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**IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY
STATE OF UTAH**

FRIENDS of Great Salt Lake, Western	:	
Wildlife Conservancy, Utah	:	
Waterfowl Association, Utah	:	
Physicians for a Healthy Environment,	:	
Bridgerland Audubon Society, Wasatch	:	COMPLAINT and
Audubon Society, Great Salt Lake	:	PETITION FOR REVIEW
Audubon Society, Utah Airboat	:	seeking INJUNCTIVE and
Association, Utah Chapter of the	:	DECLARATORY RELIEF
Sierra Club, League of Women Voters	:	
of Salt Lake, League of Women Voters	:	
of Utah, Utah Rivers Council and Great	:	
Salt Lake Yacht Club, non-profit	:	
corporations,	:	
	:	
Plaintiffs/Petitioners,	:	
vs.	:	Case No. 110900361
	:	
Utah Department of Natural Resources,	:	The Hon. Tyrone Medley
an agency of the State of Utah;	:	
Executive Director of the Utah	:	
Department of Natural Resources, in his	:	
official capacity, Utah Division of	:	
Forestry, Fire and State Lands, an agency	:	
of the State of Utah, and Director of	:	
the Division of Forestry, Fire and State	:	
Lands, in his official capacity,	:	
	:	
Defendants/Respondents.	:	

Pursuant to Utah Code Ann. § 78A-5-102(7)(a), Utah Code Ann. § 63G-4-402, and the Utah Rules of Civil Procedure, petitioner non-profit corporations FRIENDS of Great Salt Lake, Western Wildlife Conservancy, Utah Waterfowl Association, Utah Physicians for a Healthy Environment, Bridgerland Audubon Society, Wasatch Audubon Society, Great Salt Lake Audubon Society, Utah Airboat Association, Utah Chapter of the Sierra Club, League of Women Voters of Salt Lake, League of Women Voters of Utah, Utah Rivers Council and Great Salt Lake Yacht Club (collectively FRIENDS), petition the Third District Court, Salt Lake County, Utah to review, by trial de novo, the December 6¹ and December 22, 2010 Orders (the December Orders) by the Executive Director of the Utah Department of Natural Resources (hereinafter, along with the Department of Natural Resource, referred to as Executive Director) upholding the decision by the Division of Forestry, Fire and State Lands (hereinafter, along with the Director of the Division of Forestry Fire and State Lands, referred to as Division) to issue leases for Public Trust lands allowing for the construction of 37,000 acres of mining facilities on the bed of Great Salt Lake. The Executive Director rejected the Petition for Consistency Review filed by FRIENDS on August 9, 2010 (Exhibit A, attached), and upheld an October 25, 2010 decision by the Division (Exhibit B, attached) rejecting the Request for Agency Action also filed by petitioners on August 9, 2010 (Exhibit C, attached) relative to a Record of Decision (No 09-0406-200-00115) (ROD) (Exhibit D, attached).

FRIENDS alleges the following:

¹ Although the December 6 Order was dated December 2, 2010, the Executive Director clarified in an email that the Order was not signed and sent to Friends until December 6, 2010 and that “for the purpose of appeal please use the December 6, 2010 date.”

INTRODUCTION

1. By this action, FRIENDS seeks the opportunity to challenge administratively and judicially a management decision by respondent Division and the Executive Director, embodied in the August 4, 2009 ROD (No 09-0406-200-00115), granting a 10-year lease to Great Salt Lake Minerals (Mining Company) for the purposes of occupying and the mining of minerals on 37,000 acres of Great Salt Lake sovereign lands. The ROD also allows for the exchange of existing leases on sovereign lands.
2. On June 10, 2008, Mining Company nominated approximately 52,000 acres of Great Salt Lake sovereign lands for leasing, occupation and mining. On December 8, 2008, the Division submitted the nomination to the Resource Development Coordinating Committee (RDCC). This submission, together with significant media outreach from the Division and Mining Company, called on the public to comment on and participate in the decision making process before the Division.
3. In its August 4, 2009 ROD, the Division approved Mining Company's leasing proposal and land exchange but failed to notify FRIENDS and other members of the public of its decision. The decision allows the company to construct hundreds of miles of dikes to create huge evaporation reservoirs occupying approximately 37,000 acres of sovereign lands for the purpose of extracting mineral salts from the waters of Great Salt Lake,
4. On August 9, 2010, after it became aware of the ROD, FRIENDS appealed that decision to the Division and the Executive Director in the form of a Request for Agency Action (Request) and Petition for Consistency Review (Petition) respectively. In the Request and Petition, FRIENDS

asserted that the Division's management actions violated the agency's Public Trust and management planning responsibilities.

5. The Division denied the Request for Agency Action and FRIENDS timely appealed that Division decision to the Executive Director in the form of second Petition for Consistency Review.
6. In the December Orders, the Executive Director denied both Petitions for consistency review, determining, *inter alia*, that under the Utah Administrative Procedures Act (UAPA) and the agencies' regulations, FRIENDS could not, in any way, appeal the August 4, 2010 ROD or the Division decision to lease and allow the occupation and mining of 37,000 acres of the bed of Great Salt Lake. FRIENDS now seeks review of the December Orders by this Court; or in the alternative, de novo review of the merits of the Division and the Executive Director's underlying leasing and development decisions.

JURISDICTION AND VENUE

7. FRIENDS files this Complaint and Petition for Review pursuant to the statutes that provide this court jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings, specifically Utah Code Ann. § 78A-5-102(7)(a) and Utah Code Ann. § 63G-4-402(1)(a).
8. In addition, this Court has jurisdiction over FRIENDS' breach of fiduciary duties and breach of trust causes of action pursuant to Utah Code Ann. § 75-7-203; *see also* 75-7-201(1)(a) and has jurisdiction over FRIENDS' Declaratory Judgment Act claims under Utah Code Ann. § 78B-6-401.
9. Venue is appropriate in the Third District Court under Utah Code Ann. § 63G-4-402(1)(b), as

FRIENDS resides and maintains its principal place of business in Salt Lake County. Respondents are also headquartered in Salt Lake County.

PARTIES

Plaintiff/Petitioners

10. **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, bird watching, 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, seeking agency review of management decisions relating to oil and gas development, and making comments to the Division of Water Quality on proposed changes in the description of the beneficial uses of Great Salt Lake. 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.
11. FRIENDS of Great Salt Lake has staff and members who regularly use and enjoy and will continue to use and enjoy regularly Great Salt Lake for bird watching, boating, photographing,

hiking and studying natural areas. Indeed, some of these members use and will use in the future, Clyman Bay and Bear River Bay, including the exact areas that were the subject of the ROD and/or are slated for development by Mining Company – for these very purposes. FRIENDS, its staff and its members, are harmed and will be harmed by the Division and the Executive Director’s failure to comply with both the Public Trust Doctrine and their planning and management obligations. In failing to carry out its constitutional, common law, statutory and regulatory obligations, the Division and the Executive Director have allowed an activity that will compromise the Public Trust values of Great Salt Lake and that does not benefit Great Salt Lake or the public at large in the way mandated by the Doctrine. The Division and the Executive Director’s failure to carry out the law will significantly impair FRIENDS staff and members’ use and enjoyment of the Lake because of the resulting harm to navigation, fish and wildlife habitat, aquatic beauty, recreation and water quality and their ability to enjoy and participate in these activities. FRIENDS will also be harmed because the organization and its staff and members were not permitted to participate in an agency decision making process that was based on an adequate analysis of Public Trust impacts and was otherwise legally deficient; and because FRIENDS has been denied notice and the opportunity for judicial review of agency decisions in violation of the duties of the trustees of the Public Trust, due process of law, open access to courts, separation of powers, and the Public Trust Doctrine.

12. The three local societies of **Bridgerland Audubon Society**, **Great Salt Lake Audubon Society**, and **Wasatch Audubon Society** (collectively Audubon) have similar missions. Great Salt Lake 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. The mission of Bridgerland Audubon Society is to conserve, enhance, and enjoy the natural environment with special emphasis on birds and their habitats for the benefit and education of humanity and for the biological diversity of the Earth. The Wasatch Audubon Society is an association of people who share an interest in birds, all natural things, and Utah's varied habitats.

13. 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.
14. Specifically, 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.
15. Audubon has staff and members who regularly use and enjoy and will continue to regularly use and enjoy Great Salt Lake for bird-watching, boating, photographing, hiking and studying natural areas. Indeed, some of these members use and will use in the future, Clyman Bay and Bear River Bay, including the exact areas that were the subject of the ROD and/or are slated for development by Mining Company – for these very purposes. Audubon, its staff and its members are harmed and will be harmed by the Division and the Executive Director's failure to

comply with both the Public Trust Doctrine and its planning and management obligations. In failing to carry out its constitutional, common law, statutory and regulatory obligations, the Division and the Executive Director have allowed an activity that will compromise the Public Trust values of Great Salt Lake and that does not benefit Great Salt Lake or the public at large in the way mandated by the Doctrine. The Division and the Executive Director's failure to carry out the law will significantly impair Audubon staff and members' use and enjoyment of the Lake because of the resulting harm to navigation, fish and wildlife habitat, aquatic beauty, recreation and water quality and their ability to enjoy and participate in these activities. Audubon will also be harmed because the organization and its staff and members were not permitted to participate in agency decision making process that was based on an adequate analysis of Public Trust impacts and was otherwise legally deficient; and because Audubon has been denied notice and the opportunity for judicial review of agency decisions in violation of the duties of the trustees of the Public Trust, due process of law, open access to courts, separation of powers, and the Public Trust Doctrine.

16. The **Utah Chapter of Sierra Club** has as its mission to explore, enjoy and protect the planet. Recognizing the national and international significance of Great Salt Lake, the organization has long been involved in the protection and restoration of the Lake, its wetlands and its ecosystems. On behalf of its members, Sierra Club frequently participates in agency processes related to the management of the Lake, including taking part in all public processes related to the Legacy Parkway, as well as, participating in agency decisions relating to oil and gas development on the Lake and to various Kennecott discharge permits. Sierra Club 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.

