THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

UTAH PHYSICIANS FOR A HEALTHY ENVIRONMENT, AMERICAN BIRD CONSERVANCY, CENTER FOR BIOLOGICAL DIVERSITY, SIERRA CLUB, and UTAH RIVERS COUNCIL, Plaintiffs, vs. UTAH DEPARTMENT OF NATURAL RESOURCES, et al., Defendants, and CENTRAL UTAH WATER CONSERVANCY DISTRICT, et al., Intervenors.	**RULING AND ORDER RE:** **MOTIONS TO DISMISS FILED BY STATE DEFENDANTS AND INTERVENORS** Case No: 230906637 Judge Laura S. Scott March 27, 2025

Before the court are the motions to dismiss filed by Defendants Utah Department of Natural Resources (DNR), Utah Division of Water Rights (DWR), and Utah Division of Forestry, Fire, and State Lands (FFSL) (collectively State Defendants) and Intervenors Central Utah Water Conservancy District, Weber Basin Water Conservancy District, and Jordan Valley Water Conservancy District (collectively Water Conservancy Districts); Utah Lake Water Users Association, PacifiCorp, Provo River Water Users Association, Metropolitan Water District of Salt Lake & Sandy, Utah Lake Distributing Company, and the cities of Eagle Mountain, Provo, Ogden, and Salt Lake (collectively Water User Intervenors); and Utah Division of Water

Resources and Board of Water Resources, Utah Division of Wildlife Resources, and Utah Division of State Parks (collectively State Agency Intervenors).[1, 2]

On September 17, 2024, the court held a hearing on the pending motions to dismiss. At the hearing, Plaintiffs Utah Physicians for a Healthy Environment, American Bird Conservancy, Center for Biological Diversity, Sierra Club, and Utah Rivers Council (collectively Plaintiffs) were represented by Stuart Gillespie. The State Defendants were represented by Michael Begley (FFSL), Sarah Shechter (State Engineer), and Lance Sorenson (DNR). The Water Conservancy Districts were represented by Aaron Lebenta. The Water Users Intervenors were represented by David Wright and the State Agency Intervenors were represented by Shane Stroud. [3]

At the conclusion of the hearing, the court requested supplemental briefs regarding a potential narrowing of Plaintiffs' declaratory judgment claim and the Utah Supreme Court's decision in *Colman v. Utah State Land Bd.*, 795 P.2d 622 (1990). After supplemental briefing was complete, the parties submitted the motions to dismiss for decision on January 6, 2025.

Having now considered the briefing, the oral arguments, the applicable legal standards, and the relevant law,[4] the Court hereby issues the following Ruling and Order:

I. SUMMARY OF RULING AND ORDER

The motions to dismiss are denied in substantial part.

As explained in more detail below, the court has subject matter jurisdiction to issue a limited declaratory judgment regarding (a) the scope of the public trust in Utah; (b) the scope of the State's duties as trustee of the public trust; and (c) the State's alleged breach of its trustee duties.

With respect to scope, the court concludes that Utah's public trust includes the navigable waters of the Great Salt Lake as well as the sovereign lands underlying those waters. Accordingly, the State, as trustee, has ongoing fiduciary duties to protect and preserve the waters of the Great Salt Lake from substantial impairment so that these waters can be used for the trust purposes of navigation, commerce, fishing, and recreation. The exact parameters of the State's trustee duties will need to be developed through additional briefing or further litigation.

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[1] The Water Conservancy Districts, the Water Users Intervenors, and the State Agency Intervenors are sometimes collectively referred to as "Intervenors" and the State Defendants and Intervenors are sometimes collectively referred to as "Defendants."

[2] The court also permitted the filing of an amicus curiae brief by law professors and responses to the amicus curiae brief by Defendants.

[3] The court is only referencing the attorneys who made arguments on behalf of Plaintiffs, the State Defendants, and the Intervenors. Several other attorneys made appearances for the record but did not argue at the hearing.

[4] As the court was preparing to issue the Ruling and Order, the Utah Supreme Court issued its decision in *Roussel v. State*, 2025 UT 5. Although this decision does not change the court's conclusion regarding its subject matter jurisdiction, the Court's holding in *Roussel* is briefly discussed in footnotes in Section IX below.

The court further concludes that Plaintiffs have stated a claim for breach of the State's trustee duties, *i.e.*, that the State has failed or refused to take feasible steps to protect the waters of the Great Salt Lake and to preserve them for trust purposes. Of course, at the motion to dismiss stage, the court is not ruling that the State has, in fact, breached its duties as trustee of the public trust. This aspect of Plaintiffs' claim requires further litigation.

However, the court concludes that Plaintiffs are not entitled to additional specific declaratory relief in the form of an order directing the State to "review, and where necessary, modify [upstream] diversions to protect and preserve the public trust." While it may be true that upstream water diversions are "by far the most significant cause" of the Great Salt Lake's "precipitous decline," the court is not persuaded that these upstream diversions "remain subject to the public trust" or that mandatory modifications of perfected water rights are "feasible" given Utah's prior appropriation system. Consequently, the court grants the motions to dismiss with respect to this aspect of Plaintiffs' declaratory judgment claim.

II. THE GREAT SALT LAKE

The Great Salt Lake is a national treasure. It is the largest saline lake in North America and the eighth largest terminal lake in the world. The Great Salt Lake plays a critical role in Utah's economic, ecological, and environmental well-being. A variety of industries – including brine shrimp fishing, recreation, mineral extraction, tourism, and skiing – depend on the Great Salt Lake. These industries collectively contribute billions of dollars each year to Utah's economy and provide thousands of jobs to Utah workers. In addition, a diversity of wildlife depends on the Great Salt Lake, which also provides essential resting, feeding, and breeding habitat for up to 12 million migratory birds each year.

As with other terminal saline lakes, the Great Salt Lake's water level has historically fluctuated because of natural and human influences.[5] The Great Salt Lake is primarily fed by inflows from freshwater tributaries that also support municipal and agricultural uses. The Great Salt Lake is broad and shallow. Consequently, even small changes in water level bring about significant changes in its surface area.[6] Compared to its historic baseline, the Great Salt Lake had lost approximately 73% of its water and 60% of its surface area when it hit record low levels in the fall of 2022.[7]

As Plaintiffs allege in their Complaint and further explain in their opposition to the motions to dismiss, the State's own experts have determined that the Great Salt Lake's "healthy range" for

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[5] *See Great Salt Lake Strike Team, Great Salt Lake Policy Assessment* 11 (Feb. 9, 2023), https://gardner.utah.edu/wp-content/uploads/GSL-Assessment-Feb2023.pdf?x71849 ("Policy Assessment"); *see also Utah State Rd. Comm'n v. Hardy Salt Co.*, 26 Utah 2d 143, 145, 486 P.2d 391(1971).

[6] Utah Dep't of Nat. Res., *Final Great Salt Lake Comprehensive Management Plan and Record of Decision* at § 2.3.1 (2013), https://ffsl.utah.gov/wp-content/uploads/OnlineGSLCMPandROD-March2013.pdf ("Comprehensive Management Plan").

[7] Compl. at ¶ 3; Benjamin W. Abbott et al., *Emergency Measures Needed to Rescue Great Salt Lake from Ongoing Collapse*, at 2 (Jan. 4, 2023), https://pws.byu.edu/GSL%20report%202023.

human and ecological interests is between 4,198 and 4,205 feet above sea level.[8] Elevations below 4,198 feet are associated with increased salinity levels and significant exposure of the lakebed, resulting in serious ecological, economic, and public health impacts. More specifically, brine fly and shrimp populations are harmed by declining lake levels, which in turn threatens the brine shrimp industry and imperils the many bird species that depend on brine shrimp as a food source. Exposure of the lakebed results in the emission of harmful lakebed dust pollution, which creates a public health hazard. And lowered water levels of the already shallow lake result in the loss of boating access and difficulties in navigation.

Economically, the Great Salt Lake directly supports approximately $1.3 billion in economic activity and provides around 7,700 jobs, primarily through mineral extraction, brine shrimp fishing, and recreation.[9] The Great Salt Lake's evaporation increases annual snowfall by 5 to 10 percent, bolstering the local ski industry and providing another 20,000 jobs and approximately $1.2 billion in economic activity.[10] Accordingly to one assessment, "the monetized potential costs of a drying Great Salt Lake" could be as much as $1.69 billion to $2.17 billion per year and over 6,500 job losses, with costs increasing substantially over time.[11]

According to Plaintiffs, the decline of the Great Salt Lake is the result of "excessive water diversions" related to "agriculture, extractive industry, and unsustainable outdoor use."[12] They allege the State has failed to "adopt or implement" strategies identified by the Great Salt Lake Strike Team involving reduction of water use in these areas or "any other strategy to limit upstream diversions sufficiently to prevent further losses to the Lake" or restore it to 4,198 feet.

Defendants do not dispute the importance of the Great Salt Lake or the gravity of the situation presented by its significantly declining water levels. Indeed, in their motions to dismiss, Defendants recognize that the Great Salt Lake is a critical resource and detail the State's voluntarily efforts to address the health of the Lake. Nevertheless, Defendants are adamant that the State has no legal obligation to protect and preserve the waters of the Great Salt Lake under the public trust doctrine or otherwise. Defendants even go so far as to insist that the State, if it chooses to do so, can de-water the Great Salt Lake so that it is nothing but a dry lakebed.[13]

Consequently, Plaintiffs have filed this action to correct the State's fundamental misunderstanding of the public trust doctrine and to force the State to acknowledge and fulfill its duties as trustee of Utah's public trust, which includes the waters of the Great Salt Lake.

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[8] Compl. at ¶ 13; *see generally* Comprehensive Management Plan.

[9] Comprehensive Management Plan at 2-165.

[10] Compl. at ¶ 34.

[11] Martin & Nicholson Env't Consultants, *Assessment of Potential Costs of Declining Water Levels in Great Salt Lake*, prepared for Great Salt Lake Advisory Council at iii (Sept. 2019), https://lf-public.deq.utah.gov/WebLink/DocView.aspx?id=392796&eqdocs=DWQ-2019-012913; Compl. at ¶ 104.

[12] Compl. at ¶¶ 63-65.

[13] *See e.g.,* Transcript of Hearing at 45, UPHE et al. v. DNR et al., No. 230906637 (3rd Dist. filed Sept. 26, 2024).

III. THE PARTIES

Plaintiff Utah Physicians for a Healthy Environment (UPHE) is a 501(c)(3) non-profit organization of health care providers dedicated to reducing the public health consequences of environmental degradation, particularly air pollution.

Plaintiff American Bird Conservancy (ABC) is a 501(c)(3) non-profit organization dedicated to conserving wild birds and their habitats throughout America. Its members in Utah derive recreational, conservation, aesthetic, and other benefits from the bird life breeding, migrating through, and wintering in the Great Salt Lake.

Plaintiff Center for Biological Diversity (CBD) a 501(c)(3) non-profit environmental organization dedicated to the protection of native species and their habitats through science, policy, creative media, and environmental laws.

Plaintiff Sierra Club is a 501(c)(4) non-profit organization and the nation's oldest grassroots environmental organization. Its Utah Chapter has more than 5,000 members.

Plaintiff Utah Rivers Council is a 501(c)(3) non-profit organization that advocates for the protection of Utah's watersheds and the communities they support.

Members of these groups use the Great Salt Lake for navigation, brine shrimp fishing, commerce, and recreation.

Defendant DNR is the governmental body responsible for protecting the State's natural resources. It houses the DWR, which is responsible for overseeing water appropriations, and FFSL, which is responsible for managing Utah's sovereign lands.

Defendant DWR is the water rights authority of the State of Utah and is responsible for administering and supervising the appropriation of the waters of the State. The State Engineer "is the water rights authority of the State of Utah . . . endowed with the power and obligation to oversee water appropriations across the state."[14]

Defendant FFSL is the executive authority for the management of sovereign lands, which are defined as those lands lying below the ordinary high-water mark of navigable bodies of water at the date of statehood and owned by the State by virtue of its sovereignty. Thus, FFSL is responsible for managing the bed of the Great Salt Lake.

IV. THE COMPLAINT

In the Complaint, Plaintiffs assert a claim for "breach of trust duty to undertake feasible means of achieving a lake level consistent with continued trust uses." They seek declaratory relief and injunctive relief. More specifically, they seek a declaratory judgment that:

[14] Compl. at ¶ 29.

a. "The public trust doctrine imposes a duty on [State] Defendants to maintain the Great Salt Lake at least at the minimum elevation consistent with public trust uses";[15]

b. "[State] Defendants have failed to protect public trust resources, and thus they have violated the public trust duty" by "allowing the water level of the Great Salt Lake to decline in a manner that adversely impacts the Lake, its ecosystem, and trust uses of the Lake";[16]

c. "The public trust doctrine imposes a duty on [State] Defendants to identify and implement feasible means of maintaining the Great Salt Lake at least at the [4,198 feet] level, including the reduction of unsustainable upstream diversions";[17] and

d. "The public trust doctrine creates a duty of continuing supervision over the taking and use of appropriated water and requires [State] Defendants to modify water allocations based on new information as necessary to protect and preserve the public trust."[18]

With respect to their request for injunctive relief, Plaintiffs request an order that:

a. "[State] Defendants must take action sufficient to ensure that any further decline in the Lake's average annual elevation ceases within two years" and "to restore the Great Salt Lake to at least the minimum elevation consistent with continued public trust uses";[19]

b. "[State] Defendants must review all existing water diversions from the Great Salt Lake watershed and determine feasible means to ensure compliance with their mandatory public trust duties" and "modify any existing diversions that are inconsistent with the restoration and maintenance of the Lake";[20]

c. "[State] Defendants must continue to monitor water usage consistent with their duty of continuing supervision and manage water diversions as necessary to protect the public trust";[21] and

d. "[State] Defendants must facilitate public involvement in the identification and implementation of these modifications through maintenance of a public record, the

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[15] Compl. at 27-28.

[16] *Id.* at 28.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.* at 29.

[21] *Id.*

establishment of a process for public comment, and the publication of documents describing state activities in a medium accessible to the general public."[22]

V. STATE DEFENDANTS' MOTIONS TO DISMISS[23]

In their motions to dismiss, the State Defendants argue the court "should dismiss the Complaint because it lacks subject matter jurisdiction" or, alternatively, the court "should decline jurisdiction in a declaratory judgment action such as this where the declaration would not resolve the controversy or uncertainty between the parties."

The State Defendants also argue Plaintiffs "lack standing because their claim is not redressable." They further argue Plaintiffs' claims are barred by "res judicata and laches" and "failure to exhaust administrative remedies." Finally, they argue "Plaintiffs have failed to join necessary parties as required by rule and statute."

Defendant FFSL further argues Plaintiffs have failed to state a claim upon which relief can be granted because Utah's public trust doctrine is limited to protection of sovereign lands and excludes water. Defendant DWR further argues that "inserting water rights into Utah's public trust doctrine goes against the long-standing water public policy of the state" and "the State Engineer lacks legal authority to curtail water rights to maintain lake levels."

VI. INTERVENORS' MOTIONS TO DISMISS

A. State Agency Intervenors' Motions to Dismiss.

In addition to joining in the arguments of the State Defendants, the State Agency Intervenors also argue that Plaintiffs' requested relief undermines their statutory mandates.

B. Water Conservancy Districts' Motion to Dismiss.

The Water Conservancy Districts also argue the court lacks subject matter jurisdiction because "(1) federally owned water rights and related facilities are subject to sovereign immunity; (2) by seeking to 'modify' the legal extent of every water right in the GSL Basin, Plaintiffs are effectively seeking a general adjudication of water rights, but general adjudications are special statutory civil actions which can only be brought pursuant to Title 73, Chapter 4; and (3) District projects include trans-basin diversions that import hundreds of thousands of acre-feet of water from the Colorado River Basin to the Wasatch Front, and issues related to such 'imported water' can only be determined in a general adjudication proceeding." The Water Conservancy Districts further argue the Complaint must be dismissed for failure to join "the tens of thousands of water right appropriators in the GSL Basin or, in the alternative, the United States."

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[22] *Id.*

[23] The Intervenors incorporate and adopt the arguments of the State Defendants. For the sake of brevity, the court is not including these duplicative arguments in its summary of the Intervenors' Motions to Dismiss.

C. Water Users Intervenors' Motion to Dismiss.

The Water Users Intervenors also argue that modifying water rights is constitutionally prohibited, that Plaintiffs' proposed remedy is an uncompensated taking of private property and creates impossible conflicts among state agencies, that article XX, section 1 of the Utah Constitution is not self-executing, and Plaintiffs have no claim under Utah's Uniform Trust Code.

VII. RELEVANT PROVISIONS OF UTAH CONSTITUTION

The Enabling Act authorized "the People of Utah to form a Constitution and State Government, and to be admitted into the Union on an equal footing with the original States." The Enabling Act provides that, upon admission into the Union, the State will receive certain lands for certain purposes, including for the support of common schools, for the purposes of erecting public buildings, for the establishment of the University of Utah and an agricultural college, to be sold to create a permanent fund to support the common schools, and for other governmental purposes. *See* Utah Enabling Act, ch. 138, 28 Stat. 107 (1894) §§ 6-10, 12.

