PROTEST

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WATER RIGHTS
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Protestant: FRIENDS of Great Salt Lake
150 S 600 E, Ste 5D
Salt Lake City, UT 84102

RE: Protest of Change Application a55167 (13-2)

See attached protest

FRIENDS of Great Salt Lake

Enclosure

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FRIENDS of GREAT SALT LAKE

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November 24, 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 # a55167 (Water Right: 13-2), Bar H Ranch, Inc./O'Leary Digital Utah DC Sub I, LLC**

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 **Change Application Number a55167 (Water Right: 13-2)** made by **Bar H Ranch, Inc./O'Leary Digital Utah DC Sub I, LLC (Stratos)** to change the use of 1,712 acre-feet of spring water in the Great Salt Lake Basin for a 7,500 MW power plant and commercial and industrial uses as a data center. The application, filed by Stratos on behalf of the record owner Bar H Ranch, seeks to change the point of diversion, place of use and nature of use of 4 cfs or 1,712 acre-feet of water from the Salt Wells Spring. That water has ostensibly been used to irrigate land on the northern shore of Great Salt Lake from April 1 to October 31 annually. The application proposes instead to use it year-round for a 7,500 MW power plant and a hyperscale data center campus, spread across roughly 11,000 acres of Hansel Valley.

This application follows Application Number a54385 (Water Right 13-4148), which FRIENDS protested on April 30, 2026, and which has since been withdrawn. The new filing is supported by considerably more paper than its predecessor, but the supporting materials confirm rather than resolve the fundamental issues FRIENDS identified last spring. The so-called water savings rest on water use outside the authorized place of use, and the promised benefit to Great Salt Lake is, in the applicant's own words, "uncertain." The engineering is provisional and internally inconsistent, and the project still has no committed tenant, no committed financing, and a claimed capital base that amounts to a rounding error compared with the overall cost of this project. As outlined below, Stratos has not carried its burden under Utah Code Ann. §§ 73-3-3 and 73-3-8(1), and the application must be rejected.

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

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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.

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FRIENDS of Great Salt Lake has staff and members who regularly use and enjoy and will continue to use and enjoy Great Salt Lake and its shoreline for birdwatching, boating, photographing, hiking and studying natural areas. FRIENDS, its staff and its members visit the Salt Wells Flat area and the adjacent North Arm shoreline on a frequent basis and plan to continue doing so. FRIENDS, its staff and its members 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 (Utah 1989) ("Section 73-3-7 permits 'any person interested,' not just a water user or an owner of vested rights, to protest the granting of an application under title 73").

These particularized injuries also provide FRIENDS with standing to seek judicial review under Utah Code Ann. § 73-3-14(1)(b). Under Utah law, a party has standing to challenge an agency decision when the challenged action injures an interest that attaches to or implicates the party's personal stake in the dispute. In turn, a personal stake is established when, first, the interest "has been or will be adversely affected by the [challenged] actions"; second, there is "a causal relationship between the injury to the party, the [challenged] actions and the relief requested"; and, third, "the relief [is] substantially likely to redress the injury claimed." *Utah Chapter of the Sierra Club v. Utah Air Quality Board*, 2006 UT 74, ¶ 19, 148 P.3d 960 (internal quotations omitted). Utah recognizes the ability of an environmental organization or "association" to bring suit on behalf of its staff and members, when those members "have identified personal adverse effects, sufficient causation, and redressability." *Sierra Club*, 2006 UT 74, ¶ 21. In *Sierra Club*, it was sufficient that the organization's members lived and recreated near the site of the challenged action. *Id*. ¶ 28. Here, FRIENDS' staff and members use the very shoreline the change would dry, the injury flows directly from the diversion and depletion the State Engineer would authorize, and rejection of the application would redress those harms.

III. Legal Framework

A permanent change application is evaluated under the same procedures as an application to appropriate. Utah Code Ann. § 73-3-8(5)(a)(i). In evaluating this application, the State Engineer must first determine if "the proposed use will not impair existing rights." 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 or monopoly." Utah Code Ann. § 73-3-8(1)(a)(iv) & (v).

Under § 73-3-8(7)(a), in determining whether a proposed plan would prove detrimental to the public welfare, the State Engineer "may only consider (i) the effect of the proposed plan on: (A) the beneficial use of water; or (B) the quantity, quality, or availability of water; and (ii) other factors as specifically directed by statute." Utah Code Ann. § 73-3-8(7)(a). The public welfare arguments in this protest rest on the proposed plan's effect on the quantity and availability of water reaching Great Salt Lake and its shoreline.

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Further, the State Engineer "may not consider or rely on detriment to the public welfare . . . as a basis for the rejection of an application if: (i) the prevention, regulation, or mitigation of the detrimental effect is reserved to, reasonably within the scope of authority of, or better suited to be addressed by another regulatory agency." Utah Code Ann. § 73-3-8(7)(b). None of these limitations apply here. First, the detriment FRIENDS identifies is the change's effect on the quantity and availability of water reaching Great Salt Lake and its shoreline. Determining how much water a change may divert is the State Engineer's responsibility under Sections 73-3-3 and 73-3-8. FRIENDS does not ask the State Engineer to rely on air emissions or water quality discharges, which fall to other agencies. Second, these effects are directly associated with the interests in Subsection (7)(a); they are effects on the quantity or availability of water. Third, the effect is not negligible; the change requested involves approximately 1,700 acre-feet of water. Additionally, under § 73-3-7(2)(a), the State Engineer shall "consider a protest only to the extent the protest addresses a basis for which the state engineer may approve or reject the application," and this protest addresses those permissible grounds. Utah Code Ann. § 73-3-7(2)(a). Each argument below is directed at one of the § 73-3-8 criteria.