17. The Utah Chapter of the Sierra Club has staff and members who regularly use and enjoy and will continue to regularly use and enjoy the Lake for bird watching, boating, photographing, hiking and studying natural areas. The Sierra Club, its staff and its members are harmed and will be harmed by the Division and the Executive Director's failure to comply with both the Public Trust Doctrine and its planning and management obligations. In failing to carry out its constitutional, common law, statutory and regulatory obligations, the Division and the Executive Director have allowed an activity that will compromise the Public Trust values of Great Salt Lake and that does not benefit Great Salt Lake or the public at large in the way mandated by the Doctrine. The Division and the Executive Director's failure to carry out the law will significantly impair Sierra Club staff and members' use and enjoyment of the Lake because of the resulting harm to navigation, fish and wildlife habitat, aquatic beauty, recreation and water quality and their ability to enjoy and participate in these activities. Sierra Club will also be harmed because the organization and its staff and members were not permitted to participate in agency decision making process that was based on an adequate analysis of Public Trust impacts and was otherwise legally deficient; and because Sierra Club has been denied the opportunity for judicial review of agency decisions in violation of the duties of the trustees of the Public Trust, due process of law, open access to courts, separation of powers, and the Public Trust Doctrine.

18. 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.
19. 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.
20. The **Utah Rivers Council** protects Utah's rivers and clean water sources for today's citizens, future generations, and wildlife. The organization implements this mission through grassroots organizing, direct advocacy, research, education, community leadership, and – when absolutely necessary – litigation on the behalf of rivers and people.
21. **Utah Physicians for a Healthy Environment** is dedicated to protecting the health and well-being of the citizens of Utah by promoting science-based health education and interventions that result in progressive, measurable improvements to the environment.
22. The mission of **Western Wildlife Conservancy** is to preserve and protect wildlife native to the intermountain West through research, education and advocacy.
23. The mission of the **Great Salt Lake Yacht Club** is to promote and develop the recreational use of the Lake; to preserve and protect the ecology of the Lake; to promote the science and arts of sailing, boating, navigation, and seamanship; to assist Club Members in becoming proficient in navigation, seamanship, and the sailing of boats and other watercraft; to organize social activities for the benefit of the Club's Members/Shareholders; to preserve and perpetuate the unique history and folklore of the Great Salt Lake; and to develop physical facilities including,

but not limited to, clubhouses, marinas, docking facilities, and other conveniences normally associated with sailing and boating.

24. The **League of Women Voters of Salt Lake** and the **League of Women Voters of Utah** have as their mission to promote an environment beneficial to life through the protection and wise management of natural resources in the public interest and the management of natural resources as interrelated parts of life-supporting ecosystems. These organizations also work to promote resource conservation, stewardship and long-range planning with the responsibility for managing natural resources shared by all levels of government.
25. These organizations have staff and members who regularly use and enjoy and will continue to regularly use and enjoy Great Salt Lake for bird watching, boating, hunting, photographing, hiking and studying natural areas. Indeed, some of these members use and will use in the future, Clyman Bay and Bear River Bay, including the exact areas that were the subject of the ROD and/or are slated for development by Mining Company – for these very purposes. These organizations, their staff and their members are harmed and will be harmed by the Division and the Executive Director’s failure to comply with both the Public Trust Doctrine and its planning and management obligations. In failing to carry out its constitutional, common law, statutory and regulatory obligations, the Division and the Executive Director have allowed an activity that will compromise the Public Trust values of Great Salt Lake and that does not benefit Great Salt Lake or the public at large in the way mandated by the Doctrine. The Division and the Executive Director’s failure to carry out the law will significantly impair these organizations’ staffs’ and members’ use and enjoyment of the Lake because of the resulting harm to

navigation, fish and wildlife habitat, aquatic beauty, recreation and water quality and their ability to enjoy and participate in these activities. These organizations will also be harmed because they and their staff and members were not permitted to participate in agency decision making process that was based on an adequate analysis of Public Trust impacts and was otherwise legally deficient; and because they have been denied notice, the opportunity for judicial review of agency decisions in violation of the duties of the trustees of the Public Trust, due process of law, open access to courts, separation of powers, and the Public Trust Doctrine.

Defendant/Respondents

26. The **Division of Forestry, Fire and State Lands** is an agency of the State of Utah created “within the Department of Natural Resources under the administration and general supervision of the [E]xecutive [D]irector” of the Department. Utah Code Ann. § 65A-1-4(1)(a). The Division is the “executive authority for the management of sovereign lands,” *id.*, including the sovereign lands of the bed Great Salt Lake.
27. The **Director of the Division of Forestry, Fire and State Lands** “is the executive and administrative head of the [D]ivision” Utah Code Ann. § 65A-1-4(3).
28. The **Department of Nature Resources** is an agency of the State of Utah that “comprises,” *inter alia*, the Division of Forestry, Fire and State Lands. Utah Code Ann. § 79-2-201(2)(j).
29. The **Executive Director of the Department of Natural Resources**, *inter alia*, “administer[s] and supervise[s] the Department of Natural Resources and provide[s] for coordination and cooperation among the boards, divisions, and committees of the department[.]” Utah Code Ann. § 79-2-202(2)(a).

30. Venue is appropriate in Salt Lake County, the County where most plaintiff/petitioners reside and/or maintain their principal place of business. Utah Code Ann. § 63G-4-402(1)(b).

Defendant/Respondents all reside and/or maintain their principal place of business in Salt Lake County.

STATEMENT OF FACTS AND REASONS

The Proposed Development

31. Currently, Mining Company operates 43,000 acres of solar evaporation reservoirs on Great Salt Lake sovereign lands. According to the company, this includes 21,000 acres of salt ponds in Clyman Bay on the west side lake, a 21 mile long canal running along lake bottom from west to the east side of Great Salt Lake, and 22,000 acres of solar ponds in Bear River Bay on the east side of the lake.

32. To this existing operation, Mining Company plans to add significant additional facilities. The goal of the expansion is largely to produce sulfate of potash from the waters of Great Salt Lake.

33. To this existing 43,000 acre facility, Mining Company initially planned to add 33,000 acres of industrial development. On the west side, in Clyman Bay, the company proposed to build an additional 18,000 acre solar pond, and a new 7,000 acre pond, as well as a new feed canal into the lake and a new pump station powered by a diesel engine. The company maintains that it currently leases much of the land necessary to build this 7,000 acre pond and what it does not lease is presently leased by a private individual.

34. On the east side of the lake, in Bear River Bay, the company intends to build a new 8,000 acre solar reservoir. Mining Company contends that it currently holds sovereign land leases sufficient to construct this 8,000 acre pond in Bear River Bay.
35. In 2007, the Division approved Mining Company's application to lease approximately 23,088 acres to allow the expansion of the west side of the lake. At the same time, contrary to the law, the Division refused to examine whether to revoke or exchange and/or failed to revoke or exchange existing Bear River Bay and Clyman Bay leases or otherwise prohibit or mitigate Mining Company development of these leases in order to protect the Public Trust.
36. The United States Army Corps of Engineers has also approved a Mining Company proposal to relocate and lengthen the southern portion of the existing inlet canal that transports water to the solar evaporation pond in Clyman Bay. In addition, the applicant proposes to deepen the canal to an elevation of 4188 feet above sea level so that there is continued water flow as Lake levels decrease to an approximate elevation of approximately 4193 feet above sea level.
37. On top of all this existing and approved development, Mining Company proposes to undertake significant upgrades of the Behrens Trench and has submitted an application to appropriate 353,000 acre feet of water from Great Salt Lake annually to support its expansion.
38. The ROD now adds an additional 37,000 acres of mining facilities on the west side of Great Salt Lake surrounding Dolphin Island. Purportedly, Mining Company relinquished 30,000 acres of leases as part of this proposal. However, it appears that significant acreage involved in that relinquishment will remain open to mineral salts leasing and other development such as oil and gas development.

39. In sum, the Division and the Executive Director have approved leases which will allow Mining Company to expand its 43,000 acre operation by 83,000 acres on the west side of the Lake and 8,000 acres on the east side, for a total expansion of 91,000 acres. This means that Mining Company proposes to have under development 134,000 acres or 209 square miles of the bed of Great Salt Lake – only slightly smaller than the land mass of Davis County (223 square miles).
40. Because the existing and proposed development is concentrated in the North Arm of the Lake and in Bear River Bay, the impacts of the mining operations will be felt even more acutely in that part of the Lake, which is the site of some of the most important bird habitat anywhere in the Great Salt Lake ecosystem. By the same token, the mining operations take place largely on mudflats and shallow waters near the shoreline of the Lake. This means that the impacts of the mining operations will be concentrated in these valuable ecosystems.
41. The proposed development necessitates the construction of giant evaporation ponds in which the waters of Great Salt Lake are sequestered. These ponds are constructed using large dikes, built up from the bed to a height of up to five feet. Over the course of approximately three years, the water in these ponds evaporates and the remaining salts are increasingly concentrated in the ponds. As a result, the areas of Great Salt Lake encompassed by these reservoirs have lost all ecosystem function and value and are essentially dead zones.
42. The proposed development will remain on the bed of the Lake and the associated activities will continue to operate for at least 30 years, but are likely to be permanent.
43. Directly, indirectly and cumulatively, the proposed development will impair, interfere with and adversely impact each of the Public Trust values of Great Salt Lake – navigation, fish and

wildlife habitat, aquatic beauty, public recreation, and water quality.

44. For example, the proposal will: 1) convert relatively intact Great Salt Lake ecosystems into industrial zones; 2) cut off navigation and prevent recreational access to 37,000 more acres of Great Salt Lake; 3) destroy the remote and stark beauty of the landscape; 4) sequester and otherwise use a huge amount of Lake water, thereby artificially reducing Lake levels and water availability critical to ecosystem and hydrological function; 5) impede water flow and natural hydrological systems to the detriment of ecosystem function and hamper navigation throughout the Lake; 6) convert wildlife and fish habitat into industrial facilities; 7) endanger the American pelican colonies on Gunnison Island and the birds of Dolphin Island; 8) increase predator access to and human disturbance of nesting birds; 9) adversely impact water quality and Great Salt Lake's beneficial uses; and 10) increase the chances that should a seismic event in or around Great Salt Lake occur, the event will have catastrophic impacts on the Lake ecosystem.

The Mineral Leasing Plan and Comprehensive Management Plan

45. On or about June 27, 1996, the Division and the Executive Director published the Great Salt Lake Mineral Leasing Plan (MLP), a resource plan which purports to review the history of mineral ownership and leasing, inventory mineral resources, and examine conflicts among resources on Great Salt Lake.

46. On or about March 1, 2000, the Division and the Executive Director issued the Great Salt Lake Comprehensive Management Plan and Decision Document (CMP).²

² Any reference to CMP in this Complaint includes and refers to the planning documents that support or are specifically referenced by the CMP.