The Enabling Act further provides that the State "shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act; and the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the Legislature of the State may provide." *Id.* at § 12.

Article V, Section 1 of the Utah Constitution provides as follows:

> 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.

Article XVII, Section 1 of the Utah Constitution provides as follows:

> All existing rights to the use of any of the waters in this State for any useful or beneficial purpose, are hereby recognized and confirmed.

The Utah Constitution includes the following articles regarding sovereign lands:

Article III, Ordinance, Second provides, in relevant part, as follows:

> The people inhabiting this State do affirm and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries hereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United

> States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States[.]

Article X, Section 7 of the Utah Constitution provides as follows:

> The proceeds from the sale of lands reserved by Acts of Congress for the establishment or benefit of the state's universities and colleges shall constitute permanent funds to be used for the purposes for which the funds were established. The funds' principal shall be safely invested and held by the state in perpetuity. Any income from the funds shall be used exclusively for the support and maintenance of the respective universities and colleges. The Legislature by statute may provide for necessary administrative costs. The funds shall be guaranteed by the state against loss or diversion.

Article XX, Sections 1 and 2 of the Utah Constitution provides as follows:

> All lands of the State that have been, or may hereafter be granted to the State by Congress, and all lands acquired by gift, grant or devise, from any person or corporation, or that may otherwise be acquired, are hereby accepted, and, except as provided in Section 2 of this Article, are declared to be the public lands of the State; and shall be held in trust for the people, to be disposed of as may be provided by law, for the respective purposes for which they have been or may be granted, donated, devised or otherwise acquired.
>
> Lands granted to the State under Sections 6, 8, and 12 of the Utah Enabling Act, and other lands which may be added to those lands pursuant to those sections through purchase, exchange, or other means, are declared to be school and institutional trust lands, held in trust by the State for the respective beneficiaries and purposes stated in the Enabling Act grants.

VIII. LEGAL STANDARD

Defendants filed their motions to dismiss pursuant to rules 12(b)(1) (lack of jurisdiction over the subject matter), (6) (failure to state a claim upon which relief can be granted), and (7) (failure to join an indispensable party). Utah R. Civ. P. 12(b)(1), (6), (7).

"A dismissal is a severe measure and should be granted by the trial court only if it is clear that a party is not entitled to relief under any state of facts which could be proved in support of its claim." *Am. W. Bank Members, L.C. v. State*, 2014 UT 49, ¶ 13, 342 P.3d 224 (citing *Colman v. Utah State Land Bd.*, 795 P.2d 622, 624 (Utah 1990)). When ruling on a motion to dismiss for failure to state a claim, the court must construe the Complaint in the light most favorable to Plaintiffs and indulge all reasonable inferences in their favor. *See Mack v. Utah State Dep't of Com.*, 2009 UT 47, ¶ 17, 221 P.3d 194.

Additionally, Utah has adopted the concept of "notice pleading," which is embodied in rule 8 of the Utah Rules of Civil Procedure and requires only that a complaint contain a "short and plain . . . statement of the claim showing that the party is entitled to relief" and a "demand for judgment for specified relief." *See* Utah R. Civ. P. 8(a); *Zubiate v. American Family Ins. Co.*, 2022 UT App 144, ¶ 11, 524 P.3d 148. Under this standard, a complaint is sufficient if it provides "fair notice of the nature and basis or grounds of the claim and a general indication of the type of litigation involved." *Mack*, 2009 UT at ¶ 17.

When considering a motion to dismiss, the court "must keep this 'notice pleading' standard in mind" and "liberally construe" both the applicable rules of civil procedure as well as the Complaint "to favor finding a pleading sufficient." *See Zubiate*, 2022 UT App. at ¶ 12. Even if the Complaint is "vague, inartfully drafted, a bare-bones outline or not a model of specificity, [it] may still be adequate so long as it can reasonably be read as supporting a claim for relief." *See Casaday v. Allstate Ins. Co.*, 2010 UT App 82, ¶ 16, 232 P.3d 1075 (internal quotations omitted).

Finally, "it need not appear that [P]laintiff[s] can obtain the particular relief prayed for in the complaint, as long as the [court] can ascertain from what has been alleged that some relief may be granted by the court." *See* Wright & Miller, 5B Fed. Prac. & Proc. Civ. § 1357 (4th ed. 2024). Accordingly, the court need not decide the precise remedies available to Plaintiffs on a motion to dismiss if some relief may be granted. *See Immigrant Defs. L. Ctr. v. Mayorkas*, No. 20-cv-09893, 2023 WL 3149243, at *14 (C.D. Cal. Mar. 15, 2023).

IX. SUBJECT MATTER JURISDICTION

Defendants first argue the court lacks subject matter jurisdiction. The court respectfully disagrees.

"Subject matter jurisdiction can mean 'statutory limits on the class of cases assigned to the authority of a certain court'" or "other limits that go to the concept of justiciability." *In re Adoption of B.B.*, 2017 UT 59, ¶ 129, 417 P.3d 1 (Lee, A.C.J., opinion of the court on this issue). Stated differently, one category of subject matter jurisdiction involves whether the court has statutory authority to hear a particular class of cases. *Id.* Another category embodies concepts of justiciability. *Id.* Justiciability issues that affect the court's jurisdiction include standing, failure to exhaust administrative remedies, and the political question doctrine. *Id.* at ¶ 121, 123.

Here, Defendants do not contend the court lacks statutory authority to hear this case. Rather, Defendants assert that Plaintiffs' declaratory judgment claim is a nonjusticiable political question. They also maintain that Plaintiffs lack standing because their claim is not redressable and/or because they failed to exhaust their administrative remedies.

A. Plaintiffs' Declaratory Judgment Claim.

Because the framing of Plaintiffs' declaratory judgment claim impacts the justiciability analysis, the court first addresses the relief requested by Plaintiffs.

In their Complaint, Plaintiffs seek a declaratory judgment specifying, among other things, that "the public trust doctrine imposes a duty on [the State] Defendants to maintain the Great Salt Lake at least at the minimum elevation consistent with public trust uses – that is, 4,198 feet," that "[the State] Defendants have failed to protect public trust resources, and thus they have violated the public trust duty" by allowing the water level of the Great Salt Lake to decline in a manner that adversely impacts it, and that "[t]he public trust doctrine imposes a duty on [the State] Defendants to identify and implement feasible means of maintaining the Great Salt Lake at least at [4,198 feet]."

At the hearing, the court questioned whether Defendants' justiciability arguments were moot if Plaintiffs' declaratory judgment claim was limited to (a) the scope of the public trust doctrine in Utah; (b) the scope of the State's duties as trustee of the public trust; and (c) the State's alleged breach of its trustee duties.

In their supplemental briefing, Plaintiffs argue the court "can declare, at the very least, that (a) the trust res encompasses the Great Salt Lake's navigable waters and submerged lands; (b) the State has a duty to preserve that res from substantial impairment; and (c) that duty includes considering the public trust in planning and administering water resources." And given the State Defendants' "unanticipated insistence that the public trust excludes navigable waters," this limited declaratory judgment would "award meaningful relief, and dismissal is not warranted for this reason alone."[24]

In their supplemental briefing, the State Defendants insist that such a "naked" declaration "would not redress [Plaintiffs'] injuries" or "avoid application of the political question doctrine." More specifically, the State Defendants first assert that Plaintiffs are the "master of the complaint" and "[i]t is not for the court to reframe [Plaintiffs'] complaint to ask for relief that a court thinks the plaintiff should have asked for."[25] From this assertion, and citing *Hunter v. Finau*, 2024 UT App 17, 545 P.3d 294, the State Defendants suggest it would be improper for the court to consider whether Plaintiffs may be entitled to a declaratory judgment that the navigable waters of the Great Salt Lake are part of the public trust because Plaintiffs also ask for "far more specific relief" in terms of establishing a "specific minimum elevation . . . by curtailing upstream diversions."

The court rejects this argument for several reasons.

First, in *Hunter*, the plaintiff argued that the district court should not have considered certain factual allegations in his complaint in determining whether the statute of limitations had run on his contract claims. The court of appeals disagreed because courts are required to accept the factual allegations in the complaint as true when considering a motion to dismiss. *Id.* at 29.[26]

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[24] Pl.s' Suppl. Br. 1.

[25] DNR's Suppl. Br. 5.

[26] The State Defendants also cite *Utah Stream Access Coal. v. VR Acquisitions, LLC*, 2019 UT 7, 439 P.3d 593. In that case, the Utah Supreme Court noted "[t]he public has a right to use streambeds underlying navigable waters within its borders. USAC could thus have asserted a claim that the relevant portion of the Provo River is navigable and that VR does not own the streambed. Yet it chose not to assert such a claim. Instead, it asserted claims for relief under an

But here, this is not a situation where Plaintiffs are attempting to distance themselves from their factual allegations or have failed to assert an alternative claim. *Id.* Nor is the court being asked to dismiss a viable alternative claim[27] or "close one door simply because another one exists" that may be more efficient.[28] Rather, the court is doing what it is required to do on a motion to dismiss: determine whether the Complaint can be reasonably read to support a limited declaratory judgment claim that would be justiciable.

Second, Plaintiffs' declaratory judgment claim presumes the navigable waters of the Great Salt Lake are part of the public trust. At the time they filed the Complaint, Plaintiffs had no idea the State Defendants would assert the waters are excluded, which is contrary to the State's position in *Colman v. Utah State Land Bd.*, 795 P.2d 622 (Utah 1990). In *Colman*, the State argued that "[t]he Public Trust Doctrine holds that the State must manage its navigable waters and their beds (like the Great Salt Lake) for the public good. Colman's position would essentially nullify that principle and would undermine both the State's public trust authority and initiative in dealing with natural disasters."[29] Plaintiffs were not required to anticipate the State Defendants' change of position and plead accordingly. *Cf. Bright v. Sorenson*, 2020 UT 18, ¶¶ 33-38, 463 P.3d 626 (plaintiff not required to plead in anticipation of possible affirmative defense).

Third, the State Defendants' position is inconsistent with rule 8(a), which merely requires a "short and plain statement of the claim showing the party is entitled to relief,"[30] and the motion to dismiss standard, which requires the court to construe the Complaint in the light most favorable to Plaintiffs and to indulge all reasonable inferences in their favor.

And finally, the State Defendants' position is undermined by rule 54(c), which provides that a prevailing party may obtain any relief to which it is entitled, "even if the party had not demanded such relief in his pleadings." Utah R. Civ. P. 54(c)(1).

As explained further below, the court is not persuaded that it lacks subject matter jurisdiction to issue a limited declaratory judgment regarding the scope of the public trust, the State's duties as trustee of the public trust, and the State's alleged breach of these duties. Such a limited declaratory judgment would redress Plaintiffs' alleged injuries[31] and would not involve a

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alternative, easement-based theory of relief. And that was USAC's prerogative as the plaintiff and master of its complaint." *Id.* at ¶ 34.

[27] *Ramon v. Nebo School Dist.*, 2021 UT 30, ¶ 16, 493 P.3d 613 (reversing district court's dismissal of viable alternative claims of negligent employment and negligence because they are not redundant and "plaintiff has the prerogative of identifying the claims or causes of action she seeks to sustain in court.").

[28] *In re Interest of Z.C.W. and C.C.W.*, 2021 UT App 98, ¶ 18, 500 P.3d 94.

[29] *See* Br. of State Resp., *Colman v. Utah State Land Bd.* (Jan. 14, 1987) (attached as Exhibit 1 to Plaintiffs' Combined Opposition in Response to Motions to Dismiss).

[30] Utah R. Civ. P. 8(a).

[31] Plaintiffs continue to press their argument that "upstream diversions remain subject to the public trust, thereby preserving the State's continuing authority to assess and, where necessary, undertake feasible modifications of upstream water usage to protect public trust uses from impairment." However, Plaintiffs also acknowledge that the State's experts have "identified multiple viable pathways to modify water usage and restore the Great Salt Lake to its minimum healthy elevation, thereby averting the looming crisis and safeguarding trust uses." Pl.s' Opp. at 3.

political question or implicate the doctrines of res judicata and laches. Nor would such a limited declaratory judgment require the joinder of indispensable parties or exhaustion of administrative remedies or result in an unconstitutional taking of private property for public use.

However, the court concludes that Plaintiffs' request for a declaratory judgment requiring the State Defendants to "review all existing water diversions from the Great Salt Lake watershed" and "modify any diversions that are inconsistent with the restoration and maintenance of the [Great Salt] Lake" at 4,198 feet may violate the political question doctrine.[32]

B. Utah's Declaratory Judgment Act.

The court has broad authority to issue declaratory relief when presented with a "genuine justiciable controversy." *Salt Lake Cnty. v. Salt Lake City*, 570 P.2d 119, 120-21 (Utah 1977). Utah's Declaratory Judgment Act grants the court "the power to issue declaratory judgments determining rights, status, and other legal relations within its respective jurisdiction." Utah Code § 78B-6-401(1)(a). The purpose of a declaratory judgment is to "provide a means for resolving uncertainties and controversies before trouble has developed or harm has occurred, and in order to avoid future litigation." *Salt Lake Cnty.*, 570 P.2d at 120-21. The court, however, is not permitted to reach "moot or abstract questions." *Id.* at 121; *see also Williamson v. Farrell*, 2019 UT App 123, ¶ 11, 447 P.3d 131, 134-5 (quoting *Baird v. State*, 574 P.2d 713, 715 (Utah 1978) ("The courts are not a forum for hearing academic contentions or rendering advisory opinions.").[33]

In order for the court to render a declaratory judgment, four threshold elements must be met: "(1) there must be a 'justiciable controversy' presented for resolution; (2) the parties to the action must have interests that are adverse; (3) the party seeking relief must have a 'legally protectible interest'; and (4) the issues presented must be 'ripe for judicial determination.'" *Williamson*, 2019 UT App at ¶ 11.[34] "Nested within the second and third requirements are the traditional standing requirements – injury, causation, and redressability." *Roussel v. State*, 2025 UT 5, ¶ 5.

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[32] With respect to Plaintiffs' request for an order setting a specific lake level, the court acknowledges that a specific lake elevation may be relevant to a determination of whether the State breached its trustee duties in subsequent proceedings. For example, Plaintiffs might be able to prove that the State's experts have determined this minimum lake elevation is necessary to prevent substantial impairment of trust uses, there are feasible steps the State can take to increase the lake elevation to this minimum, and the State has failed or refused to undertake them. Alternatively, as DNR points out in its supplemental brief, the State's experts may determine that "maintaining the Lake for navigability, which is at the heart of the public trust doctrine," requires a lower elevation than "maintaining the Lake for a healthy eco-system." DNR's Suppl. Br. at 2, n.2. Accordingly, the court declines to address this aspect of Plaintiffs' requested relief at this juncture.

[33] An "abstract question" is a question that is to be "considered apart from application to or association with a particular instance." *Salt Lake Cnty v. State*, 2020 UT 27, ¶ 38, 466 P.3d 158. A "controversy" means a "case that requires a definitive determination of the law on the facts alleged for the adjudication of an actual dispute, and not merely a hypothetical, theoretical, or speculative legal issue." *Id.* at ¶ 40.

[34] *See also Salt Lake Cnty*, 570 P.2d at 121 ("[T]here must be a genuine justiciable controversy in that (1) the interests of the parties involved are adverse, (2) the party seeking relief must have, or assert a bona fide claim, of a legally protectable interest therein, and (3) the issues must be ripe for judicial determination. That is, it must appear either that there is actual controversy, or that there is a substantial likelihood that one will develop so that the adjudication will serve a useful purpose in resolving or avoiding controversy or possible litigation.").

Where a declaratory judgment "would not terminate the uncertainty or controversy giving rise to the proceeding," the court may refuse to enter such judgment. Utah Code § 78B-6-404. Importantly, the Declaratory Judgment Act "is to be liberally construed" and courts should be "indulgent in entertaining actions brought to achieve that objective; and more particularly so, where there is a substantial public interest to be served by the settlement of such an issue." Utah Code § 78B-6-412; *see also Salt Lake Cnty*, 570 P.2d at 121. Finally, courts should not decline to hear an action "merely because the sought-after judgment would fail to establish global peace between the parties." *Williamson*, 2019 UT App 123, ¶ 15. If the declaratory judgment resolves the specific controversy giving rise to a claim, it is not required to terminate any and all underlying disputes that may exist or arise between the parties. *Id.*

Plaintiffs have demonstrated that the four threshold elements are met in this case. As a preliminary matter, Defendants do not dispute that Plaintiffs have legally protectible interests that are adverse to their own interests. Thus, the second and third elements are met.[35]

Nor do Defendants seriously contend that the issues are not ripe for judicial determination. Ripeness exists when "a conflict over the application of a legal provision [has] sharpened into an actual or imminent clash of legal rights and obligations between the parties thereto." *Carter v. Lehi City*, 2012 UT 2, ¶ 93, 269 P.3d 141.

