**BEFORE THE ENVIRONMENTAL APPEALS BOARD**
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**WASHINGTON, D.C.**

| In re: | |
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| Deseret Power Electric Cooperative, Bonanza Power Plant, | Appeal Nos. CAA 15-01; CAA 15-02 |
| Permit No. V-UO-000004-00.00 | |

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement" or "Settlement Agreement") is made by, between, and among Region 8 of the U.S. Environmental Protection Agency ("EPA Region 8"); Sierra Club; WildEarth Guardians ("Guardians"); and Deseret Generation & Transmission Co-operative ("Deseret"). EPA Region 8, Sierra Club, Guardians, and Deseret are sometimes referred to jointly as the "Parties" and individually as a "Party."

## RECITALS

1. Deseret owns and operates the Bonanza Power Plant ("Plant"), which includes a single 500 MW electric generating unit located in Uintah County, Utah.
2. On December 5, 2014, the Director of the Air Program, U.S. Environmental Protection Agency (EPA), Region 8 issued a Part 71 Permit to Deseret Power Electric Cooperative Bonanza Power Plant pursuant to title V of the Clean Air Act ("Part 71 Permit" or "Title V Permit"). Permit No. V-UO-000004-00.00.
3. On December 3, 2014, two days before the Bonanza Part 71 Permit was issued, EPA Region 8 also issued a Proposed Prevention of Significant Deterioration (PSD) permit for the Bonanza facility. Draft Air Pollution Control PSD Permit to Construct, PSD-UO-000004-2014.003 (December 3, 2014; also referred to as the "Proposed PSD Permit"). EPA Region 8 has not taken final action on the Proposed PSD Permit.

4. On January 7, 2015, the above-referenced Petitions for Review (Appeal Nos. CAA 15-01; CAA 15-02) of the Bonanza Part 71 permit were filed with the Environmental Appeals Board (the "EAB Appeal").
5. On January 27, 2015, Deseret filed an unopposed motion to participate as intervenor. The Board granted Deseret's request on January 29, 2015.
6. The Parties have agreed to settle this action without any admission of fact or law, which the parties consider to be a just, fair and equitable resolution of the claims raised in this action.

NOW, THEREFORE, the Parties intending to be bound by this Agreement, hereby incorporate by reference and agree to the accuracy of the above recitals and further agree as follows:

**DEFINITIONS**

7. For the purposes of this Agreement, in addition to terms defined in the preceding and following paragraphs, the following definitions apply:
    a. "$CO_2$" means carbon dioxide;
    b. "End of Service" means the permanent cessation of operations to generate electricity at Bonanza Power Plant Unit 1.
    c. "LNB/OFA" means low-NOx burners and overfire air technology;
    d. "NOx" means nitrogen oxides;
    e. "Related Actions" means any administrative or judicial proceedings pertaining to the Title V Permit, the Proposed PSD Permit, the EAB Appeal, and the Bureau of Land Management (BLM) Litigation (as defined in Paragraph [17.a]);
    f. "SCR" means selective catalytic reduction technology for NOx reduction;

g. "Unit 1" means the existing Bonanza Power Plant Unit 1 as identified in the Title V Permit (Permit Number V-UO-000004-00.00) and includes minor modifications that do not trigger New Source Review permitting during the remaining life thereof, but does not include any modifications to Unit 1 if such modified unit is permitted under New Source Review and meets Standards of Performance for New Stationary Sources (NSPS) applicable to new sources or modified/ reconstructed sources which commence construction after the effective date of this Agreement.

h. "Coal" includes coal, metallurgical coke, petroleum coke, and/or tires or any other fuel made or derived from the foregoing.

i. "Petitioners" means Sierra Club and WildEarth Guardians.