47. By definition, comprehensive management plans are “plans prepared for sovereign lands that guide the implementation of sovereign land management objectives.” Utah Admin. Code r. 652-1-200(6). The Great Salt Lake CMP adopted Alternative “A” from among the various management alternatives set forth in the 1999 Draft CMP. Relative to the minerals, Alternative “A” chooses to “use the MLP categories and zones” and “use the MLP policies.”
48. Since 2000, the Division and Executive Director have not amended the CMP or the MLP.
49. In drafting, adopting or issuing both the CMP and the MLP, the Division and the Executive Director failed to comply with the procedures of the Utah Administrative Rulemaking Act, Utah Code Ann. §§ 63G-3-101 to 3-702.
50. In making a decision on Mining Company’s application to lease and use Great Salt Lake sovereign lands for its mining operations and in determining whether to lease sovereign lands to Mining Company, the Division and the Executive Directive have understood and acted on the CMP and MLP as though these written statements are rules, are controlling, are enforceable and/or have the effect of law. For example, in assessing and approving the Mining Company expansion and leasing proposal, the Division and the Executive Director determined only whether the proposal complied with the CMP and/or MLP. The agencies stated that the decision whether or not to lease the relevant areas for mineral development and the determination whether or not this leasing conformed to the Public Trust had been made in the CMP and/or MLP. The agencies did not conduct site-specific planning or determine, on the record, that the specific Mining Company expansion and leasing project would comply with

applicable statutes and regulations and/or conform to the Public Trust doctrine, or would otherwise be legal and proper.

51. Similarly relying on the CMP and/or the MLP as though these written statements are rules, the Division and the Executive Director stated that in order to challenge mineral leases issued for the Great Salt Lake, FRIENDS must request an amendment to the CMP and/or the MLP, but that the organization could not challenge the decision that led to the issuance of the Mining Company leases.

52. In 2006, the Division and the Executive Director entered into a signed and legally binding agreement with FRIENDS of Great Salt Lake and others, which stated that the Division “shall reconsider and reissue the Great Salt Lake Mineral Leasing Plan.” The Division further committed that this review would involve the public and RDCC and would include a reexamination of whether mineral leasing and development of areas of Great Salt Lake would impermissibly interfere with Public Trust values:

The Division shall reconsider and reissue the Great Salt Lake Mineral Leasing Plan of June 27, 1996. . . . At a minimum, the Division will determine if leasing and development of any specific area of the bed of Great Salt Lake open to leasing interferes with or served the public trust . . . recognizing that [any] permitted use cannot interfere with these resources.

53. Thus, in 2006, the Division and the Executive Director not only acknowledged that the MLP was out of date and perhaps inadequate to protect Public Trust values, but committed to undertaking a public process to reevaluate and reconsider the decisions made in that document, along with the analysis on which the agency relied to come to those conclusions.

54. In the MLP and CMP, the Division and the Executive Director concede that the agencies lack the information necessary to determine the extent of adverse impacts from future mining activities and promise they will acquire and consider the necessary information prior to making any decisions regarding specific proposals to dike and mine Great Salt Lake sovereign lands.
55. Both the MLP and CMP identified significant conflicts between mineral salts mining and the protection of Public Trust resources and promise site-specific planning, including a complete Public Trust analysis of the individual and cumulative impacts of any particular mining proposal.
56. The MLP and CMP also require the Division and the Executive Director to undertake site-specific planning in response to any applications to use Great Salt Lake and before approving any development of Great Salt Lake, particularly development involving the diking of the bed of the Lake.
57. Neither the CMP nor the MLP are site-specific. Neither plan anticipates, much less analyzes, the impacts on or interference with Trust resources from the leasing and attendant development, including diking, of Clyman and Bear River bays for the purposes of mineral extraction.
58. In the CMP, the Division and the Executive Director adopts the “Great Salt Lake Diking Policy.” This policy requires that prior to any approval of a proposal that involves the diking of the Lake, the Division must assess the individual and cumulative impacts on wetlands, wildlife habitat, lake level, water quality and navigation.

The RDCC Process and the ROD

59. On or around June 10, 2008, Mining Company nominated approximately 52,000 acres of Great

Salt Lake sovereign lands for leasing, occupation and mining. On December 8, 2008, the Division submitted the nomination to the Utah Resource Development Coordinating Committee (RDCC). At the time, there was extensive media coverage of the nomination, including press release by the Mining Company and articles in the *Deseret News* and *Standard Examiner*. This media consistently called on the public to comment on the proposed lease and land exchange.

60. The December 8, 2008 RDCC notice alerted the public of the proposed project and provided the public with an opportunity to comment on the leasing proposal. In that notice, the Division stated:

In June 2008, [Mining Company] filed a mineral lease nomination for 52,200 acres in Gunnison Bay as part of their plans to expand production for their potash operations. . . .

A revised nomination has been received to lease 37,083 acres below the meander line on the west side of the Great Salt Lake. The intent of leasing this land is to expand solar evaporation operations for mineral extraction of brines from the water of the Great Salt Lake.

61. On December 30, 2008, FRIENDS and ten additional user and conservation groups filed detailed comments on the 37,000 acre proposal, including ten exhibits and expert opinions from former federal and state employees and professors at local institutions.

62. In those comments, the user and conservation groups urged the Division, the Executive Director and RDCC to reject the land exchange and nomination of 37,000 acres in Clyman Bay for leasing and mining development until they correctly stated and complied with their Public Trust duties and until the Division acquired and analyzed sufficient information to assess the potential individual and cumulative impacts of the expansion project and proposed land exchange on Public Trust values.

63. The United States Fish and Wildlife Service also filed comments with the Division and the RDCC expressing significant concerns about the nomination, exchange and the impacts of the proposed development on, *inter alia*, wildlife and water quality.
64. The Division signed the ROD on August 4, 2009. The Division did not notify any of the groups that filed comments in the FRIENDS December 30, 2008 submittal, or the Fish and Wildlife Service of the issuance of the ROD.
65. The ROD purports to act on an April 6, 2009 Mineral Lease Application (20000115), rather than on the initial lease application.
66. The Division did not notify the public or the RDCC of this April 6, 2009 lease application. Despite the fact that the April 6, 2009 Mineral Lease Application has a different number and date than the lease application listed in the original December 8, 2008 RDCC notice, the ROD grants leases to the same 37,000 acres of sovereign lands and approves the same lease exchange set forth in the December 8, 2008 notice.
67. Although the ROD purports to respond to FRIENDS comments, the Division never provided those responses to FRIENDS and the responses were not included in the record request disclosure.
68. To approve the leasing and development of the 37,000 acres of Clyman Bay and to approve the lease exchange, the Division and the Executive Director did not conduct site-specific planning before issuing the lease. Further, the agencies deny that they have any duty to perform site-specific planning before issuing a lease for the use of Great Salt Lake sovereign lands or exchanging leases on the Lake.
69. The Division's analysis in the ROD does not adequately address the potential direct, indirect

and/or cumulative adverse impacts on Public Trust values from the proposed lease exchange or development.

70. The Division's analysis, as presented in the ROD, does not adequately address the concerns and issues raised in public comments submitted on the ROD.
71. The Division's analysis is insufficient to support a determination that the proposed development and exchange would not interfere with or impair Public Trust values and is insufficient to support its decision to accept the bid by Mining Company for the leases or otherwise allow the proposed development to proceed.
72. In the ROD and in its purported Public Trust analysis, the Division wrongly formulated and applied its Public Trust responsibilities, adopting a standard that is insufficiently protective of Public Trust resources.
73. The Division and Executive Director's decision, as embodied in the ROD and decision to lease and allow the attendant development of the Clyman Bay leases as proposed by Mining Company violates the law, is arbitrary and capricious, is contrary to the terms and purposes of the Public Trust, is not in the interests of the beneficiaries of the Trust and is a breach of the Public Trust.

The Request and Petitions

74. FRIENDS became aware that the Division had issued the ROD through a Government Records and Access Management Act request FRIENDS filed June 30, 2010. FRIENDS obtained documents disclosing the existence of the ROD as a result of the request on July 20, 2010, shortly after it was informed that the records were available.

75. FRIENDS sought administrative review of the ROD by filing a Request for Agency Action with the Division and a Petition for Consistency Review with the Executive Director, both submitted on August 9, 2010.
76. As the Division failed to mail the ROD to FRIENDS, or otherwise notify it of the ROD, FRIENDS met any relevant deadline by filing its Request for Agency Action and Petition for Consistency Review within 20 days of becoming aware of the ROD.
77. In both the Request and the Petition, FRIENDS challenged the Division's failure to comply with its constitutional, statutory and regulatory obligations in the context of Mining Company's leasing request, lease exchange and expansion proposal, as well as in issuing the Clyman Bay lease and otherwise allowing the development of 37,000 acres of the bed of Great Salt Lake. FRIENDS demonstrated, *inter alia*, that the ROD failed to meet the Division's management planning obligations; that in basing its decision on the ROD, the Division had failed to comply with the Public Trust; that the Division had not followed the guidance and direction of the CMP and MLP; and that the Division had made a decision that could not be supported by the administrative record and that was arbitrary and capricious and otherwise a violation of the law.
78. On October 25, 2010, the Division denied FRIENDS' Request for Agency Action. FRIENDS appealed that decision by timely submitting a Petition for Consistency Review with the Executive Director on November 22, 2010. The November 22, 2010 deadline for filing the Petition was based on an agreement with Division counsel.

79. In similar Orders dated December 6³ and December 22, 2010, the Executive Director denied both of FRIENDS' Petitions for Consistency Review. To deny the Petitions, the Executive Director relied on a Memorandum Decision and Ruling issued by the Honorable Judge Trease of the Third District Court.

80. In neither the October 25, 2010 Division decision nor the December Orders did the Division or the Executive Director assert or otherwise raise the issue or defense that it had notified FRIENDS of the August 4, 2009 ROD other than by responding to the FRIENDS open record request in June 2010.

Judge Trease's Memorandum Decision and Ruling

81. As mentioned above, the Division recently approved the first phase of the company's giant expansion proposal by issuing a lease(s) allowing Mining Company to occupy, develop and mine 23,000 acres of sovereign lands in Clyman Bay and allowing the occupation and development of 8,000 acres in Bear River Bay.

82. At that time, the Division refused to examine whether to revoke or exchange and/or failed to revoke or exchange exiting Bear River Bay and Clyman Bay leases or otherwise prohibit or mitigate Mining Company development of these leases in order to protect the Public Trust.