Rather, Defendants argue that a limited declaratory judgment regarding the scope of Utah's public trust doctrine and the State's duties as trustee of the public trust would not raise the level of the Great Salt Lake or otherwise resolve the controversy between the parties. Thus, Defendants argue, the court would be issuing an advisory opinion or "naked" declaration. The court respectfully disagrees.

Here, the conflict over the scope of the public trust doctrine and the State's fiduciary duties as trustee is more than a "difference of opinion regarding a hypothetical application of [the public trust doctrine] to a situation in which the parties might, at some future time, find themselves." *See Redwood Gym v. Salt Lake Cnty. Comm'n*, 624 P.2d 1138, 1148 (Utah 1981). And the court's determination of the threshold question – whether the waters of the Great Salt Lake are part of the public trust – would not be an advisory opinion on a matter that might not impact the parties. *See Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Lindberg*, 2010 UT 51, ¶ 40, 238 P.3d 1054. To the contrary, the court's resolution of this legal issue will serve a useful purpose in resolving an important dispute over the State's alleged failure to protect and preserve the waters of the Great Salt Lake. Further, courts routinely define the contours of legal duties, instruct fiduciaries on them, and apply the specific facts of the case to determine whether the fiduciary has breached its duties.[36]

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[35] They do, however, challenge redressability, which is "nested" in these requirements. *See Roussel* at ¶ 5. However, because of the way the parties briefed these issues, redressability will be addressed separately.

[36] See *e.g., Russell v. Lundberg*, 2005 UT App 315, ¶¶ 17-24, 120 P.3d 541 (in deciding whether there was a breach of trustee duties, the court "identif[ied] the nature and scope of duty owed" by trustee, finding the trustee had no fiduciary duty, but did owe other duties as trustee); *Five F, L.L.C. v. Heritage Sav. Bank*, 2003 UT App 373, ¶¶ 13-20, 81 P.3d 105 (determining the existence and extent to trustee's fiduciary duty to the beneficiary to decide whether

This conclusion is not undermined by the Utah Supreme Court's recent decision in *Roussel*. In *Roussel*, several youth plaintiffs brought an action challenging certain statutory provisions and government conduct relating to fossil fuel development. 2025 UT 5 at ¶ 1. The plaintiffs allege the challenged provisions and conduct are designed to maximize fossil fuel development in Utah, which endangers their health and shortens their lifespans by exacerbating the effects of climate change. Based on this harm, the plaintiffs asked the district court to declare that the provisions and conduct violated their fundamental rights "to life" and "to liberty" under the Utah Constitution. *Id.* The Court held that the plaintiffs lack standing because "striking the provisions as unconstitutional would not redress their injuries." *Id.* at ¶ 24.

The Court then turned to the plaintiffs' alternative argument that "their challenges to the statutory provisions ought to move forward even if . . . striking the provisions would not redress their injuries" in order to provide "judicial guidance about the constitutionality of the government defendants' subsequent conduct . . . and pronounce judgment on the hypothetical question of whether the government defendants' future actions would be [constitutional]." *Id.* at ¶ 48. Unsurprisingly, the Court concluded that the plaintiffs' "request is better characterized as a request for an advisory opinion" and the district court therefore lacked subject matter jurisdiction to answer "such a hypothetical question [because it] would require the court to divorce the question from the facts." *Id.*

In this case, Plaintiffs are not asking for advisory opinion. They are asking the court to define the scope of Utah's public trust doctrine and enforce the State's legal obligation to protect the navigable waters of the Great Salt Lake. Thus, the fourth element is met in this case.

Finally, as explained further below, the court determines that the controversy is justiciable.

C. Justiciability and the Political Question Doctrine.

The Utah Supreme Court has "repeatedly recognized that a justiciable controversy is the keystone of our judicial framework." *Carlton v. Brown*, 2014 UT 6, ¶ 29, 323 P.3d 571, 579-80. A justiciable controversy "is one wherein the plaintiff is possessed of a protectible interest at law or in equity and the right to a judgment, and the judgment, when pronounced, must be such as would give specific relief." *Baird v. State*, 574 P.2d 713, 716 (Utah 1978).

The State Defendants argue the court "lacks jurisdiction under the political question doctrine because (1) there are not judicially discoverable and manageable standards for resolving Plaintiffs' claim; (2) to grant Plaintiffs' requested relief, the court would need to weigh into policy considerations regarding water use, water management, and competing public interests in the State of Utah; and (3) granting Plaintiffs' requested relief would demonstrate a lack of respect for the myriad efforts the State is already taking to enhance the Lake."[37]

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the trustee breached a fiduciary duty); *Sabour v. Koller*, 2024 UT App 26, 546 P.3d 28 (reviewing determination that trustee breached fiduciary duties).

[37] *See* DNR's Mot. to Dismiss 4.

In so arguing, the State Defendants focus almost exclusively on Plaintiffs' request that the court order the State to review all upstream water diversions. When this proposed relief is divorced from Plaintiffs' declaratory judgment claim, however, these arguments lose all of their force.

1. Separation of Powers Clause and Political Question Doctrine.

The Separation of Powers Clause of the Utah Constitution provides that the "powers of the government of the State of Utah shall be divided into three distinct departments . . . 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." Utah Const. art. V, § 1. The Separation of Powers Clause "regulates and guides the apportionment of authority and function between the branches of government." *Vega v. Jordan Valley Med. Ctr., LP*, 2019 UT 35, ¶ 15, 449 P.3d 31.

The political question doctrine, which is rooted in this separation-of-powers premise, is "a tool for maintenance of governmental order." *Skokos v. Corradini*, 900 P.2d 539, 541 (Utah Ct. App. 1995) (citing *Baker v. Carr*, 369 U.S. 186, 210-11 (1962); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 165-66, 2 L.Ed. 60 (1803)). "[B]oth focus on the proper roles of each branch of government and aim to curtail interference of one branch in matters controlled by the others." *Matter of Childers-Gray*, 2021 UT 13, ¶ 64, 487 P.3d 96 (citing *Skokos,* 900 P.2d at 541).

The political question doctrine "prevents judicial interference in matters wholly within the control and discretion of other branches of government." *Skokos*, 900 P.2d at 541. And it "preserves the integrity of functions lawfully delegated to political branches of the government and avoids undue judicial involvement in specialized operations in which the courts may have little knowledge and competence." *Id.* Thus, courts must hold "strictly to an exercise and expression of [their] delegated or innate power to interpret and adjudicate." *Trade Comm'n v. Skaggs Drug Ctrs., Inc.*, 21 Utah 2d 431, 439, 446 P.2d 958, 963 (1968).

The United States Supreme Court has identified a political question as involving:

> a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government[.]

Baker v. Carr, 369 U.S. 186, 217, 82 S.Ct. 691 (1962).

Under the *Baker* test, a case may not be dismissed for non-justiciability on political question grounds unless one of these factors is demonstrated.

Importantly, the *Baker* Court distinguished "political questions" from "political cases." *Baker*, 369 U.S. at 218. Courts typically will not find a political question "merely because [a] decision may have significant political overtones." *Japan Whaling Ass'n v. Am. Cetacean Soc'y*,

478 U.S. 221, 230 (1986). Similarly, the Utah Supreme Court observed that while judicial roles may have political overtones, that does not mean the courts should "simply 'shirk' those roles by announcing them nonjusticiable." *Matter of Childers-Gray*, 2021 UT at ¶ 67. Thus, "claims involving policies and decisions promulgated by government officials or entities are not automatically barred from judicial review as nonjusticiable political issues." *Skokos*, 900 P.2d at 541 (citing *Ukrainian-American Bar Ass'n v. Baker*, 893 F.2d 1374, 1380 (D.C.Cir. 1990)).

Further, because common law matters are within the court's authority, the judiciary has the responsibility "to examine those causes of action which it has created, to alter them when appropriate, and to abolish them when necessary." *Matter of Childers-Gray,* 2021 UT at ¶ 67 (citing *Norton v. Macfarlane*, 818 P.2d 8, 17 (Utah 1991)). Finally, the court's "exercise of common-law authority, when not abrogated by statute, neither runs afoul of the political question doctrine nor violates the separation-of-powers requirements of article V, section 1." *Id.* at ¶ 68. "If a claim involves the interpretation of a statute or questions the constitutionality of a particular political policy, courts are acting within their authority in scrutinizing such claims 'so long as there are ... 'judicially discoverable and manageable standards for resolving' the dispute.'" *Skokos*, 900 P.2d at 541 (quoting *Baker*, 369 U.S. at 217).[38]

2. Determining Scope of Public Trust Doctrine and State's Duties as Trustee Do Not Present Political Questions.

The parties dispute whether the *Baker* test applies. But regardless of whether Utah has "embraced" or "rejected" the *Baker* test, the court concludes that Plaintiffs' request for a declaratory judgment regarding (a) the scope of the public trust doctrine in Utah; (b) the scope of the State's duties as trustee of the public trust; and (c) the State's alleged breach of its trustee duties does not present a political question. There are "judicially discoverable and manageable standards" for resolving these questions.[39] And such limited declaratory relief does not require the court to wade into policy discussions or intrude upon the other branches of government or otherwise express a lack of respect for them. Nor would the court be developing water policy, creating a new water code, or ignoring the State's "extensive efforts" in connection with the Great Salt Lake.

As discussed further below, the public trust doctrine is an inherent attribute of sovereignty that predates Utah's statehood, is firmly established in Utah common law, and is harmonious with the Utah Constitution. There is no question that courts are empowered to analyze the common law and interpret constitutional provisions and to exercise their common law authority, including determining whether a legal duty exists and, if so, the contours of that duty. And if a legal duty exists, courts are empowered to instruct the trustee on its duties and determine whether those duties have been breached. *See, e.g., Japan Whaling Ass'n*, 478 U.S. at 230 (courts are well-equipped to

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[38] *See, e.g., Baker v. Carr*, 369 U.S. at 228 (complaint about reapportionment of state legislative districts justiciable under Equal Protection Clause); *Chiles v. Thornburgh*, 865 F.2d 1197, 1216 (11th Cir.1989) (claim alleging improper operation of detention center justiciable because resolution requires interpretation of statutes and Constitution); *State Highway Comm'n v. Volpe*, 479 F.2d 1099, 1106 (8th Cir.1973) (claim concerning executive branch's power to control expenditures justiciable because resolution turns on interpretation of Federal-Aid Highway Act).

[39] Defendants do not argue that there has been "a textually demonstrable constitutional commitment of the issue to a coordinate political department." Nor could they because courts play an essential role in declaring and enforcing the public trust.

"first determine the nature and scope of the duty" and "then apply[] this analysis to the particular set of facts" of the case). Indeed, courts routinely issue these types of declaratory judgments because they involve claims of legal rights, resolvable according to legal principles.

Importantly, when properly focused on the court's role in resolving this controversy – determining the scope of the public trust and the nature of the trustee's duties, not dictating how the trustee exercises its discretion in fulfilling these duties – there are clearly judicially discoverable and manageable standards for these important questions. Such judicially discoverable and manageable standards include the extensive public trust doctrine case law and the whole body of law setting forth standards applicable to trustees.[40]

Nevertheless, relying heavily on *Iowa Citizens for Community Improvement v. State of Iowa*, 962 N.W.2d 780 (Iowa 2021), the State Defendants insist that this court lacks "judicially discoverable or manageable standards" for resolving Plaintiffs' claim. In that case, the plaintiffs were asking the court to declare that the Iowa legislature must "broadly protect the public's use of navigable waters," including from pollution. *Iowa Citizens*, 962 N.W.2d at 796.

The court is not persuaded by the majority's analysis in *Iowa Citizens*, which is not binding on the court and easily distinguishable. In *Iowa Citizens*, the plaintiffs sought to "expand" the public trust doctrine to "impose a duty on the State to pass laws that regulate those waters in the best interests of the public." *Id.* The majority "perceiv[ed] 'a lack of judicially discoverable and manageable standards'" because an order directing the legislature to "'broadly protect[] the public's use of navigable waters' provides no meaningful standard at all." *Id.*

Here, Plaintiffs are not seeking to "dramatically expand" the "traditional" public trust doctrine. Thus, the court would not be determining whether "the public trust doctrine can be channeled in a new direction" beyond "its origins related to navigation and commerce" to "protect navigable waters from effective alienation through pollution." *Iowa Citizens*, 962 N.W.2d at 805 (Appel, J., dissenting). Nor would the court be ordering the legislature to enact specific legislation or dictating a specific outcome. It would be correcting the State's foundational legal error regarding the scope of the public trust, instructing the State on the nature of its duties as trustee, and determining whether the State breached them based on the facts and other evidence elicited in this case.

Thus, for the reasons set forth in the dissents in *Iowa Citizens*, such a limited declaratory judgment does not implicate a nonjusticiable political question because courts have "never shied away from declaring rights of beneficiaries and obligations of trustees." *Id.* at 809. And "courts around the country recognize the importance of the judiciary's role in defining the scope and applicability of the public trust doctrine." *Id.* Consequently, while "the constitutionality, feasibility, and efficacy of potential remedies" may ultimately "militate against expansion of the public trust doctrine," the court concludes that is not a basis for dismissing the entirety of Plaintiffs' claim for declaratory relief under the political question doctrine.

[40] The court also rejects any purported attempt to "frame up" a future political question by asserting that there are no judicially manageable standards to "supervise" the State's obligation to protect the Great Salt Lake.

3. Aspects of Requested Relief May Present Political Questions.

In their supplemental briefing, Plaintiffs continue to insist that they are entitled to additional declaratory relief in the form of an order directing the State Defendants to review and modify diversions inconsistent with maintaining the Great Salt Lake at a certain level.

The court agrees with the State Defendants that this additional declaratory relief may be non-justiciable under the *Baker* test because such relief implicates policy decisions belonging to the other branches of government.[41] However, because this specific request for relief is extricable from Plaintiffs' declaratory judgment claim, the court is not required to dismiss the Complaint just because this relief may involve a political question. *See Baker*, 369 U.S. at 217 ("Unless one of these formulations is inextricable from the case at bar, there should be no dismissal for non-justiciability on the ground of a political question's presence. The doctrine of which we treat is one of 'political questions,' not one of 'political cases.'").

D. Standing and Redressability.

The State Defendants next argue Plaintiffs "lack standing because their claim is not redressable." "Standing is a flexible legal concept designed to preserve the integrity of judicial adjudication by requiring that legal issues be adequately defined and crystalized so that judicial procedures focus on specific, well-defined legal and factual issues." *Nat'l Parks & Cons. Ass'n v. Bd. of State Lands*, 869 P.2d 909, 913 (Utah 1993). Standing is a threshold requirement. *Berg v. State*, 2004 UT App 337, ¶ 6, 100 P.3d 261, 264. Standing comprises three components: injury, causation, and redressability. *Carlton*, 2014 UT at ¶ 31.

When considering motions to dismiss brought prior to discovery, courts "do not hold plaintiffs to a high standard of proof." *Alpine Homes, Inc. v. City of W. Jordan*, 2017 UT 45, ¶ 32, 424 P.3d 95, 106. Rather "all allegations in [the] complaint, and all reasonable inferences drawn from those allegations, are taken as true." *Id.* A plaintiff satisfies the standing test "by alleging that . . . they [have been] injured by the defendant's conduct, so long as the complaint contains adequate factual context to satisfy [Utah's] notice pleading requirements." *Brown v. Div. of Water Rts. Of Dep't of Nat. Res.*, 2010 UT 14, ¶ 21, 228 P.3d 747. "For purposes of a motion to dismiss," such an allegation "will be assumed to 'embrace those specific facts that are necessary to support the claim.'" *Id.* Importantly, standing does not depend on the merits of the plaintiff's claim. *S. Utah Wilderness All. v. San Juan Cnty. Comm'n*, 2021 UT 6, ¶ 26, 484 P.3d 1160, 1168.

Even if a plaintiff shows injury and causation, a plaintiff nevertheless lacks standing if the alleged injury "is not redressable by a favorable ruling from [the] court" because the court "simply [cannot] grant the relief requested"[42] or because the relief requested is not "substantially likely to redress the injury claimed." *Utah Chapter of Sierra Club v. Utah Air Quality Bd.*, 2006 UT 74, ¶ 19, 148 P.3d 960 (citing *Jenkins v. Swan*, 675 P.2d 1145, 1149 (Utah 1983)). Declaratory relief

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[41] An order requiring the State Engineer to implement mandatory curtailments of upstream diversions would raise a myriad of questions regarding, among other things, the order of curtailment, the amount of curtailment, and the "higher" beneficial uses that might be insulated from curtailment. *See* DNR's Mot. to Dismiss at 19-20.

[42] *Juliana v. United States*, 947 F.3d 1159, 1171 (9th Cir. 1983).

satisfies this requirement where it affects a "change in legal status," and the "practical consequence[s]" of that change would "amount to a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered." *Utah v. Evans*, 536 U.S. 452, 464 (2002).

