

Eric P. Lee (USB #4870)
JONES, WALDO, HOLBROOK & McDONOUGH
1441 W. Ute Blvd., Suite 330
Park City, Utah 84098
Telephone: (435) 200-0085
elee@joneswaldo.com

Nathan D. Thomas (USB #11965)
Elizabeth M. Butler (USB #13658)
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main Street, Suite 1500
Salt Lake City, Utah 84101
Telephone: (801) 521-3200
nthomas@joneswaldo.com
ebutler@joneswaldo.com

Attorneys for Defendant VR Acquisitions, LLC

IN THE FOURTH JUDICIAL DISTRICT COURT, WASATCH COUNTY

STATE OF UTAH

UTAH STREAM ACCESS COALITION, a
Utah non-profit corporation,

Plaintiff,

vs.

VR ACQUISITIONS LLC, a Delaware limited
liability company; et al.

Defendants.

**VR ACQUISITIONS, LLC'S MOTION
FOR RECONSIDERATION**

Civil No. 100500558

Hon. Derek Pullan

Defendant VR Acquisitions, LLC ("VRA"), by and through counsel, hereby submits the following motion for reconsideration pursuant to Utah Rule of Civil Procedure 54(b).

In its March 8, 2013 Order, this Court articulated a test to determine whether H.B. 141 violates the Utah public trust doctrine. The Court, however, has not resolved the final factor of

its test – “whether the Act substantially impairs the public’s interest in the lands and waters remaining” (3/8/13 Order at 22–23). In light of Judge Kelly’s decision in the matter of *Utah Stream Access Coalition v. Park, et al.*, Third Judicial District, State of Utah, Case No. 110500360 (the “Weber Case”) and the Utah Supreme Court’s decision in *Eldridge v. Johndrow*, 2015 UT 21, VRA now moves the Court to reconsider certain conclusions it made in its prior orders. This motion is based upon ““Rule 54(b) of the Utah Rules of Civil Procedure ... [which] allows a court to change its position with respect to any order or decision before a final judgment has been rendered in the case.”” *Cope v. Utah Valley State Coll.*, 2012 UT App 319, ¶ 9, 290 P.3d 314 *aff’d on other grounds*, 2014 UT 53, ¶ 9, 342 P.3d 243 (quoting *Trembly v. Mrs. Fields Cookies*, 884 P.2d 1306, 1310 n. 2 (Utah Ct.App.1994)).

By this motion, VRA respectfully requests that the Court revise its prior orders in the following respects: (1) revise the January 21, 2015 Order denying VRA and the State’s motions for summary judgment on the grounds that in light of Judge Kelly’s ruling in the Weber Case, USAC cannot meet its burden to demonstrate that H.B. 141, codified at Utah Code Ann. 73-29-101 *et seq.*, impaired the public’s interests in the lands and waters that remain to any degree of certainty; and (2) revise the conclusion in the Court’s March 8, 2013 Order that a revocable regulation of a public use can violation Article XX, Section 1 of the Utah Constitution. As such, based on these revisions, VRA respectfully requests that the Court enter judgment as a matter of law in its favor.

As more fully discussed in the accompanying memorandum, the Weber Case demonstrates that USAC is unable to meet its burden to show that H.B. 141 caused a “substantial impairment” of the public’s interest in the lands and waters remaining; the number of non-navigable miles of streams and rivers of the state impacted by H.B. 141 is not known and, thus, any consideration of the extent of any impairment is not possible. Additionally, the Supreme Court’s decision in *Eldridge* indicates that factually intense legal tests not amenable to

meaningful judicial review of the type employed by the Court in this matter are disfavored. No such factual inquiry is necessary, however, upon application of *Illinois Central R. Co. v. Illinois*, 146 U.S. 387, 458 (1892) to assess the legislature's adherence to its public trust obligation. The test set forth in *Illinois Central*, sanctioned by the Utah Supreme Court, requires the state's cession of control as a necessary predicate to any factual inquiry regarding the degree of any impairment. Because, as this Court has concluded, the legislature did not cede control in enacting the revocable regulation, namely, H.B. 141, the analysis need not continue.

This motion is made with reference to and incorporation of *VR Acquisitions, LLC's Memorandum in Support of Motion for Reconsideration* filed concurrently herewith, and including any exhibits thereto, and all other pleadings and papers on file with the Court in the above-captioned matter. Accordingly, for the reasons set forth herein and more explicitly stated in VRA's Memorandum in Support, VRA respectfully submits that this Court grant judgment as a matter of law in favor of VRA.

DATED this 19th day of May, 2015.

JONES WALDO HOLBROOK & McDONOUGH PC

By: /s/ Nathan D. Thomas

Eric P. Lee

Nathan D. Thomas

Elizabeth M. Butler

Attorneys for Defendant VR Acquisitions, LLC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of May, 2015, I caused a true and correct copy of the foregoing to be served via electronic filing to the following:

Craig C. Coburn
Richards Brandt Miller Nelson
299 South Main Street, 15th Floor
Salt Lake City, UT 84111

John L. Young
YOUNG HOFFMAN, LLC
170 S. Main Street, Suite 1125
Salt Lake City, UT 84101

Thomas D. Roberts
Office of the Utah Attorney General
160 East 300 South, 5th Floor
PO Box 140857
Salt Lake City, UT 84114-0857

/s/ Nathan D. Thomas