



WESTERN RESOURCE
ADVOCATES

Protecting the Interior West's Land, Air, and Water

February 13, 2008

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Re: Comments on Project 08-8803, Applications for Permit to Drill Associated with West Rozel Lease No. ml20000013, Wells: West Rozel – State 41-16 & 43-33

Dear RDCC Members and Mr. Baza,

I write these comments on behalf of FRIENDS of Great Salt Lake, Utah Waterfowl Association, National Audubon Society, Audubon Council of Utah, including the four local societies of Bridgerland Audubon Society, Great Salt Lake Audubon Society, Red Cliffs Audubon Society and Wasatch Audubon Society, and Utah Airboat Association (collectively “FRIENDS”). The purpose of these comments is to urge you to deny these Applications for Permit to Drill (“APDs”). We recommend this action because approval of the APDs is contrary to the State’s obligations under the Public Trust Doctrine.

Oil, gas, and hydrocarbon development in the sovereign lands underlying Great Salt Lake injures FRIENDS environmental, aesthetic, scientific, educational, and spiritual interests in Great Salt Lake. For example, 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, and advocacy. 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 taking part in scoping and submitting comments on the development of the Great Salt Lake Comprehensive Management Plan, submitting comments to the Sovereign Lands Advisory Committee on proposed use of exposed lake bed by off-road vehicles, and making comments to the Division of Water Quality on proposed changes in the description of the beneficial uses of Great Salt Lake. FRIENDS of Great Salt Lake 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.

The Conservation Groups

FRIENDS of Great Salt Lake has staff and members who regularly use and enjoy and will continue to use and enjoy the lake for bird-watching, boating, photographing, hiking and studying natural areas. Indeed, these members use and will use in the future the exact areas the State has leased and proposes for oil and gas development. FRIENDS, its staff and its members are harmed and will be harmed by the approval of these APDs. FRIENDS will be harmed because the development permitted by these APDs will significantly impair their use and enjoyment of the lake by harming navigation, fish and wildlife habitat, aquatic beauty, recreation and water quality and their ability to enjoy and participate in these activities.

The National Audubon Society and four local societies of the Audubon Council of Utah (Bridgerland Audubon Society, Great Salt Lake Audubon Society, Red Cliffs Audubon Society and Wasatch Audubon Society; collectively "Audubon") have similar missions. The mission of National Audubon Society is to conserve and restore natural ecosystems, focusing on birds, other wildlife, and their habitats for the benefit of humanity and the earth's biological diversity. The mission of the local Audubon societies is to conserve and restore natural ecosystems, focusing on birds, other wildlife, and their habitats for the benefit of humanity and the earth's biological diversity. In that role, Audubon is dedicated to protecting and enhancing habitat for wildlife, plant and animals, particularly birds, and to maintaining health and diverse environments for wildlife and people throughout the Utah. Recognizing the national and international significance of Great Salt Lake, these organizations have long been involved in the protection and restoration of the lake, its wetlands and its ecosystems. On behalf of its members, Audubon frequently participates in agency processes related to the management of the lake. Audubon 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.

Specifically, National Audubon owns and manages the more than 1,400 acre Gillmor Sanctuary on the south shore of Great Salt Lake, works to monitor and conserve the five major bays of Great Salt Lake that have been announced as Important Bird Areas, and participates in Great Salt Alliance efforts to address numerous issues on the Great Salt Lake such as selenium, mercury, water levels, water quality, wildlife habitat and funding for sovereign lands. Audubon conducts numerous field trips to Great Salt Lake, participates in the Great Salt Lake Alliance and comments on action that may affect the lake and its wildlife.

Audubon has staff and members who regularly use and enjoy and will continue to use and enjoy the lake for bird-watching, boating, photographing, hiking and studying natural areas. Indeed, these staff and members use and will use in the future the exact areas associated with the proposed West Rozel wells. Audubon, its staff and its members are harmed and will be harmed by the approval of these APDs for oil development. Audubon will be harmed because the proposed oil development will significantly impair their use and enjoyment of the lake by

harming navigation, fish and wildlife habitat, aquatic beauty, recreation and water quality and their ability to enjoy and participate in these activities.