The State Defendants do not dispute that Plaintiffs satisfy the first and second requirements. Instead, the State Defendants maintain that even a narrow declaratory judgment "would not redress Plaintiffs' alleged injuries" because they have "chosen not to ground their Complaint in an actual controversy by, say, challenging a particular decision on an application."[43] Nor would it "alter the actions of the State in any way because such a declaration would not put the State on notice of anything it must do to comply with undefined public trust requirements."[44] Additionally, the State Defendants contend that Plaintiffs' declaratory judgment claim "is not redressable because their requested relief exceeds the equitable power of the court" and "parties whose rights would be adversely affected by the requested relief are absent."[45]

The court concludes that Plaintiffs satisfy the "redressability" requirement.

Given the State Defendants' insistence that Utah's public trust does not include the navigable waters themselves and that they have no duty to preserve the Great Salt Lake as a lake, a limited declaratory judgment regarding the scope of the public trust doctrine and the State's fiduciary duties under it would afford Plaintiffs meaningful relief from the alleged real-world harms due to the State's refusal to acknowledge that it has any such duties. *See* Wright & Miller, 5B Fed. Prac. & Proc. Civ § 1347 (4th ed. 2024) (Dismissal is not warranted where "the district judge can ascertain from what has been alleged that *some* relief may be granted by the court.") (emphasis added).

It may be that the State's voluntary efforts satisfy their public trust duties because they are the only feasible means available to it. If that is the case, the State Defendants may be correct that a declaration that the water of the Great Salt Lake is part of the public trust would not have any effect on the State's future actions. But given the State's refusal to acknowledge *any* duty with respect to the waters of the Great Salt Lake and its mistaken belief that it can dredge and fill it if it wants to do so, the court is not persuaded that Plaintiffs would not be afforded *any* relief through the exercise of its common law power or that their declaratory judgment claim is otherwise not redressable. And it would not be appropriate for the court, at the motion to dismiss stage, to simply accept the State Defendants' self-serving statements that nothing would change if they were forced to address this crisis as a trustee rather than a volunteer. Finally, if Plaintiffs are ultimately able to prove that the State's current voluntary actions do not fulfill their trustee duties, then the court may order the State to implement additional feasible measures to protect and preserve the Great Salt Lake, providing additional meaningful relief.[46]

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[43] DNR's Suppl. Br. 9.

[44] *Id.*

[45] DNR's Mot. to Dismiss at 24-25.

[46] The Court in *Roussel* also determined the district court lacked subject matter jurisdiction because plaintiffs' success on their challenges to statutory provisions relating to fossil fuels would not redress their injuries. In contrast to the public trust doctrine at issue in this case, the challenged provisions in *Roussel* did not impose "directives" or

E. Failure to Exhaust Administrative Remedies.

In their final attack on subject matter jurisdiction, the State Defendants argue that Plaintiffs have failed to exhaust their administrative remedies.

Under Utah's Administrative Procedures Act (UAPA), "[a] party aggrieved may obtain judicial review of final agency action ..." and "may seek judicial review only after exhausting all administrative remedies available[.]" Utah Code § 63G-4-401(1)-(2). The "basic purpose underlying the doctrine of exhaustion of administrative remedies 'is to allow an administrative agency to perform functions within its special competence – to make a factual record, to apply its expertise, and to correct its own errors so as to moot judicial controversies.'" *Maverik Country Stores, Inc. v. Indus. Comm'n*, 860 P.2d 944, 947 (Utah Ct. App. 1993) (quoting *Parisi v. Davidson*, 405 U.S. 34, 37, 92 S.Ct. 815, 818 (1972)).

If the legislature has delegated adjudicative authority over a legal claim to an administrative agency, the district court lacks subject matter jurisdiction over that claim unless and until a plaintiff has exhausted its administrative remedies. *See* UAPA, Utah Code § 63G-4-101 *et seq.*; *Ramsay v. Kane Cnty. Human Res. Special Serv. Dist.*, 2014 UT 5, ¶ 8, 322 P.3d 1163 ("'a district court has subject matter over a legal claim unless adjudicative authority for that claim is specifically delegated to an administrative agency.'") (quoting *Mack*, 2009 UT at ¶ 33); *Nebeker v. Utah State Tax Comm'n*, 2001 UT 74, ¶ 14, 34 P.3d 180, 184 (UAPA's general exhaustion requirement depends on the existence of "applicable administrative remedies," which were not available to address Plaintiffs' claims). However, UAPA "does not affect a legal remedy otherwise available to . . . compel an agency to take action." *See* Utah Code § 63G-4-102(3)(a).

As a preliminary matter, the State Defendants have not identified any applicable statute expressly delegating adjudicative authority over Plaintiffs' declaratory judgment claim to an administrative agency and the cases cited by them are easily distinguishable. In these cases, the court lacked subject matter jurisdiction either because a statute specifically delegated the plaintiff's claim to an administrative agency or the plaintiff commenced, but failed to complete, the administrative proceedings prior to filing an action in district court.

For example, in *Ramsay* and *Hom v. Utah Dep't of Pub. Safety*, 962 P.2d 95 (Utah Ct. App 1998), the district court lacked subject matter jurisdiction because the plaintiffs were statutorily required to pursue administrative remedies first but failed to do so. *See Ramsay*, 2014 UT at ¶¶ 13, 18; *Hom*, 962 P.2d at 101. Similarly, in *Patterson v. American Fork City*, 2003 UT 7, 67 P.3d 466, the plaintiffs "failed to pursue any administrative remedies prior to filing suit, despite the fact that the City's Development Code clearly contemplates that land use decisions are to be directed through the Planning Commission and City Council." *Patterson*, 2003 UT at ¶ 17.

"mandates" on the government defendants. Consequently, declaring the provisions unconstitutional would not limit the State's ability to promote fossil fuel development or effect any change in the State's action and, therefore, the plaintiffs' alleged injuries were not redressable. 2025 UT 5, ¶ 9.

In *Nebeker* and *Christensen v. Utah State Tax Comm'n*, 2020 UT 45, 469 P.3d 962, the plaintiffs participated in underlying administrative actions but filed their claims in court without exhausting administrative remedies. *See Nebeker*, 2001 UT at ¶ 17; *Christensen*, 2020 UT at ¶ 19 ("[A]ny party that has participated in an initial hearing and is unhappy with the results of that hearing must timely request a formal hearing before seeking judicial review."). And in *Friends of Great Salt Lake v. Utah Dept. of Natural Res.*, 2017 UT 15, 393 P.3d 291, the plaintiff's claims were not preserved in the underlying administrative action so the court was precluded from reviewing them. *Friends*, 2017 UT at ¶¶ 58 and 59.

The State Defendants also rely on Utah Administrative Code R652-7 and R652-9 to argue that Plaintiffs were required to submit a petition for a declaratory order to the FFSL and a petition for consistency review to DNR prior to filing this action. More specifically, the State Defendants argue that "Plaintiffs could have, and should have, petitioned FFSL for a declaratory order to determine whether Utah Code 65A-10-203, requiring FFSL to develop strategies to manage a fluctuating Lake level, directs FFSL to establish or maintain a minimum Lake level."[47] *See* Utah Code § 65A-17-201(1) (formerly § 65A-10-203).

But these administrative code provisions do not assign adjudicative authority over public trust claims to any state agency. And Plaintiffs are not otherwise seeking a declaratory judgment regarding the applicability of a statute, rule, or order governing or issued by FFSL. *See* Utah Admin. Code R652-7-200(4). Nor are Plaintiffs seeking a review of an agency action – whether by FFSL or the State Engineer – for "consistency with statutes, rules and division policy." *See* Utah Admin. Code R652-9-100 (provides procedure for parties "aggrieved" by an agency action); Utah Code § 73-3-14(1)(a) ("[a] person aggrieved by an order of the state engineer may obtain judicial review in accordance with [UAPA] and this section."). Finally, Plaintiffs do not claim to be "aggrieved" by a particular action or a specific order of the FFSL or State Engineer. *See, e.g., Utah Alunite Corp. v. Jones*, 2016 UT App 11, ¶ 7, 366 P.3d 901 ("[A]lthough a person may be negatively impacted by a decision from the State Engineer that is adverse to his or her interests—and thus be 'aggrieved' in a general sense—that person does not have standing to seek judicial review unless he or she becomes a party, pursuant to UAPA, in the proceeding sought to be reviewed.")[48]

Given that there is no statute or rule expressly delegating adjudicative authority over Plaintiffs' public trust claim to an administrative agency and Plaintiffs are not seeking a review of an agency rule or decision, exhaustion of administrative remedies is not required in this case.

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[47] FFSL's Mot. to Dismiss at 21.

[48] In *Friends*, the plaintiff filed a motion in the district court to add various constitutional and statutory claims regarding DNR's decision to grant a mining lease covering a small portion of the Great Salt Lake. The Court affirmed the district court's determination that it did not have subject matter over these claims because it filed a statutory proceeding for judicial review under UAPA and "review implies an analysis of the claims and defenses raised in the proceeding under review." However, the Court did not "foreclose the possibility of a future filing by Friends invoking the district court's original jurisdiction under Utah Code section 78A-5-102." *Friends*, 2017 UT 15, ¶¶ 1, 58-59.

X. FAILURE TO JOIN INDISPENSABLE PARTIES

Defendants argue that the court should dismiss the Complaint because Plaintiffs failed to join indispensable parties, *i.e.*, the federal government and upstream water right holders.

Rule 19 of the Utah Rules of Civil Procedure requires the court to determine (1) if these non-parties are necessary, (2) if so, is joinder of these necessary parties feasible, and (3) if not, are these necessary parties indispensable. Utah R. Civ. P. 19; *Harvey v. Ute Indian Tribe of Uintah & Ouray Rsrv.*, 2017 UT 75, ¶ 35, 416 P.3d 401, 416-17. If a party is necessary but joinder is not feasible, "the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable." *Id.* at ¶ 35; Utah R. Civ. P. 19(b).

A party will be deemed necessary under Rule 19(a) if: "(1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest." Utah R. Civ. P. 19(a).

Given its narrowing of Plaintiffs' declaratory judgment claim, the court is not persuaded the federal government or the holders of upstream water rights are necessary, much less indispensable, parties.

A. The Federal Government.

In support of their argument that the United States is indispensable, Intervenor Defendants focus on its title to water rights and ownership of reclamation project facilities in the Great Salt Lake basin. Intervenor Defendants insist the United States is an indispensable party because any declaratory relief "that would require bringing additional water to the Lake" impacts the federal government's interests and puts the Intervening Defendants at risk of incurring inconsistent contractual obligations with respect to reclamation project water. However, joinder is infeasible because of the doctrine of federal sovereign immunity, which protects the United States from suit without its consent or waiver. *In re Uintah Basin*, 2006 UT 19, ¶ 23, 133 P.3d 410, 417, *abrogated on other grounds by Energy Claims Ltd. v. Catalyst Inv. Grp. Ltd.*, 2014 UT 13, 325 P.3d 70.

Here, Plaintiffs are not asserting a claim against the United States or its interests. Consequently, the cases cited by Intervenor Defendants are easily distinguishable because they involve claims asserted directly against federal interests[49] or claims advanced by the federal

[49] In *City of Mesa v. Salt River Project Agr. Imp. & Power Dist.*, 101 Ariz. 74, 416 P.2d 187 (1966), the court dismissed an eminent domain proceeding brought against an agricultural improvement district to condemn an electrical plant and distribution system owned by the United States. In *Dugan v. Rank*, 372 U.S. 609, 610-11 (1963), the Supreme Court affirmed the dismissal of an action to enjoin the Bureau of Reclamation from storing and diverting water in a dam, which was part of a federal reclamation project.

government to protect its interests.[50] And Intervenor Defendants' purported concerns about the possible impact of a declaratory judgment on the federal government are based on mere speculation about how the State may ultimately fulfill its trustee duties under the public trust doctrine. Thus, the Intervenor Defendants have not shown that the United States is an indispensable party.

B. Holders of Upstream Water Rights.

Similarly, a determination by the court that Utah's public trust includes the waters of the Great Salt Lake and/or that the State has breached its duties as trustee will not impair the interests of upstream water right holders. If the State, as trustee, takes any future action with respect to perfected water rights, the holders of those water rights would have an opportunity to challenge the action through appropriate administrative or judicial proceedings at that time. Accordingly, as acknowledged by the Intervenor Defendants at the hearing, the court's narrowing of Plaintiffs' declaratory judgment claim renders this argument moot.[51]

XI. FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

The court now turns to the merits of the important question raised in this case: whether Utah's public trust includes the waters of the Great Salt Lake. The court concludes that it does.

Defendants argue that Plaintiffs' declaratory judgment claim fails to state a claim upon which relief may be granted because "the common-law public trust doctrine, as recognized in Utah, is limited to public lands underlying navigable lakes and rivers." According to Defendants, Utah has "adopted" a "unique version" of the "modifiable common-law public trust doctrine recognized in *Illinois Central* when it enacted article XX, section 1 of the Utah Constitution," "which speaks only to 'lands' and notably does not mention or cover water resources."[52] Consequently, Defendants categorically deny that the State has any legal duty to protect the waters of the Great Salt Lake or preserve the Great Salt Lake as a lake.

The court respectfully rejects these arguments. As discussed further below, the public trust doctrine is a longstanding doctrine of public rights and governmental duties to ensure access to, and protection of, important trust resources like navigable waters and their submerged lands. These public rights and governmental duties are inherent in state sovereignty. They may be recognized in constitutions and statutes, but they are not created by them, and they are inalienable. Thus, while states may expand the public trust doctrine – and many have done so – a state cannot limit it, whether in a constitution, statute, case, or otherwise. Indeed, the court has been unable to find any persuasive authority for Defendants' position that the State can excise navigable waters from the public trust. But even if it could, the court is not persuaded that Utah has done so. Finally, the court is not persuaded that Utah's prior appropriation doctrine is hostile to the public trust doctrine or

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[50] *See California v. United States*, 438 U.S. 645 (1978) (action by United States challenging a decision of a state agency on appropriating water for reclamation project); *see also United States v. Rio Grande Dam & Irrigation Co.*, 174 U.S. 690, 703, 706 (1899) (action by United States to enjoin an irrigation company from constructing dam across the Rio Grande River because of threat to federally-owned property).

[51] For these same reasons, the Water Users Intervenors' uncompensated takings argument is moot.

[52] DNR's Rep. Mem. at 5-6.

fundamentally incompatible with the State's duties as trustee of Utah's public trust, which includes the waters of the Great Salt Lake.

A. Origins and Historical Background.

The parties have extensively briefed the origins and historical background of the public trust doctrine, which the court will briefly summarize here. The public trust doctrine has frequently been described as having roots in ancient Roman Law and English common law. Under English common law, all lands and tidal, or navigable, waters were under the exclusive control of the King, and private parties could acquire title through grants from the Crown. *See Shively v. Bowlby*, 152 U.S. 1, 13, (1894). After American Independence, the states adopted much of the English common law, including the law relating to navigable waters and "the principle that submerged lands are held for a public purpose." *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 284 (1997). Consistent with this principle, the submerged lands of navigable waters were presumptively owned by the states unless they had been previously granted to a private party.

The public trust doctrine was first articulated in several early nineteenth century cases.

In *Arnold v. Mundy*, 6 N.J.L. 1, 53 (1821), the supreme court of New Jersey held that the power exercised by the state over the navigable waters and lands under them, "is nothing more than what is called the 'jus regium,' the right of regulating, improving, and securing them for the benefit of every individual citizen." Thus:

> The sovereign power itself, therefore, cannot, constituent with the principles of the law of nature and the constitution of a well-ordered society, make a direct and absolute grant of the waters of the state, divesting all the citizens of their common right. It would be a grievance which never could be long borne by a free people.

In *Martin v. Waddell's Lessee*, 41 U.S. 367, 410 (1842), the U.S. Supreme Court explained that:

> When the Revolution took place the people of each state became themselves sovereign, and in that character hold the absolute right to all their navigable waters, and the soils under them, for their own common use, subject only to the rights since surrendered by the constitution to the general government.

The U.S. Supreme Court then issued its seminal ruling in *Illinois Central Railroad Co. v. Illinois*, which is frequently described as *the* foundational public trust case. In *Illinois Central*, the Court was faced with the question of "whether the legislature was competent to . . . deprive the state of its ownership of the submerged lands in the harbor of Chicago, and of the consequent control of its waters." 146 U.S. 387, 452. In determining that the legislature was not, the Court explained the public trust doctrine as follows:

> [T]he state holds the title to the lands under [] navigable waters . . . and that title necessarily carries with it control over the waters above them, when the lands are subjected to use. But it is a title different

in character from that which the state holds title in lands intended for sale . . . *It is a title held in trust for the people of the state, that they may enjoy the navigation of the waters, carry on commerce over them, and have the liberty of fishing therein, free from the obstruction or interference of private parties.* The interest of the people in the navigation of the waters and in commerce over them may be improved in many instances by the erection of wharves, dockets, and piers therein, for which purpose the state may grant parcels of the submerged lands . . . so long as their disposition is made for such purpose [and such grants] do not substantially impair *the public interest in the lands and the waters remaining* . . . . But that is a very different doctrine from the one which would sanction the abdication of the general control of the state over the lands under the navigable waters of an entire harbor or bay, or of a sea or lake. *Such abdication is not consistent with the exercise of that trust which requires the government of the state to preserve such waters for the use of the public.*

* * *

The control of the state for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of *the public interest in the lands and water remaining.*

* * *

The state can no more abdicate its trust over property in which the whole people are interested, *like navigable waters and soils under them*, so as to leave them entirely under the use and control of private parties, except in the instance of parcels mentioned for the *improvement of the navigation and use of the waters*, or when parcels can be disposed of without impairment of the public interest in what remains, than it can abdicate its police powers in the administration of government and the preservation of peace.

