

PROTEST

PROTEST FEE PAID

\$15.00 23-04800

Fee Rec'd BY: ONLINE

October 10, 2023

Protestant: Utah Rivers Council
PO Box 900457
Sandy, UT 84090

RECEIVED

OCT 10 2023

WATER RIGHTS

ONLINE

RE: Protest of Water Right Application 13-4100

See attached document for entire protest letter. Text reproduced here.

The Utah Rivers Council ("URC") hereby submits a timely protest, pursuant to Utah Code SS73-3-7, regarding Application to Appropriate No. A83921 ("Application") for water right No. 13-4100 filed by the Keller Cattle Corporation and its registered agent Mike Schultz (the "Applicant") on August 25, 2023. This Application pertains to a proposal for a new use of 278.35 acre-feet of water near the shores of the Great Salt Lake.

The URC is a non-profit 501(c)(3) grassroots community-based organization that advocates for sound water policy and protection and conservation of Utah's rivers, streams, and clean water sources for today's citizens, future generations, and wildlife. The URC has a long history working to protect waters in the Great Salt Lake Basin, and we believe the proposed appropriation may affect numerous stakeholders, including members of our organization and many URC members throughout Utah. These members are taxpayers, ratepayers, conservationists, fishermen, outfitters, guides, other recreationists, and business leaders who have a vested interest in maintaining the Great Salt Lake at healthy levels, sustainable water management, fiscally conservative water spending, and the continued existence of aquatic ecosystems.

Our experience in drafting and implementing statewide water policy, analyzing municipal water use data, studying water project economics, initiating water conservation programs and our ability to provide expertise on sustainable water policy has made our organization a leader in the conservation community in Utah. As such, the URC is formally protesting Application to Appropriate No. A83921 as a "persons interested" under Utah Code SS73-3-7. The arguments for our protests are as follows.

I. There may not be unappropriated water for the Application.

Utah Code SS73-3-8(1)(a)(i) states that the state engineer shall approve an application to appropriate if, "there is unappropriated water in the proposed source." If the Application does not meet this criteria, Utah Code SS73-3-8(1)(c) states that the state engineer must reject the application.

The Applicant proposes to withdraw water from unnamed springs and underground water wells on the northwest slope of the Promontory Mountains approximately seven miles from the shore of the Great Salt Lake.

The Great Salt Lake is facing a serious water shortage crisis. The Lake has been in a long-term decline since the 1980's and set two record low water levels in 2021 and 2022., This decline is problematic because numerous studies have identified that the minimum healthy elevation for the Great Salt Lake is approximately 4,198 feet and that below this level numerous important resources - like wetlands, isolated island habitats, recreation, economic activities, air quality, and many more - are adversely impacted. ,

Recent studies have found that the main driver behind these Lake level declines is the unsustainable diversion of waters tributary to the Lake., Additional studies have found that continued diversion of waters tributary to the Lake are likely to result in even larger Lake level declines, thereby leading to more adverse impacts to the Lake's resources and the people and wildlife that depend on them.

Recognizing this, Utah Governor Spencer Cox issued Proclamation 2022-01, which suspended new appropriations in much of the Great Salt Lake Basin. In the proclamation, the Governor stated that "the State Engineer has recommended that the right of the public to appropriate surplus or unappropriated waters in the Great Salt Lake Basin be suspended," and that "the welfare of the State demands such suspension..." to justify his actions. This demonstrates that the spirit of the proclamation was to prevent further decline of Great Salt Lake levels and stave off additional harms to Utahns.

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Technically, the Application proposes to withdraw water from an area outside the bounds of the areas affected by the Proclamation 2022-01. However, given that the Application would pull water from aquifers and springs mere miles from the shore of the Great Salt Lake (see Figure 1), it is very likely that the Application is within the true watershed of the Great Salt Lake and that water used by the Applicant would have an effect on the Great Salt Lake. Therefore, while the Application may not technically violate Proclamation 2022-01, it clearly violates it in principle and spirit.

It seems arbitrary to close the Basin to new appropriations in an effort to protect Great Salt Lake levels while simultaneously allowing other appropriations that also are likely to have impacts on the Lake, like this Application, to proceed.

Even if the proclamation were to be set aside, the fact still exists that the Great Salt Lake is declining due to upstream diversions and that these declines are harming Utahns. Unless it can be shown that the Application would not have an effect on the Lake, the state engineer should look skeptically on the claim that there exists unappropriated water in this area.

II. The Application requires investigation by the state engineer because it may affect public recreation, the natural stream environment, and prove detrimental to the public welfare.