Importantly, the burden of persuasion is on the applicant throughout the application process. "In a proceeding before the state engineer, the applicant has the burden of producing evidence sufficient to support a reasonable belief that the change can be made in compliance with this section and Section 73-3-8, including evidence: (a) that the change will not cause a specific existing right to experience quantity impairment." Utah Code Ann. § 73-3-3(5). If the applicant "is unable to meet the burden described in Subsection 73-3-3(5)," the State Engineer "shall reject" the application. Utah Code Ann. § 73-3-8(6)(a). The statutory requirement is consistent with longstanding Utah law. In *Searle v. Milburn Irrigation Company*, the Utah Supreme Court held that a change 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). 2006 UT 16, ¶ 53, 133 P.3d 382. The applicant must show that there is reason to believe the change will satisfy the Subsection (1)(a) factors, *id.* ¶¶ 45, 53, and this requirement exists even if the application is unopposed. *Id.* ¶ 57. If the applicant cannot meet this burden, or if a protestor produces evidence that undermines the reasonableness of the applicant's "reason to believe" assertions, the application must be rejected. *Id.* ¶ 56.

Finally, under § 73-3-14(1)(b), a person is "aggrieved" by a State Engineer order approving or rejecting an application under § 73-3-8 "only if the person has suffered or will suffer a particularized injury from an action taken by the state engineer in accordance with Section 73-3-8." Utah Code Ann. § 73-3-14(1)(b). This codifies the constitutional standing requirement of injury-in-fact but does not limit aggrieved status to holders of water rights. As established in *Bonham v. Morgan*, 788 P.2d 497 (Utah 1989), the "person interested" who may protest under § 73-3-7 is not limited to water users or vested rights holders, and the particularized injury standard of § 73-3-14(1)(b) does not disturb that holding. Because FRIENDS' staff and members who regularly use and enjoy the Lake will suffer direct and particularized injuries from approval of this application, this protest satisfies the § 73-3-14(1)(b) standard.

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IV. Background

Water Right 13-2 is the senior right on Salt Wells Spring Stream, with a 1904 priority. Explanatory at 1, p. 7[1]; Loughlin § 2.1 & Table 3, pp. 23, 27. Under the Proposed Determination for the Great Salt Lake Division, Snowville, Promontory Point and Vicinity Subdivision (Book 13-3), it authorizes a diversion of 4 cfs or 1,712 acre-feet, for irrigation from April 1 to October 31. Explanatory at 1, p. 7; Loughlin §§ 2.1-2.2, pp. 23-24. The application lists the current beneficial use amount as 920 acres within a group total of 2,035.8 acres. Application ¶ 5, p. 1. However, while the application's maps show the 2,035.8-acre group place of use, the application does not identify which of those acres make up the 920 acres attributed to Water Right 13-2, or which water rights irrigate the remaining 1,116 acres of the group. Application ¶¶ 5-6, p. 1 & maps, pp. 4-5. In any case, the authorized place of use is located within Salt Wells Flat at the southern end of Hansel Valley, contiguous to the North Arm of Great Salt Lake.

In March 2026, Bar H filed Application a54385 to segregate Water Right 13-4148 from 13-2. That change application, for the same Stratos project, was for 1,900 acre-feet, more water than the entire parent right now claims, and contained no explanatory statement or supporting information. Its attachment asserted that the data center use "will not result in a consumptive loss." Application a54385, Attachment ¶ 24, p. 4. FRIENDS protested Application a54385 on April 30, 2026, and the application has since been withdrawn.

In the current application, Stratos contends that the historic depletion by Bar H under Water Right 13-2 amounts to 1,009 acre-feet per year, that the project at buildout will deplete 986.55 acre-feet annually, and that a 2.5-mile pipeline carrying unused water and treated return flows will deliver more water to Great Salt Lake than reaches it today. Explanatory at 2-4, pp. 8-10. However, it is important to note that Stratos only accepts the 1,712 acre-foot limit "for purposes of this Application" and expressly reserves Bar H's objection to the Proposed Determination, which seeks to use the water right year-round. Explanatory at 1, p. 7. Stratos thus leaves the door open for a future claim to use substantially more water down the road.

V. Argument: The Application Must Be Rejected.

While Stratos asserts that the materials provided in its application "establish a reasonable belief that all of the Utah Code § 73-3-8(1)(a) factors are established," Explanatory at 6, p. 12, as outlined below, the application falls short of the statutory requirements and must be rejected. Each of Stratos' central claims is either contradicted by its own exhibits or is based on assumptions that the exhibits label as provisional.

A. Stratos Has Not Shown that the Change Will Not Enlarge the Right or Impair Existing Rights.

Stratos' entire depletion claim rests on a comparison of what it designates as the historical depletion of 1,009 acre-feet per year, versus the project's claimed depletion of 986.55 acre-feet. Explanatory at 2, p. 8. If either the historical figure is overstated, or the project's

[1] These references – p. 7, pp. 23, 27, etc. – refer to where in the PDF document the information is found.