## SPECIFIC TERMS OF AGREEMENT

8. EPA Environmental Appeals Board ("Board") Notification: No later than 10 days from the date this Settlement Agreement is signed by the Parties, the Parties jointly will notify the Board that the Parties have provisionally reached this Settlement Agreement, will submit the Settlement Agreement to the Board, and will request that the Board continue to hold Appeal Nos. 15-01 & 15-02 in abeyance pending EPA's final action on Deseret's application for a Minor New Source Review ("NSR") Permit under Paragraph [13] of this Agreement. Petitioners shall be barred from moving to lift the stay of action on their Petitions except pursuant to the terms and conditions specified in Paragraphs [16] and [21] below.

9. Public Notice: The Parties agree and acknowledge that before this Agreement becomes final, the Environmental Protection Agency ("EPA") must provide notice in the *Federal Register* and an opportunity for comment for persons not named as parties or intervenors in this matter pursuant to CAA section 113(g), 42 U.S.C. § 7413(g). After this Agreement has undergone

an opportunity for notice and comment, the Administrator shall promptly consider any such written comments in determining whether to withdraw or withhold his/her consent to the Agreement, in accordance with section 113(g) of the CAA. If the Administrator elects not to withdraw or withhold his/her consent to the Agreement, EPA Region 8 shall provide written notice to the Parties as expeditiously as possible, and this Agreement shall become final on the date of such written notice.

10. Minor NSR Permit Application: Within 30 days after this Agreement becomes final under Paragraph [9], Deseret will submit an application to EPA Region 8 for a Minor NSR Permit for the Plant ("Application") pursuant to 40 C.F.R. part 49 ("Tribal NSR Rule"). The Application will include the following requested permit terms, as well as any additional information as needed and requested by EPA to process the permit application regarding these terms and other information needed for the permit:

    a. NOx Control Requirements and Emissions Limits:

        i. Deseret shall install and operate LNB/OFA at the Plant no later than June 30, 2016, if EPA Region 8 issues a final Minor NSR Permit for the Plant on or before December 31, 2015, or no later than June 30, 2018, if EPA Region 8 issues a final Minor NSR Permit for the Plant on or after January 1, 2016.

        ii. Beginning no later than 425 boiler operating days after installation of LNB/OFA, Unit 1 shall not discharge into the atmosphere $NO_x$ in excess of 0.28 lbs/MMBTU heat input, based on a 365-day rolling average. Compliance shall be determined as follows: first, sum the pounds of NOx emitted from Unit 1 during the most recent boiler operating day and the previous 364 boiler operating days; second, sum the total heat input to Unit 1

in mmBTU during the most recent boiler operating day and the previous 364 boiler operating days; and third, divide the total number of pounds of NOx emitted during the 365 boiler operating days by the total heat input during the 365 boiler operating days. A new 365-Day Rolling Average Emission Rate shall be calculated for each new boiler operating day.

iii. Total NOx emissions from the Plant shall not exceed 5,700 tons per year on a rolling 12 calendar month basis, to begin in the third calendar month that permitted operations of LNB/OFA commence. Deseret shall provide written notification to EPA Region 8 of the date that operation of the LNB/OFA commences.

iv. For the period from January 1, 2030 until the End of Service, total NOx emissions from the Plant shall not exceed 3,000 tons per year on a rolling 12 calendar month basis.

v. In determining NOx emissions under this Paragraph [10.a] from the period beginning no later than 60 days after installation of LNB/OFA until the End of Service, Deseret shall use data from Continuous Emission Monitoring Systems ("CEMS") as defined in 40 C.F.R. § 72.2 and installed and operated in accordance with 40 C.F.R. Part 75 and shall include all periods of startup, shutdown, and malfunction; however, the NOx data need not be bias adjusted and the missing data substitution procedures of 40 C.F.R. Part 75 shall not apply to such determinations. Diluent capping (i.e., 5% $CO_2$) will be applied to the NOx emission rate for any hours where the measured $CO_2$ concentration

is less than 5% following the procedures in 40 C.F.R. Part 75, Appendix F, Section 3.3.4.1.

b. Coal Consumption Cap:

i. For the period from January 1, 2020 through End of Service of Unit 1, coal consumption at the Plant shall not exceed 20,000,000 short tons of coal.