* * *

[T]he decisions are numerous which declare that such property is held by the state, by virtue of its sovereignty, in trust for the public. *The ownership of the navigable waters of the harbor, and of the lands under them, is a subject of public concern to the whole people of the state.* The trust with which they are held, therefore, is governmental, and cannot be alienated, except in those instances mentioned[.]

Id. at 452, 453, and 455 (emphasis added).

In *Illinois Central*, the Court was clear not only that the public trust included both submerged lands and overlying waters, but that the state's trustee obligations were inalienable, as they required state management and control of trust resources to ensure against "any substantial impairment of the public interests in the lands and waters remaining." *Illinois Central*, 146 U.S. at 453. And since *Illinois Central*, no court has ever ruled that the public trust doctrine does not include the navigable waters themselves or that a state has the authority to remove the navigable waters from its public trust.

B. The Equal Footing Doctrine.

The equal footing doctrine is related to, but distinct from, the public trust doctrine. Under the equal footing doctrine, newly admitted states entering the Union after 1789 had the same rights, privileges, and authority as the original thirteen states. Thus, "the people of each state became themselves sovereign; and in that character, held the absolute right to all their navigable waters, and the soil under them; for their own common use, subject only to the rights since surrendered by the constitution to the general government." *Martin*, 41 U.S. at 410.

State ownership of land underlying navigable waters has been "considered an essential attribute of sovereignty," founded upon the principle "that navigable waters uniquely implicate sovereign interests." *Coeur d'Alene Tribe*, 521 U.S. at 283 (quoting *Utah Div. of State Lands v. United States*, 482 U.S. 193, 195 (1987)). The right to rivers and shores "is held in trust for every individual proprietor in the state or the United States, and requires a trustee of great dignity." *Pollard v. Hagan*, 44 U.S. 212, 216 (1845).

While the equal footing doctrine relates to a state's *title* to the lands underlying navigable waters, the public trust doctrine also protects the public's *right to use* the waters for navigation, commerce, and fishing "freed from the obstruction or interference of private parties." *Illinois Central*, 146 U.S. at 452. Thus, the public trust doctrine not only prohibits the disposition of submerged lands that would "substantially impair the public's interest in the lands and the waters remaining," it requires the state to affirmatively "preserve such waters for the use of the public." *Id.* at 453. Consequently, while many public trust cases deal with an attempted conveyance of submerged lands, such a conveyance is not a prerequisite to asserting a breach of the state's duties as trustee of the public trust.[53]

[53] Many public trust cases do not involve an attempted disposition of submerged lands. *See e.g., Min. Cnty. v. Lyon Cnty.*, 136 Nev. 503, 473 P.3d 418 (2020) (based on tribe's action seeking recognition of additional water under decree, the court addressed question of "whether, and to what extent, the public trust doctrine applied to water rights already adjudicated"); *Shokal v. Dunn*, 109 Idaho 330, 707 P.2d 441 (1985) (reviewing grant of application to appropriate water, the court observed that "dewatering" of creek raised public trust concerns); *Kramer v. City of Lake Oswego*, 365 Or. 422, 446 P.3d 1, *opinion adhered to as modified on reconsideration*, 365 Or. 691, 455 P.3d 922 (2019) (plaintiffs sought declaration of public access right in lake despite the city's holding on title to riparian rights to lake); *Env't L. Found. v. State Water Res. Control Bd.*, 26 Cal. App. 5th 844, 237 Cal. Rptr. 3d 393 (2018) (the court addressed whether "State Water Resources Board had the authority and duty under the public trust doctrine to regulate extractions of groundwater that affected public trust uses in river").

C. The Great Salt Lake is a Navigable Body of Water.

Defendants do not dispute that the Great Salt Lake has been deemed "navigable in fact," which the Supreme Court in *The Daniel Ball* has defined as:

> [Waters] are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

The Daniel Ball, 77 U.S. 557, 563, 19 L. Ed. 999 (1870).

Applying this navigable in fact test, the Supreme Court held in *Utah v. United States*, 403 U.S. 9, 10 (1971), that the Great Salt Lake is navigable and therefore owned by the State. Thus, there is no genuine dispute that if Utah's public trust doctrine includes navigable water, then the State has a duty as trustee to protect and preserve the waters of the Great Salt Lake.

D. Utah's Articulation of the Public Trust Doctrine.

Certain Defendants contend the "sole origin of Utah's public trust doctrine" is article XX, section 1 of the Utah Constitution. And because this provision only references land, Utah's public trust does not include navigable waters and the State can "divert or allocate all water that goes to the Great Salt Lake and essentially eliminate it as a lake."[54, 55]

The court rejects this contention for several compelling reasons.

First, while it is true that article XX, section 1 references "land grants accepted on terms of trust," Defendants have not provided the court with any authority, much less persuasive authority, that the framers of Utah's constitution intended this provision to be *the* definitive statement of Utah's public trust doctrine, as opposed to a provision adopted "largely to comply with Utah's Enabling Act."[56]

Second, assuming the framers intended to address the public trust doctrine in the Utah Constitution at all, Defendants ignore article XVII, section 1, which confirmed "[a]ll existing rights to the use of any of the waters of this State for any useful or beneficial purposes." While there is no question this provision includes rights acquired through "whatever method of

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[54] Transcript of Hearing at 13, UPHE et al. v. DNR et al., No. 230906637 (3rd Dist. filed Sept. 26, 2024).

[55] The State Engineer acknowledges "the full scope of Utah's public trust doctrine is a question of first impression." She also acknowledges "[t]he Utah Supreme Court has considered but never articulated a clear constitutional basis for the public trust doctrine" and that article XX, section 1 merely provides a "potential" articulation of the public trust doctrine. *See* State Engineer Reply at 11. As explained above, the public trust doctrine exists regardless of whether it is explicitly or implicitly referenced in a state's constitution. Thus, the court is not necessarily limited to looking at "the plain language of the constitutional provisions to determine" the scope of Utah public trust doctrine.

[56] FFSL reply at 20.

procedure"[57] prior to statehood, its plain language easily encompasses public rights to navigable waters under the public trust doctrine. There is certainly nothing in this broad language, or the framers' discussion of it, that limits its reach to perfected water rights or that explicitly excludes the public's rights in navigable waters under the public trust doctrine.

Third, the Utah Supreme Court confirmed in *Colman* that Utah's public trust includes navigable waters. While Defendants attempt to dismiss *Colman* – curiously insisting that the case "had nothing, absolutely nothing, to say about water"[58] or suggesting the court simply ignore it as mere obiter dicta – the court cannot so easily cast it aside, particularly when the Court's articulation of the public trust doctrine is consistent with *Illinois Central* and all other cases addressing the minimum scope of the public trust doctrine.

Fourth, even if *Colman's* statement of Utah's public trust is obiter dicta, the court is not persuaded that Utah may excise water from the public trust or otherwise abdicate its trustee duties over the navigable waters in which the whole people of the State are interested.

And finally, Utah's prior appropriation doctrine is not hostile to the public trust doctrine or fundamentally inconsistent with it. Indeed, no prior appropriation state has attempted to exclude navigable waters from its public trust doctrine. While Utah's prior appropriation doctrine may prevent the State, as trustee, from imposing mandatory curtailments of perfected water rights in furtherance of its duties to the Great Salt Lake – and therefore render the *Mono Lake* approach unfeasible – it does not require the removal of navigable waters from the public trust or excuse the State from preserving and protecting them.

1. Article XX, Section 1 [Land grants accepted on terms of trust.].

Pursuant to the Enabling Act, the State was "to be admitted into the Union on an equal footing with the original States." And "upon admission," the State was "granted" certain lands for specified purposes. *See* Enabling Act §§ 6, 7, 8, and 12. Consistent with the Enabling Act, article XX, section 1 provides as follows:

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

Some Defendants insist this provision is the exclusive basis for Utah's public trust and, therefore, the lack of any reference to water demonstrates the framers' intent to remove navigable waters from the public trust. But these Defendants do not point to any historical evidence that the

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[57] *Wrathall v. Johnson*, 86 Utah 50, 40 P.2d 755, 768 (1935).

[58] Transcript of Hearing at 117, UPHE et al. v. DNR et al., No. 230906637 (3rd Dist. filed Sept. 26, 2024).

framers considered the public trust doctrine at all in the drafting of article XX, section 1. In fact, the Official Report of the constitutional convention, which was cited by Defendants in their briefing, does not mention the public trust doctrine, submerged lands, or navigable waters.[59] Rather, the framers discussed Utah's Enabling Act, which similarly does not mention the public trust doctrine, submerged lands, or navigable waters. Consequently, the court does not find this provision to be a clear statement that the framers were defining the scope of Utah's public trust, much less intentionally removing navigable waters from it.[60]

2. Article XVII, Section 1 [Existing rights confirmed.].

But even if a mere reference to "public lands" being "held in trust for the people" is enough to invoke the public trust doctrine, the court questions why article XVII, section 1's similarly general reference to "[a]ll existing rights to the use of any waters of this State for any useful or beneficial purpose" as being "hereby recognized and confirmed" could not also be a statement of the public trust doctrine.

The Utah Supreme Court has emphasized that "conventional methods of constitutional interpretation, [] dictate that when determining the meaning of a constitutional provision, 'other provisions dealing generally with the same topic . . . assist us in arriving at a proper interpretation of the constitutional provision in question.'" *Am. Bush v. City of S. Salt Lake*, 2006 UT 40, ¶ 18, 140 P.3d 1235, 1241 (quoting *In re Worthen*, 926 P.2d 853, 866–67 (Utah 1996)). *See also Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 675 (Utah 1985) (stating that the meaning of the constitutional provision "must be taken not only from its history and plain language, but also from its functional relationship to other constitutional provisions").

The court agrees with the State Defendants that these constitutional provisions are not in conflict and that "the court must review the entire structure of Utah's constitution when evaluating the meaning of a single provision."[61] Thus, assuming the framers intended to define the scope of the public trust in the Utah Constitution notwithstanding the lack of any discussion of it, both provisions read together embody the basic public trust doctrine as articulated by the Supreme Court in *Illinois Central*.

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[59] Utah, *Official Report of the Proceedings and Debates of the Convention Assembled at Salt Lake City on the Fourth Day of March, 1895, to Adopt a Constitution for the State of Utah* (Salt Lake City: Star Printing Company, 1898) [hereafter "Official Report"]; *Transcript of Proceedings; Thirty-Sixth Day: Monday*, Constitutional Convention (1895) Records and Dockets (April 8, 1895); *Transcript of Proceedings; Thirty-Seventh Day*, Constitutional Convention (1895) Records and Dockets (April 9, 1895).

[60] Some Defendants maintain that article XX, section 1 is not "self-executing" without a disposition of sovereign lands or implementing legislation. "To say that a constitutional provision is self-executing is to conclude only that it is judicially enforceable in the absence of statutory authority for a private claim." *Friends of Great Salt Lake v. Utah DNR*, 2017 UT 15, ¶60, 393 P.2d 291. The court rejects this argument for two reasons. First, the public trust exists regardless of whether it has been enshrined in any provision of Utah's Constitution. And it protects the public's interest in navigable waters in the absence of implementing legislation. Second, Plaintiffs possess a common law action to enforce the public trust doctrine, which the State Defendants implicitly concede.

[61] FFSL's Suppl. Br. at 3 (citing *University of Utah v. Shurtleff*, 2006 UT 51, ¶ 17, 144 P.3d 1109, 1114).

3. The *Colman* Case and Utah's Public Trust Case Law.

The Utah Supreme Court provided the clearest expression of Utah's public trust in *Colman v. Utah State Land Board.* In *Colman*, the plaintiff sought to enjoin the state from breaching the causeway on the Great Salt Lake and to recover damages from the resulting harm to his brine canal. *Colman*, 795 P.2d 622 (Utah 1990). Among other arguments, the State asserted that breaching the causeway was "in furtherance of its public trust responsibilities" and that it could not be liable for damages. *Id.* at 635.

In its decision, the Court, referencing *Illinois Central* as the "controlling case" on the public trust doctrine, stated that "the essence of this doctrine is that navigable waters should not be given without restriction to private parties and should be preserved for the general public for uses such as commerce, navigation, and fishing." *Id.* Thus, "a state can grant certain rights in navigable waters if those rights can be disposed of without affecting the public interest in what remains." *Id.* at 635-36.

Although the State Defendants now attempt to distance themselves from the *Colman* case, the court believes they had it right the first time in their briefing in the *Colman* case. In their brief, the State argued that:

> *The Public Trust Doctrine holds that the State must manage its navigable waters and their beds (like the Great Salt Lake) for the public good.* Colman's position would essentially nullify that principle and would undermine both the State's public-trust authority and initiative in dealing with natural disasters.
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> * * *
>
> [Colman's] lease and right-of-way involve *the waters and bed of a navigable lake, and therefore are subject to the Public Trust Doctrine*. That Doctrine, whose origins and development are discussed in the margin,[18] requires the State to manage the Lake and its resources in the public's best interest.[62]
>
> [18] In England, the Crown and Parliament held in public trust all rights (proprietary and governmental) in all navigable waters and the lands beneath those waters. As a result of the American Revolution, the thirteen colonies succeeded to all rights of both the Crown and Parliament in and to navigable waters, their beds, and adjacent shores. When the colonies became the original States, they retained those rights and powers, while granting the federal government certain powers under the Constitution. All States, as a matter of constitutional 'equal footing,' enjoy the same proprietary and regulatory powers in their navigable waters and beds as the original States. The States, having assumed all incidents of ownership of

[62] *Id.* at 33.

> their navigable waters and beds, continue to hold them in public trust. (internal citations omitted).
>
> * * *
>
> Under the Public Trust Doctrine, all private interests in navigable waters and their beds are subject to a governmental servitude. The State cannot be held liable for enforcing that servitude against private interests. [63]

The State also cited to *Kootenai* and *Mono Lake* for the proposition that grants of "public trust resources" are given "subject to the public trust doctrine" and, therefore, a state "is not precluded from determining in the future that this conveyance is no longer compatible with the public trust imposed on this conveyance."[64]

A decision by the Utah Supreme Court is binding precedent when it "confronts an issue germane to the eventual resolution of the case, and resolves it after reasoned consideration in a published opinion." *State v. Robertson*, 2017 UT 27, ¶ 27, 438 P.3d 491. The mere articulation of alternative bases for a decision does not convert an opinion into dicta. *Id.* at ¶ 26. Nevertheless, the State Defendants now claim their position in the *Colman* case was wrong and the court should disregard the Court's statements as mere obiter dicta because the case was not decided on public trust grounds.[65]

"Dicta" refers to parts of judicial decisions that are "not critical to the holding." *State v. Daniels*, 2002 UT 2, ¶ 35, 40 P.3d 611. Utah courts have recognized both "obiter dicta" and "judicial dicta." Obiter dicta is generally not binding authority or precedent, and "refers to a remark or expression of opinion that a court uttered as an aside," such as a "statement made by a court for use in argument, illustration, analogy or suggestion." *Exelon Corp. v. Department of Revenue*, 234 Ill.2d 266, 917 N.E.2d 899, 907 (2009); *Ortega v. Ridgewood Est. LLC*, 2016 UT App 131, ¶ 14 n.4, 379 P.3d 18.

However, judicial dicta *is* binding on courts in deciding later cases. Judicial dicta refers to "statement[s] deliberately made for the guidance of the bench and bar," or those "expression[s] of opinion upon a point in a case argued by counsel and deliberately passed upon by the court." *Greyhound Lines, Inc. v. Utah Transit Auth.*, 2020 UT App 144, 486 P.3d 472, 477 (citing *Ortega*, 2016 UT App at ¶ 14 n.4).

The Court's statements in *Colman* are not obiter dicta because it did not merely discuss the public trust doctrine "as an aside." Rather, the Court's explanation of the public trust doctrine was

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[63] *See* Br. of State Resp. at 7 and 35, *Colman v. Utah State Land Bd.* (Jan. 14, 1987) (attached as Exhibit 1 to Plaintiffs' Combined Opposition in Response to Motions to Dismiss) (emphasis added).

[64] *Id.* at 37 n.20 (quoting *Kootenai Env'tl, Inc. v. Panhandle Yacht Club Inc.*, 105 Idaho 622, 671 P.2d 1085, 1096 (1983); *Nat'l Audubon Soc'y v. Superior Court*, 658 P.2d 709, 723 (Cal. 1983)).