83. The Division notified the RDCC of this 33,000 acre expansion proposal on or about December 1, 2008.

84. On April 25, 2007, several conservation and user groups, including FRIENDS, filed comments on

³ Although the December 6 Order was dated December 2, 2010, the Executive Director clarified in an email that the Order was not signed and sent to Friends until December 6, 2010 and that "for the purpose of appeal please use the December 6, 2010 date."

Mining Company's leasing and expansion proposal with the Division, the Executive Director and the RDCC. In those comments, these groups urged the Division, the Executive Director and RDCC to reject the nomination of 23,088 acres in Clyman Bay for mineral salts leasing until the agency acquired and analyzed sufficient information to assess the potential impacts of the diking project on Public Trust values. The groups further asserted that, because the Clyman Bay expansion is inextricably linked to a larger expansion project, which includes development of 8,000 acres in Bear River Bay, the impacts of this east side expansion on Public Trust values must also be analyzed.

85. The United States Fish and Wildlife Service and Utah Division of Wildlife Resources also filed comments with the Division and RDCC expressing significant concerns about the nomination and the impacts of the proposed development on, *inter alia*, wildlife and water quality.
86. In response to these comments, the Division purported to undertake analysis of the impacts of the Mining Company proposal on Public Trust values in the ROD. The Division restricted itself to analysis of the Clyman Bay expansion only.
87. On July 7, 2007, the Division issued Record of Decision Number 07-0601-200 00107 (the 2007 ROD), in which the agency undertook insufficient review of the effects of the Mining Company expansion proposal on Public Trust resources. On May 29, 2007, well before the agency completed its Public Trust "analysis," the Division accepted the bid by Mining Company, thereby approving the contested Clyman Bay leases.
88. The Division promptly mailed copies of the 2007 ROD to conservation and user groups, including FRIENDS, because these entities had submitted comments during the RDCC process,

thereby notifying FRIENDS in sufficient time so that the conservation and user groups could timely file their appeals.

89. FRIENDS appealed that decision to the Executive Director and the Director of the Division in the form of a Petition for Consistency Review, Petition for Declaratory Order and Request for Agency Action (2007 Petitions). In the 2007 Petitions, FRIENDS asserted, *inter alia*, that the Division and the Executive Director's actions violated the agencies' Public Trust and management planning responsibilities. FRIENDS also asked the Division to review existing, but undeveloped Mining Company leases in Bear River Bay and Clyman Bay to determine if these leases complied with Utah law, including the Public Trust Doctrine, and to take action appropriate to its findings in order to protect the Public Trust.
90. In a January 18, 2008 Decision and Order, the Division and Executive Director denied the 2007 Petitions, determining, *inter alia*, that under the Utah Administrative Procedures Act and the agencies' regulations, FRIENDS could not proceed with the 2007 Petitions. The Division and the Executive Director therefore refused to reach the merits of the 2007 Petitions.
91. FRIENDS sought review of the January 18, 2008 Order in the Third District Court, filing its complaint on February 15, 2008. The parties, the Division, Executive Director, Mining Company and FRIENDS subsequently filed motions for partial summary judgment relating to that action.
92. On September 10, 2010, Judge Trease issued a Memorandum Decision and Ruling on the partial motions for summary judgment, finding against FRIENDS. Judge Trease ruled that FRIENDS did not have the right to proceed with the 2007 Petitions essentially because she determined that

FRIENDS was not a party to the informal adjudication process during which the Division approved and issued the lease(s) for 23,000 acres in Clyman Bay.

93. As a ruling on motions for partial summary judgment, Judge Trease’s Memorandum Decision and Rule is not final under Rule 54(b) of the Utah Rules of Civil Procedure. Utah R. Civ. P. 56(d), (a decision that “adjudicates fewer than all the claims . . . shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.”)
94. Moreover, of relevance to this matter, Judge Trease ruled only on the issues of whether FRIENDS was entitled to bring its Request for Agency Action and Petition for Consistency Review. She did not rule on any of the other seven causes of action (Causes 3 through 9) alleged below.

LEGAL BACKGROUND

The Division’s Public Trust Obligations

95. As land under a navigable water, the bed of Great Salt Lake is Utah sovereign land.
96. Article XX, § 1 of the Utah Constitution, which applies to Great Salt Lake, provides that:
- [a]ll lands of the State that have been, or may hereafter be granted to the State by Congress . . . 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.
97. The purpose of the Public Trust is to preserve sovereign lands for the general public, to include protecting the ecological integrity of sovereign lands and their public recreational uses.
98. Accordingly, the Utah Legislature has directed the Division to manage all uses of these lands in

a way that “serve[s] the public interest and do[es] not interfere with the public trust.” Utah Code Ann. § 65A-10-1.

99. Based on these principles, the Division has clarified that it must manage sovereign lands for the “protection of navigation, fish and wildlife habitat, aquatic beauty, public recreation, and water quality. . . .” Utah Admin. Code r. 652-2-200.

100. The Division states, in reference to its obligation to Great Salt Lake specifically, that it is “clear that the purposes of the trust have primacy and that other uses must meet the criterion to avoid substantial impairment of public trust uses.” CMP at unnumbered 9 (Conclusion/Action).

101. With regard to Great Salt Lake, the Division has also concluded:

[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.

CMP at unnumbered 4.

The Division’s Management Planning Obligations

102. The Division’s organic statute directs the agency to “adopt rules for notifying and consulting with interested parties, including the general public, resource users, and federal, state and local agencies on state land management plans.” Utah Code Ann. § 65A-2-4(1).

103. These rules “shall provide” that the Division “respond to all commenting parties” who submit comments on any management plan during the comment period. Utah Code Ann. § 65A-2-4(2)(b).

104. In response to these dictates, the Division has adopted management planning regulations as

set forth in Utah Admin. Code r. 652-90. At the time the Division finalized the CMP and MLP, at the time Mining Company nominated the relevant sovereign lands for leasing (both on June 10, 2008 and April 6, 2009), at the time the Division noticed the nomination and lease exchange to the RDCC on December 8, 2009, and at the time the public was given its sole opportunity to comment on the nomination and exchange on December 30, 2008, these regulations provide that “[s]ite-specific planning shall be initiated either by: (a) an application for a sovereign land use, or (b) the identification by the division of an opportunity for commercial gain in a specific area.” Utah Admin. Code r. 652-90-300(2) (2008).⁴

105. Division rules define a “site specific plan” as a “plan[] prepared for sovereign lands which provide[s] direction for specific actions. Site-specific plans shall include Records of Decision in either narrative or summary form.” Utah Admin. Code r. 652-1-200(26).

106. Division rule define “record of decision” as a “written finding describing a division action, relevant facts, and the basis upon which the decision for action was made.” Utah Admin. Code r. 652-1-200(22).

107. Division rule define “comprehensive management plan” as “a plan[] prepared for sovereign lands that guide[s] the implementation of sovereign land management objectives.” Utah Admin. Code r. 652-1-200(22).

108. Site-specific planning entails, *inter alia*:

⁴ The Division altered R652-90-300(2) to read: “In the absence of a comprehensive management plan or a resource management plan [] for sovereign land, site specific planning shall be initiated [] by (a) an application for a sovereign land use[.]” The rule was finalized on May 22, 2009. As this alteration does not meet any of the exceptions to the prohibition on retroactive application of a rule or statute, the 2008 version of the rule applies to the present case.

(a) a comparative evaluation of the commercial gain potential of the proposed use with competing or existing uses; (b) the effect of the proposed use on adjoining sovereign lands; (c) an evaluation of the proposed use or action with regard to natural and cultural resources, if appropriate; (d) the **notification of**, and **environmental analysis of**, the proposed use provided by the public, federal, state and municipal agencies through the Resource Development Coordinating Committee (RDCC) process; and, (e) and further notification and evaluations as required by applicable rules.

Utah Admin. Code r. 652-90-400 (emphasis added).

109. In turn, the RDCC process “provides an environmental assessment for purposes of sovereign land management.” Utah Admin. Code r. 652-90-1200.
110. “The public may comment on proposed sovereign land uses through the RDCC and other public notification processes.” *Id.*
111. “Upon completion of any planning process, the Record of Decision or other document summarizing final division action and relevant facts document shall be provided to any persons requesting notice from the [D]ivision.” Utah Admin. Code r. 652-90-600(3).
112. Utah Admin. Code r. 652-90-400(e) obligates the Division, as part of its site-specific planning, to undertake “evaluations as required by applicable rules.”
113. Therefore, as part of its planning, the agency must determine if the proposed use of Great Salt Lake “serve[s] the public interest and do[es] not interfere with the public trust.” Utah Code Ann. § 65A-10-1.
114. To determine if interference will occur, the agency must, at a minimum, also complete the analysis required by Utah Admin. Code r. 652-2-200 (“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”).

115. The Division must determine the supposed value of a proposed use of Public Trust resources as well as the cost to Public Trust resources that would result from this proposed use.

Ultimately, the Division must guarantee that a proposed use will not interfere with Public Trust values.

The Duties of the Division and Executive Director as Trustees

116. Sovereign lands are those lands that lie under navigable waters. Great Salt Lake is a navigable water and therefore the bed of Great Salt Lake is sovereign land.

117. For the purposes of Article XX, sec. 1, sovereign lands, including the bed of Great Salt Lake, are public lands of the State granted to Utah by the United States Congress or otherwise acquired.

118. Pursuant to federal law and/or Article XX, sec. 1, the State of Utah holds sovereign lands in trust for the public and/or citizens of Utah (the “Public Trust”). Federal law and/or Article XX, sec. 1 created the Public Trust. The public and/or citizens of Utah are the beneficiaries of the Public Trust.

119. The purpose of the Public Trust is to preserve sovereign lands for the general public, including by protecting the ecological integrity of sovereign lands and their public recreational uses.

120. The Division and the Executive Director, acting as and for the State of Utah, are required to manage the Public Trust so that any use of sovereign lands “serve[s] the public interest and

do[es] not interfere with the public trust.” Utah Code Ann. § 65A-10-1.