ii. Coal consumption under this Paragraph [10.b] will be determined by weight avoirdupois, regardless of coal source or quality. Quantity of coal consumed will be measured by the Unit 1 coal pulverizer feeder belt scales, calculated monthly, and reported with the Plant's compliance report for the relevant reporting period (currently submitted at least semi-annually under 40 C.F.R. § 60.51Da). The pulverizer feeder belts scales will be calibrated per manufacturer's calibration procedures no less than twice per calendar year and in at least two (2) different calendar quarters during the year. A pulverizer feeder belt scale calibration will also be conducted when a pulverizer feeder belt is replaced. A copy of the calibration procedure and, for each calibration, a record of the pulverizer number, calibration date and reason for calibration will be kept on site. A copy of any revision to the manufacturer's calibration procedures and a record of the dates of each completed calibration shall be provided by Deseret with its annual compliance certification required by 40 C.F.R. § 71.6(c)(5).

c. Contingent Releases from Coal Consumption Cap:

i. The coal consumption cap in Paragraph [10.b] shall not apply after the date that any of the following events occur:

(1) Deseret applies for and receives approval to construct from EPA Region 8 (to the extent required), and installs and operates an SCR at Unit 1 prior to December 31, 2029, and Unit 1 achieves and continuously complies with a NOx emission limit of 0.05 lb/MMBtu 12-month rolling average, measured with CEMS (with permit terms that establish monitoring, recordkeeping and reporting requirements specific to the SCR system) as defined and required in Paragraph [10.a.v], beginning no later than 180 days after the SCR installation is complete; or

(2) Due to petitions or other actions commenced by unaffiliated third parties or governmental authorities (including EPA), and without Deseret's consent, Deseret is required to and does install and operate an SCR at Unit 1 prior to December 31, 2030, and achieves and continuously complies with a NOx emission limit of 0.05 lb/MMBtu 12-month rolling average, measured with CEMS (with permit terms that establish monitoring, recordkeeping and reporting requirements specific to the SCR system) as defined and required in Paragraph [10.a.v], beginning no later than 180 days after the SCR installation is complete.

ii. Deseret must notify Petitioners of its decision to install and operate an SCR at Unit 1 at least 24 months in advance of its intended date for commencing SCR operation; and must apply to EPA at least 12 months in advance of its intended date for commencing construction, and receive a permit before

commencing construction, of SCR for a revision to the Minor NSR Permit specified in Paragraph [13], to incorporate requirements for SCR. If Deseret does not notify Petitioners of its choice to install SCR prior to December 31, 2027 (in the event of voluntary SCR installation under Paragraph [10.c.i.(1)]) or December 31, 2028 (in the event of SCR installation under Paragraph [10.c.i.(2)]), then the release in Paragraph [10.c.i] will not apply and the coal consumption cap in Paragraph [10.b] will continue in effect until the End of Service of Unit 1.

11. Regional Haze: In conducting any reasonable progress analysis under the regional haze rule, EPA Region 8 acknowledges that in calculating Deseret's baseline emissions EPA Region 8 intends to reflect any emission reductions that result from a final LNB/OFA Minor NSR Permit and installation of LNB/OFA.

12. EPA Region 8 Review of Application: Within 60 days after receiving and determining Deseret's application is technically complete, EPA Region 8 will publish notice of a draft Minor NSR Permit for the Plant in accordance with the public participation requirements of 40 C.F.R. part 49. If, while processing the application that has been determined to be technically complete, EPA Region 8 determines that additional information is necessary to evaluate or take proposed or final action on the application, it may request additional information from Deseret, and Deseret will provide such information as expeditiously as reasonably possible.

a. The terms of the draft Minor NSR Permit will include the requested terms described in Paragraph [10] of this Agreement that are included in Deseret's forthcoming Application. The draft Minor NSR Permit will not include any term inconsistent with Paragraph [10] of

this Agreement, any term that would alter any emission limits or applicable CAA requirements to which Deseret is subject at the time notice of the draft Minor NSR Permit is published (other than those in the requested terms or standard terms used in Minor NSR permits), or any term that would impose on Deseret a new requirement not currently in the Title V Permit (other than those in the requested terms).

b. In the notice for the draft minor NSR Permit, EPA Region 8 also intends to include a statement explaining that it plans to withdraw the Proposed PSD Permit ten days after the Minor NSR Permit becomes final and effective and include a statement to this effect as part of the final Minor NSR Permit action.