The Utah Airboat Association (aka Utah Airboat Incorporated) is dedicated to the support, well-being and benefit of the airboaters of the State of Utah and to providing for the conservation of natural resources, waterfowl and wildlife species. The mission of the Utah Waterfowl Association (UWA) is to preserve Utah's waterfowl, waterfowl habitat, and rich waterfowling heritage. To that end, the UWA will work towards providing a voice in the political and regulatory arena to Utah's more than 24,000 waterfowlers.

These organizations too have staff and members who regularly use and enjoy and will continue to use and enjoy regularly Great Salt Lake for bird-watching, boating, hunting, photographing, hiking and studying natural areas. Indeed, these staff and members use and will use in the future the exact areas associated with the proposed West Rozel wells. These organizations, their staff, and their members are harmed and will be harmed by the approval of these APDs for oil development. They will be harmed because the proposed oil development will significantly impair their use and enjoyment of the lake by harming navigation, fish and wildlife habitat, aquatic beauty, recreation and water quality and their ability to enjoy and participate in these activities.

Water Rights

The APDs incorrectly state that the water necessary to proceed with development of the West Rozel field is supported by a valid water right associated with Water Right 13-3543. This water right, owned by Bonnie & Heather Young, is designated by the State Engineer for use in the Little Valley Harbor area for either livestock or domestic use. No change application to use this water right for mining or oil and gas development has been approved by the State Engineer.

State law is clear that a change in use associated with a water right may not be made unless that change has been approved by the State Engineer, Utah Code 73-3-3(4), and that any person who makes such a change without approval is not entitled to use the water for that new purpose. Utah Code 73-3-3(9). Additionally, in making such a change that person would be guilty of a separate, punishable crime for each day such a change is knowingly and intentionally made. Id. Because the applications are not supported by a valid water right, it would be inappropriate to approve the APDs until either a separate, valid water right is obtained for this use, or a change of use for the current, proposed water right is approved by the State Engineer.

West Rozel Petition for Consistency Review & Stipulation

In November 2005, FRIENDS submitted, *inter alia*, a Petition for Consistency Review protesting the decision on the part of the Division of Forestry, Fire and State Lands (Division) to issue Lease Nos. 20000012-13, 20000022 & 20000027-49 for oil, gas and hydrocarbon development over an area encompassing 57,678.52 acres of the bed of Great Salt Lake (GSL). These leases represented only part of the 177,813 acres of lands, roughly the size of Davis

County,¹ that the Division had either issued or proposed to issue for oil and gas leasing in the North Arm of the Lake.

Subsequent to receipt of the FRIENDS Petition, in May 2006, the Division entered into a Stipulation and Agreement (Agreement) with FRIENDS and others whereby FRIENDS agreed to withdraw its objections of these and other leases located in the West Rozel field pending review of the June 27, 1996 Great Salt Lake Mineral Leasing Plan (MLP) by the Division. As part of this Agreement, FRIENDS reserved, among other actions, the right to comment on and adjudicate any oil, gas or hydrocarbon development proposed for any parcel within the West Rozel tracts. Agreement at ¶ 6, attached as Exhibit 1.

In exchange for FRIENDS' withdrawal of its objections, the Division agreed to reconsider and review all aspects of the 1996 MLP as part of the Division's GSL planning effort. Agreement at ¶ 13. At a minimum, the Division agreed to determine if leasing and development of each specific area of the Lake was appropriate in light of the Division's public trust responsibilities. *Id.* The Division further agreed to reassess whether areas currently open for oil and gas development should remain open. *Id.* The Division projected that it would take two years or longer to conduct this review. Agreement at ¶ 14. To date, Friends has not been notified that the planned review has been drafted or is available for public comment.

