

Office of the Utah Attorney General
MEMORANDUM

RE: Emergency Procurement of Outside Counsel for Great Salt Lake Litigation

DATE: June 19, 2025

This memorandum documents compliance with Utah Administrative Rule R105-1, which governs the selection of outside counsel, specifying certain requirements and setting forth the procurement authority of the Attorney General. It also serves as written justification for the emergency procurement of outside counsel for the Utah Department of Natural Resources (DNR), as required by Utah Code § 63G-6a-803 and R33-108-401. The legal services are for representing state agencies in the case of *Utah Physicians for a Healthy Environment et al. v. Utah Department of Natural Resources et al.*, Case #230906637, pending in the Third Judicial District Court for Salt Lake County.

Utah Code § 63G-6a-803 allows the Attorney General to authorize emergency procurement without using a standard procurement process if the procurement is necessary to protect the legal interests of a public entity. In making that authorization, the Attorney General is required to: (a) ensure the procurement is made with as much competition as reasonably practicable while protecting the aforementioned interests; and (b) make publicly available within 14 days (i) a written document describing the specific emergency, (ii) the name of the highest ranking government official that approved the emergency procurement, and (iii) each written contract related to the procurement. In addition, R33-108-401 requires written documentation laying out the basis for the emergency and selection of the procurement item be kept in the contract file.

Basis for the emergency. Utah Physicians for a Healthy Environment, American Bird Conservancy, Center for Biological Diversity, Sierra Club, and Utah Rivers Council (“Plaintiffs”) filed suit in Third District Court against the Department of Natural Resources, Division of Water Rights, and Division of Forestry, Fire, and State Lands (collectively “Defendants”) alleging Defendants have mismanaged the Great Salt Lake in violation of the Public Trust Doctrine. Declining lake elevations are the central focus of the lawsuit, and Plaintiffs seek a court order compelling Defendants to curtail upstream diversions as necessary to maintain a minimum lake elevation. Several water conservancy districts and other water users have intervened as defendants in the litigation, along with the Division of State Parks, Division of Wildlife Resources, Division of Water Resources, and the Board of Water Resources. In mid-December 2023, Defendants and the intervening parties filed motions to dismiss the case. Plaintiffs responded with a 135-page memorandum in opposition. Defendants filed reply memoranda on May 31, 2024. A consortium of law professors sought leave of court to file an amicus brief supporting Plaintiffs’ opposition to Defendants’ motions to dismiss, which the Court granted on July 23, 2024. The parties presented oral arguments on the motion on September 17, 2024. After a period of supplemental briefing, on March 27, 2025, the court

denied the Defendants motions to dismiss in substantial part. The court's significant legal conclusions in that decision are self-explanatory. The court's ruling required the state agencies to file a response to the Complaint. The state agencies filed their Answer on June 9, 2025. During this same time period, two attorneys working on the case (one representing DNR's Division of Fire, Forestry and State Lands and one representing the Division of State Parks) gave notice of their intent to leave state employment. The court has now issued a Notice of Event Due Dates and imminent court deadlines are approaching.

The complexity of this litigation and limited resources currently available to represent DNR and the other state agencies support retention of outside counsel. The scope and potential consequences of legal determinations in this litigation have created an emergency. Given these circumstances, immediate retention of outside counsel is necessary to represent the legal interests of DNR and the state agencies appearing in the case.

Basis for the selection of the procurement. The procurement requested is outside counsel with complex litigation experience pertinent to the lawsuit. Competitive rates and qualifications were considered with as much competition as reasonably practicable while protecting DNR's legal interests. Four qualified firms were invited to provide hourly rates and initial cost estimates, and two firms responded.

Selection. The appointment of Tyler Green of the firm Consovoy McCarthy is in the best interests of the state in light of the resources of the Attorney General's Office. First, the experience of lead counsel proposed by the firm appears best suited for the legal issues the State of Utah anticipates litigating. Second, the firm's partner rates are slightly lower than the lead counsel's rate of any competing proposals. The proposal rates were very similar, so this was not a determinative factor. Third, the firm does not have any conflicts that require management.

A copy of the written contract is attached.

Dated June 19, 2025

Mark E. Burns

Attorney General or designee