13. EPA Final Action on Draft Minor NSR Permit: After the draft Minor NSR Permit has undergone an opportunity for notice and comment, EPA Region 8 shall promptly consider any such comments and within 90 days after publishing notice of the draft Minor NSR Permit, EPA Region 8 will provide Deseret and the Petitioners with excerpted permit terms and any relevant accompanying statement(s) from an advance copy of the Agency's intended final Minor NSR Permit at least 50 days prior to the Region's notification of the permit decision in writing pursuant to 40 C.F.R. 49.159(a). Such excerpts shall include all substantive terms (i.e., all terms other than standard, general condition terms) of the intended final Minor NSR Permit and statement(s), including but not limited to, the terms and statement(s), if any, that cover the provisions under Paragraphs [10.a], [10.b], and [12.b].

a. Deseret and Petitioners' Review. If Deseret or one or both of the Petitioners do not believe the excerpted permit terms and statement(s) adequately serve to implement the Agreement in principle, within 20 days of receiving the advance permit terms and statement(s), the objecting Party may provide the other Parties with written notice of the

dispute and a request for negotiations. The Parties shall meet and confer in order to attempt to resolve the dispute within 30 days of written notice. If the Parties are unable to reach resolution within that time frame, (i) one or both Petitioners (if they are the objecting Party or Parties) may file a motion requesting that the Board lift its stay in their pending Petitions in Appeal Nos. 15-01 & 15-02; and (ii) Deseret (regardless of whether it is the objecting Party) may, at its sole discretion, notify EPA Region 8 that it elects to withdraw the Application. If Deseret elects to withdraw its Application, EPA Region 8 shall not issue a final Minor NSR Permit; Deseret shall be under no further obligation to submit an application for a Minor NSR Permit or to complete any portion(s) of the LNB/OFA project contemplated pursuant to this Settlement; and this Agreement shall terminate 30 days after written notice by Deseret to the Parties of Deseret's withdrawal of such Application. If no Party requests negotiations within the 20 day time frame, EPA Region 8 may issue the final Minor NSR Permit. No Petitioner may appeal the final Minor NSR Permit.

14. Regulation of Carbon Dioxide ($CO_2$) From Bonanza Power Plant: In the event that EPA Region 8 issues a final Minor NSR Permit for the Plant with provisions that are consistent with Paragraph [10], to the extent allowed under any future program, Sierra Club, Guardians, and EPA will not oppose Deseret taking credit for any reductions in $CO_2$ emissions from Unit 1 that result from reduced coal consumption under the Minor NSR Permit or Deseret relying on such $CO_2$ reductions for the purpose of demonstrating compliance with any applicable $CO_2$ emission standards.

## DISMISSALS, RELEASES, FORBEARANCE, AND WITHDRAWAL OF OTHER MATTERS

15. Forbearance on Proposed PSD Permit: To the extent it is not required by court order, EPA will not take final action on the Proposed PSD Permit before the date on which it intends to withdraw the Proposed PSD Permit pursuant to Paragraph [12.b].

16. Disposition of Petitions: In the event that EPA Region 8 issues a final Minor NSR Permit for the Plant with provisions that are consistent with Paragraph [10], within 10 business days after such Minor NSR Permit becomes final and non-appealable, Petitioners will file a motion with the Board to dismiss with prejudice their pending Petitions in Appeal Nos. CAA 15-01 & 15-02. EPA Region 8 intends to process the Minor NSR Permit as expeditiously as practicable, and in the event that EPA Region 8 does not issue a final Minor NSR Permit with provisions that are consistent with Paragraph [10] within 140 days after publishing notice of the draft Minor NSR Permit, Petitioners will either file a motion with the Board to dismiss with prejudice their pending Petitions in Appeal Nos. 15-01 & 15-02 or file a motion requesting that the Board lift its stay.