Implicit in the Agreement is the admission that the 1996 MLP is insufficient and outdated and should not be used as the basis for decisions that permit oil and gas development within the confines of GSL. Because the Division has not completed its review of the MLP, any decision to approve these APDs at this time would necessarily be based on inadequate and outdated information and analysis and thus should be considered invalid. As such, any decision to approve the APDs must be held in abeyance until the Division's review can be completed.

The West Rozel Oil Field

The oil deposits in the 2,300 acre West Rozel field were discovered by Amoco in the late 1970s and Amoco proceeded to drill thirteen offshore wells between from 1978-1980 as it sought to develop this field. MLP at 16. The type of oil in the West Rozel field is commonly referred to as a "heavy oil" and the oil is tar-like in viscosity and contains a great deal of impurities, including over 12 percent sulfur. *Id.* at 15-16. Because this oil is so thick, it is often lumped into the same category as tar sands for discussion purposes and, like tar sands, is difficult and expensive to extract from the ground.

In-situ pumping of tar sands typically involves either the injection of super-heated steam or dilution of the oil through chemicals in order to facilitate pumping to the surface. With heavy oil, however, most producers attempt to extract the oil using "cold production" which calls for pumping the oil at ground temperature. John Chen, Heavy Oils, SIAM News, Vol. 39, No. 3, April 2006. Using this technique, only a small percentage of the total oil reserves, about 5 percent, is typically extracted. *Id.* Amoco's discovery well, for instance, only produced from two to five barrels of oil per hour during production testing and through 1993 a total of only 33,028 barrels of oil have been produced from the West Rozel wells. Great Salt Lake

¹ The land area of Davis County is 304 square miles. There are 640 acres in one square mile.

Comprehensive Management Plan Resource Document (CMPRD) at 114. In spite of attempts to accelerate production in the GSL fields using electric heaters and steam injection, to date there has been minimal oil and gas production in the lake and no royalty payments have been received by the State in spite of the 12.5 percent royalty rate contained within the GSL leases. MLP at 21.

After the initial exploration period, Amoco decided not to develop the West Rozel field because of the unusual character of the oil and the high cost of operating an offshore field. MLP at 16. As a result of this decision and its analysis of the situation, the Utah Geological Survey concluded that the field had low potential because the oil cannot be economically developed. *Id.* Even Pearl Montana Exploration and Production LTD, the Canadian firm that bought the rights to the West Rozel leases in 2007, has labeled the development of the field as “speculative in nature.” Pearl Financial Statement, September 30, 2007.

Although the amount of oil that can theoretically be extracted from the West Rozel field has cyclically proven tempting, the practical and technological barriers that currently exist are highly likely to once again prove that any attempt to develop the field is not economically feasible. The issue, then, is not so much the amount of resources that a private entity is willing to waste chasing such a speculative venture, it is the amount of conflict and risk to the State’s precious and irreplaceable resources inherent in allowing such a venture to proceed forward. As the MLP notes, those looking for examples of such conflicts and risks need only look four miles east of the proposed wells, to Rozel Point. These include “hazards associated with leaking wells from past operations going back to the early 1900s and natural seeps, visual impacts, recreational and wildlife conflicts.” MLP at 34. As if that were not enough, the MLP also notes that this hydrocarbon development also risks the “potential degradation of mineral salt resources or evaporation pond sites. *Id.* These impacts constitute a considerable downside to approving these APDs considering that the State has not received a single dollar in royalties from GSL oil and gas development.

In addition, the State cannot justify risk to public trust values because the company seeking approval of the APDs has not provided sufficient financial guarantees. Division of Oil, Gas and Mining (DOGM) regulations specify that the amount of the bond required prior to well development is based on the overall depth of the well and not on the well’s location or the possible environmental impacts associated with the well. Currently, with West Rozel wells located at between 2,280 and 2,410 feet below the surface, the bonding amount is \$15,000 per well, adjusted to 2002 dollars. Utah Admin. Code R649-3-1. This is hardly enough. The MLP notes that the bonding amounts should, but do not, take into account the unique and high associated risks of hydrocarbon development within GSL. MLP at 38. Assuming that the Division’s review of the 1996 MLP will include an analysis of the unique costs of remediation in the complex environment of GSL, it would be premature to approve the APDs until such an analysis can be completed and the company posts sufficient financial guarantees.