Utah Code SS73-3-8(1)(b) states that the state engineer is required to withhold approval or rejection of an application if she obtains information that an application may "unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare..." until she is able to investigate the matter.

The Application has the potential to affect public recreation, the natural stream environment, and prove detrimental to the public welfare by further contributing to decline of Great Salt Lake water levels, which have had documented adverse impacts to recreation, the natural stream environment, and the public welfare.

Specifically, declining Great Salt Lake water levels have:

- * Closed boat launches,
- * Forced sailors to remove sailboats from marinas that became too shallow,
- * Caused the Great Salt Lake Rowing Club to relocate,
- * Increased salinity concentrations in the Lake to dangerously high levels, impacting brine flies and brine shrimp, birds, and the larger Great Salt Lake ecosystem,
- * Connected islands to the mainland, allowing predators access to once-protected rookeries and other habitats,
- * Exposed vast tracts of lakebed and dust, which has been picked up by winds and blown toward Utah's population centers where it is inhaled and causes a number of negative health outcomes,
- * Accelerated snowmelt in Utah's mountains by depositing light-absorbing, dark dust particles on snowpacks,
- * Forced business owners, from larger extractive industries to smaller guiding outfits, to modify their operations, sometimes at great cost, and
- * Created a number of other deleterious impacts.

Furthermore, the Applicant has provided no information to indicate that the Application would not affect public recreation, the natural stream environment, or prove detrimental to the public welfare. Given this and the above, the state engineer has an obligation to further investigate the Application prior to rendering a decision.

Thank you for considering our arguments here and taking the time to review this protest.

Utah Rivers Council

Enclosure

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VIA ELECTRONIC MAIL

Teresa Wilhelmsen
State Engineer
Division of Water Rights
1594 West North Temple, Suite 220
Salt Lake City, Utah 84116-3154

Subject: Protest of Application to Appropriate No. A83921

Dear Ms. Wilhelmsen,

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The Applicant proposes to withdraw water from unnamed springs and underground water wells on the northwest slope of the Promontory Mountains approximately seven miles from the shore of the Great Salt Lake.

The Great Salt Lake is facing a serious water shortage crisis. The Lake has been in a long-term decline since the 1980's and set two record low water levels in 2021 and 2022.^{1,2} This decline is problematic because numerous studies have identified that the minimum healthy elevation for the Great Salt Lake is approximately 4,198 feet and that below this level numerous important resources – like wetlands, isolated island habitats, recreation, economic activities, air quality, and many more – are adversely impacted.^{3,4}

Recent studies have found that the main driver behind these Lake level declines is the unsustainable diversion of waters tributary to the Lake.^{5,6} Additional studies have found that continued diversion of waters tributary to the Lake are likely to result in even larger Lake level declines,⁷ thereby leading to more adverse impacts to the Lake's resources and the people and wildlife that depend on them.

Recognizing this, Utah Governor Spencer Cox issued Proclamation 2022-01, which suspended new appropriations in much of the Great Salt Lake Basin. In the proclamation, the Governor stated that “the State Engineer has recommended that the right of the public to appropriate surplus or unappropriated waters in the Great Salt Lake Basin be suspended,” and that “the welfare of the State demands such suspension...” to justify his actions. This demonstrates that the spirit of the proclamation was to prevent further decline of Great Salt Lake levels and stave off additional harms to Utahns.