121. The legal duties of a trustee apply to the State of Utah, including the Division and the Executive Director, in the administration and management of sovereign lands and the Public Trust.
122. The State of Utah, Division and Executive Director, as trustees of the Public Trust and sovereign lands, owe fiduciary duties to the beneficiaries of the trust, including the duty of care and the duty of loyalty. The Division and Executive Director must administer the Public Trust expeditiously and in good faith, in accordance with the terms and purposes of the Public Trust and the interests of the beneficiaries. The duty of care requires the trustees to be fully informed before irretrievably committing trust resources. The duty of loyalty requires these trustees to act only for the benefit of the beneficiaries and to exercise prudence and skill in administering the trust.
123. As trustees, the Division and the Executive Director are obligated to keep the beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests.
124. As beneficiaries of the Public Trust and/or based on their interests in and uses of Great Salt Lake sovereign lands, FRIENDS and its members are entitled to enforce, in Utah District Court, the fiduciary duties of the State of Utah, the Division and the Executive Director in administering and managing the bed of Great Salt Lake and its attendant Public Trust resources.

The Utah Administrative Procedures Act

125. The Utah Administrative Procedures Act, Title 63G, Chapter 4 of the Utah Code (Utah

APA) applies, with a few exceptions: “to every agency of the state and govern[s]: (a) state agency action that determines the legal rights, duties, privileges, immunities, or other legal interests of an identifiable person, including agency action to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license[.]” Utah Code Ann. § 63G-4-102(1)(a).

126. Utah Code Ann. § 63G-4-103(1)(f) defines a party as “the agency or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the presiding officer to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.”

127. Utah Code Ann. § 63G-4-201(3)(a) provides that “[w]here the law applicable to the agency permits persons other than the agency to initiate adjudicative proceedings, that person’s request for agency action shall be in writing . . . and shall” follow specific format requirements.

128. Utah Code Ann. § 63G-4-401(1) states that “[a] party aggrieved may obtain judicial review of final agency action, except in actions where judicial review is expressly prohibited by statute.”

129. Utah Code Ann. § 63G-4-402(1)(a) states that “[t]he district courts have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings. . . .”

130. The Utah APA provides that “[w]ithin a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing that states the following: (i) the decision; (ii) the reasons for the decision; (iii) a notice of any right of

administrative or judicial review available to the parties; and (iv) the time limits for filing an appeal or requesting a review.” Utah Code Ann. § 63G-4-203(i)(i-iv).

131. In addition, the “presiding officer’s order shall be based on the facts appearing in the agency’s files and on the facts presented in evidence at any hearings” and a “copy of the presiding officer’s order shall be promptly mailed to each of the parties.” Utah Code Ann. § 63G-4-203(j), (k).

Constitutional Right of Due Process

132. The Utah Constitution guarantees the citizens of Utah due process of law. Utah Const. art. I, § 7.

133. The United States Constitution also ensures that citizens shall not be deprived of a property or liberty interest without due process of law. U.S. Const. amend. XIV.

134. A vested right of action is also a protected property, liberty and statutory interest for the purposes of due process protections.

135. At a minimum, the right to due process guarantees the opportunity to be heard at a meaningful time and in a meaningful manner. This requires that affected individuals be treated fairly, that they receive adequate notice and that their concerns be heard by an impartial decision maker, including an impartial court.

136. Once the state establishes an avenue of appellate review, due process guarantees that this avenue be free from unreasonable distinctions that impede an opportunity for impartial review and open and equal access to the courts.

137. Affected citizens of Utah, who are by definition beneficiaries of the Public Trust, have a significant property, liberty and statutory interest in the conservation and, if lawful and appropriate, the disposition of Public Trust resources. This property, liberty and statutory interest is protected by and subject to the constitutional guaranteed of due process.

Constitutional Guarantee of Open Courts

138. The Utah Constitution guarantees citizens open and equal access to courts. Utah Const. art. I, § 11.

139. As a general matter, district courts, including this Court, have original jurisdiction in all civil matters and are open to all litigants for the redress of grievances or the enforcement of rights.

140. As a result, the open courts provision guarantees an aggrieved individual the opportunity to be heard at a meaningful time and in a meaningful manner. The open courts provision guarantees affected individuals and entities adequate notice and the opportunity to be heard by an impartial decision maker, including an impartial court.

141. Under the open courts provision, the government may not abrogate a cause of action or remedy unless the injured person has an effective and reasonable alternative remedy or the abrogation seeks to eliminate a clear social or economic evil.

Constitutional Guarantee of Separation of Powers

142. The Utah Constitution, Article V, Section 1, provides:

The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

143. Agencies have the authority to exercise executive, legislative and judicial functions, provided that there is an appropriate internal division of labor between inconsistent functions.
144. When agencies exercise executive, legislative and/or judicial functions at the same time, the agency must not violate an affected individual's due process rights.
145. When the agency renders a decision upon a question of law or application of law to fact, the agency must not insulate its decisions from judicial review.
146. Judicial review of an agency decision is available where administrative remedies have been exhausted or when no administrative remedies are provided.
147. Where an aggrieved individual's right to petition the agency will not be protected by the administrative tribunal, judicial review of an agency decision may be available even if administrative remedies have not been exhausted.

Declaratory Judgment Act

148. The Declaratory Judgment Act, Utah Code Ann. § 78B-6-401 to 412, gives the district courts the power to issue declaratory judgments determining the rights and status of a petitioner that have the full force and effect of law.
149. Courts will be indulgent in entertaining actions brought to achieve the objectives of the Declaratory Judgment Act, and more particularly so where there is substantial public interest to be served by settlement of issues.
150. An action under the Declaratory Judgment Act is appropriate where there is a justiciable controversy based upon an accrued set of facts, an actual conflict, adverse parties, a legally protectable interest on plaintiff's part, and an issue ripe for judicial resolution

151. Declaratory judgment is an appropriate remedy where it would settle uncertainty concerning the parties' legal rights or status or would resolve the controversy giving rise to the proceeding.
152. When declaratory relief is sought, all persons who have any interest which would be affected by the declaration shall be made parties. The declaration may not prejudice the rights of persons not parties to the proceeding.
153. A person whose rights, status, or other legal relations are affected by a statute may request the district court to determine any question of construction or validity arising under the statute and obtain a declaration of rights, status, or other legal relations.
154. In addition to a declaration of rights or status, a court may grant any necessary or appropriate relief based on the declaratory judgment that would make a person whole.

Utah Administrative Rulemaking Act

155. The Utah Administrative Rulemaking Act requires an agency to undertake formal rulemaking procedures when "issu[ing] a written interpretation of state or federal mandate" but not when "an agency issues policy or other statements that are advisory, informative, or descriptive." Utah Code Ann. § 63G-3-201(3), (4).
156. "An agency's written statement is a rule if it conforms to the definition of a rule under Section 63G-3-102, but the written statement is not enforceable unless it is made as a rule in accordance with the requirements of this chapter." Utah Code Ann. § 63G-3-202(1).
157. To the extent that an agency seeks to rely on an adjudication to establish "principles of law," the agency must enact rules incorporating these principles within 120 days of "announcing" those principles in an adjudication. Utah Code Ann. § 63G-3-201(6) ("Each agency shall enact

rules incorporating the principles of law not already in its rules that are established by final adjudicative decisions within 120 days after the decision is announced in its cases.”

158. Division rules provide that “[a]ny lease, permit, or easement, issued by the [D]ivision on sovereign lands, is subject to a public trust; and any lease, permit, or easement may be revoked at any time if necessary to fulfill public trust responsibilities.” Utah Admin. Code r. 652-70-300.

FIRST CAUSE OF ACTION
FRIENDS is Entitled to Review of its Petition for Consistency Review.

159. All allegations contained in this Complaint are hereby incorporated by reference.

160. FRIENDS made its Petitions for Consistency Review pursuant to Utah Admin. Code r. 652-9 and Utah Code Ann. § 65A-1-4(6)(a).

161. Utah Code Ann. § 65A-1-4(6)(a) states that “[a]n aggrieved **party** to a final **action** by the director [of the Division] may appeal that action to the executive director of the Department of Natural Resources. . . .” Emphasis added.

162. Division regulations establish the

procedure through which any party aggrieved by a division action directly determining the rights, obligations, or legal interests of specific persons may petition the executive director of the Department of Natural Resources to review the action for consistency with statutes, rules, and division policy pursuant to [Utah Code Ann. § 65A-1-4(6)].⁵

Utah Admin. Code r. 652-9-100.

163. FRIENDS’ December 6, 2010 Petition for Consistency Review sought Executive Director

⁵ Utah Code Ann. § 65A-1-4 has been renumbered as of 2007. The provision that was once 65A-1-4(5) is now 64A-1-6. *See* Chapter 136, 2007 General Session.

review of the Division's actions, as embodied in the ROD or otherwise related to Mining Company's leasing request, lease exchange and expansion proposal. The Petition maintained that these actions are inconsistent with the Division's constitutional, statutory and regulatory obligations, including its Public Trust and sovereign land management planning duties and responsibilities.

164. The ROD is a "site-specific plan," environmental assessment or other planning document governed by Utah Admin. Code Rule r. 652-90, the regulation setting forth the Division's "Sovereign Land Management Planning" obligations.
165. The ROD is a final agency action by the Division and the decision embodied in the ROD or otherwise related to Mining Company's leasing request, lease exchange and expansion proposal is a final agency action by the Division.
166. FRIENDS is a party to the ROD or Division action related to Mining Company's leasing request, lease exchange and expansion proposal, because, *inter alia*, it is a party to these actions.
167. FRIENDS is a party to the ROD or Division action related to Mining Company's leasing request, lease exchange and expansion proposal, because, *inter alia*, it commented on the proposed action. Utah Code Ann. § 65A-2-4(1); Utah Code Ann. § 65A-2-4(2)(b).
168. FRIENDS is an aggrieved party for the purposes of Utah Code Ann. § 65A-1-4(6) and Utah Admin. Code r. 652-9-100, *et seq.*
169. FRIENDS is also a party to its own Petition for Consistency Review for the purposes of Utah Code Ann. § 63G-4-103(1)(f).
170. FRIENDS is entitled to seek a consistency review of the ROD or the Division action

otherwise related to Mining Company's leasing request, lease exchange and expansion proposal from the Executive Director.

171. The Executive Director's decision that FRIENDS is not entitled to consistency review of the ROD or action otherwise related to Mining Company's leasing request, lease exchange and expansion proposal and his denial of FRIENDS' December 6, 2010 Petition for Consistency Review are arbitrary and capricious and contrary to law.