The Division's Public Trust Obligations

Legal Basis of Public Trust Doctrine

The bed of GSL is comprised of sovereign lands. Oversight of these lands falls to the Division, a division of the Department of Natural Resources (DNR). The Division is responsible for both the management and development of GSL resources and for coordinating the activities of DNR divisions such as DOGM, the sponsoring agency for these APDs. Utah Code 65A-10-8(1) & (9).

Although the public trust doctrine originated in early Roman law, the concept that sovereign lands of the State are to be held in trust for the people of the State is contained in the Utah Constitution,² as well as State rules and regulations. For instance, the Utah Legislature has directed the Division to carry out its responsibilities under the doctrine by managing the sovereign lands of the State, such as the bed of GSL, in a way that “serve[s] the public interest and do[es] not interfere with the public trust.” Utah Code Ann. § 65A-10-1. In order to achieve this, the Division has clarified that it must manage the State’s sovereign lands for the “protection of navigation, fish and wildlife habitat, aquatic beauty, public recreation, and water quality. . . .” Utah Admin. Code R652-2-200.

Indeed, DNR states, in reference to its obligation to Great Salt Lake, that:

the overarching management objectives of [the Division] and DNR are to protect and sustain the trust resources of, and to provide for reasonable beneficial uses of those resources, consistent with their long-term protection and conservation. This means that [the Division] will manage GSL and its resources under multiple-use sustained yield principles . . . accommodating public and private uses to the extent that those [uses]. . . do not compromise public trust obligations and sustainability is maintained. Any beneficial use of public trust resources is subsidiary to long-term conservation of resources.

Great Salt Lake Comprehensive Management Plan and Decision Document (CMPDD) at 4 (citations omitted). Said another way:

[t]here is no question that the [D]ivision’s implementation of the multiple-use sustained yield statute is subject to consistency with public trust obligations. All possible uses under a multiple-use framework are not necessarily protected uses under the Public Trust Doctrine. Any private uses of sovereign lands must yield to the criterion to avoid substantial impairment of protected public uses.

CMPDD at 4.

² “All lands of the State that have been, or may hereafter be granted to the State by Congress, and all lands acquired by gift, grant or devise, from any person or corporation, or that may otherwise be acquired, are hereby accepted, and, except as provided in Section 2 of this Article, are declared to be the public lands of the State; and shall be held in trust for the people, to be disposed of as may be provided by law, for the respective purposes for which they have been or may be granted, donated, devised or otherwise acquired.” Article XX, Section 1.

Additionally, application of the Doctrine can be found in State and Federal caselaw. See, e.g., Illinois Central R.R. Co. v Illinois, 146 U.S. 387 (1892) and Coleman v. Utah State Land Board, 795 P.2d 622 (Utah 1990); see also National Parks and Conservation Ass'n v. Board of State Lands, 869 P.2d 909, 919 (Utah 1993) (“the ‘public trust’ doctrine . . . protects the ecological integrity of the public lands and their public recreational uses for the benefit of the public at large”) (citations omitted). The State must not only protect its sovereign lands so that they may be used for “commerce, navigation, and fishing,” Coleman, 795 P.2d at 635, it must also ensure that the lands’ “ecological integrity” remains intact and that the land is preserved for “public recreational uses,” National Parks and Conservation Ass'n, 869 P.2d at 919. In carrying out these obligations, the State must ensure that public trust lands are not sold or leased unless the State’s sovereign ownership rights can be transferred without impairing the interests protected by the public trust. Coleman, 795 P.2d at 635 (quoting Illinois Central R.R., 146 U.S. at 455-56). The bottom line is that “[n]avigable waters should not be given without restriction to private parties and should be preserved for the general public.” Coleman, 795 P.2d at 635; see also Utah Code § 23-21-4(2) (mandating that the State retain public access rights as part of any lease or sale of public trust lands).

