and dissipate a thermal load of that size, and what would be the downstream impacts on Great Salt Lake? The applicant has simply failed to address these questions.

Lastly, the economic feasibility prong of § 73-3-8(1)(a)(iii)(A) requires that the proposed plan be economically viable – not merely theoretically profitable using optimistic assumptions. As outlined in detail below, the project has no committed anchor tenant, no executed financing agreements, and no announced construction timeline. O'Leary Digital's strategy is to build the campus on a speculative basis and then seek to attract hyperscale tenants after the fact. Industry analysts who reviewed the identical Alberta project noted that data centers are significantly more difficult to finance and build without committed long-term tenant contracts, observing that "the tenant is very, very, very important." *The Truth About Wonder Valley, Kevin O'Leary's Data-Centre Dream,* David Reevely, The Logic, December 2025, reprinted at Geothermal Canada,

https://www.geothermalcanada.org/news/2025/12/17/the-truth-about-wonder-valley. A project with no anchor tenant, no financing in place, and no construction timeline cannot be demonstrated to be economically feasible in any meaningful sense of that term. The State Engineer cannot make an affirmative finding of economic feasibility based on projected revenues from tenants who have not committed, financed by capital that has not been raised, for infrastructure that has not been designed.

D. The Proposed Use Will Be Detrimental to the Public Welfare.

The importance of Great Salt Lake to the public welfare is evident, and the State has made protecting and preserving Great Salt Lake a priority. The Lake "protects Utahns' quality of life in many ways: the very air we breathe, the water we drink, and the food we eat." The Great Salt Lake Strategic Plan (Strategic Plan), at 29; Great Salt Lake Strategic Plan - Great Salt Lake (utah.gov), at 3. In November 2022, the Lake fell to a new record low, and "[a]s the water level dropped, salinity spiked, threatening an ecosystem that supports over 10 million migratory birds and a brine shrimp industry that helps feed tens of millions of people around the world." *Id*. As a result of this declining water level, "the state experienced serious adverse consequences" including "significant ecologic impacts" and "direct human consequences." *Id*., at 8. The Lake continues to struggle and by the end of this summer we will, unfortunately, again be approaching that record low level.

In facing this threat, the state has "responded with significant public investments and policy changes," and "is actively working to enhance conservation efforts." *Id*., at 3, 12. Those efforts include focused regional conservation goals, a $250+ million investment in secondary water metering, landscape conversion incentive programs, water saving device rebates, integrated land use and water planning, at least $300 million in agricultural conservation efforts, in addition to $40 million spent to fund a Great Salt Lake water trust and numerous other legislative initiatives, regulatory changes, agency efforts and dedicated expenditures, in addition to the Governor's Proclamation suspending all new appropriations in the Great Salt Lake Basin. *See Id*., at 12-14; *see also* Proclamation.

Additionally, through the Great Salt Lake 2034 Charter, the State has partnered with private entities who have pledged upwards of $200 million, in a renewed effort to bring the Lake back to a healthy level by the 2034 Olympics. In speaking to the need for such a commitment, the Governor stated that "Great Salt Lake is our lake, our heritage, and our responsibility," and that "[w]e will not let the Great Salt Lake fail." *See* GSL 2034 | Governor Spencer J. Cox

In short, the state leadership has made it clear that anything that undermines the protection and preservation of Great Salt Lake is detrimental to the public welfare, including this proposed groundwater withdrawal. Therefore, because this withdrawal will negatively impact Great Salt Lake, the proposed use will be detrimental to the public welfare and the application must be rejected pursuant to Utah Code Ann. § 73-3-8(1)(a)(iii)(B). *See also* Utah Code Ann. § 73-3-8(1)(b).

E. There is No Evidence that the Applicant Has the Financial Ability to Complete the Proposed Project.

Utah Code § 73-3-8(1)(a)(iv) requires the State Engineer to find, before approving a water right application, that "the applicant has the financial ability to complete the proposed works." This criterion cannot be satisfied simply by proponents' claims of project value or anticipated economic benefit. It requires a showing – demonstrated at the time of application – that the applicant actually has the financial resources necessary to build the infrastructure the water right is intended to serve. Where that showing cannot be made, the application must be rejected. *See* Utah Code Ann. § 73-3-8(1)(c). Utah Code § 73-3-11 reinforces this requirement by specifically authorizing the State Engineer to demand, from any incorporated applicant, submission of articles of incorporation, the names and residences of its directors and officers, and the amount of its authorized and paid-up capital to enable the State Engineer to evaluate whether the applicant has the financial capacity to carry out the proposed work. The existence of § 73-3-11 confirms that financial ability is not presumed and must be demonstrated through concrete disclosure, not promotional representations.

The record on the project's financial status is supplied in large part by O'Leary Digital's own principal. In an interview with CBC News in April 2026, Kevin O'Leary stated explicitly: "The minute we get the permit, that triggers a whole bunch of other activities in terms of how we finance it, when we start engineering, design, everything else." CBC News, April 10, 2026, *supra*. While this statement was made in the context of the Alberta project, the Utah project uses the identical business model, and is a direct admission that financing is contingent on permitting. In other words, the project proponent has publicly acknowledged that it does not presently have the financing in place to complete the proposed works and does not intend to arrange that financing until after regulatory approvals are obtained.

