Utah Stream Access Coalition

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FOR IMMEDIATE RELEASE

Utah Stream Access Coalition Returns to Utah Supreme Court for Oral Arguments on Appeal

Salt Lake City, Utah – On Monday, January 9, 2023, the Utah Stream Access Coalition (USAC or "the Coalition") will return to the Utah Supreme Court for the third time in six years in its quest to vindicate Utahns' rights to recreate on public waters where they flow through private lands. This time, the Court will hear oral arguments on whether the Fourth District Court got it wrong when it summarily dismissed *USAC v. VR Acquisitions, LLC (Victory Ranch)* in response to pre-trial motions filed by Victory Ranch and the State of Utah.

The case was before the Fourth District Court on the question of whether the public had a right to use privately owned streambeds for recreational purposes when Utah adopted its Constitution in 1895. Earlier, the Supreme Court ruled that the existence of such a right at statehood is a prerequisite to the Coalition's claims today. Fourth District Court Judge Derek Pullan concluded that while "[t]he Coalition has come forward with substantial evidence that in the last half of the 19th century, Utahns widely and freely touched and used both public and private beds of Utah's lakes, rivers and streams for a variety of purposes, including recreation …. the Coalition has failed to prove that this historical use gave rise to a public easement dictated by our law in the late 19th Century."

The Coalition disagrees with this assessment and is asking the Utah Supreme Court to reverse Judge Pullan's ruling and to send the matter back to the Fourth District Court so that a trial can be held to fully consider the Coalition's "substantial evidence" of the existence of public easement rights at statehood. In 2008, the Utah Supreme Court itself recognized that these public easement rights existed under modern-day Utah law, but two years later the Utah Legislature passed the ironically named Public Waters Access Act of 2010 purporting to eliminate these rights, effectively taking away public access to approximately 2,700 miles of Utah's rivers and streams that flow over privately owned beds, or about 42% of Utah's fishable waters, and setting the stage for the present case in which the Coalition challenges the constitutionality of the Public Waters Access Act.

In an earlier case, the Coalition convinced Utah's Third District Court that the uppermost 40 miles of the Weber River met the test of navigability based on evidence that the River was used for commercial purposes prior to Utah becoming a state. That ruling, affirmed by the Utah Supreme in 2017, means that the public has a right to use the beds and banks of the upper Weber River – and other navigable rivers in Utah – for lawful recreational purposes, in perpetuity.

The Coalition is committed to the principle that the waters flowing in all of Utah's rivers and streams are owned by the public, and therefore the public should have the right to make use of such waters for lawful recreational purposes, regardless of whether they are navigable or who holds title to the lands beneath them. Through the present litigation – now in its twelfth year running – the Coalition intends to establish that these public rights are rooted in the Utah Constitution and cannot be abrogated by the Legislature's Public Waters Access Act.

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