In sum, the State’s public trust obligations are mandatory. The State and its agencies are required to ensure that any use of GSL does not interfere with navigation, fish and wildlife habitat, aquatic beauty, public recreation, and water quality on and in the lake. Moreover, protection of these values trumps any other use of sovereign lands and cannot be superseded in the name of economic development or payment to the State.

Application of the Doctrine

It is clear that the application of the public trust doctrine requires a State agency, such as the Division, to conduct a balancing test, weighing the benefits of allowing extraction of natural resources in the bed of GSL against any possible risks or conflicts associated with that extraction. In doing this, that agency is tasked by the Public Trust Doctrine to “accommodat[e] public and private uses to the extent that those uses . . . **do not** compromise public trust obligations. . . .” CMPDD at 4 (emphasis added). This means that extraction of these resources may not proceed at any cost, rather no use of GSL may “interfere with the public trust.” Utah Code Ann. § 65A-10-1.

The question, then, is whether approval of the APDs would interfere with public trust values. We contend that it does. At a minimum, the State has failed to undertake sufficient analysis of the direct, indirect and cumulative impacts of the proposed development to either guarantee that no interference will occur or to assess in any meaningful way to what degree any such interference may result from the proposal.

Public Trust Analysis for the West Rozel APDs

In considering whether approval of the APDs is in the best interests of the public trust, the Division and the RDCC cannot consider these wells in isolation; they must place them in context, considering the risks involved with the development of these resources and then weigh

those risks against the supposed public benefit that would result from this development. Utah Admin. Code R652-2-200 (“all uses on, beneath, or above the beds of navigable lakes . . . [shall] be regulated so that the protection of navigation, fish and wildlife habitat, aquatic beauty, public recreation, and water quality will be given due consideration and balanced against the navigational or economic necessity or justification for, or benefit to be derived from, any proposed use”).

It is not enough, for instance, to say that drilling a well in the middle of GSL is a proper use of a public trust resource; granting permission to proceed with drilling would only be proper if the drilling could be done without interference to public trust resources, Utah Code Ann. § 65A-10-1, and “without detriment to the public interest in the lands and waters remaining.” Coleman, 795 P.2d at 635 (citations omitted).

- Possible Benefits

- There is no benefit to the public trust values from this proposal. This is because any purported benefit to the trust resources must be direct and identifiable. To be considered a benefit to the trust, any alleged economic gain must directly benefit navigation, fish and wildlife habitat, aquatic beauty, public recreation, and water quality. Economic gains to the state economy or to state coffers are not appropriately considered as a benefit to the trust.
- In addition, purely private uses of the trust, essentially to the exclusion of public access use and enjoyment of public trust values, are almost certainly prohibited under Utah law. This is true even where those uses benefit the Utah economy and/or lead to royalties. Such private, consumptive uses cannot be equated with public uses of sovereign lands, and must, almost always, be rejected as an improper burden on public trust resources.
- Even if revenues were improperly considered in the weighing of harms and benefits to the public trust, the only possible benefit in allowing this drilling to proceed is a financial one. According to the terms of the standard lease agreement, the people of the State stand to gain 12.5% in royalties from the production of these wells. Unfortunately, as outlined above, such a gain is highly speculative. The past history of these wells has shown that development of these resources is not economically feasible. Even Pearl Montana, the company applying for the APDs, considers this development to be “speculative in nature.” Considering this, and considering that the State has yet to receive a single royalty from any oil, gas and/or hydrocarbon exploration and development in the GSL, the possibility of any future royalties from development of these wells must be significantly discounted.