[65] Plaintiffs do not suggest, and the court does not otherwise find, that the State Defendants are estopped from changing their position on the scope of the public trust doctrine.

provided to the district court as a guide in determining on remand whether "Colman's canal impaired the public interest [in the navigable waters] in any way at the time the State granted him the right to conduct his operation." *Colman,* 795 P.2d at 636.

Nor can the Court's articulation of the public trust doctrine be dismissed as "unfortunately imprecise" or somehow limited to flood conditions, particularly when it has not been repudiated in any subsequent Utah case, including *Nat'l Parks & Conservation Ass'n v. Bd. of State Lands* and the *VR Acquisition* cases.

Three years after *Colman*, the Utah Supreme Court in *Nat'l Parks* addressed the "central issue" of the case, which was "whether the scenic, aesthetic, and recreational value of school trust land should be given preference over maximization of income." *Nat'l Parks,* 869 P.2d at 916. In holding that the Board did not breach its trustee duties by refusing to give priority to these values when it approved a land exchange, the Court noted the plaintiff was confusing "the public trust that applies to sovereign lands with school trust land" when it argued that "school trust land is public land 'held in trust for citizens.'" *Nat'l Parks,* 869 P.2d at 919. Citing *Colman*, the Court then stated "the 'public trust' doctrine, discussed in *Colman* . . . protects the ecological integrity of public lands and their public recreational uses for the benefit of the public at large. The public trust doctrine, however, is limited to sovereign lands and perhaps other lands that are not subject to specific trusts, such as school trust lands." *Id.* [66] In context, the Court was merely distinguishing between school trust lands and public trust lands, which have different beneficiaries and purposes.

This conclusion is further bolstered by the Court's citation to certain law review articles which describe the public trust doctrine as including navigable waters, including Charles F. Wilkinson, *The Public Trust Doctrine in Public Land Law*, 14 U.C. Davis L.Rev. 269 (1980) and Joseph L. Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 Mich.L.Rev. 471 (1970). In his seminal law review article on the public trust, Mr. Sax concludes that the scope of the public trust includes navigable waters. He further asserts that public trust cases need not be limited by conventional public use interests "or to questions of disposition of public properties." Sax at 556. Although Wilkinson specifically considered the public trust doctrine in the public land context, he also states that "the classic public trust doctrine seems to have applied to navigable waterways before they passed out of federal hands. That is, before new states took lands under navigable watercourses at statehood, the United States was bound by the limitations imposed by the public trust doctrine in much the same way that states have been limited by the trust since statehood." Wilkinson at 301.

The parties also cite heavily to a pair of cases considered by the Utah Supreme Court, *Utah Stream Access Coalition v. VR Acquisitions, LLC* (*USAC I & USAC II*). While the Court did not specifically reference *Colman* in these cases, nothing in its discussion or analysis is inconsistent with *Colman's* articulation of Utah's public trust. In *USAC I*, Utah Stream Access Coalition argued that the Public Waters Access Act unconstitutionally restricted the public easement rights in public waters. *USAC I*, 2019 UT 7, ¶ 2, 439 P.3d 593, 596; Utah Code §§ 73-29-101 to 208. Citing article XX, section 1 of the Utah Constitution, the plaintiffs argued that this provision's protection of "lands of the state" extends to interests in land, including the purported easement. *Id.* at ¶¶ 20-22.

[66] The Court's description of Utah's public trust doctrine included "ecological integrity" and "recreational uses."

However, the plaintiffs did not assert a claim that the public waterway at issue was navigable. As a result, the Court declined to consider whether the public had a right to touch the bed of the waterway on that basis. *See USAC I*, 2019 UT at ¶¶ 30, 37.

Critically, the Court never stated that article XX, section 1 embodied the entirety of Utah's public trust doctrine.[67] And its reference to *Illinois Central* was not a rejection of it. *See USAC I*, 2019 UT at ¶ 73. The Court appropriately observed that *Illinois Central* permitted the disposition of public waters or lands to the extent it does not "substantially impair the public interest in the lands and waters remaining." *Id.* at ¶ 75. Importantly, the Court noted that the disposition at issue in *Illinois Central* – a "restriction of public access to an entire waterway" – was "a classic infringement of the public trust." *Id.* at ¶ 76. Thus, there is nothing in *USAC I* that is inconsistent with the *Colman's* articulation of Utah's public trust doctrine or that suggests the Court viewed navigable waters as being excluded from the public trust.

In *USAC II*, the case returned to the Court on a single issue: "whether there was a 19th century basis for an easement providing the public with the right to touch privately owned streambeds underlying state waters." *USAC II*, 2023 UT 9, ¶ 1, 531 P.3d 195, 198. The Court ultimately decided there was an insufficient historical basis for the easement. Again, nothing in the Court's decision contradicts *Colman's* articulation of Utah's public trust doctrine.

Because *Colman's* statement of Utah's public trust doctrine cannot be dismissed as a mere "aside," the court is not free to disregard this binding precedent, which is faithful to *Illinois Central* and consistent with all other cases that have considered the issue. Accordingly, the court determines that Utah's public trust includes the navigable waters of the Great Salt Lake and that the State, as trustee, is required to protect and preserve them so that they can be used for the public trust purposes of navigation, commerce, fishing, and recreation.[68]

4. Utah Cannot Remove Navigable Waters from the Public Trust.

Even if *Colman's* description of Utah's public trust is obiter dicta, the court is not persuaded that Utah has discretion to excise water from the public trust or otherwise abdicate its trust responsibilities over the navigable waters of the Great Salt Lake. As the U.S. Supreme Court emphasized in *Illinois Central*, "[t]he state can no more abdicate its trust over property in which the whole people are interested, like navigable waters and the soils under them . . . than it can abdicate its police powers in the administration of government and the preservation of the peace." *Illinois Central*, 146 U.S. at 453. Indeed, the public trust is an inherent attribute and defining element of state sovereignty that cannot be abdicated or relinquished. *See id.* at 455; *PPL Montana v. Montana*, 565 U.S. 576, 590 (2012).

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[67] At most, the court observed that "to the extent the *Illinois Central* test is in line with the public's understanding of the public trust principles embraced in article XX, section 1, the district court may have erred in the standard of scrutiny that it applied." *USAC I*, 2019 UT at ¶ 77.

[68] To the extent the Court expanded the public trust doctrine in *Nat. Parks.*, the State, as trustee, may be required to protect the "ecological integrity" of the Great Salt Lake as well.

To support their extreme position, Defendants rely exclusively on two sentences at the end of the U.S. Supreme Court's decision in *PPL Montana*. These sentences must be considered in context.

PPL owned and operated hydroelectric facilities in Montana. Ten of its facilities were located on riverbeds underlying segments of the Missouri, Madison, and Clark Fork Rivers. For decades, PPL paid rent to the United States for the use of the riverbeds. In 2003, parents of Montana schoolchildren filed a federal lawsuit claiming that PPL's facilities were on riverbeds that were state owned and part of Montana's school trust lands. *Id.* at 579.

After the federal lawsuit was dismissed, PPL filed a state-court lawsuit seeking a declaratory judgment that Montana was barred from seeking compensation for PPL's riverbed use. Montana counterclaimed, contending that under the equal footing doctrine, it owned the riverbeds and could charge rent for their use. *Id.* The trial court granted summary judgment in favor of Montana and ordered PPL to pay Montana $41 million in rent. In affirming the trial court, the Montana Supreme Court adopted a "liberal construction of the navigability test" and declared "the river stretches in question to be short interruptions of navigability that were insufficient as a matter of law to find nonnavigability, since traffic had circumvented those stretches by portage." *Id.*

The Supreme Court held the "Montana Supreme Court erred in its treatment of the question of river segments and portage" and "in relying on evidence of present-day, primarily recreational uses of the Madison River" because "questions of navigability for determining state riverbed title are governed by federal law" and "[n]avigability must be assessed as of the time of statehood." *Id.* at 579, 600. Thus, Montana could not "adopt a retroactive rule for determining navigability which . . . would enlarge what actually passed to the State, at the time of her admission, under the constitutional rule of equality here invoked." *Id.* at 604-05.

The Supreme Court then briefly addressed Montana's "final contention" that "denying the State title to the riverbeds here in dispute will undermine the public trust doctrine, which concerns public access to the waters above those beds for purposes of navigation, fishing, and other recreational uses."[69] In rejecting this contention, the Supreme Court stated as follows:

> The public trust doctrine is of ancient origin. Its roots trace to Roman civil law and its principles can be found in the English common law on public navigation and fishing rights over tidal lands and in the state laws of this country. Unlike the equal-footing doctrine, however, which is the constitutional foundation for the navigability rule of riverbed title, *the public trust doctrine remains a matter of state law*, subject as well to the federal power to regulate vessels and navigation under the Commerce Clause and admiralty power. While equal-footing cases have noted that *the State takes title to the navigable waters and their beds in trust for the public*, the contours of that public trust do not depend on the Constitution. Under

[69] If, as the State Defendants argue, the "imprecise statements made by the Utah Supreme Court in *Colman* regarding the nature of the public trust doctrine" are "obiter dictum," the court has a difficult time understanding how this "casual" statement made "without analysis" would be "judicial dictum." *See Ortega*, 2016 UT App at ¶ 14 n.4.

> accepted principles of federalism, *the States retain residual power to determine the scope of the public trust over waters within their borders*, while federal law determines riverbed title under the equal footing doctrine.

Id. at 603-04 (emphasis added) (internal citations omitted).[70]

Given the context of the case – Montana's attempt to expand the navigability test to "enlarge what actually passed" to it under the equal footing doctrine – and the Court's unequivocal statement that "the State takes title to the navigable waters and their beds in trust for the public," the court is not persuaded that *PPL Montana* allows the State to excise navigable waters from the public trust or disclaim its public trust obligations over them. Rather, the Court merely acknowledged that, unlike title to the submerged lands, states may expand the scope of the public trust over navigable waters.

As one commentator explained:

> As a matter of state law, states can expand upon the federal public trust doctrine and they have done so in several ways. First, a state can apply its public trust doctrine to more waters than federal law requires, extending public rights upstream of tidal waters and navigable-in-fact waters. Second, a state can protect more public uses than federal law requires. States exercising this prerogative have done so most often to protect the rights of recreation. Finally, the state can extend the concept of a public trust to resources beyond surface waters.[71]

Consistent with this authority to expand the public trust, some states have extended the geographic scope of the public trust doctrine beyond navigable waters and submerged lands to include categories like beaches, groundwater, and non-navigable tributaries.[72] Other states have expanded the public rights guaranteed by the doctrine to include recreational purposes or to prevent pollution or for scenic or ecological purposes.[73] Importantly, no state has attempted to remove the navigable waters from the public trust.

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[70] Among other cases, the Court approvingly cited *Nat'l Audubon Soc'y v. Superior Court of Alpine Cty.*, 33 Cal.3d 419, 433-441, 658 P.2d 709, 718-724 (1983).

[71] Robin K. Craig, *A Comparative Guide to the Eastern Public Trust Doctrines: Classifications of States, Property Rights, and State Summaries*, 16 Penn. State Envt'l L. Rev. 1, 11 (2007).

[72] *See e.g. Just v. Marinette County*, 56 Wis. 2d 7, 16, 3 ELR 20167 (Wis. 1972) (holding lands adjacent to or near navigable waters subject to public trust powers); *Nat'l Audubon Soc'y v. Superior Court*, 658 P.2d 709, 719, 732-33 (Cal. 1983); *Mont. Coal. for Stream Access v. Curran*, 210 Mont. 38, 39, 53 (Mont. 1984) (extending public trust to any surface waters capable of use for recreational purposes); *In re Water Use Permit Applications*, 9 P.3d 409, 445-47 (Haw. 2000) (holding state's public trust applies to "all water resources without exception or distinction[,]" including groundwater).

[73] *See e.g., Marks v. Whitney*, 6 Cal. 3d 251, 259, 2 ELR 20049 (Cal. 1971) (observing "[t]he public uses to which tidelands are subject are sufficiently flexible to encompass changing public needs" beyond the traditional uses of navigation, commerce, and fishing); *Just*, 56 Wis.2d at 16 (explaining state's active public trust duty includes

But perhaps most critically, Defendants have never attempted to reconcile their "modified" public trust doctrine with the "main purpose of the equal footing doctrine," which "is to ensure the state owns and controls submerged lands so that 'navigable waters' remain open and freely accessible as public highways."[74] If a state is prohibited from disposing submerged lands because doing so would divest control over waters that must remain open and freely accessible, the court fails to understand why a state would be permitted to divest the waters themselves through other means. Indeed, the classic public trust infringement case does not involve impaired access to the submerged lands, but impaired access to the waters over them.

Defendants' argument also defies common sense. Despite hundreds of pages of briefing, Defendants have failed how to explain how the public trust doctrine can possibly protect the acknowledged "public trust values of navigation, commerce, and fishing" if there is no obligation to preserve the waters themselves. These public trust uses obviously, and entirely, depend on water. Without water, the Great Salt Lake is not navigable and the public cannot fish in it or recreate on it. Indeed, the public's "absolute right to all their navigable waters" would be destroyed if the State, through a statute or otherwise, could simply surrender them. *See Martin*, 41 U.S. at 410.

Accordingly, the court agrees with Plaintiffs that while states may expand their public trusts – and many states have done so – a state cannot exclude the navigable waters from it, whether in a constitution, statute, case, or otherwise.

5. Public Trust Not Inconsistent with Prior Appropriation System.

Finally, notwithstanding some Defendants' protestations to the contrary, the inclusion of navigable waters in Utah's public trust is not fundamentally incompatible with Utah's prior appropriation system. And confirming that Utah's public trust includes the waters of the Great Salt Lake is not "insert[ing] the public trust doctrine into Utah's appropriative water rights system" or "recognizing" a "riparian" or "super priority" water right that has never existed before.[75] While it may make Plaintiffs' preferred relief infeasible and the State's task more challenging, there are multiples ways for the State to fulfill its trustee duties without threatening Utah's water rights system.

(a) Utah's Prior Appropriation System.

In Utah, all water – regardless of navigability and the public trust doctrine – belong to the public. *See* Utah Code Ann. § 73-1-1. This "[p]ublic ownership is founded on the principle that

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protecting and preserving navigable waters for navigation, but also for fishing, recreation, and scenic beauty); *State ex rel. Brown v. Newport Concrete Co.*, 44 Ohio App. 2d 121, 127 (Ohio Ct. App. 1975) (finding public uses for recreational purposes are legitimate use under which the state holds navigable waters in trust); *Env't L. Found. v. State Water Res. Control Bd.*, 26 Cal. App. 5th 844, 857, 237 Cal. Rptr. 3d 393, 400 (2018) (observing that the range of public trust uses is broad, including right to hunt, bathe, or swim, and is flexible to changing public needs, including preservation of trust lands in their natural state for ecological purposes).

[74] FFSL Reply Mem. at 5.

[75] DWR's Mot. to Dismiss at 3; DWR's Reply Mem. at 11.

water, a scarce and essential resource in this area of the country, is indispensable to the welfare of all the people." *J.J.N.P. Co. v. Division of Wildlife Res.*, 655 P.2d 1133, 1136 (Utah 1982). "[I]t is essential that putting water to the highest and best beneficial use should not only be encouraged, but carefully safeguarded." *Green River Canal Co. v. Thayn*, 2003 UT 50, ¶ 28, 84 P.3d 1134. "[T]he State must therefore assume the responsibility of allocating the use of water for the benefit and welfare of the people of the State as a whole." *J.J.N.P. Co.*, 655 P.2d at 1136.

Like many other arid western states, Utah has adopted the prior appropriation system to maximize productive usage of water. *Heal Utah v. Kane Cty Water Conserv. Dist.*, 2016 UT App 153, ¶ 6, 378 P.3d 1246. The prior appropriation system has two basic principles: priority and beneficial use. *Id.*

Priority refers to the general system of first in time, first in right. *Id.* In essence, the senior water right holder – the water user with the earliest priority date who has continuously put water to a beneficial use – may divert water under their right before all junior water users. The right is that of preferential use as against subsequent appropriators. *Adams v. Portage Irr., Reservoir & Power Co.*, 95 Utah 1, 72 P.2d 648, 653 (1937).