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depletion is increased, any enlargement of the water right comes out of downstream water and the Lake.

1. About 40 Percent of the Claimed Depletion Comes From Use Outside the Authorized Place of Use.

The Loughlin Report (Application Exhibit A) admits that for more than a decade Bar H used a pump in Pond 1 that delivered water to two center pivots located northeast of the authorized place of use (POU), even though these pivots "are not technically within the approved POU for water right number 13-2." Loughlin §§ 4.1, 6.2, pp. 36, 44. The amount of water depleted by those pivots is estimated at 401 acre-feet per year, which equals about 40 percent of the total depletion associated with this water right. *Id*., p. 44; Executive Summary, p. 21. What that means is that approximately 40 percent of Bar H's depletion was used by the ranch outside of its authorized POU. To account for the unauthorized usage, Loughlin creates a study area that it calls the "POUx," which includes the center pivots and consists of 2,253 acres, or 217.2 acres larger than the authorized POU of 2,035.8 acres. *Id*. Table 6, p. 45. Loughlin states that its study of the POUx area was necessary because "excluding the pivots from the depletion analysis would severely underestimate the historical depletion." *Id*. § 6.2, p. 44.

Under Utah water law, beneficial use of water constitutes "the basis, the measure and the limit" of a water right. Utah Code Ann. § 73-1-3. For a water right to rise to the level of being used beneficially, the use of the water must fall within the parameters approved by the State Engineer, including its authorized POU. A water right is "only a right to use a given amount of the transitory waters of a stream or water source for a specific time, place and purpose." *Strawberry Water Users Ass'n v. Bureau of Reclamation*, 2006 UT 19, ¶ 35, 133 P.3d 410. Using water outside the authorized POU, as Bar H has done here, requires an approved change application, Utah Code Ann. §§ 73-3-3(1)(b)(ii), (3)(a)(iii), (4)(a), which Bar H never bothered to apply for. Loughlin's description of the pivots as "not technically within the approved POU," Loughlin § 6.2, p. 44, understates the problem; Bar H's use of the water for those center pivots "in violation of an existing water right" is grounds for an enforcement action rather than a basis for receiving credit for that use. Utah Code Ann. § 73-2-25(2)(a)(ii). Bar H, therefore, "obtains no right by the change." *Id*. § 73-3-3(7)(a)(i); *see also id*. § 73-3-8(6)(c)(i)(B) (quantity impairment is presumed where a right has not been "beneficially used at the approved place of use"). Because water for the center pivots was used by Bar H outside of Water Right 13-2's authorized POU without an approved change, it was not a beneficial use under Water Right 13-2 and cannot be credited to the water right and then transferred to a new use. Without the pivots, Loughlin's own depletion estimates for the POUx range from 517-637 acre-feet per year. Loughlin § 6.3.4.3 & Table 12, pp. 61-62. Based on the projected 986.55 acre-foot depletion, the proposed change would increase depletion by about 350 to 470 acre-feet annually.

2. Loughlin Does Not Separate Depletion Under 13-2 From Other Water Rights.

While Water Right 13-2 is limited to 4 cfs, Stratos reports that Salt Wells Spring flowed at 9.16 cfs in March 2025, 5.4 cfs in June 2026, and 5.0 cfs in July 2026. Explanatory at 1, p. 7; Loughlin § 7, p. 72. It is important to note that the 2026 figures come from just two site visits in June and July and, as Loughlin admitted, "[n]ot all locations were revisited in July 2026 due to

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health and safety concerns due to high forecasted temperatures." Loughlin §§ 5, 5.1, pp. 38-39. Two summer measurements are not sufficient to establish how much the spring discharges over a full year, or how much of that flow exceeds 13-2's 4 cfs. In spite of this, Loughlin estimates evapotranspiration from the entire spring's outflow across Salt Wells Flat, with a small carveout for a "Minor Springs" area it ties to Water Right 13-2762, and attributes that consumption to 13-2. Loughlin §§ 6.3.4, 7, pp. 52, 73. Except for that minor carveout, Loughlin fails to break out how much of that consumption is from water in excess of 13-2's 4 cfs water right or that should be credited to other water rights that are part of the 2,035.8 acre group POU. Because Stratos claims beneficial use of only 920 of the 2,035.8 acres, the State Engineer cannot credit to 13-2 depletion of water that 13-2 does not have a right to use.

3. The Change Would Create New Depletion in Months When the Current Right is Not Authorized to be Used.

Under the Proposed Determination, Water Right 13-2 is only authorized to be used from April 1 to October 31. Consistent with that, Loughlin calculates historical depletion only for April through October. Loughlin § 6.3.1.1, p. 46. By contrast, presumably because the application seeks year-round use, the Beairsto Report (Application Exhibit B) models depletion from the project at 467,678 gallons per day (~ 217 acre-feet) during the 151-day winter period when the right has historically consumed nothing. Beairsto, Executive Summary, Table E1, p. 139. However, besides the single March 2025 reading taken for a different water right, the application does not contain any fall or winter measurements of the spring's flow. Explanatory at 1 n.3, p. 7; Loughlin § 5, p. 38. Loughlin (citing Hood, 1971) states that outside the growing season very little water is consumed by evapotranspiration and any spring flow that is not consumed, approximately 2,400 acre-feet per year, leaves Hansel Valley toward Great Salt Lake. Loughlin § 3.6, p. 35. Therefore, any water that would be depleted in winter by this project is water taken from the Lake, and may not be credited as historical consumption. Pursuant to Utah Code Ann. §73-3-3(1)(h)(i)(B), a change in "the timing of availability of water" is a form of quantity impairment.