17. Release, Forbearance, and Withdrawal of Other Matters: In the event that EPA Region 8 issues a final Minor NSR Permit for the Plant that includes provisions and relevant accompanying statement(s) consistent with Paragraphs [10] and [12.b], the Parties referenced below further agree that:

    a. Within 10 days after the Minor NSR Permit becomes final and non-appealable, Guardians will dismiss with prejudice its lawsuit in *WildEarth Guardians v. Bureau of Land Management, et al.* (Case No. 1:14-cv-01452 (D. Colo.)) (the "BLM Litigation").

    b. Petitioners may not challenge EPA's withdrawal of the Proposed PSD Permit in any formal administrative or judicial forum.

c. Within 10 days after the Minor NSR Permit becomes final and non-appealable, Deseret will provide EPA Region 8 with notice, as specified in Paragraph [36], of its withdrawal of the outstanding PSD permit application to construct a waste coal-fired unit at the Plant. *In re Deseret Power Electric Cooperative,* 14 E.A.D. 212 (EAB 2008) (PSD permit remanded to EPA Region 8).

d. Petitioners will neither commence nor join any proceeding in any formal administrative or judicial forum, nor submit any written comments in any administrative action (including, but not limited to, rulemakings and permit actions), seeking the installation of SCR at Unit 1.

e. Petitioners will not commence any action, suit, or proceeding described or set forth in the Notice of Intent to Sue Letter dated April 25, 2012 from Guardians to Deseret.

f. Notwithstanding the foregoing, nothing in this Agreement limits Petitioners' ability to oppose any application by Deseret for lease or mining rights to acquire additional sources of fuel other than from existing coal leases awarded to Blue Mountain Energy, Inc.

g. Petitioners will not provide legal assistance by Sierra Club or Guardians staff, or contract with any outside counsel to provide legal assistance, or fund any third parties in any proceeding or action described in Paragraphs [17.d] and [17.e] above.

h. Within ten days after the Minor NSR Permit becomes final and non-appealable, Deseret and Sierra Club will withdraw their respective FOIA requests (FOIA

numbers: Deseret, EPA-R8-2014-006863 and Sierra Club, EPA-R8-2014-007585).

18. Notice of Asserted Violation and Opportunity to Cure: In the event Deseret asserts either or both Petitioners are in violation of any provision of this Agreement related to release, forbearance, or withdrawal of claims, Deseret will provide Petitioners with written notice of such asserted violation. Before pursuing action to enforce Petitioners' asserted violation, Deseret will provide Petitioners an opportunity to take reasonable action to cure such asserted violation within 30 days of receiving written notice. Reasonable action to cure an asserted violation may include, but is not limited to, withdrawing comments, dismissing claims, or filing corrective comments. Deseret shall not unreasonably determine such actions to be an inadequate cure for an asserted violation. In the event that Deseret asserts Petitioner(s) have breached this Agreement by funding third parties to submit written comments in any proceeding described in Paragraph [17.d], the parties agree that submission of corrective comments by Petitioner(s) in the same forum where the alleged breach occurred disclaiming the third-party comments is a complete cure, regardless of whether or not there is an open public comment period or the forum accepts or considers the corrective comments. Enforcement of this Agreement may be sought only against the Party or Parties claimed to be in breach of the Agreement.

19. End of Service Within Deseret's Discretion: Nothing in this Agreement limits Deseret's discretion to determine the End of Service for Unit 1, subject only to the caps on coal consumption set forth in Paragraph [10.b] (if applicable).