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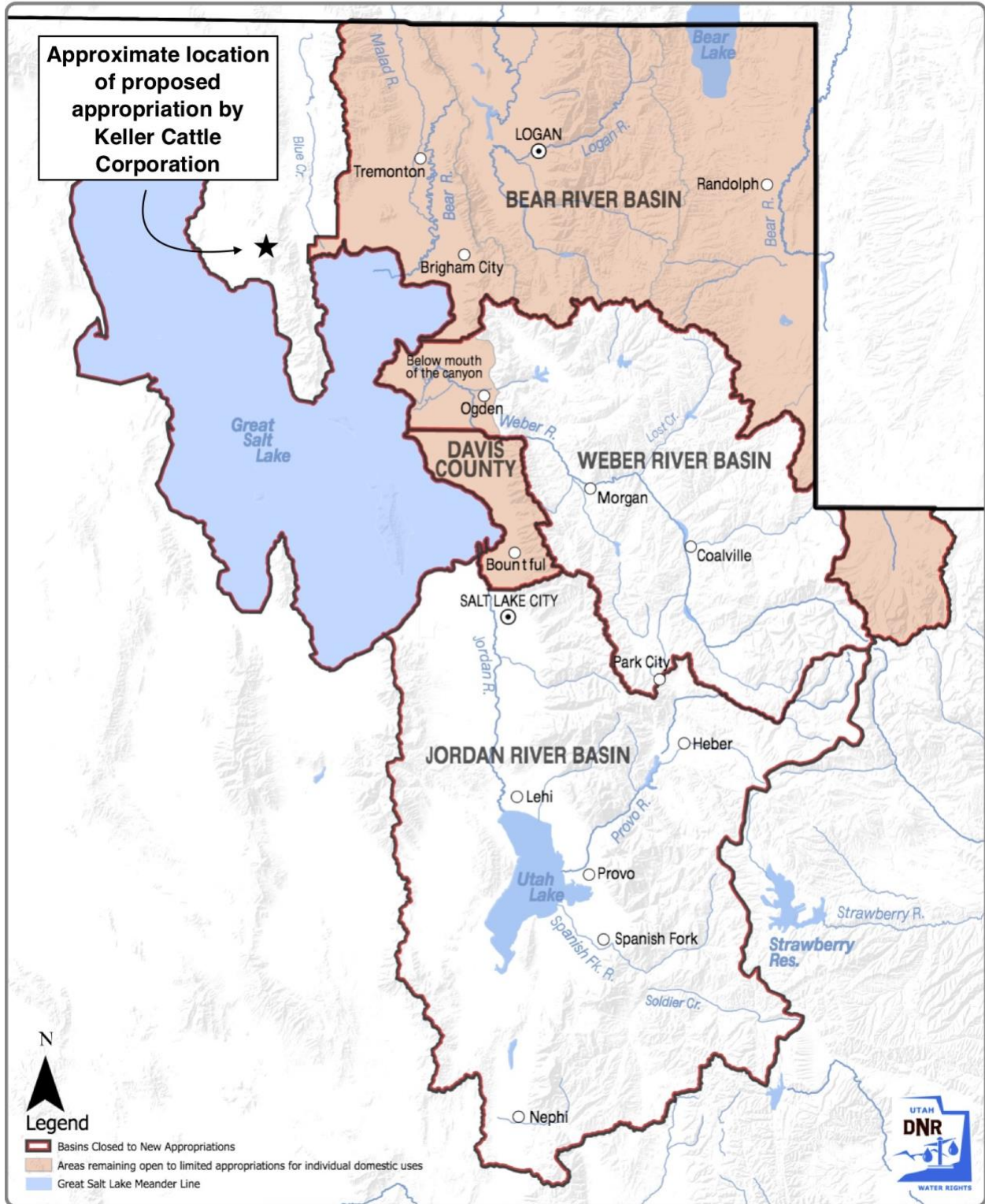


Figure 1: The Application proposes to appropriate water from an area technically outside of the Governor Cox's Proclamation 2022-01, but within the watershed of the Great Salt Lake. Map originally from Division of Water Rights with annotations added by Utah Rivers Council.

II. The Application requires investigation by the state engineer because it may affect public recreation, the natural stream environment, and prove detrimental to the public welfare.

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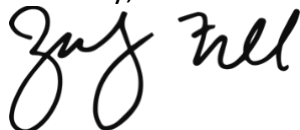
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Thank you for considering our arguments here and taking the time to review this protest.

Sincerely,



Zachary Frankel

Executive Director, Utah Rivers Council

Endnotes

- ¹ United States Geological Survey. (2023). Great Salt Lake at Saltair Boat Harbor, UT – 10010000.
- ² United States Geological Survey. (2023). Great Salt Lake Near Saline, UT – 10010100.
- ³ Utah Division of Forestry, Fire, and State Lands. (2013). *Final Great Salt Lake Comprehensive Management Plan and Record of Decision*. <https://ffsl.utah.gov/wp-content/uploads/OnlineGSL-CMPandROD-March2013.pdf>
- ⁴ Great Salt Lake Advisory Council. (2012). *Definition and Assessment of Great Salt Lake Health*. <https://documents.deq.utah.gov/water-quality/standards-technical-services/great-salt-lake-advisory-council/Activities/DWQ-2012-006862.pdf>
- ⁵ Great Salt Lake Strike Team. (2023). *Great Salt Lake Policy Assessment*. <https://gardner.utah.edu/wp-content/uploads/GSL-Assessment-Feb2023.pdf?x71849>
- ⁶ Wurtsbaugh, W. A., Miller, C., Null, S. E., Wilcock, P., Hahnenberger, M., & Howe, F. (2016). Impacts of water development on Great Salt Lake and the Wasatch Front.
- ⁷ Null, S. E., & Wurtsbaugh, W. A. (2020). Water development, consumptive water uses, and Great Salt Lake. *Great Salt Lake biology: A terminal Lake in a time of change*, 1-21.