- Likely Conflicts/Risks

- The Agreement acknowledges that the 1996 MLP, the document used to evaluate whether drilling in the West Rozel field is an appropriate use of the

State's public trust resources, is insufficient, out of date and is in need of a full review. Until the State has had an opportunity to determine if the leasing and development of West Rozel is appropriate in light of a more current analysis and the opportunity for public input, approval of these APDs constitutes an unnecessary and unacceptable risk. To accurately determine the impact of the proposed exploration and development on public trust resources, the Division must, at a minimum determine the impacts to these resources caused by all existing development on the lake. This development is extensive and the Division has yet to examine the individual and cumulative impacts of this development on trust values. Also included in any valid analysis must be the cumulative impacts of reasonably foreseeable activities such as the development of parcels for which leases have been issued or for which leases are pending.

- The MLP notes that there are conflicts and risks associated with development of these oil and gas leases, including leaking wells, visual impacts and recreational and wildlife conflicts. These conflicts and risks must be taken into account when considering whether to allow development of the West Rozel field to proceed.
- It is becoming increasingly clear that the North Arm of the Lake is experiencing an unprecedented amount of development pressures. With the Division's current approval to expand the Clyman Bay evaporation ponds by 23,000 acres, and with the possible approval of these APDs, Gunnison Bay is losing its ability to provide much needed refuge for both resident and migrating birds. In considering the impacts of this development, it is not enough to view it in isolation; it must be viewed in the context of the increasing development pressures in the surrounding area.
- During high water years, the North Arm of the Lake supports a noticeable increase in bird use because of the increased population of brine shrimp. MLP at 33 (“[D]uring the high water years from 1983 to 1987, there were increase populations of brine shrimp in the north arm as salinity decreased [and] . . . eared grebes followed the brine shrimp into the north arm, abandoning sites along the Antelope Island causeway. . . .”); July 19, 2007 Letter from Don Paul to Mr. Styler and Mr. Buehler at 2, attached as Exhibit 2 (“During periods when the GSL elevation occurs between 4193’ and 4206’ above sea level (asl), there are several aquatic bird species that occur at the lake in continental and hemispheric numbers of importance at the GSL and largely in the Gilbert Bay. These are the Wilson's Phalarope, Red-necked Phalarope, and the Eared Grebe. Some years these populations are in excess of 1,200,000, and 1,300,000 respectively during their seasonal occurrence at GSL. At times these numbers of Wilson's Phalaropes and Eared Grebes represent 50 to 70% of the population that occur in the world.”).³ Because of

the fluctuating nature of the Lake, the possibility that Gunnison Bay could see a large increase in bird use under high water conditions must be taken into account.

- Gunnison Island, host to one of the only nesting locations for American white pelicans in Utah, is quickly being squeezed by this increase in activity. The Island, located 5 to 10 miles southwest of the proposed drilling sites, and within two and a half miles from the proposed Clyman Bay expansion, is likely to experience significant increases in human disturbances. Because the potential effects on the pelican population are unknown, considerable caution is advised.
- Since the CMP was finalized, significant new information regarding Great Salt Lake and its public trust resources has come to light. For example, federal scientists have discovered alarmingly high levels of methylmercury in the water of Great Salt Lake. These levels represent some of the highest levels of this toxin ever discovered by the U.S. Geological Survey (USGS). Toxic levels of mercury have also been found in Great Salt Lake waterfowl, such as northern shovelers and common goldeneyes, in such high concentrations that the Division of Wildlife Resources warned the public not to shoot or consume waterfowl from these two species. In addition, possible selenium contamination in the lake has prompted state and federal agencies, along with the public, to begin the extensive process of determining a lake-specific numeric water quality standard for this pollutant. At the same time, another USGS study has shown high levels of contaminants in the bed of the lake.⁴ These discoveries sound an alarm about water quality, casting serious doubt on the assumption that areas of the lake's deep brine layer will hold contaminants and keep them inert, and suggesting that disturbing lake sediments could be significantly detrimental to water quality.
- Robert Smithson's Spiral Jetty, which the DNR acknowledges as "a famous international work of art" and "among the classics of modern sculpture," CMPRD at 126, would be unnecessarily harmed by development of the West Rozel field. It would be easy to dismiss the comments that have been received regarding risk to the Jetty as the rantings of a community of artists uneducated in the fine art of oil extraction. But such a reaction would entirely miss the point. The significance of the Spiral Jetty is not simply the work itself – although it is difficult to not to admire a 15 foot wide structure, composed of 6,600 tons of black basalt rock, laid out in a 1,500 foot long

