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Attorney for PVR Inc. and Grand Canyon Trust

BEFORE THE UTAH DIVISION OF WATER RIGHTS

IN RE: GRAND CANYON TRUST AND
PVR, INC.'S, REQUEST FOR AGENCY
ACTION PURSUANT TO UTAH CODE
SECTION 73-3-13 REGARDING
DESERET GENERATION AND
TRANSMISSION CO-OPERATIVE'S
LACK OF DILIGENCE IN PUTTING
WATER RIGHT 49-258 TO BENEFICIAL
USE

**JOINT NOTICE OF SETTLEMENT AND
REQUEST TO STAY PROCEEDINGS**

Presiding Officer: Jared Manning, P.E.

Agency Action Number: SEAA2273

Water Right No. 49-258 (a38730)

PLEASE TAKE NOTICE that all parties to the above-captioned proceeding—
Deseret Generation & Transmission Co-operative, PVR Inc., and the Grand Canyon Trust

(collectively, the “Parties”)—have entered into a Settlement Agreement resolving this matter. The Settlement Agreement between the Parties is attached hereto as Exhibit A, and pursuant thereto, the Settlement Agreement is to be filed with the Utah Division of Water Rights (“UDWR”) and made publicly available in the records for the subject water right, Water Right No. 49-258.

Pursuant to Section 4 of the Settlement Agreement, the Parties respectfully request that UDWR stay the above-captioned proceeding, including vacating the hearing scheduled for August, 29, 2023, pending UDWR’s approval of the Change Application (as defined in the Settlement Agreement) for Water Right No. 49-258. The Change Application is required to be filed by Deseret Generation & Transmission Co-operative pursuant to Section 2 of the Settlement Agreement.

Following UDWR’s approval of the Change Application, the parties will file a joint request for dismissal of the above-captioned matter. Pursuant to Section 4 of the Settlement Agreement, the joint request for dismissal will respectfully request that UDWR’s order of dismissal expressly incorporate the terms and conditions of the Settlement Agreement, so that the Settlement Agreement becomes an enforceable order by UDWR.

Respectfully submitted on this 25th day of August, 2023.

Richard R. Hall

Richard R. Hall
Dorsey Whitney, LLP
Counsel for Deseret Power

Michael Toll

Michael Toll
Counsel for Grand Canyon Trust

/s Jeff Appel

Jeffrey W. Appel
Ray Quinney & Nebeker P.C.
*Counsel for Grand Canyon Trust and
PVR, Inc.*

EXHIBIT A

Settlement Agreement

[attached]

SETTLEMENT AGREEMENT

In Re: Grand Canyon Trust and PVR Inc. 's Request for Agency Action Pursuant to Utah Code Section 73-3-13 Regarding Deseret Generation and Transmission Co-Operative 's Lack of Diligence in Putting Water Right 49-258 to Beneficial Use
Utah Division of Water Rights, Agency Action No: SEAA2273

This SETTLEMENT AGREEMENT (the “*Agreement*”) is made and entered into this 25th day of August, 2023 (the “*Effective Date*”) by and between, on the one hand, Deseret Generation & Transmission Co-operative, a regional transmission and generation cooperative, having a mailing address of 10714 South Jordan Gateway, Suite 300, South Jordan, Utah 84095 (“*Deseret*”) and, on the other hand, PVR Inc., a Utah corporation, having an address of HC 64 Box 1803, Moab, Utah 84532 (“*PVR*”) and the Grand Canyon Trust, a nonprofit corporation having a headquarters address of 2601 N. Fort Valley Rd., Flagstaff, AZ (“*GCT*”, collectively with PVR, the “*Protestants*”). Deseret and the Protestants may be referred to herein individually as a “*Party*” and collectively as the “*Parties*.”

RECITALS

A. WHEREAS, the Application to Appropriate for Water Right No. 49-258 (the “*Water Right*”) was filed on February 10, 1965. To date, proof of beneficial use has not been filed for the Water Right. In 2012, Deseret acquired the Water Right from Enefit American Oil Co., an oil shale development company. In 2013, Deseret filed with the Utah Division of Water Rights (“*UDWR*”) a request for an extension beyond 50 years to file proof of beneficial use of the Water Right under Utah Code § 73-3-12(4)(b), which allows such extensions for wholesale electrical cooperatives that establish their need for the water to generate electricity to meet the reasonable future power requirements of the public.