Beneficial use is "the basis, the measure and the limit of all rights to the use of water in this state." Utah Code § 73-1–3. The principle of beneficial use means a water right is acquired by diverting water and putting it to beneficial use. *Heal Utah,* 2016 UT App at ¶ 7. A right to use water may be abandoned or forfeited by nonuse. *Id.*

Because all waters of the State are "declared to be property of the public," the "right to the use of water, although a property right, is very different from the ownership of specific property which is subject to possession, control and use as the owner sees fit." *United States v. Dist. Ct. of Fourth Jud. Dist. in & for Utah Cnty*, 121 Utah 1, 4–5, 238 P.2d 1132, 1134 (1951); Utah Code §73-1-1(1). A water right holder owns a usufruct right, which is an interest that incorporates the needs of others. This right "does not involve the ownership of a specific body of water but is only a right to use a given amount of the transitory waters of a stream or water source for a specified time, place and purpose, and a change in any of these might materially affect the rights of other users of the same stream or source." *Id.* at 5. In other words, this right is not absolute, it is contingent on exercising the right in accordance with the law. *See Adams,* 72 P.2d at 653. However, a perfected water right is still considered a property interest and may be transferred or sold in the manner of real property.[76]

Under Utah's water scheme, rights to the use of water may be obtained by two methods. The first is commonly known as a diligence claim. Prior to 1903, a person was allowed to appropriate public water by diverting it from its natural channel and putting it to beneficial use. This method of appropriation has been preserved by statute. *See East Jordan Irrigation Co. v. Morgan*, 860 P.2d 310, 312-13 (Utah 1993); *Eskelsen v. Town of Perry,* 819 P.2d 770, 771 n.1 (Utah

[76] *See In re Bear River Drainage Area*, 2 Utah 2d 208, 211, 271 P.2d 846, 848 (Utah 1954) ("rights to the use of water . . . have been characterized by this and other courts as an interest in real property."); DWR, *Frequently Asked Questions*, ("Water rights are classified as 'real property' in . . . Utah and are bought and sold much like real estate."). https://waterrights.utah.gov/wrinfo/faq.asp#:~:text=Answer%3A%20Water%20rights%20are%20classified,as%20they%20do%20for%20properties.

1991); Utah Code § 73-5-13. In 1903, the State formalized the procedure for acquiring rights to use water, which requires the filing of a written application with the State Engineer. *Id.*; Utah Code § 73-3-2.

The State Engineer is "responsible for the . . . supervision . . . and the measurement, appropriation, apportionment, and distribution of those waters" to fulfill the public's interest in "the beneficial use . . . of water in this state." Utah Code 73-2-1(3)(a). Thus, the State Engineer must ensure "that the waters of the state are used by appropriators in accordance with their priorities and that diverted waters are used for proper beneficial purposes." *Heal Utah,* 2016 UT App at ¶ 7.

(b) Public Trust Doctrine and Prior Appropriation System.

In arguing that Plaintiffs' articulation of the public trust doctrine conflicts with Utah's existing water scheme, Defendants continue to conflate two separate aspects of Plaintiffs' requested relief, *i.e.,* a declaration that Utah's public trust includes the navigable waters of the Great Salt Lake and an order directing the State to curtail upstream diversions.

For example, the Intervenors argue water rights in Utah have never been held or acquired subject to the public trust doctrine because "plaintiffs cannot point to a single instance in which the public trust doctrine limited a water right in Utah, irrespective of priority and beneficial use."[77] While this may speak to whether it is appropriate to impose a "public trust overlay restriction" on water rights, it does not mean that water is excluded from the public trust or that the State's duties as trustee are "not reconcilable under prior appropriation."[78] Indeed, Defendants have not pointed to a single case from a prior appropriation state holding that navigable waters are excluded from the public trust.[79] To the contrary, most appropriation states have explicitly or implicitly acknowledged that their public trusts includes navigable waters.[80] And no court has found that a

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[77] Intervenors' Reply at 2.

[78] *Id.* at 9.

[79] In 1996, the Idaho legislature enacted statutory provisions limiting the public trust doctrine to "solely a limitation on the power of the state to alienate or encumber the title to the beds of navigable waters[,]" and expressly stating the doctrine does not apply to "[t]he appropriation or use of water, or the granting, transfer, administration, or adjudication of water or water rights." Idaho Code §§ 1201 to 1203. Despite this, in 2020 the Supreme Court of Idaho stated that under the public trust doctrine, "the state, acting on behalf of the people, has the right to regulate, control and utilize navigable waters for the protection of certain public uses, particularly navigation, commerce and fisheries." *Newton v. MJK/BJK, LLC,* 167 Idaho 236, 242, 469 P.3d 23, 29 (2020) (quoting *Kootenai Env't All., Inc. v. Panhandle Yacht Club, Inc.,* 105 Idaho 622, 625, 671 P.2d 1085, 1088 (1983)). The court also referred to *Kootenai,* which expressed a broad public trust doctrine, as "still good law." Thus, it is unclear how, if at all, Idaho's public trust is limited.

Colorado has, to some degree, refused to recognize any public trust doctrine in the state, with courts impliedly finding all streams within the state to be non-navigable. *Stockman v. Leddy,* 129 P. 220, 222 (Colo. 1912) (overruled on other grounds by *United States v. City & County of Denver,* 656 P.2d 1 (Colo. 1982)). Most recently, in *State v, Hill,* 530 P.3d 632, the Colorado Supreme Court concluded that a fisherman did not have standing to bring a public trust claim because the state's ownership of the riverbed was a "necessary prerequisite" and only the state could bring that claim.

[80] *See e.g., Williams Alaska Petroleum, Inc. v. State,* 529 P.3d 1160, 1187 (Alaska 2023) (explaining that certain resources (including wildlife, minerals, and water rights) are held in trust for public use, and the coverage of "waters" goes beyond navigable waters and includes "public water"); *In re Water Use Permit Applications,* 94 Haw. 97, 9 P.3d 409, 445 (2000) (stating that, under a constitutional provision, "the public trust doctrine applies to all water resources

prior appropriation system is incompatible with the public trust doctrine.[81] Thus, while Utah's water system may have grown up without reference to public trust principles, that does not mean the trust has no application to navigable waters.

Utah's prior appropriation system recognizes that "a drop of water is a drop of gold." *See Carbon Canal Co. v. Sanpete Water Uses Ass'n*, 425 P.2d 405, 407 (Utah 1967). The requirements of beneficial use – "beneficial purpose and reasonable amount" are ongoing and the "types of use considered to be beneficial have expanded to encompass not only economically beneficial uses, but also uses that promote conservation, recreation, and other values deemed to be socially desirable." *Delta Canal Co. v. Frank Vincent Family Ranch, LC*, 2013 UT 69, ¶ 22 420 P.3d 1052 (internal citations omitted). Indeed, "the concept of beneficial use is not static" and "is susceptible to change over time in response to changes in science and values associated with water use." *In re Gen. Determination of Rights of Water*, 2004 UT 67, ¶ 46, 98 P.3d 1, 11-12. Thus, a "particular use must not only be of benefit to the appropriator, but it must also be a reasonable and economic use of the water in view of other present and future demands upon the source of the water supply." *Delta Canal*, 2013 UT at ¶ 24 (citing *State Dep't of Ecology v. Grimes*, 852 P.2d 1044, 1051 (Wash. 1993)). Importantly, "[w]hat may be a reasonable beneficial use, where water is present in excess of all need, would not be a reasonable beneficial use in an area of great scarcity and great time." *In re Gen. Determination of Rights of Water*, 2004 UT at ¶ 46.

Similarly, the public trust doctrine reflects a fundamental societal mandate to preserve navigable waters for future generations. *See Illinois*, 146 U.S. at 452. Like the doctrine of beneficial use, the public trust doctrine recognizes that navigable waters, an essential but often scare resource, are "intrinsically important to every citizen." *See* Sax, *The Public Trust Doctrine*, at 484. And that "certain uses [of water] have a peculiarly public nature that makes their adaption to private use inappropriate." *Id.* at 485. Like a usufruct right in a prior appropriation system, the public trust doctrine "incorporates the needs of others" and imposes upon the government an obligation "to regulate water uses for the general benefit of the community and to take into account

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without exception or distinction."); *Mont. Trout Unlimited v. Beaverhead Water Co.*, 255 P.3d 179, 185 (Mont. 2011) (under the public trust doctrine and the Montana Constitution the public has use rights in the waters of the state, and the state is trustee of the public trust over the navigable streambeds and the waters of the state); *Pub. Lands Access Ass'n v. Bd. of Cnty. Comm'rs of Madison Cnty.*, 321 P.3d 38, 52 (the state's public trust covers both navigable and non-navigable waters, including "any surface waters that are capable of recreational use"); *Min. Cnty. v. Lyon Cnty.*, 437 P.3d 418, 425-26 (Nev. 2020) (stating the public trust doctrine applies to all waters within the state, whether navigable or non-navigable, explaining "[t]o limit the public trust doctrine to only navigable waterways and the lands below would ignore the fact that flowing water that feeds into the navigable waters is allocated along the way."); *Parks v. Cooper*, 676 N.W.2d 823, 837-39 (S.D. 2004) (acknowledging the court had previously found the public trust doctrine covered navigable waters and their beds, and concluding that *all* waters in the state are held in trust for the public); *Lake Union Drydock Co., Inc. v. State Dept. of Nat. Res.*, 179 P.3d 844, 851 (Wash. Ct. App. 2008) (observing that under the public trust doctrine, the state holds shorelines and waters in trust for the people); *Adobe Whitewater Club of New Mexico v. New Mexico State Game Comm'n*, 519 P.3d 46, 52 ("[T]he beds to both navigable waters and nonnavigable waters—whether title is vested in the state or the United States—are still subject to state law under the public trust doctrine."); *Chernaik v. Brown*, 475 P.3d 68, 77 ("In addition to the land underlying bodies of water that meet the federal test for navigability, the navigable waters themselves are a public trust resource.").

[81] *See e.g., Nat'l Audubon Soc'y v. Superior Ct.*, 658 P.2d 709, 732 (1983) (holding plaintiffs could rely on the public trust doctrine in seeking reconsideration of water allocations); *but see Min. Cnty.*, 437 P.3d at 425, 429 (holding that the public trust doctrine applies to all water rights, including those previously settled under prior appropriation, but reallocation of adjudicated water rights is not permitted).

. . . the public nature and the interdependency which the physical quality of [water] implies." *Id.* This requires the State, much like the State Engineer, to manage the navigable waters for the "public good."[82] *See Arnold*, 6 N.J.L. at 53; *Martin*, 41 U.S. at 410. Finally, the public trust doctrine, like beneficial use, is capable of evolving over time to address changes in needs and values.

Given these aligning principles, the dynamism of beneficial use, and the multiple pathways to restore the Great Salt Lake, the court is not persuaded that Utah's public trust doctrine is hostile to Utah's prior appropriation system. Nor does it create an unresolvable conflict between the State's duties as trustee and the State Engineer's responsibility to fulfill the public's interest in "the beneficial use . . . of water in this state," which may properly include consideration of the public trust in the planning and administration of Utah's water resources. Importantly, both the public trust doctrine and the prior appropriation system require the State to "assume the responsibility of allocating the use of water for the benefit and welfare of the people of the State as a whole." *See J.J.N.P. Co.*, 655 P.2d at 1136.

E. The State's Duties As Trustee of the Public Trust.

At this stage of the proceedings, the court does not need to determine the precise contours of the State's duties as trustee of the public trust. This will be the subject of future litigation. However, the court needs to address two arguments raised by the parties in their briefing.

First, citing the *Mono Lake* case, Plaintiffs argue that the State's trustee duties include the duty to curtail upstream diversions because these water rights are always subject to the public trust.

Second, the State Defendants argue that the legislature's delegation of different authorities to different agencies somehow limits the State's trustee duties under the public trust doctrine.

The court rejects both of these arguments.

1. General Duties of the State as Trustee of Public Trust.

In general, the existence of a legal duty and its contours is a determination made by courts as a matter of law.[83]

The court is unaware of any case that explicitly enumerates the duties of a state under the public doctrine, except perhaps as they relate to the disposition of submerged lands. However, the court may glean the general contours of the State's duties as trustee from cases around the country, general trust principles, and secondary sources discussing the public trust doctrine. At its core, the public trust doctrine protects the public's right to use navigable waters for navigation, commerce,

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[82] *See* Br. of State Resp. at 7, Colman v. Utah State Land Board (Jan. 14, 1987).

[83] *Cf., e.g., Weber, By & Through Weber v. Springville City*, 725 P.2d 1360, 1363 (Utah 1986); *Cope v. Utah Valley State Coll.*, 2012 UT App 319, ¶¶ 10-11, 290 P.3d 314, 318, *aff'd on other grounds*, 2014 UT 53, 342 P.3d 243; *Smith v. Frandsen*, 2004 UT 55, ¶ 14, 94 P.3d 919, 923-24; *Sabour v. Koller*, 2024 UT App 26, ¶ 26, 546 P.3d 28, 33 (citing *Smith v. Robinson*, 2018 UT 30, ¶ 8, 422 P.2d 863).

and fishing. Cases have articulated the state's duties as trustee as including the obligation to protect the trust property against damage or destruction and requiring consideration of the public trust in making certain decisions to ensure that they either improve the public's common use rights or do not substantially impair them.[84]

Accordingly, at a minimum, the State must (1) avoid taking actions that will substantially impair the public's use rights in the navigable waters; and (2) as necessary, take feasible steps to restore the public trust when it has been impaired, whether that impairment resulted from general neglect, naturally occurring drought cycles, human activity, or otherwise.[85] This may require, as Plaintiffs argue, the State to consider the public trust in planning and administering water resources[86] and to use its expertise and authority to identify feasible ways to restore and preserve the Great Salt Lake.[87]

The State, however, retains considerable discretion in determining how to best protect and preserve the trust res in accordance with the purposes of the public trust. *See* Utah Code § 75-7-813; *see generally* George G. Bogert et al., Bogert's The Law of Trusts and Trustees, §§ 541, 552 (updated 2024) (explaining that the grant of broad discretionary powers to the trustee to administer the trust does not relieve the trustee from the duty of prudence; for mandatory powers, the trustee has an affirmative duty to act, but the manner of performance is within their discretion); *see also, e.g., Pa. Env't Def. Found.*, 640 Pa. at 90. In exercising this discretion, however, the State must always fulfill its duties with loyalty, impartiality, and prudent administration.[88]

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[84] *See* Restatement (Third) of Trusts §77 ("The duty of care requires the trustee to exercise reasonable effort and diligence in planning the administration of the trust, in making and implementing administrative decisions, and in monitoring the trust situation, with due attention to the trust's objectives and the interests of the beneficiaries.").

[85] DWR criticizes Plaintiffs for failing to "identify even a single 'feasible mean'" or explaining why "feasible means" do not include the State's ongoing efforts to return more water to the Great Salt Lake. DWR reply at 4. But, as Plaintiffs repeatedly point out, the State views lake protection as an entirely voluntary enterprise based largely on the willingness of others to restore the lake's navigable waters. And as laudable as these efforts may be, the State has not acknowledged any legal obligation to continue them.

[86] At this juncture, the court is not deciding whether the State must "consider[] the public trust in the planning and administration of water resources." The court simply notes that requiring the State to *consider* the public trust in planning and administering its water resources is not the same as requiring the State to *modify* the amount of water available for upstream diversion based on the public trust.

[87] *See* Bogert's Trust §541 ("If a trustee has greater skill, the trustee must use that greater skill.").

[88] *See e.g., Arizona Ctr. For L. In Pub. Int. v. Hassell*, 172 Ariz. 356, 837 P.2d 158 (Ct. App. 1991) ("Just as private trustees are judicially accountable to their beneficiaries for dispositions of the res, ... so the legislative and executive branches are judicially accountable for their dispositions of the public trust."); *Ching v. Case*, 145 Haw. 148, 170, 175-76, 449 P.3d 1146, 1168, 1173-74 (2019) (relying on common law trust law in expressing the state's duty reasonably monitor trust property as part of its obligation "to protect and maintain the trust property and regulate its use[;]" and holding that while not all common law provisions apply, some may); *Chernaik v. Brown*, 367 Or. 143, 475 P.3d 68, 83 (2020) ("[W]e have previously relied on common-law private trust cases in explaining the state's role as trustee.... But this court's case law cannot be read to conclude that all common-law principles of private trust law govern the public trust doctrine."); *Pennsylvania Env't Def. Found. v. Commonwealth*, 640 Pa. 55, 87, 90, 161 A.3d 911, 930, 932 (2017) (looking to underlying principles of state trust law—including the duties of prudence, loyalty, and impartiality—in finding the state's public trust duties, and recognizing that the trustee's discretion is limited by their duties and the trust's purpose).

2. Mono Lake Case.

Plaintiffs argue the State has a "duty of continuing supervision over the taking and use of the appropriated water," which is an inherent part of its sovereign public trust responsibilities.[89]

Although the court agrees with Defendants that this precise relief is not available to Plaintiffs, the court will briefly address *National Audubon Society v. Superior Court,* 33 Cal. 3d 419, 658 P.2d 709 (1983), which is sometimes referred to as the *Mono Lake* case, because Plaintiffs rely so heavily on it.

Mono Lake is the second largest lake in California. It is a saline lake that contains no fish but supports a large population of brine shrimp. Although Mono Lake receives some water from rain and snow on the lake surface, historically most of its supply comes from snowmelt in the Sierra Nevada. Five freshwater streams carry the annual runoff to the west shore of the lake. However, in 1940, the California Division of Water Resources granted the Department of Water and Power of the City of Los Angeles (DWP) a permit to appropriate virtually the entire flow of four of the five non-navigable streams flowing into Mono Lake. As a result of these diversions, the lake level dropped significantly and the surface area of the lake diminished by one-third. *Id.* at 711. Plaintiffs filed an action in superior court to enjoin the diversions "on the theory that the shores, bed, and waters of Mono Lake are protected by a public trust." *Id.* at 712.