This admission is corroborated by O'Leary Digital's own press materials. In a February 2026 statement, O'Leary acknowledged that the project would need "every incentive" it could obtain as he works to raise billions of dollars to fund both the power plant and the data centers. *Mr. Wonderful's AI Data Center in Utah Could Consume 2x More Power Than the Whole State,* TechSpot, April 28, 2026, https://www.techspot.com/news/112206-wonderful-ai-data-center-utah-could-consume-2x.html. This statement refers to an ongoing fundraising effort, not a present financial capacity. A project requiring billions of dollars in capital that hasn't been raised cannot satisfy the requirement that the applicant must have the financial ability to complete the proposed project.

Further, the "proposed works" for which the applicant must demonstrate financial ability is no small thing. At full buildout, the Stratos Project contemplates a 9-gigawatt on-site power generation facility connected to the Ruby interstate natural gas pipeline, a hyperscale data center campus spanning approximately 41,200 acres, and associated water diversion, conveyance, and treatment infrastructure – all in an unincorporated area of western Box Elder County with no existing utility-scale infrastructure. *'Hyperscale' Data Center Project in Utah — Expected to Generate and Consume More Power Than Entire State — Nears Final Approval,* Salt Lake Tribune, April 25, 2026, https://www.sltrib.com/news/2026/04/25/hyperscale-data-center-may-

be/. The project has been publicly valued at tens of billions of dollars. Even Phase 1, targeting 3 gigawatts of generation capacity, would represent a huge financial undertaking.

The burden of demonstrating financial ability rests with the applicant, not with protestants to disprove it. *See* Utah Code § 73-3-3(5). The public record, including the proponents' own statements, fails to show any committed financing, executed loan agreements, equity commitments, an anchor tenant providing revenue certainty, or construction-ready capital. What the record does show is a plan to seek financing after permits are obtained. That is the inverse of what § 73-3-8(1)(a)(iv) requires. Given this, because the applicant has failed to demonstrate that it has the financial ability to complete the proposed works this application must be rejected.

F. There is No Evidence that the Application Was Filed in Good Faith and Not for the Purposes of Speculation.

Utah Code § 73-3-8(1)(a)(v) limits the State Engineer's approval of a water right application to a finding that "the application was filed in good faith and not for purposes of speculation or monopoly." This is not a discretionary consideration. Where the State Engineer cannot make an affirmative finding that the criterion is satisfied, the application must be rejected. *See* Utah Code Ann. § 73-3-8(1)(c). The burden of demonstrating good faith and the absence of speculation rests with the applicant. *See* Utah Code Ann. § 73-3-3(5) (placing burden on applicant to produce evidence sufficient to support a reasonable belief that applicable requirements are met).

The Stratos Project, as publicly described by its proponents, is clearly a speculative infrastructure venture: water, land, power generation facilities, and data center entitlements are being assembled and permitted before any tenant or end user has committed to occupy the campus. The *Salt Lake Tribune* reported that the tax incentives MIDA approved for the project – including cutting the energy use tax from 6% to 0.5% and rebating 80% of property tax revenue – were explicitly structured to help the project "lure the hyperscalers" like Amazon, Microsoft, and Google to the state. *See* Salt Lake Tribune, April 25, 2026, *supra*. The phrase "lure the hyperscalers" reflects the project's own promotional framing, and is evidence that no hyperscaler has yet been secured. In a February 2026 Facebook post, O'Leary himself stated that the project would need "every incentive" it could obtain as he works to raise billions of dollars to fund both the power plant and the data centers. *See* TechSpot, April 28, 2026, *supra*. The admission that financing has not yet been raised, and that a tenant has not yet committed to the project, confirms that this application does not reflect a present, good-faith intent to beneficially use this water. Instead, it reflects a strategy of securing water entitlements as speculative assets in advance of a project that may never be built. An application filed on this basis cannot satisfy Utah Code § 73-3-8(1)(a)(v)'s requirement that the application be filed in good faith and not for purposes of speculation.

As noted above, O'Leary Digital's companion project – the "Wonder Valley" campus in the Municipal District of Greenview in northwestern Alberta, Canada – provides clear evidence of how this developer operates and of the speculative nature of its business model. The Alberta project was announced in December 2024 as all but certain to proceed, with construction

supposed to begin by 2026 and a first phase operating by 2027. *See* The Logic, *supra*. As of early 2026, the Alberta project has not broken ground, is more than a year behind its announced schedule, and construction is now not expected to begin until late 2028. *Id.* Critically, the Alberta project still has no confirmed anchor tenant. *Id.* This demonstrates that the strategy for Wonder Valley is to design the campus on a speculative basis and then seek to attract a hyperscale tenant after the fact. Industry analysts quoted by The Logic noted that data center financing is fundamentally dependent on long-term tenant commitments, observing that "the tenant is very, very, very important." *Id.* That the project proponent is the same developer using the same business model, at the same stage of development as the stalled Alberta project is not coincidental – it is the pattern. And the State Engineer should consider this track record in evaluating whether the application reflects a genuine, present intent to beneficially use water, or instead reflects the same speculative land and entitlement acquisition strategy that has characterized the developer's conduct elsewhere. Because the applicant cannot show that the project proponents have demonstrated a firm commitment to carry out this project, the application fails to meet the requirements of § 73-3-8(1)(a)(v) and must be rejected.

V. Relief Requested

For the reasons stated above, FRIENDS requests that the State Engineer reject the application associated with Water Right # 13-4148 because it fails to meet many of the requirements of Utah Code Ann. § 73-3-8(1).

Respectfully submitted April 30, 2026.

/s/ Rob Dubuc
Rob Dubuc
General Counsel, FRIENDS of Great Salt Lake
robd@xmission.com
801.529.3964