Holland & Hart

Groundbreaking Lawsuit Challenges Utah's Management of Great Salt Lake



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A coalition of environmental groups filed a groundbreaking lawsuit against the State of Utah's Department of Natural Resources, Division of Forestry, Fire and State Lands, and Division of Water Rights (the Agencies), alleging that the Agencies have failed to ensure that the Great Salt Lake's water level remains at a level capable of supporting important ecosystems and citizens' ability to use the lake.

The plaintiffs are local environmental groups Utah Physicians for a Healthy Environment and Utah Rivers Council, joined by national groups Center for Biological Diversity, American Bird Conservancy, and Sierra Club. The plaintiffs sued pursuant to the Public Trust Doctrine, which generally requires the state to hold navigable waters, including the Great Salt Lake, in trust for the use and benefit of Utahns. They allege that excessive upstream diversions, which they claim have resulted in roughly two-thirds of the water that would naturally flow into the Great Salt Lake being diverted upstream, have caused the lake's water level to fall to dangerous levels, impacting important habitat, Utah's economy, and citizens' ability to fish and recreate. Rights to divert water are processed through the Division of Water Rights, while the Division of Forestry, Fire, and State Lands is responsible for managing sovereign lands in Utah, including the bed of the Great Salt Lake.

In the lawsuit filed on September 6, the plaintiffs seek to hold the Agencies accountable for keeping the Great Salt Lake at a minimum elevation level of 4,198 feet, which the plaintiffs claim is the minimum level required to maintain a healthy lake, compared to the lake's existing level of 4,192 feet. To that end, the plaintiffs seek declaratory relief specifying that the Agencies have public trust duties and have breached those duties, and injunctive relief requiring that the Agencies “take action sufficient to ensure that any further decline in the Lake's average annual elevation ceases within two years” and act to “restore the Great Salt Lake to at least the minimum elevation” level of 4,198 feet within ten years. Moreover, the plaintiffs ask the court to require the Agencies to:

- review all existing water diversions from the Great Salt Lake watershed;
- modify diversions that interfere with the restoration and maintenance of the lake;
- continue to monitor water usage to protect the lake's water levels; and

- facilitate public involvement in the process.

This lawsuit has the potential to significantly impact individuals and industries that engage in a wide range of activities affecting the Great Salt Lake. Reviewing and modifying existing water diversions in the Great Salt Lake watershed would implicate tens of thousands of existing water rights held by Utah citizens, especially water rights held by agricultural operations and extractive industries, as those uses account for a large portion of the existing water rights. Where many of the existing water rights are characterized as real property interests, this lawsuit will force the court to address the tension between the Public Trust Doctrine and constitutionally protected private property rights. The lawsuit may also have implications for other interests on the Great Salt Lake, including wastewater treatment facilities and industrial entities that discharge to the lake or industries that otherwise rely on or affect the lake through their operations. The lawsuit follows widespread national and local news coverage of potential ecosystem collapse and public health impacts from lowering lake levels as well as unprecedented efforts by the Utah Legislature to take action to prevent such impacts. Given its implications and potential to establish new legal precedent, this case merits close attention by those who rely on or impact the Great Salt Lake through their operations.

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