B. WHEREAS, UDWR approved Deseret’s extension request in 2014, extending the Water Right’s proof due date to 2025 based on Deseret’s stated need for the water to generate electricity at the company’s Bonanza power plant to meet the reasonable future power requirements of the public. Under Utah Code § 73-3-12(3), which provides that “an application upon which proof has not been filed shall lapse and have no further force or effect after 50 years from the date on which the application is approved,” because proof had not been filed, the Water Right would have lapsed in 2015 but for the fact that Deseret Power sought and obtained an extension of time beyond 50 years based on Deseret’s stated need for the Water Right to generate electricity at the Bonanza power plant to meet the reasonable future power requirements of the public.

C. WHEREAS, on November 16, 2021, the Protestants filed a Request for Agency Action (the “*RAA*”) with UDWR alleging that Deseret was failing to satisfy its obligation under Utah Code § 73-3-12 to exercise reasonable and due diligence in putting the Water Right to beneficial use for electrical generation at the Bonanza power plant because Deseret had contractually granted to Enefit the exclusive right to use the full amount of the Water Right for oil shale development.

D. WHEREAS, in response to the Protestants’ RAA, UDWR commenced an administrative proceeding, number SEAA2273, captioned: IN RE: GRAND CANYON TRUST AND PVR, INC.’S, REQUEST FOR AGENCY ACTION PURSUANT TO UTAH CODE SECTION 73-3-13 REGARDING DESERET GENERATION AND TRANSMISSION CO-OPERATIVE’S LACK OF DILIGENCE IN PUTTING WATER RIGHT 49-258 TO BENEFICIAL USE (the “*Proceeding*”).

E. WHEREAS, the Parties now desire to settle and dismiss the Proceeding, in accordance with the terms and conditions of this Agreement.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, Deseret, PVR, and the GCT agree as follows:

1. Limitations on Type of Use and Place of Use of Water Right. Deseret agrees that the Water Right shall not be used, by Deseret or any other entity or person, for any type of use other than in connection with electrical power generation. Deseret also agrees that the Water Right shall not be used, by Deseret or any other entity or person, at any place of use other than the location of Deseret's existing Bonanza power plant site (the "**Bonanza Site**") as currently authorized under the Water Right. For the sake of clarity, this Agreement prohibits Deseret Power and all other entities or persons from using the Water Right for fossil fuel mining, extraction, processing, or development.

2. Water Right Change Application. Within thirty (30) days of the Effective Date, Deseret shall file a change application for the Water Right modifying the Water Right (the "**Change Application**") as follows:

a. *Type of Use.* The current approved uses under the Water Right are:

- i. Irrigation – Beneficial Use Amount: 10 acres
- ii. Domestic – Beneficial Use Amount: 135 EDUs
- iii. Mining – District: unorganized; Name: unnamed; Ores: Oil Shale
- iv. Other – Industrial: mining, retorting, drilling, steam generation, cooling, sanitation
- v. Power – Name: Bonanza (A steam generation power plant, Rated at 500 MW).

The Change Application shall remove **all** currently approved uses **except**: Power – Name: Bonanza (A steam generation power plant, Rated at 500 MW).

b. *Place of Use.* The current approved places of use for the Water Right include certain lands in Uintah County in proximity to the White River (primarily south of the White River). The Change Application shall remove as authorized places of use under the Water Right all currently approved places of use within the following townships and ranges:

- i. Township 9 South, Range 25 East, SLBM
- ii. Township 10 South, Range 24 East, SLBM
- iii. Township 10 South Range 25 East, SLBM
- iv. Township 11 South, Range 25 East, SLBM

Deseret shall diligently pursue the prosecution and approval of the Change Application, including defending the Change Application in the event it is protested. The Protestants will be allowed to protest the Change Application, and they will be deemed to have standing to do so, only if the Change Application

fails to comply with the terms of this Agreement and only to the extent necessary to enforce the terms of this Agreement. Deseret shall provide the Protestants a copy of the Change Application upon filing, and a copy of the Order of the State Engineer approving the Change Application upon issuance. If the State Engineer denies the Change Application for any reason, Deseret shall take any and all steps necessary to rectify the issues that resulted in the State Engineer's denial, and Deseret will refile the Change Application pursuant to this Agreement within (30) days of the order of denial.

3. Future Change Applications. Following UDWR's approval of the Change Application, Deseret agrees not to pursue a new change application or any similar authorization that would allow any authorized types of use of the Water Right other than electrical power generation, or that would allow any authorized places of use of the Water Right other than the Bonanza Site, without the prior written approval of the Protestants, which shall not be unreasonably conditioned, withheld, or delayed. In determining what constitutes unreasonable conditions, withholding, or delay, the Parties agree that the only permissible types of use for, or places of use of, the Water Right are those necessary and useful for electrical power generation, and do not include any types of use, or places of use, related to fossil fuel development.