4. The Application Ignores Downstream Rights and the Statutory Presumption of Impairment.

The applicant is required to produce evidence that the change will not cause "a specific existing right" to experience quantity impairment. Utah Code Ann. §73-3-3(5)(a). However, the application does not identify, let alone analyze, the water rights downstream of Salt Wells Flat, in spite of Loughlin's identification of several of those rights in its report. Loughlin, Table 3, pp. 27-28. Those rights include Bureau of Land Management's Water Right 13-3614 to 1,440 acre-feet from "Salt Wells," and Chad G. Holmgren LLC's stock Water Rights 13-3607 and 13-3608 on "Salt Wells Stream." From the information provided, it appears that the requested change would constitute a quantity impairment of each of these rights by reducing water at the source, changing when water would be available through year-round diversion, and increasing overall depletion. Utah Code Ann. § 73-3-3(1)(h)(i)(A)-(C). This would constitute an impairment of existing rights in violation of Subsection 73-3-8(1)(a)(ii).

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Further, the applicant's history of diverting water outside the approved point of diversion (POD) and using it outside the authorized POU makes such a showing harder still. By the applicant's own admission, for more than a decade a pump in Pond 1 has supplied two center pivots that lie outside the authorized POU. Loughlin §§ 4.1, 6.2, pp. 36, 44. The location of that pump is not the authorized POD, which Loughlin places about 0.5 miles southwest of the spring's ponded areas. Loughlin § 2.1, p. 23. In fact, Stratos proposes moving the POD to the pump. Application ¶ 8, p. 2. That pump supplied approximately 1.98 cfs to those pivots, which is roughly half of the applicant's claimed right of 4 cfs. Loughlin §§ 6.4.2, 6.5, pp. 67-68, 72; Application, p. 1.

For more than seven consecutive years, the portion of the water right that supplied those pivots has been diverted from somewhere other than the approved POD and used outside of the approved POU. Under Utah law, that portion of the water right is therefore presumed to cause quantity impairment. Utah Code Ann. § 73-3-8(6)(c)(i)(A)-(B). The State Engineer may consider the presumption only if it is raised in a protest by a party whose own water rights would be impaired, or by the State Engineer herself by serving written notice of the presumption within 90 days after the application is filed. *Id.* § 73-3-8(6)(d). Because FRIENDS holds no water rights of its own, it requests that the State Engineer issue that notice by January 13, 2027, identifying Water Rights 13-3614, 13-3607 and 13-3608 as rights that may be impaired. *Id.* § 73-3-8(6)(d)(ii), (e). Once the presumption is raised, Stratos bears the burden of rebutting it. *Id.* § 73-3-3(5)(b). If it fails to meet that burden, the State Engineer must reject the application or, at a minimum, exclude the pivots' share of the water right from any approval. *Id.* § 73-3-8(6)(a), (b)(i).

5. The Depletion Estimate Relied on "Limitations and Uncertainties."

Stratos' claim that the project will not use any more water than the ranch used historically is based on a difference between the claimed historic use of 1,009 acre-feet, and the projected use 986.55 acre-feet, or about 22 acre-feet. Explanatory at 2-3, pp. 8-9. That assumes, however, that the historic use is at the high end of the historic range of 944 to 1,009 acre-feet. Loughlin § 7, p. 74. Not only does the majority of that range fall below the 986.55 acre-foot projection, but Loughlin also admits that its numbers rely on "limitations and uncertainties," *id.* § 6.3.4, p. 52, one of which is the evapotranspiration rates it used in deriving that range. *Id.* § 7, p. 73. Those rates come from a program called OpenET, which is a satellite tool that its own developers found to be less accurate with shrublands such as that found in Hansel Valley than with irrigated cropland. *See* J.M. Volk et al., *Assessing the Accuracy of OpenET Satellite-Based Evapotranspiration Data to Support Water Resource and Land Management Applications*, Nature Water (2024), https://www.nature.com/articles/s44221-023-00181-7. In fact, the company itself acknowledges this problem, cautioning on its website that "OpenET models have lower accuracy in shrublands and grasslands" and that "[u]sers should carefully consider and assess inaccuracies when applying OpenET data in shrublands and grasslands," something Loughlin fails to acknowledge. https://etdata.org/accuracy-known-issues/.

Given that: 1) Stratos selected the high end of the historic range as the basis for its claim that the project would use no more water than was historically used; 2) the historic range was calculated using a program which cautions against using it in the shrublands and grasslands

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found in Hansel Valley because of its inaccuracies at calculating evapotranspiration in that environment; 3) about 40% of the historical depletion occurred outside the authorized POU and diverted away from the authorized POD; and, 4) the estimated depletion does not account for consumption by other water rights, there is no basis for the State Engineer to conclude that the change would not enlarge the existing water right. *See* Utah Code Ann. §§ 73-3-3(5), 73-3-3(1)(h)(i)(C). At a minimum, any approval must be limited to depletion that Stratos can actually prove, rather than its consultant's estimate of historical use. *See id*. §§ 73-3-8(5)(c)(i), (6)(b)(i).