172. The Executive Director is required to address FRIENDS' December 6, 2010 Petition for Consistency Review as set forth in Utah Admin. Code r. 652-9-100, *et seq.*

173. FRIENDS is entitled to a reversal of the Executive Director's decision and a declaration that the Executive Director was acting arbitrarily and capriciously and contrary to the law when he denied FRIENDS' December 6, 2010 Petition for Consistency Review.

174. FRIENDS is entitled to an order requiring the Executive Director to address FRIENDS' December 6, 2010 Petition for Consistency Review on its merits.

SECOND CAUSE OF ACTION
FRIENDS is Entitled to Review of its Request for Agency Action.

175. All allegations contained in this Complaint are hereby incorporated by reference.

176. FRIENDS made its Request for Agency Action pursuant to Utah Admin. Code r. 625-8 and Utah Code Ann. § 63G-4-201(3).

177. Utah Code Ann. § 63G-4-201(3) provides that, where agency rules permit persons other than the agency to initiate adjudicative proceeding, they may file a request for agency action according the established format.

178. The Division’s Rule R652-8 confirms that persons other than the Division can indeed initiate adjudicative proceedings.
179. Utah Admin. Code r. 652-8-200(1), in turn, clarifies that “[r]equests for action include applications for leases, permits, easements, sale of sovereign lands, exchange of sovereign lands, sale of forest products and any other disposition of resources under the authority of the agency or other matter where the law applicable to the agency permits parties to initiate adjudicative proceedings.”
180. In its Request for Agency Action, FRIENDS seeks agency action relative to the decision set forth in the ROD, which purports to take action on the disposition of resources on sovereign lands.
181. FRIENDS is a party to its own Request for Agency Action for the purposes of Utah Code Ann. § 63G-4-103(1)(f).
182. FRIENDS is entitled to pursue its Request for Agency Action with the Division.
183. The Division is required to address FRIENDS’ Request for Agency Action as set forth in Utah Admin. Code r. 652-8-100, *et seq.*
184. The Executive Director’s decision that FRIENDS is not entitled to review of its Request for Agency Action is erroneous, arbitrary and capricious and contrary to law.
185. The Executive Director is required to address the merits of FRIENDS’ Request for Agency Action.
186. FRIENDS is entitled to a reversal of the Division and Executive Director’s decisions and a declaration that the Division and the Executive Director were acting erroneously, arbitrarily and

capriciously and contrary to the law when they denied FRIENDS' Request for Agency Action.

187. FRIENDS is entitled to an order requiring the Division and Executive Director to address FRIENDS' Request for Agency Action on its merits.

THIRD CAUSE OF ACTION
Violation of the Right to Due Process, Utah Const. art. I, § 7
and U.S. Constitution art. XIV, § 1.

188. All allegations contained in this Complaint are hereby incorporated by reference.

189. FRIENDS is, *inter alia*, a commenter on Mining Company's expansion project and the Division and the Executive Director's planning and Public Trust obligations relative to that proposal, a citizen of Utah, a member of the public and a beneficiary of the Public Trust.

190. As such, FRIENDS has a significant liberty, property, and statutory interest in the non-interference with, the conservation of and, if lawful and appropriate, the disposition of the bed of Great Salt Lake and its attendant Public Trust resources that is protected by the procedural and substantive constitutional guarantees of due process.

191. The Division's and the Executive Director's uninformed and final management decisions and actions, including but not limited to those encompassed by the ROD, accepting and approving a bid for the Clyman Bay Lease and lease exchange, issuing the Clyman Bay Lease, fulfilling or not fulfilling their Public Trust obligations, and otherwise allowing the proposed Mining Company expansion to proceed on sovereign lands has the potential to and will harm FRIENDS' significant common law, liberty, property, and statutory interest in Great Salt Lake and its Public Trust resources.

192. As a commenter, citizen, member of the public and beneficiary, FRIENDS also has a vested right to notice of and administrative and judicial review of and/or appeal of the Division's and Executive Director's management actions and decisions impacting Great Salt Lake and approving Mining Company's leasing, exchange and expansion proposal.
193. The Division and Executive Director have refused to allow FRIENDS due process in order to protect its interests in Great Salt Lake and its attendant Public Trust resources and to prevent those interests from being harmed.
194. Therefore, in making these management decisions and taking these actions, the Division and the Executive Director have deprived FRIENDS of its significant common law, liberty, property, and statutory interest in the bed of Great Salt Lake and its attendant Public Trust resources without due process.
195. In refusing to allow FRIENDS to adjudicate, either administratively or judicially, the agencies' management decisions impacting the Lake have deprived FRIENDS of its significant common law, liberty, property, and statutory interest in the bed of Great Salt Lake and its attendant Public Trust resources without due process.
196. By denying FRIENDS notice of the ROD and of the agencies' management decisions and decision on the Mining Company lease exchange and expansion proposal and in issuing the Clyman Bay Lease, the Division and the Executive Director have deprived FRIENDS of its significant liberty, property, and statutory interest in the bed of Great Salt Lake and its attendant Public Trust resources without due process.

197. The Division and Executive Director's actions allowing Mining Company access to an adjudication, as well as administrative and judicial review of its application to use sovereign lands while preventing FRIENDS the same or similar access to an adjudication to protect its interests in the bed of Great Salt Lake and its attendant Public Trust resources, and otherwise prohibiting FRIENDS from securing administrative and judicial review of the agencies' actions and decisions impacting the Lake, are violations of due process and serves no compelling or reasonable interest.
198. By interpreting their rules to give the agencies complete discretion whether or not to allow FRIENDS to participate in an adjudication of the Mining Company application to use sovereign lands or to otherwise protect its members' interests relative to the request to use sovereign lands by declaring the adjudication informal and therefore closed to intervention is a violation of due process and serves no compelling or reasonable interest.
199. By denying FRIENDS notice of the ROD and the opportunity to ensure that the Division and the Executive Director are fulfilling the terms and purposes of the trust and are properly managing and administering the trust, by denying the organization the opportunity to secure the material information necessary to safeguard their interests and, ultimately and by denying FRIENDS access to administrative and judicial forums to protect its interest in the trust, the Division and Executive Director are in violation of due process and are serving no compelling or reasonable interest.
200. As a result of these due process violations, the actions and decisions of the Division and Executive Director that have the potential to and will impact Great Salt Lake sovereign lands

and resources and their refusal to notify FRIENDS of these actions and to provide FRIENDS with an administrative and judicial avenue to protect its interests relative to these actions are unconstitutional, arbitrary and capricious and otherwise contrary to law.

201. FRIENDS is entitled to an order requiring the Division and Executive Director to address FRIENDS' Petition for Consistency Review and Request for Agency Action on their merits; or in the alternative, to direct judicial review of the Division and the Director's actions and decisions in this court.

FOURTH CAUSE OF ACTION
Access to Open Courts, Utah Const. art. I, § 11.

202. All allegations contained in this Complaint are hereby incorporated by reference.

203. FRIENDS is a commenter, citizen of Utah, member of the public and beneficiary of the Public Trust.

204. The open courts provision of the Utah Constitution guarantees FRIENDS notice and an administrative and judicial avenue to protect its interests in the bed of Great Salt Lake and its attendant Public Trust resources and to prevent those interests from being harmed.

205. For all the reasons that the Division and Executive Director have taken that violate the due process guarantees relative to FRIENDS' protected interests in the bed of Great Salt Lake, the agencies have also violated the open courts provision of the Utah Constitution.

206. Federal and state common law, constitutional law and statutory law have historically guaranteed and still guarantee FRIENDS a judicial remedy and avenue to protect its interests in the bed of Great Salt Lake and its attendant Public Trust resources.

207. The Division and the Executive Director have abrogated this avenue, cause of action and/or remedy without providing FRIENDS with an effective or reasonable alternative. The Division and Executive Director's abrogation serves no compelling or reasonable purpose and does not seek to eliminate any social or economic evil.
208. Therefore, the Division and the Executive Director's abrogation of a cause of action or remedy to allow FRIENDS to protect its interests in the bed of Great Salt Lake and its attendant Public Trust resources violates the open courts provision.
209. The open courts provision guarantees FRIENDS notice of Division and Executive Director actions and decisions that have the potential to or will impact FRIENDS interests, and the opportunity for administrative and judicial review of the actions and decisions encompassed by the ROD and of the agencies' management decisions and actions on the Mining Company lease exchange and expansion proposal and in issuing the Clyman Bay Lease and addressing the company's application to use sovereign lands, as well as the agencies' management and Public Trust obligations relative to that application.
210. By failing to provide FRIENDS notice of its actions and decisions and refusing to allow FRIENDS an administrative and judicial avenue to protect its interests, the Division and the Executive Director have violated the constitutional guarantees of the open courts provision.
211. FRIENDS has exhausted all available administrative remedies relative to the ROD and the Division and Executive Director's final actions and decisions on the Mining Company lease exchange and expansion proposal and application to use sovereign lands, as well as the agencies' management and Public Trust obligations relative to that application.

212. In refusing to address the merits of FRIENDS' Petition for Consistency Review and Request for Agency Action, the Division and Executive Director have unlawfully created barriers that have impeded FRIENDS' open and equal access to the courts.
213. Because it has been denied notice and an opportunity to challenge the Division's and Executive Director's actions and decisions on the merits, FRIENDS has been deprived of its right to be heard at a meaningful time and in a meaningful manner and have its concerns be heard by an impartial decision maker, in violation of the open courts provision.
214. As a result of these open courts violations, the actions and decisions of the Division and Executive Director that have the potential to and will impact Great Salt Lake sovereign lands and resources and their refusal to notify FRIENDS of these actions and to provide FRIENDS with an administrative and judicial avenue to protect its interests relative to these actions are unconstitutional, arbitrary and capricious and otherwise contrary to law.
215. FRIENDS is entitled to an order requiring the Executive Director to address FRIENDS' Petitions on their merits; or in the alternative, to direct judicial review of the Division's and the Director's actions in this court.

FIFTH CAUSE OF ACTION
Separation of Powers, Utah Const. Art. V, § 1

216. All allegations contained in this Complaint are hereby incorporated by reference.
217. For all the reasons that the Division and Executive Director have violated the due process and open courts guarantees relative to FRIENDS' protected interests in the bed of Great Salt

Lake, the agencies have also violated the separation of powers provision of the Utah Constitution.