4. Stay and Dismissal of Proceeding. As of the Effective Date, the Parties agree to suspend the Proceeding until such time as the Change Application is approved by UDWR. Within two (2) days of the execution of this Agreement, the Parties shall notify UDWR of the Agreement and file a request to stay the Proceeding (the "*Stay Request*"). The Stay Request shall include this Agreement as an attachment, which shall be filed in UDWR's records for the Water Right and shall be publicly available. Upon approval of the Change Application, the Parties shall file a joint request for dismissal of the Proceeding, which shall include a request that UDWR's order of dismissal expressly incorporate the terms and conditions of this Agreement, so that this Agreement becomes an enforceable order by UDWR.

5. Future Extension Requests. The Protestants acknowledge that Deseret will be seeking future requests for extension of the Water Right pursuant to the provisions of Utah Code § 73-3-12(4) based on a showing that the Water Right is required by Deseret (or an affiliate, successor, or assign), as a wholesale electrical cooperative, to meet the reasonable future electrical requirements of the public, with the most immediate request to be filed in 2025. The Protestants agree not to protest such future extension requests so long as: (1) Deseret is in compliance with the terms of this Agreement, and (2) the extension request demonstrates that Deseret, as a wholesale electrical cooperative, needs the Water Right to meet the reasonable future electrical requirements of the public, as required under Utah Code § 73-3-12(4). Furthermore, the Protestants shall not encourage, facilitate, or support the protest of such an extension request by Deseret by another party.

6. Deseret's Other Water Rights. This Agreement, and the terms and conditions contained herein, pertains solely to Water Right No. 49-258, and shall not apply to, or in any way limit, regulate or effect, Deseret's use of its other water rights.

7. Miscellaneous. In addition to the foregoing, the Parties to this Agreement agree as follows:

a. *No Admission of Liability.* The Parties acknowledge and agree that this Agreement does not constitute an admission of liability or wrongdoing of any nature whatsoever by any of the Parties, and that this Agreement shall not be used as evidence of any liability or wrongdoing for any purpose whatsoever except as may be necessary to enforce the terms and conditions of this Agreement.

b. *Entire Agreement.* This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the Parties with respect thereto.

c. *Binding Effect.* This Agreement shall be binding upon, and shall inure to the benefit of, the Parties to it and their respective successors and assigns.

d. *Severability.* In the event that any provision of this Agreement shall be held invalid and unenforceable, such provision shall be severable from, and such invalidity and unenforceability shall not be construed to have any effect on, the remaining provisions of this Agreement.

e. *Enforcement.* The terms and conditions of this Agreement are enforceable both in a court of competent jurisdiction and in a proceeding before UDWR.

f. *Attorney's Fees.* In any litigation or other proceeding relating to the breach of any covenant of any Party to this Agreement, the prevailing Party or Parties (as the case may be) shall be entitled to recover its out-of-pocket costs and reasonable attorneys' fees, including those incurred at trial or on appeal.

g. *Expenses.* Each Party shall bear its own costs and expenses incurred in connection with the negotiation of this Termination, and all other documents prepared in connection therewith.

h. *Further Assurances.* The Parties agree to execute any additional documents or agreements necessary to facilitate the intent of this Agreement.

i. *Governing Law.* This Agreement shall be governed by the laws of the State of Utah.

j. *Modification.* This Agreement shall not be modified except in writing signed by the parties.

k. *Counterparts.* This Agreement may be executed electronically and in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.


l. *Authority.* Each signatory represents that he or she has the full authority to legally bind the party on whose behalf he or she has executed this Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

DESERET:

DESERET GENERATION & TRANSMISSION
CO-OPERATIVE
a regional transmission and generation cooperative

DocuSigned by:

0467CE184EED477

By: Jeffrey M. Peterson
VP & General Counsel

Dated this 25th day of August, 2023

PVR:

PVR Inc.,
a Utah corporation

/s/ Jeff Appel

By: Jeffrey W. Appel
Ray Quinney & Nebeker P.C.

Counsel for PVR Inc. and Grand Canyon Trust

Dated this 25th day of August, 2023

GCT:

Grand Canyon Trust,
a nonprofit corporation



By: Michael Toll
Counsel for Grand Canyon Trust

Dated this 25th day of August, 2023