B. The Applicant Has Not Evaluated Whether the Change Will Affect Locomotive Springs.

About 14 miles west of Salt Wells Flat lies Locomotive Springs Wildlife Management Area (WMA) at the south end of Curlew Valley. The WMA covers roughly 18,000 acres and has long been considered one of the most important waterfowl areas in the area surrounding the North Arm. *Utah's Massive Data Center Could Be the Final Death Knell for a Struggling Waterfowl Refuge*, Field & Stream (May 29, 2026), https://fieldandstream.com/stories/locomotive-springs-utah-theatened-by-data-center.

Whether this proposed change will further impact the already struggling springs is a question that the application does not ask, let alone answer. In the application, Loughlin notes that a U.S. Geological Survey regional model shows that the Hansel Valley aquifer contributes roughly 10,000 acre-feet per year to the Curlew Valley aquifer, Loughlin § 3.6, pp. 35-36 (citing Brooks et al. (2014)), that feeds the WMA. Loughlin concedes that "[n]either water balance was validated through rigorous study" and that the figure should be considered an estimate. *Id*., p. 36. Nonetheless, Loughlin fails to consider whether a change from agricultural use, with its return flows, to year-round industrial depletion would impact the groundwater which moves between the two aquifers, and ultimately to Locomotive Springs.

Further, because the State Engineer does not consider Area 13 to be covered by the Governor's Proclamation 2022-01, https://governor.utah.gov/uncategorized/gov-cox-issues-proclamation-closing-great-salt-lake-basin-to-new-water-right-appropriations/, which suspends new appropriations in the Great Salt Lake Basin, Hansel Valley effectively remains open to new groundwater appropriations and the proponents of this project, with its uncertain water demands, may well seek them. Whether, and to what degree, Salt Wells Spring and Locomotive Springs are connected is an open question which Stratos has failed to address, but must address before the application is approved.

At a minimum, before a permanent conversion from agricultural to industrial use is approved, the State Engineer must exercise her authority to "require such additional information as will enable [her] properly to guard the public interests." Utah Code Ann. § 73-3-11. In order to accomplish that, the State Engineer must require Stratos to complete a hydrologic evaluation of groundwater flow between the two valleys, and of the change's potential impact on Locomotive Springs.

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C. There Is No Reason to Believe the Change Will Increase Flows to Great Salt Lake.

In spite of its boastful claim that the project "is almost certain to result in a net increase of water flowing to downstream water rights and the Great Salt Lake," the applicant's own materials undermine this claim. Explanatory at 3-4, pp. 9-10. Shortly after making this boast, the applicant concedes that "it's uncertain how much of the flows returned through the pipeline will reach the Great Salt Lake." *Id*. at 4, p. 10. That concession should put that claim to rest because it is up to the applicant to show that its claims are reasonable. *Searle*, 2006 UT 16, ¶¶ 53, 56.

The record shows that there are several reasons why return flows to the Lake are "uncertain." First, the pipeline for the return flow does not reach Great Salt Lake; instead, it runs to "the edge of Applicant's property at the lower point of return." Explanatory at 4, p. 10. The application fails to note what happens to the water once it leaves the pipe. Second, the return flows are provisional. Beairsto states that credit for the cooling-tower blowdown return flow "is not established by this report," that the receiving water and outfall "remain to be confirmed," and that the sanitary return flow is "a planning assumption." Beairsto § 8.5, p. 166; Executive Summary, pp. 139, 141. Third, any implementation of return flow is open-ended. Stratos states that it intends to "balance implementation of the Application over time, preserving some irrigation" during the project's buildout. Explanatory at 4, p. 10.

In short, a speculative and uncertain benefit cannot be considered an offset for an increase in depletion. It also cannot be used as proof that the change will not be detrimental to the public welfare because of the change's effect on "the quantity . . . or availability of water" for Great Salt Lake. Utah Code Ann. § 73-3-8(7)(a)(i)(B).

D. The Applicant Has Not Shown that the Proposed Plan is Physically Feasible.

A requirement for approval of the application is the determination by the State Engineer that the proposed use is physically 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, in this case questions have been raised about whether Stratos' claims are even feasible, especially given the company's admissions that critical systems have not even been selected, let alone designed and tested, and given the fact that the plan's engineering is incomplete and internally inconsistent.

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 7.5 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

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actually be used. *Id.* MIDA Executive Director Paul Morris stated at the April 24, 2026 board meeting that the project would "lose 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 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 24 acre-feet for 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, which undermines 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.*

That aside, Stratos cannot even say what kind of power plant it intends to build. The application's explanatory statement describes the power facility as fifteen 500 MW combined-cycle natural gas plants. Explanatory at 2-3, pp. 8-9. However, the Beairsto Report, from which the Explanatory Statement derives its numbers, instead describes "a co-located 7.5 GW reciprocating-engine power generation facility." Beairsto, Executive Summary, p. 139. To muddy things up even further, the application states that Stratos "has not finalized its exact power generation plans" and is "continually evaluating" other options. Explanatory at 2-3, pp. 8-9. The difference between a combined-cycle natural gas plant and a reciprocating-engine power generation facility is substantial, with different water and cooling requirements. Even Beairsto states that any changes to the power generation configuration "must trigger an update to the site-wide water balance before filing or design reliance." Beairsto § 9.3, p. 168.