218. In taking their final actions and decisions encompassed by the ROD and taking their final management decisions and actions on the Mining Company lease exchange and expansion proposal and in issuing the Clyman Bay Lease and addressing the company's application to use sovereign lands, as well as fulfilling or not fulfilling their management and Public Trust obligations relative to that application, the Division and the Executive Director have rendered a decision upon a question of law or application of law to fact.
219. By denying FRIENDS' administrative and judicial review of the merits of its Petition for Consistency Review and Request for Agency Action, the Division and the Executive Director have unlawfully insulated their decisions from judicial review in violation of Utah Const. Art. V, § 1.
220. By failing to provide FRIENDS notice of its actions and decisions and refusing to allow FRIENDS an administrative and judicial avenue to protect its interests, the Division and the Executive Director have insulate their decisions from judicial review. This is unlawful and contrary to the separation of powers principle of the Utah Constitution.
221. Insulating these actions and decisions from judicial review allows the Division to enjoy unchecked power to allow interference with and/or dispose of Public Trust resources, in violation of Utah Const. Art. V, § 1.
222. As a result of these violations of the separation of powers, the actions and decisions of the Division and Executive Director that have the potential to and will impact Great Salt Lake

sovereign lands and resources and their refusal to notify FRIENDS of these actions and to provide FRIENDS with an administrative and judicial avenue to protect its interests relative to these actions are unconstitutional, arbitrary and capricious and otherwise contrary to law.

223. FRIENDS' right to petition the Division and the Executive Director has not and will not be protected by any administrative tribunal as the agencies have denied FRIENDS access to any such avenue to protect its interests in sovereign lands.

224. Separation of powers guarantees FRIENDS judicial review of the Division and Executive Director actions and decisions that have the potential to impact and will impact FRIENDS' protected interests in Great Salt Lake and its attendant Public Trust resources. FRIENDS is also guaranteed judicial review of the Division and Executive Director's actions and decisions in order to protect its interests in these sovereign land resources.

225. FRIENDS is entitled to judicial review of the Division and Executive Director's actions and decisions pursuant to separation of powers principles articulated in Utah Const. Art. V, § 1.

226. FRIENDS is entitled to an order requiring the Division and the Executive Director to address FRIENDS' Petition for Consistency Review and Request for Agency Action on their merits; or in the alternative, to direct judicial review of the Division and the Director's actions and decisions in this Court.

**SIXTH CAUSE OF ACTION
Breach of Trust and Violation of Fiduciary Duties**

227. The State of Utah, including the Division and the Executive Director, are bound by the legal duties of a trustee in the administration and management of the bed of Great Salt Lake and its

attendant Public Trust resources.

228. The Division and the Executive Director, acting as and for the State of Utah, are required to manage the bed of Great Salt Lake and its attendant Public Trust resources in compliance with Trust's purpose of preserving Great Salt Lake sovereign lands for the general public, protecting the ecological integrity of Great Salt Lake sovereign lands and safeguarding the public recreational uses of Great Salt Lake sovereign lands.
229. The Division and the Executive Director must also ensure that any use of Great Salt Lake sovereign lands "serve[s] the public interest and do[es] not interfere with the public trust." Utah Code Ann. § 65A-10-1.
230. In managing and administering the sovereign lands of Great Salt Lake subject to Mining Company's expansion proposal, the Division and Executive Director have violated their fiduciary duties and committed a breach of trust and otherwise failed their duties as trustees.
231. In accepting and approving a bid for the Clyman Bay lease, in issuing the Clyman Bay lease, in approving the lease exchange, in allowing Mining Company's planned use of sovereign lands and/or in otherwise allowing the proposed Mining Company expansion to proceed, the Division and the Executive Director have violated their fiduciary duties, committed a breach of trust and otherwise failed their duties as trustees.
232. As trustees, the Division and the Executive Director breached the trust and violated their fiduciary duty and duty of care by not conducting site-specific planning. The agencies did not adequately address or consider potential direct, indirect and/or cumulative adverse impacts on Public Trust values from the proposed use and development of the bed of Great Salt Lake.

233. Contrary to their duties as trustees, the Division and Executive Director failed to support a determination, on the record or otherwise, that the proposed development would not interfere with Public Trust values. *E.g.* Utah Code Ann. § 65A-10-1
234. Contrary to their duties as trustees, the Division and Executive Director wrongly formulated and applied the Public Trust Doctrine and adopted a standard that is insufficiently protective of Public Trust resources.
235. In these ways, the Division and Executive Director also violated their duties as trustees by, *inter alia*, failing to keep FRIENDS, as a beneficiary of the trust, reasonably informed about the administration of the trust and of the material facts necessary for FRIENDS to protect its interests in the Trust.
236. In refusing to allow FRIENDS to adjudicate, either administratively or judicially, the agencies' decisions and actions that have the potential to impact and will impact FRIENDS interest in the bed of Great Salt Lake and the attendant Public Trust resources and in refusing to allow FRIENDS to protect its interests in the Public Trust, the Division and the Executive Director have violated their fiduciary duties and committed a breach of trust.
237. The Division and the Executive Directors actions, decisions and failures to act in violation of their duties as trustees and in violation of their fiduciary duties are unconstitutional, arbitrary and capricious and otherwise a violation of the law.
238. FRIENDS is entitled to an order compelling the Division and the Executive Director to perform the duties of a trustee in managing and administering the bed of Great Salt Lake and its

attendant Public Trust resources, particularly in the context of Mining Company's proposed use of sovereign lands.

239. FRIENDS is entitled to an order enjoining the Division and the Executive Director from accepting the bid for the Clyman Bay lease, issuing the Clayman Bay lease, approving the lease exchange, allowing Mining Company's use of the sovereign lands of Great Salt Lake, allowing the Mining Company expansion proposal to proceed and otherwise breaching the Public Trust and violating their fiduciary duties as a trustee of the Public Trust.

240. FRIENDS is entitled to an order voiding the actions and decisions of the Division and the Executive Director accepting the bid for the Clyman Bay lease, issuing the Clayman Bay lease, approving the lease exchange, allowing Mining Company's use of the sovereign lands of Great Salt Lake, allowing the Mining Company expansion proposal to proceed and otherwise breaching the Public Trust and violating their fiduciary duties as a trustee of the Public Trust.

241. FRIENDS is also entitled to an order recovering Public Trust property.

**SEVENTH CAUSE OF ACTION
Declaratory Judgment Regarding CMP/MLP**

242. All allegations contained in this Complaint are hereby incorporated by reference.

243. FRIENDS is entitled to a judicial declaration, for the purposes of this matter, that the CMP and MLP are not rules, are not controlling, are not enforceable and do not have the effect of law.

244. FRIENDS is entitled to a judicial declaration, for the purposes of this matter, that the CMP and MLP are plans that guide the implementation of sovereign land management objectives and therefore constitute policy and guidance.

245. FRIENDS is entitled to a judicial declaration, for the purposes of this matter, that the CMP and MLP did not, in any way, undertake the analysis necessary to support the Division and Executive Direction actions and decisions challenged here. The CMP and MLP cannot support a determination, on the record or otherwise, sufficient to support a conclusion that the Mining Company's use of sovereign lands would not violate the Public Trust, would serve the public interest, would not interfere with Public Trust resources and would otherwise conform to the law.

246. Similarly FRIENDS is entitled to a judicial declaration, for the purposes of this matter, that the Division and Executive Director may not act on or otherwise treat the CMP and MLP as though they are rules, are controlling, are enforceable and/or have the effect of law. Instead, the Division and the Executive Director must conduct site-specific planning and determine, on the record, whether the Clayman Bay lease, the lease exchange and the approved use of the sovereign lands of Great Salt Lake complies with all applicable common and constitutional law, statutes and regulations and the Public Trust doctrine, or would otherwise be proper.

247. FRIENDS has a legally protected interest in ensuring that the actions and decisions of the Division and the Executive Director relative to Great Salt Lake sovereign land uses and that have the potential to impact or will impact Public Trust resources comply with the law, including the Utah Administrative Rulemaking Act.

248. The declarations FRIENDS seeks are warranted under the Declaratory Judgment Act because they address a justiciable controversy based upon accrued set of facts, actual conflict, adverse parties, FRIENDS' legally protectable interest and are ripe for judicial resolution.

249. The declarations would settle uncertainty concerning the parties' legal rights and status or would resolve the controversy giving rise to the proceeding.
250. All persons who have any interest which would be affected by the declarations are parties to this action. The declarations will not prejudice the rights of persons not parties to the proceeding.
251. In no way in connection with the drafting, adoption or issuance of the CMP or the MLP did the Division or the Executive Director comply with any of the procedures of the Utah Administrative Rulemaking Act, Utah Code Ann. §§ 63G-3-101 to 3-702.
252. Neither the Division nor the Executive Director has enacted rules incorporating any alleged principles of law contained within or announced in the MLP or CMP.
253. Neither the Division nor the Executive Director has enacted rules incorporating any alleged principles of law contained within or announced in the MLP or CMP within 120 days of "announcing" those principles in an adjudication or otherwise met the requirements of Utah Code Ann. § 63G-3-201(6).
254. Therefore, the MLP and CMP, as the Division and Executive Director's "written statements," are not rules, are not binding, are not enforceable and are not controlling. Utah Code Ann. § 63G-3-202(1).
255. In any case, Division rules provide that "[a]ny lease, permit, or easement, issued by the [D]ivision on sovereign lands, is subject to a public trust; and any lease, permit, or easement may be revoked at any time if necessary to fulfill public trust responsibilities." Utah Admin. Code R652-70-300.

256. Moreover, as the CMP and MLP are not rules, are not controlling, are not enforceable and do not have the effect of law, these planning documents are not reviewable agency actions and therefore cannot preclude review of the Division and Executive Director actions and decisions challenged herein.

257. As a result, FRIENDS is entitled to the judicial declarations it seeks herein. At a minimum, the Division and the Executive Director must conduct site-specific planning and/or determine, on the record, whether the accepting bids on or the issuance of Clayman Bay lease and the approval of the lease exchange and use of the sovereign lands of Great Salt Lake complies with all applicable common and constitutional law, statutes and regulations and the Public Trust Doctrine, or would otherwise be proper.

EIGHTH CAUSE OF ACTION
Declaratory Judgment Regarding Right to Judicial Review

258. All allegations contained in this Complaint are hereby incorporated by reference.

259. FRIENDS is entitled to a judicial declaration that it is entitled to judicial review of the Division and Executive Director actions and decisions accepting the bid for the Clyman Bay lease, issuing the Clayman Bay lease, approving the lease exchange, allowing Mining Company's use of the sovereign lands of Great Salt Lake and allowing the Mining Company expansion proposal to proceed.