³ Mr. Paul also states: "This was the case in the high lake years of the 1980s (1983 to 1988). The migratory populations of Phalaropes and Eared Grebes were totally reliant upon Gunnison Bay for the food and energy reserves needed to complete their annual winter migrations which sometimes exceeds 2,000 miles. Much of the foraging of these species took place along the west shorelines of promontory point, around Gunnison Island and west toward the Hogup Mountains (the ostensible GSL Minerals diking and ponding site), (DWR SLO files). *Id.*

⁴ Reconstructing Historical Changes in the Environmental Health of Watershed by Using Sediment Cores from Lakes and Reservoirs in Salt Lake Valley, Utah (December 2000).

spiral – but the setting within which the Spiral Jetty is intended to be viewed. In selecting the Rozel Point site, Mr. Smithson noted that its significance was that the view “reverberated out to the horizons” and “[i]t was as if the lake became the edge of the sun, a boiling curve, an explosion rising into a fiery prominence. Matter collapsing into the lake mirrored in the shape of a spiral.” Quote for the film *Spiral Jetty*, 1970, available at: <http://www.robertsmithson.com/films/txt/spiral.html>. This statement by the artist implies that the setting associated with the Spiral Jetty is critical and that this earthwork must be viewed in the context of its viewscape.

- DNR has stated that it should formulate a Visual Resource Management (VRM) Plan “to protect and enhance the scenic quality of a particular area, like GSL.” CMPRD at 156. The target date for completion of this plan was 12/31/01. CMPDD at 34. According to the DNR, this Plan would “[i]dentify areas of visual significance and sensitivity,” and that “[t]his information might also become a part of future resource allocation and assist in decision-making.” CMPDD at 156. Certainly, important cultural assets such as the Spiral Jetty should be considered in the VRM Plan and the decision to approve the APDs should be delayed until that can be accomplished.
- The MLP also notes that this oil and gas development in the GSL risks the potential degradation of mineral resources.
- At the very least, the significant risks associated with development of these wells must be offset by appropriate financial guarantees that would cover the possible environmental impacts of a spill or accident in GSL. Currently, the required bonding amounts are generic in nature and do not take into consideration the unique and complex environment of GSL. As the 1996 MLP notes, the standard bonding requirements are not adequate and until the MLP is updated, and an appropriate amount is determined and implemented, it would be premature to approve these APDs.

Conclusion

As the DNR acknowledges, the Public Trust Doctrine has evolved to protect ecological values and preservation of scenic beauty. CMPDD at 11. DNR further notes that the Public Trust Doctrine must be “flexible” to accommodate changing demands for public trust resources. *Id.* The DNR states that “[i]t is desirable to maintain the option to adjust the allocation of public trust resources in response to changes in demand,” and that “when there are competing public benefits, the public trust requires that those benefits that best preserve the purpose of the public trust under the circumstances should be given a higher priority.” *Id.*

The phrase “changes in demand” cannot be taken to mean only such things as private demand to extract low-grade natural resources from the bed of GSL. Clearly, the public uproar over this proposed drilling should give the decision makers at DNR and RDCC pause. And although DNR and the RDCC cannot make its decisions based on popular sentiment, either for or

against, it also cannot ignore the public comments submitted. The question that must be answered is whether the highly speculative private financial gain offsets the plethora of very real risks associated with this drilling. We maintain that it does not.

Based on the foregoing, we ask that the Director either defer approval of these APDs until the MLP and associated planning documents, such as the VRM Plan, can be updated or, alternatively, deny the APDs as being inconsistent with the Division's public trust obligations.



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