Further, the water requirements for the power generating facility came from the developer, not from engineering. Beairsto constantly points to its water consumption inputs (e.g., the 2.87 million gallon per day water power requirement and first fill amounts) as "Owner-provided" or as an "Owner benchmark." *Id.* §§ 8.1, 8.3, 9.1, 9.3, pp. 163, 164, 166, 167. Other numbers are described as "a provisional performance assumption" or "not a physically derived" number, with Beairsto finally admitting that the numbers for the final cooling requirements "should be established by the project mechanical design." *Id.*

And, as we noted above, those developer-provided assumptions are inconsistent with known methods of cooling a power plant and data center complex of this size. For instance, Beairsto allots only about 57 acre-feet of cooling tower evaporation for all eleven data center clusters combined. That works out to be about 4,600 gallons of evaporation a day for each data center cluster. Beairsto § 8.1 & Table 10, pp. 163-64. Whatever the merits of that figure, the

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application side-steps the question of which system will be used to carry away the tremendous amount of heat generated by both the 7.5 GW power facility and the data centers it supports, or whether such a system is feasible in the summer climate of Hansel Valley. The only information provided is a bullet point in the O'Leary Report noting that a "closed-loop low-water cooling" system will be used, without any description of what such a system would consist of. O'Leary § 2, p. 187. Because of this lack of information, FRIENDS reserves the right to supplement this protest with expert analysis on this point.

Stratos also assumes, without testing, that the spring's water is suitable for cooling without treatment. As the State Engineer's own policy for the area notes, "water quality is generally poor," Utah Division of Water Rights, Area 13 – Great Salt Lake Desert (November 3, 2022), Area 13 Water Rights Policies, and Loughlin reports that the area's original water budget study cited "poor water quality through much of the valley." Loughlin § 3.6, p. 36. Yet, the application does not contain an analysis of the spring water's chemistry and fails to identify a process for treating it. Beairsto admits that dissolved solids will govern how much water the cooling towers will need and that what can be done with their blowdown "should be established from source-water chemistry." Beairsto § 8.5, p. 165. As part of its water budget, Beairsto assumes that the cooling tower water can be recycled six times before it must be flushed, an assumption that Beairsto states "should therefore be substantiated through source-water analysis, including total dissolved solids, hardness, alkalinity and silica." Beairsto § 8.3, pp. 164-65. Also, as part of the water budget Beairsto places the loss allowance associated with a water treatment plant at 10%, which is a "project planning input[]," that is used "pending confirmation of final treatment-residual routing." Beairsto § 4.6, Executive Summary, pp. 139, 156. However, if the TDS in the water is too high to support the six-cycle assumption, or if the treatment consumes more water than planned for, the project will need more water than Stratos claims.

The bottom line is that this application simply fails to provide a reasonable basis for the State Engineer to conclude that this project is physically feasible given the claimed water use. In place of engineering, Stratos simply offers site characteristics such as proximity to the Ruby Pipeline and fiber-optic cabling, MIDA land use approvals, LiDAR, as well as the names of design and construction firms. O'Leary §§ 1-2, 4, pp. 186-191. 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 as part of the change application. However, the Stratos water-related infrastructure has not been designed and no engineering drawings or construction specifications have been submitted in connection with this application. 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 Impact 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.

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Ironically, the Beairsto Report reveals that the single largest use of water for the project is not power generation or computing, but is, instead, landscaping. Of the 1,215 acre-foot annual diversion, nearly half (576 acre-feet) will go to irrigate 154 acres of landscaping. Beairsto Executive Summary, p. 140. Beauty versus the Beast. The bottom line is that retiring agricultural irrigation on the shore of Great Salt Lake in order to irrigate landscaping on an industrial campus is difficult to reconcile with Stratos' assertion of a water-conserving project.

E. The Applicant Has Not Shown Economic Feasibility or the Financial Ability to Complete the Proposed Works.

Utah Code Ann. § 73-3-8(1)(a)(iii)(A) requires that Stratos demonstrate that its plan is economically feasible, and § 73-3-8(1)(a)(iv) requires the State Engineer to find that "the applicant has the financial ability to complete the proposed works." These criteria require Stratos to show that it has, or has firm access to, the resources necessary to actually build the infrastructure that the water right supports. In line with that, Utah Code Ann. § 73-3-11 reinforces this obligation by authorizing the State Engineer to require any applicant to provide "such additional information as will enable the state engineer properly to guard the public interests," including, for an incorporated applicant, "the amount of its authorized and its paid-up capital." For an unincorporated applicant, the State Engineer may require "a showing of facts necessary to enable [her] to determine whether or not they are qualified appropriators and have the financial ability to carry out the proposed work, and whether or not the application has been made in good faith." Utah Code Ann. § 73-3-11.

In its application Stratos estimates the cost to build its data center at "roughly $33 million per MW." O'Leary § 3.4, p. 188.[2] Of that amount, $13 million per MW would be for the cost of developing and building the shell for the data centers, and the $20 million per MW balance for the computing equipment would be borne by the tenant.[3] *Id*. Assuming a data center campus sized to the plant's 7.5 GW output, Stratos' share would be $97.5 billion. Added to that is the cost of the power generation facility which Stratos estimates at $1.5 to $2.0 million per MW, which puts the cost of the power generation facility at $11.25 to $15 billion. *Id*., pp. 188-89. Combined, the total project cost that Stratos would be required to bear is approximately $108.75 to $112.5 billion.