260. FRIENDS has a legally protected interest in ensuring that the actions and decisions of the Division and the Executive Director relative to Great Salt Lake sovereign land uses and that have the potential to impact or will impact Public Trust resources comply with the law,

including the federal and state constitutions, common law, statutory law, regulations and the Public Trust Doctrine.

261. The declaration FRIENDS seeks is warranted under the Declaratory Judgment Act because it addresses a justiciable controversy based upon accrued set of facts, actual conflict, adverse parties, FRIENDS' legally protectable interest and are ripe for judicial resolution.

262. The declaration would settle uncertainty concerning the parties' legal rights and status or would resolve the controversy giving rise to the proceeding.

263. All persons who have any interest which would be affected by the declaration are parties to this action. The declaration will not prejudice the rights of persons not parties to the proceeding.

264. FRIENDS has a legal right to challenge the Division and Executive Director actions and decisions accepting the bid for the Clyman Bay lease, issuing the Clayman Bay lease, approving the lease exchange, allowing Mining Company's use of the sovereign lands of Great Salt Lake and allowing the Mining Company expansion proposal to proceed. Utah Code Ann. § 63G-4-401, § 75-7-203, § 78B-6-401.

265. Under federal and state constitutional law, common law, statutory law and regulation, FRIENDS is a beneficiary of the sovereign lands of the Great Salt Lake and the attendant Public Trust resources and is entitled to enforce the duties of the Division and Executive Director as trustee of the Public Trust in this Court.

266. FRIENDS has a constitutional right to challenge the Division and Executive Director actions and decisions accepting the bid for the Clyman Bay lease, issuing the Clayman Bay lease,

approving the lease exchange, allowing Mining Company's use of the sovereign lands of Great Salt Lake and allowing the Mining Company expansion proposal to proceed. Utah Const. art. I, § 7; art. I, § 11; art. V, § 1; art. XX, § 1; U.S. Constitution art. XIV, § 1.

267. As a result, FRIENDS is entitled to the judicial declarations it seeks herein.

NINTH CAUSE OF ACTION
Declaratory Judgment Regarding Violation of Public Trust

268. All allegations contained in this Complaint are hereby incorporated by reference.

269. FRIENDS is entitled to judicial declaration that the Division and Executive Director actions and decisions accepting the bid for the Clyman Bay lease, issuing the Clayman Bay lease, approving the lease exchange, allowing Mining Company's use of the sovereign lands of Great Salt Lake and allowing the Mining Company expansion proposal to proceed violate the Public Trust and their management obligations.

270. FRIENDS is entitled to a judicial declaration that it is unlawful for the Division and the Executive Director to dispose of or allow interference with Public Trust resources without judicial or administrative review.

271. FRIENDS has a legally protected interest in ensuring that the actions and decisions of the Division and the Executive Director relative to Great Salt Lake sovereign land uses and that have the potential to impact or will impact Public Trust resources comply with the law, including the federal and state constitutions, common law, statutory law, regulations and the Public Trust Doctrine.

272. The declarations FRIENDS seeks are warranted under the Declaratory Judgment Act because it addresses a justiciable controversy based upon accrued set of facts, actual conflict, adverse parties, FRIENDS' legally protectable interest and are ripe for judicial resolution.
273. The declarations would settle uncertainty concerning the parties' legal rights and status or would resolve the controversy giving rise to the proceeding.
274. All persons who have any interest which would be affected by the declarations are parties to this action. The declarations will not prejudice the rights of persons not parties to the proceeding.
275. The Division and the Executive Director, acting as and for the State of Utah, are required to manage the bed of Great Salt Lake and its attendant Public Trust resources in compliance with Trust's purpose of preserving Great Salt Lake sovereign lands for the general public, protecting the ecological integrity of Great Salt Lake sovereign lands and safeguarding the public recreational uses of Great Salt Lake sovereign lands.
276. The Division and the Executive Director must also ensure that any use of Great Salt Lake sovereign lands "serve[s] the public interest and do[es] not interfere with the public trust." Utah Code Ann. § 65A-10-1.
277. In managing and administering the sovereign lands of Great Salt Lake subject to Mining Company's expansion proposal, the Division and Executive Director have violated the Public Trust, have failed to preserve Great Salt Lake sovereign lands for the general public, failed to protect the ecological integrity of Great Salt Lake sovereign lands and failed to safeguard the public recreational uses of Great Salt Lake sovereign lands.

278. In accepting and approving a bid for the Clyman Bay lease, in issuing the Clyman Bay lease, in approving the lease exchange, in allowing Mining Company's planned use of sovereign lands and/or in otherwise allowing the proposed Mining Company expansion to proceed, the Division and the Executive Director have failed their management obligations and impermissibly allowed a use of sovereign lands that does not serve the public interest in the Trust and interferes with the Public Trust.
279. The Division and the Executive Director have violated the Public Trust and their management obligations by failing to conduct site-specific planning. The agencies did not adequately address or consider potential direct, indirect and/or cumulative adverse impacts on Public Trust values from the proposed use and development of the bed of Great Salt Lake.
280. The Division and Executive Director failed to support a determination, on the record or otherwise, that the proposed development would serve the public interest and would not interfere with Public Trust values. *E.g.* Utah Code Ann. § 65A-10-1
281. The Division and Executive Director wrongly formulated and applied the Public Trust Doctrine and adopted a standard that is insufficiently protective of Public Trust resources.
282. The Division and Executive Director also violated their Public Trust and management duties by, *inter alia*, failing to keep FRIENDS informed about the administration of the Public Trust and of the material facts necessary for FRIENDS to protect its Public Trust interests.
283. As a result of these breaches of trust and violations of fiduciary duties, the Division and Executive Director actions and decisions and failures to act are arbitrary and capricious and otherwise contrary to law.

284. In refusing to allow FRIENDS to adjudicate, either administratively or judicially, the agencies' decisions and actions that have the potential to impact and will impact FRIENDS interest in the bed of Great Salt Lake and the attendant Public Trust resources and in refusing to allow FRIENDS to protect its interests in the Public Trust, the Division and the Executive Director have violated the Public Trust and their management obligations.

285. As a result, FRIENDS is entitled to the judicial declaration it seeks herein. The actions and decisions of the Division and the Executive Director challenged herein violate the Public Trust, and the agencies' management obligations, are arbitrary and capricious and otherwise contrary to the law.

PRAYER FOR RELIEF

WHEREFORE, FRIENDS respectfully requests that this Court issue:

A. A declaration that the Division and Executive Director actions and decisions and failures to act relative to the Mining Company's proposal to use sovereign lands and otherwise challenged herein are arbitrary and capricious and otherwise contrary to law.

B. A declaration that the Executive Director was acting erroneously, arbitrarily, capriciously, and contrary to the law when he denied FRIENDS' Petitions for Consistency Review.

C. An order requiring the Executive Director to address FRIENDS' December 6, 2010 Petition for Consistency Review on its merits.

D. A declaration stating that the Division and the Executive Director were acting arbitrarily, capriciously, erroneously and contrary to the law when the agencies denied FRIENDS' Request for Agency Action.

E. An order requiring the Division and the Executive Director to address FRIENDS' Request for Agency Action on its merits.

F. A declaration that the Division and Executive Director's actions and decisions challenged herein, including the decision to allow Mining Company's use of sovereign lands, without providing an opportunity for administrative or judicial review denied FRIENDS due process of law and open access to courts, and violated the constitutional doctrine of separation of powers and the Public Trust Doctrine and constituted a breach of trust and a violation of the agencies' fiduciary duties.

G. A declaration that FRIENDS has a legal right to judicial review of the Division and Executive Director's actions and decisions challenged herein, including the decision to allow Mining Company's use of sovereign lands, pursuant to constitutional principles of due process of law, open access to courts, and separation of powers, as well as the Public Trust doctrine and the duties of the agencies as trustees.

H. A declaration that the CMP and MLP are not rules, are not controlling, are not enforceable and do not have the effect of law.

I. A declaration that the CMP and MLP constitute policy and guidance.

J. A declaration that the CMP and MLP did not, in any way, undertake the analysis necessary to support the Division and Executive Direction actions and decisions challenged here.

K. A declaration that the Division and Executive Director may not act on or otherwise treat the CMP and MLP as though they are rules, are controlling, are enforceable and/or have the effect of law.

L. A declaration that the CMP and MLP are not binding or reviewable agency actions, and therefore could not have provided an adequate opportunity for administrative or judicial review of the actions and decisions challenged herein and could not have precluded administrative or judicial review of the actions and decisions allowing, *inter alia*, Mining Company to use sovereign lands.

M. A declaration that the undertaking of the actions and decisions challenged herein allowing, *inter alia*, Mining Company to use sovereign lands, without site-specific planning and sufficient Public Trust analysis is arbitrary, capricious, and otherwise not in accordance with law.

N. An order compelling the Division and the Executive Director to perform the duties of a trustee in managing and administering the bed of Great Salt Lake and its attendant Public Trust resources, particularly in the context of Mining Company's proposed use of sovereign lands.

O. An order enjoining the Division and the Executive Director from accepting the bid for the Clyman Bay lease, issuing the Clayman Bay lease, approving the lease exchange, allowing Mining Company's use of the sovereign lands of Great Salt Lake and allowing the Mining Company expansion proposal to proceed.

P. An order voiding the actions and decisions of the Division and the Executive Director accepting the bid for the Clyman Bay lease, issuing the Clayman Bay lease, approving the lease exchange, allowing Mining Company's use of the sovereign lands of Great Salt Lake, allowing the Mining Company expansion proposal to proceed and otherwise breaching the Public Trust and violating their fiduciary duties as a trustee of the Public Trust.

Q. An order recovering Public Trust property.

R. An order requiring the Division and the Executive Director to conduct site-specific planning and/or determine, on the record, whether the accepting bids on or the issuance of Clayman Bay lease and the approval of the lease exchange and use of the sovereign lands of Great Salt Lake complies with all applicable common and constitutional law, statutes and regulations and the Public Trust Doctrine, or would otherwise be proper.

S. A declaration that it is unlawful for the Division and the Executive Director to dispose of or allow interference with Public Trust resources without judicial or administrative review.

T. A declaration that the Clyman Bay lease is void because of the above-stated violations of law, and issuance of an injunction against further development on lease properties.

U. An order directing judicial review of the Division and the Director's actions and decisions in this Court.

V. An award of costs to FRIENDS and for any other relief as this Court deems proper.

Dated the 5th day of January, 2011.



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