The superior court explained that:

> *[T]he core of the public trust doctrine is the state's authority as sovereign to exercise a continuous supervision and control over the navigable waters of the state and the lands underlying those waters* . . . The prosperity and habitability of much of this state requires the diversion of great quantities of water from its streams for purposes unconnected to any navigation, commerce, fishing, recreation, or ecological use relating to the source stream. The state must have the power to grant nonvested usufructuary rights to appropriate water even if diversions harm public trust uses. Approval of such diversions without considering public trust values, however, may result in needless destruction of those values. *Accordingly, we believe that before state courts and agencies approve water diversions, they should consider the effect of such diversions upon interests protected by the public trust, and attempt, so far as feasible, to avoid or minimize any harm to those interests.*

Id. at 712 (emphasis added).

Therefore, because the "water rights enjoyed by DWP were granted, the diversion was commenced, and has continued to the present without any consideration of the impact upon the public trust[,] [a]n objective study and reconsideration of the water rights in the Mono Basin is

[89] Pl.s' Opp. 20 (citing *Nat'l Audubon Soc'y*, 658 P.2d at 728).

long overdue." Importantly, the superior court noted that the "water law of California – which we conceive to be an integration including both the public trust doctrine and the board-administered appropriative rights system – permits such a reconsideration; the values underlying that integration require it." *Id.*

The superior court then turned to the question of whether "the public trust limits conduct affecting nonnavigable tributaries to navigable waterways." *Id.* at 720. In concluding that it does, the court held that "parties acquiring rights in trust property generally hold those rights subject to the trust and can assert no vested right to use those rights in a manner harmful to the trust." *Id.* at 721. Thus, "plaintiffs can rely on the public trust doctrine in seeking reconsideration of the allocation of the waters of the Mono Basin." *Id.* at 732.

Importantly, the superior court did not "dictate any particular allocation of water." Rather, it resolved "a legal conundrum in which two competing systems of thought – the public trust doctrine and the appropriative water rights system – existed independently of each other, espousing principles which seemingly suggested opposite results." *Id.* "[B]y integrating these two doctrines to clear away the legal barriers which have so far prevented either the Water Board or the courts from taking a new and objective look at the water resources of the Mono Basin," the superior court hoped to prevent the "uses protected by the public trust doctrine" from being "destroyed because the state mistakenly thought itself powerless to protect them." *Id.*

As explained above, the court agrees with Defendants that an order requiring the State Engineer to "tak[e] a new and objective look" at the thousands of water rights in the Great Salt Lake basis implicates the political question doctrine. In addition, there are at least two critical differences between the Great Salt Lake and Mono Lake that may render this requested relief infeasible. First, the DWP held the right to virtually the entire flow of four of the five streams pursuant to single permit to appropriate that was granted in 1940. Thus, the court's order requiring California's Water Board to take a "new and objective look" was limited to one water right held by another governmental entity. In contrast, requiring the State Engineer to take a "new and objective look" would involve thousands of water rights owned by private individuals and entities, most of which were perfected prior to statehood.

Second, California expanded its public trust doctrine in *Marks v. Whitney*, 6. Cal.3d 251, 491 P.2d 374 (1971), which held that the traditional triad of uses – navigation, commerce and fishing – did not limit the public interest in the trust res and "[t]he public uses . . . are sufficiently flexible to encompass changing public needs." And "one of the most important public uses . . . is the preservation of [the trust res] in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area." *Id.*[90] Thus, California had already recognized that the "objective of the public trust has evolved in tandem with the changing public perception of the values and uses of waterways." *Mono Lake*, at 719. In contrast, Utah's public trust doctrine does not appear to have been expanded much beyond the minimum protections dictated by federal law.

[90] Although the *Marks* case dealt with tidelands, this language was cited by the superior court in its discussion of the purpose of the public trust.

Finally, *Mono Lake* appears to be something of an outlier. No other prior appropriation state requires the reallocation or modification of perfected water rights if deemed necessary for the preservation and protection of the public trust.[91]

Although the court concludes that Plaintiffs are not entitled to similar relief in this case, the court nevertheless believes that *Mono Lake* is instructive because it dispels any notion that the public trust doctrine is fundamentally incompatible with a prior appropriation water system. It is not. In a prior appropriation state such as Utah, perfected usufructuary rights to appropriate water may sometimes "harm public trust uses." But that does not mean the State is powerless to consider public trust values in exercising its statutory authority or that it has no obligation to implement other feasible measures to protect and preserve the Great Salt Lake to avoid the needless destruction of it.

3. Statutory Authority of FFSL and State Engineer.

In general terms, the legislature has delegated authority over sovereign lands to FFSL and water to the State Engineer. The State Defendants suggest that this administrative construct precludes a determination that the public trust includes navigable waters because each agency is "bound by their statutory directives and are strictly prohibited from going beyond them."[92]

But the public trust doctrine is not found in Titles 65A or 73. Nor do these statutes remove navigable waters from the public trust. And the State, not its individual departments or divisions, is the trustee of the public trust. But even if these administrative divisions are somehow relevant to the public trust doctrine, the State Defendants concede that these two "sister" agencies "work in tandem" under the supervision of DNR.[93] This is reflected, for example, in FFSL's statutory mandate to consult with the State Engineer on various matters and in its "duty to serve the public interest in managing the Great Salt Lake," which is a "critical resource owned and managed by the state." *See, e.g.,* Utah Code §65A-17-102.[94] So the fact the State has delegated authority over different assets to different agencies does not preclude the court from finding that the public trust

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[91] In *Kootenai,* 105 Idaho 622, 671 P.2d 1085 (1983), the Idaho Supreme Court, citing *Mono Lake*, stated that "[t]he public trust doctrine takes precedence even over vested water rights." However, this aspect of the Court's holding appears to have been superseded by statute.

Alaska and Hawaii have hinted that their public trust may take precedence over water rights. *See, e.g., Williams Alaska Petroleum, Inc. v. State*, 529 P.3d 1160, 1187 (Alaska 2023) (providing that water rights are held in trust for public use under the public trust doctrine); *In re Water Use Permit Applications*, 94 Haw. 97, 9 P.3d 409, 452 (2000) ("The continuing *authority* of the state over its water resources precludes any grant or assertion of vested rights to use water to the detriment of public trust purposes. This authority empowers the state to revisit prior diversions and allocations, even those made with due consideration of their effect on the public trust."). But their public trust doctrines are broader. For example, Hawaii's Constitution provides for a broad public trust covering all water resources in the state, "without exception or distinction." *Id.* at 445.

[92] *Id.* at 3.

[93] DWR's Mot. to Dismiss 13.

[94] These duties include the management of the Great Salt Lake Watershed Enhancement Program, Utah Code §§65A-16-101 et. seq., and the management of the Great Salt Lake pursuant to the Great Salt Lake Preservation Act, Utah Code §§65A-17-101 et. seq.

includes the waters of the Great Salt Lake or impose artificial limits on the State's public trust duties.

Finally, consistent with Utah's appropriation system and their current statutory authority, FFSL and the State Engineer can undertake meaningful action in furtherance of the State's trustee duties, including affirmatively investigating and eliminating wasteful uses of water and expanding and implementing the feasible measures identified by the Great Salt Lake Strike Team. *See, e.g.*, Utah Code §§ 73-2-1(6) (lawsuits to enjoin improper appropriation, diversion, or use of water or to prevent waste, theft, or loss of water); 73-2-25 (enforcement powers); 73-3-8(1)(b) (applications to divert unappropriated water); and 73-3c-103 (water reuse projects).[95]

XII. REMAINING ARGUMENTS

Finally, the court will briefly address a few additional arguments made by Defendants in their motions to dismiss. None of these arguments warrants dismissal of the Complaint.

A. Plaintiffs Are Not Seeking a General Water Rights Adjudication.

Certain Defendants argue that "Plaintiffs are seeking a judicial order compelling and supervising the State Engineer to undertake a comprehensive determination and modification of water rights over a given geographic area," which "is in the nature of a general adjudication."[96]

A general adjudication is a "judicial proceeding used to determine the validity of water claims" in a given source, which is "employed to resolve all competing claims to water use in [a particular] area." *In re Utah Lake and Jordan River*, 2018 UT App 109, ¶ 18 (citing *Green River Canal Co. v. Olds*, 2004 UT 106, ¶ 4, 110 P.3d 666); Utah Code §§ 73-4-1 to -24. "The purpose of the general adjudication process is to prevent piecemeal litigation regarding water rights and to provide a permanent record of all such rights by decree." *Olds*, 2004 UT at ¶ 5 (quotation simplified); *see also Green River Adjudication v. United States*, 17 Utah 2d 50, 404 P.2d 251, 252 (Utah 1965) ("The objective of an adjudication . . . is to determine and settle water rights which have not been adjudicated or which may be uncertain or in dispute."). In this regard, "the basic goal of general adjudication is to record all water claims from a particular source which subsequent appropriators can rely upon before making their investments." *Provo River*, 857 P.2d at 935 (quotation simplified); *see also Olds*, 2004 UT at ¶ 41 ("One of the key goals of the general adjudication process is to remove doubts about the validity of water rights.").

The process for adjudicating water rights through a general adjudication is established by Title 73, Chapter 4 of the Utah Code. *See* Utah Code Ann. §§ 73-4-1 to 24. All those claiming a right in the water source are joined in a single action that has been likened to quiet title action. A water right holder who fails to file a timely statement of claim "shall be forever barred and

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[95] Additionally, the legislature, at the request of the State Engineer and in recognition of the State's legal obligation to the Great Salt Lake, could expand her statutory authority, make certain voluntary measures mandatory, and/or provide additional funding so she can more effectively supervise the use of Utah's precious water resources. *See, e.g.*, Utah Code §§ 73-1-4 (forfeiture); 73-4-9.5 (unclaimed rights of record); 73-10-32 (water conservation measures); 73-10-37 (incentives).

[96] Water Conservancy Districts Reply Mem. in Support of Mot. to Dismiss 8.

estopped from subsequently asserting any rights, and shall be held to have forfeited all rights to the use of the water therefore claimed by him." Utah Code § 73-4-9; *see also EnerVest, Ltd. v. Utah State Eng'r*, 2019 UT 2, ¶ 5, 435 P.3d 209.

After evaluating the submitted claims, the State Engineer prepares and files a proposed determination of the water rights with the district court, which is also mailed to each claimant. If no objection is filed, the district court must enter "judgment in accordance with such proposed determination," which renders "the proposed determination the final adjudication of water rights for the given area." *Olds,* 2004 UT at ¶ 7; *see also United States Fuel Co. v. Huntington-Cleveland Irrigation Co.*, 2003 UT 49, ¶ 15, 79 P.3d 945; *Jensen v. Morgan,* 844 P.2d 287, 290 (Utah 1992).

To the extent Plaintiffs are seeking an order directing the State Engineer (or another state agency) to review all water rights in the Great Salt Lake basin, the court agrees that such relief may implicate the general adjudication process. And to the extent a prior judicial decree has already defined and quantified such water rights, the court agrees that Plaintiffs' request for what Defendants describe as "super-priority public trust water right" could be construed as an improper collateral attack on the prior judicial decree.

However, given the narrowing of the relief available to Plaintiffs, the court is not persuaded that their declaratory judgment claim implicates Utah's general adjudication process or is otherwise barred by it.

B. Plaintiffs' Claim is Not Barred by Res Judicata or Laches.

In a similar vein, certain Defendants assert that Plaintiffs' declaratory judgment claim is barred by the doctrine of res judicata because all water rights in the Great Salt Lake basin either have been judicially decreed or are currently under review in a general adjudication proceeding. These Defendants further argue that Plaintiffs' claim is barred by the doctrine of laches.

The court's narrowing of Plaintiffs' declaratory judgment claim renders these arguments moot. But regardless, the court is not persuaded that the doctrines of res judicata or laches would otherwise bar Plaintiffs' declaratory judgment claim.

The doctrine of res judicata requires a prior action involving the same party or parties asserting the same, or essentially the same, claim or issue. *See, e.g., Mack*, 2009 UT 47, 221 P.3d 194; *Kodiak Am. LLC v. Summit County*, 2021 UT App 47, ¶ 14, 491 P.3d 962. Res judicata encompasses both claim preclusion, which relates to causes of action, and issue preclusion, which relates to facts and issues underlying causes of action.

For claim preclusion to apply, (1) "both cases must involve the same parties or their privies;" (2) the claim must have been raised in the first action; and (3) the first action must have resolved through a "final judgment on the merits." *Id.* (citing *Snyder v. Murray City Corp.*, 2003 UT 13, ¶ 34, 73 P.3d 325).

For issue preclusion to apply:

> (i) the party against whom issue preclusion is asserted must have been a party to or in privity with a party to the prior adjudication; (ii) the issue decided in the prior adjudication must be identical to the one presented in the instant action; (iii) the issue in the first action must have been completely, fully, and fairly litigated; and (iv) the first suit must have resulted in a final judgment on the merits.

Haskell v. Wakefield & Assocs. Inc., 2021 UT App 123, ¶ 22, 500 P.3d 950 (quoting *Smith v. Hruby-Mills*, 2016 UT App 159, ¶ 12, 380 P.3d 349).

Defendants do not specify whether they are relying on claim preclusion or issue preclusion. Nor do they specifically identify any prior action involving the same parties (or their privies) or the same issues that resulted in a final judgment on the merits. Thus, Defendants have not shown that res judicata bars Plaintiffs' declaratory judgment claim.

For similar reasons, Plaintiffs' declaratory judgment claim is not barred by the equitable doctrine of laches. The doctrine of laches "is 'based upon [the] maxim that equity aids the vigilant and not those who slumber on their rights.'" *CIG Exploration, Inc. v. State*, 2001 UT 37, ¶ 14, 24 P.3d 966 (alteration in original) (quoting BLACKS LAW DICTIONARY 787 (6th ed. 1990)). In Utah, laches traditionally has two elements: "(1) [t]he lack of diligence on the part of plaintiff" and "(2) [a]n injury to defendant owing to such lack of diligence." *Papanikolas Brothers Enterprises v. Sugarhouse Shopping Center Associates*, 535 P.2d 1256, 1260 ("Laches is not mere delay, but delay that works a disadvantage to another."). Here, Plaintiffs are not seeking to establish a water right for themselves. Nor are they challenging a specific water right or a proposed determination or a decree in a general adjudication. Rather, Plaintiffs are challenging the State's failure to fulfill its trustee duties, which they allege is resulting in the destruction of the Great Salt Lake.

Given that the doctrine of laches is disfavored in public trust suits and the continuing nature of the State's alleged breach of its trustee duties,[97] the court is not persuaded that laches bars Plaintiffs' declaratory judgment claim.[98, 99]

CONCLUSION

The Motions to Dismiss are DENIED in substantial part. The court has subject matter jurisdiction to issue a limited declaratory judgment regarding (a) the scope of the public trust doctrine in Utah, which includes the navigable waters of the Great Salt Lake; (b) the scope of the State's duties as trustee of the public trust, which includes the duty to protect the Great Salt Lake

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[97] *See, e.g., Lake Mich. Fed'n v. Army Corp. of Eng'rs*, 742 F.Supp. 441, 446-47 (N.D. Ill. 1990) (doctrine of laches disfavored in public trust suits because plaintiffs are attempting to protect a substantial public interest); *Capruso v. Vill. of Kings Point*, 16 N.E.3d 527, 531-33 (N.Y.Ct.App. 2014) (where government's breach of the public trust doctrine amounts to a continuing wrong, the doctrine of laches has no application).

[98] The State Defendants rely on *United States Fuel Co.*, 2003 UT at ¶ 20 to support their argument. In that case, the plaintiff failed to timely object to the State Engineer's proposed determination in a general adjudication. *Id.* As a result, another claimant's water right was determined to be the senior right in the general adjudication. The Court held that plaintiff could not "collaterally attack" the determination due to their delay.

[99] A finding of laches depends "on the circumstances of each case" and "may turn on questions of fact." Thus, a laches determination may be inappropriate on a motion to dismiss. *See Fundamentalist Church of Jesus Christ of Latter-day Saints v. Horne*, 2012 UT 66, ¶ 40, 289 P.3d 502.

from substantial impairment and preserve the waters of the Great Salt Lake so they can be used for the trust purposes of navigation, commerce, fishing, and recreation; and (c) the State's alleged breach of its trustee duties.

However, the court agrees with Defendants that it does not have subject matter jurisdiction to issue declaratory relief in the form of an order directing the State to "review, and where necessary, modify [upstream] diversions to protect and preserve the public trust." Consequently, the court grants the Motions to Dismiss with respect to this aspect of Plaintiffs' declaratory judgment claim.

SO ORDERED.

Dated this 21st day of March, 2025.

Judge Laura S. Scott
Third Judicial District Court

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 230906637 by the method and on the date specified.

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