In its application, Stratos states that it "has already raised $20 million in funding for the Project, and it is in the process of raising an additional $30 million." Explanatory at 5, p. 11. While those amounts might sound impressive in isolation, they are nothing more than rounding errors when compared to Stratos' total financial obligation of $108.75 to $112.5 billion.[4] Further, listing a group of advisors and partners does not constitute committed financing. In its application, Stratos lists Goldman Sachs, UBS and Cantor Fitzgerald as "capital-markets

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[2] The data center industry sizes and prices facilities based on the electrical power it can deliver to the computers.

[3] Stratos states that it will deliver "the building, including the land development, building shell, and power and cooling infrastructure," and the tenant would supply the computing equipment under a triple-net lease. O'Leary § 3.4, p. 188.

[4] $50 million is less than 0.05% or about $1 for every $2,200 of the estimated cost.

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advisors," and describes their involvement as "a meaningful indicator" of a "viable path to funding." O'Leary § 3.6, p. 189. However, listing an investment bank retained to help raise funding is nothing more than an indication that funding has not been raised. There is nothing in the application which indicates a loan agreement or project financing of any kind. In fact, the same could be said of the list of construction, engineering and consulting firms that Stratos lists in Section 4 of the O'Leary Report. A list is not the same as committed capital.

As for a possible tenant, Stratos states that it "has received multiple letters of intent" and "active interest" from prospective customers. *Id.* § 3.2, p. 188. However, no tenant is named, and no letter of intent is provided. Stratos' strategy is to conceptualize the campus on a speculative basis and then seek to attract hyperscale tenants after the fact. An industry analyst has 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 10, 2025, reprinted at Geothermal Canada, https://www.geothermalcanada.org/news/2025/12/17/the-truth-about-wonder-valley.

Stratos offers no support to demonstrate that its financial models are accurate. Rather, the company relies on "internal financial models," which it states "support economic feasibility." O'Leary § 3.5, p. 189; Explanatory at 5, p. 11. However, those models are not attached. Further, while Stratos points to Utah's sales-tax exemption and infrastructure tax credits as "codified financial support," incentives that reduce taxes once a project is built do nothing to show that the applicant can actually pay to build it in the first place. O'Leary § 5, p. 191.

A project with no anchor tenant, no financing in place, and no committed construction timeline cannot be shown to be economically feasible in any meaningful sense of that term, and the State Engineer cannot make an affirmative finding of economic feasibility or financial ability 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.

F. The Applicant Has Not Shown that the Application Was Filed in Good Faith and Not for 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)(b). 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

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(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 '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, updated May 8, 2026), https://www.sltrib.com/news/2026/04/25/hyperscale-data-center-may-be/. The phrase "lure the hyperscalers" 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 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. 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.

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 November 2026, construction has yet to commence on the Alberta project. Wonder Valley AI Data Centre Park, Alberta Data Centre Watch (record last verified Nov. 4, 2026), https://albertadatacentrewatch.ca/projects/wonder-valley-ai-data-centre-park/. Permitting for that project is still underway, and several legal challenges are pending. *Id*. And, the Alberta project still has no confirmed anchor tenant. *See* The Logic, *supra*. This demonstrates that the strategy for the Hansel Valley project is to design the campus on a speculative basis and then seek to attract a hyperscale tenant after the fact. An industry analyst 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.* What we see here is that the same developer, using the same business model, is at the same stage as in the stalled Alberta project.

Stratos cites to *HEAL Utah v. Kane County Water Conservancy District*, 2016 UT App 153, ¶ 50, 378 P.3d 1246, for the proposition that the application is not speculative and was filed in good faith because it has "contracts in place," a defined site, money invested, and a specific amount of water needed. Explanatory at 5, p. 11. However, the only contracts identified are the contracts to buy the land and the water right, neither of which is evidence of a present intent to put the water right to beneficial use. Missing are any contracts to actually use the facility that the water is supposed to support.

That this is a speculative undertaking is also demonstrated in how Stratos is approaching this change application. First, the applicant seeks more water than its own expert states that it needs. The Beairsto Report calculates the annual water needs for the project at 1,215.29 acre-feet, yet Stratos seeks to divert the full 1,712 acre-feet. Application ¶ 7, p. 2; Explanatory at 1

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n.2, p. 7. Also at odds with the requested amount is a statement by a project proponent at the Box Elder County Commission meeting that only "a very small fraction" of the secured water rights would actually be used. *Amid Questions and Concerns, Box Elder County Leaders Delay Action on Data Center Proposal*, KSL, April 27, 2026, https://www.ksl.com/article/51489496. Second, in spite of applying for more water than its experts state that it needs, Stratos reserved the right to claim more water. The company accepted the 1,712 acre-foot limit only "for purposes of this Application," and preserves its predecessor's objection to the Proposed Determination seeking year-round use. Explanatory at 1 n.2, p. 7. Third, the water demand claimed has shifted to fit the available water right. In its March 25, 2026 application (Water Right 13-4148, Application a54385), the same project sought 1,900 acre-feet from a 633-acre segregation of this same right. *See* Loughlin, Table 3, p. 28. It now seeks 1,712 acre-feet from Water Right 13-2 based on information supplied by Stratos for a power plant and data center with undefined technology.

Finally, as noted above, the developer's pattern elsewhere is to assemble entitlements first, and find a tenant later, if possible, which is the very definition of speculation. The State Engineer should consider this track record in evaluating whether the application reflects a genuine, present intent to beneficially use the 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.

G. The Proposed Use Will Be Detrimental to the Public Welfare By Reducing the Quantity and Availability of Water Reaching Great Salt Lake.

Pursuant to Utah Code Ann. § 73-3-8(7)(a), the State Engineer may consider the public welfare to the extent that it concerns the beneficial use of water or the quantity, quality or availability of water in the State. This proposed withdrawal implicates the State Engineer's public welfare analysis under both Section 73-3-8(7)(a)(i)(A) and (B) because it undermines the beneficial use of water rights held for the express purpose of delivering water to Great Salt Lake, and it reduces the quantity and availability of water in the State's largest terminal water body.

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." 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 water levels 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. While the State's management strategies have kept salinity levels in check, the Lake levels remain low. As Stratos acknowledges, Utah's 2026 snowpack was "the lowest on record in Utah history." Explanatory at 1, p. 7.

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In the face of this threat, the State has "responded with significant public investments and policy changes," and "is actively working to enhance conservation efforts." Strategic Plan 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 $270 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 new appropriations in the Great Salt Lake Basin. *See id*. at 12-14, 27, 30; *see also* Proclamation of Gov. Spencer J. Cox Suspending the Right to Appropriate Water in the Great Salt Lake Basin (Nov. 3, 2022).

Additionally, the Great Salt Lake 2034 Charter commits the State and private partners to delivering sufficient water to raise the Lake to a healthy elevation by the 2034 Olympics. As part of this effort, private entities have pledged upwards of $200 million towards this quantified, water-availability objective. 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. This application, if approved, would reduce the quantity of water reaching the Lake and impair the State's ability to achieve that target. Because approval would prove detrimental to the public welfare as defined by § 73-3-8(7)(a)(i)(B), the application must be rejected.

This proposed change directly reduces the quantity and availability of water in the Great Salt Lake system, which is the harm that the State's water delivery and conservation measures are designed to prevent. Because that harm concerns the quantity and availability of water in the State within the meaning of Utah Code Ann. § 73-3-8(7)(a)(i)(B), the State Engineer must consider it in her public welfare analysis. This proposed use will prove detrimental to the public welfare as defined by § 73-3-8(7)(a), and the application must be rejected pursuant to § 73-3-8(1)(a)(iii)(B).

Beyond the § 73-3-8(7)(a)(i) factors, the State Engineer may also consider "other factors as specifically directed by statute" when determining whether an application is detrimental to the public welfare under Subsection 73-3-8(1)(a)(iii)(B). Utah Code Ann. § 73-3-8(7)(a)(ii). To that end, under Utah Code Ann. § 73-33-201 the Legislature directed the State Engineer to regulate the measurement, appropriation, apportionment, and distribution of water within Great Salt Lake through the creation of a Distribution Management Plan. That Plan, which is now in effect, establishes a tiered curtailment framework tied to Lake elevation levels, and creates a structure whose entire purpose is to manage the quantity and availability of water in the Lake below the meander line. The Dedicated Water provisions under §§ 73-3-30 and 73-3-30.3, the multiple use, sustained yield mandate in § 73-33-201(2)(b), and the State's substantial investment in purchasing water rights for the Lake all constitute legislative acts establishing GSL elevation as a public welfare consideration. A change application that reduces water to Gunnison Bay, therefore, works against the State Engineer's obligations under Title 73, Chapter 33, because every acre foot diverted from that source is one fewer acre foot available within the Lake that the State Engineer is charged by statute to protect and distribute. This proposed use will therefore prove detrimental to the public welfare as defined by § 73-3-8(7)(a)(ii), and the application must be rejected pursuant to § 73-3-8(1)(a)(iii)(B).

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V. Relief Requested

For the reasons stated above, FRIENDS requests that the State Engineer reject Change Application a55167 because it fails to meet the requirements of Utah Code Ann. §§ 73-3-3 and 73-3-8(1). In addition, FRIENDS requests that the State Engineer issue the written notice described in Utah Code Ann. § 73-3-8(6)(d)(ii), within 90 days after the application was filed, identifying Water Rights 13-3614, 13-3607 and 13-3608 as existing rights that may experience quantity impairment, so that the presumption of quantity impairment applies to this application. Further, FRIENDS requests that before acting on the application, pursuant to Utah Code Ann. § 73-3-11, the State Engineer require the applicant to provide: 1) a hydrogeologic evaluation of groundwater flow between Hansel and Curlew Valleys and of the change's potential effect on Locomotive Springs; and, 2) at least one full year of discharge measurements from Salt Wells Spring.

Alternatively, if the State Engineer does approve any part of the application, FRIENDS requests that the approval exclude that part of the right used outside the authorized POU, and that the depletion be capped at what the applicant can prove was historically and beneficially depleted under Water Right 13-2. *See* Utah Code Ann. §§ 73-3-8(5)(c)(i), (6)(b)(i).

/s/ Rob Dubuc
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