20. Inapplicability to Additional Units: Nothing in this Agreement restricts, limits, or otherwise applies to the rights or obligations of the Parties with respect to any new or

additional units to be located at the site of the Plant. The forbearance covenants in Paragraph [17] do not extend to actions or efforts by Petitioners to oppose the issuance of any permits to construct new or additional units at the Plant. Without limiting the foregoing, nothing in this Agreement prevents Deseret from:

a. Proposing to construct or constructing a new source or unit on the site of the Plant, consistent with CAA applicable requirements. Any new source or unit must satisfy applicable preconstruction permitting requirements, as determined by EPA under applicable CAA requirements. Petitioners may oppose any permit to construct such a new source or unit on any grounds not based on this Agreement.

b. Proposing to construct or constructing any fuel co-firing project at Unit 1. Any fuel co-firing project must satisfy applicable preconstruction permitting requirements, as determined by EPA under applicable CAA requirements. Petitioners may oppose any permit to construct such a new source or unit on any grounds not based on this Agreement.

c. Retaining, using, applying, or trading emission credits or allowances, including credits or allowances for $CO_2$ emissions, for Unit 1 or for any future projects, emission sources, or emission units at the site of the Plant, to the extent authorized.

## MISCELLANEOUS PROVISIONS

21. Enforcement of Terms:

a. Should EPA or Deseret fail to take an action as provided for in this Agreement or take an action prohibited by this Agreement prior to dismissal of the Petitions as

provided in Paragraph [16], the Petitioners' sole remedy is to file a motion requesting that the Board lift its stay of action on the Petitions.

b. Should Deseret fail to take an action as provided for in this Agreement or take an action prohibited by this Agreement after dismissal of the Petitions as provided in Paragraph [16], or should the Petitioners fail to take an action as provided for in this Agreement or take an action prohibited by this Agreement, any enforcement of this Agreement may be sought only against the Party or Parties claimed to be in breach of the Agreement. The Parties agree that specific performance is the only appropriate remedy for any such breach of this Agreement. Monetary damages shall not be allowed for any breach of this Agreement. Provided that nothing in this paragraph shall preclude or prevent EPA, Sierra Club, or Guardians from enforcing the terms of any permits issued that incorporate the terms of this Agreement in addition to or instead of enforcement of this Agreement.

c. In the event of a disagreement between the Parties concerning the interpretation or performance of any aspect of this Settlement Agreement, the disputing Party shall provide the other Party with written notice of the dispute and a request for negotiations. The Parties shall meet and confer in order to attempt to resolve the dispute within 30 days of the written notice. If the Parties are unable to reach resolution within that time frame, any Party may seek enforcement as provided in Paragraphs [21.a] or [21.b], as applicable.

22. No Precedent: It is specifically understood and agreed that this Settlement Agreement is executed for the sole purpose of settling Appeal Nos. 15-01 & 15-02. No Party shall be deemed to have approved, accepted, or consented to any principle, or statutory or

regulatory interpretation related to CAA source determinations or any of the matters agreed to herein or raised in connection with the issues settled herein. Nothing in this Agreement shall constitute nor be deemed an admission or agreement on the part of Deseret or any of its agents or affiliates to any factual allegation, legal assertion, or theory advanced or advocated by any Party to this Agreement or any other party to the Related Actions, including any person(s) providing comments or otherwise participating with respect to or in the course of any of the Related Actions. This Agreement shall have no precedential value and shall not be binding on any Party as to any claims, issues, or appeals, other than those specifically addressed herein.

23. Successors and Assigns: The terms of this Agreement shall bind and inure to the benefit of the principals, agents, related or affiliated entities, representatives, successors, predecessors-in-interest, and assigns of the Parties. Any change in ownership or corporate legal status, including but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Parties under this Agreement.

24. Authority: Each undersigned representative of the parties to this Settlement Agreement certifies that he or she is fully authorized to enter into and execute the terms and conditions of this Settlement Agreement and to legally bind such party to this Settlement Agreement. By signature below, all parties consent to this Settlement Agreement.

25. Counterparts: This Settlement Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

26. Construction: It is hereby expressly understood and agreed that this Settlement Agreement was jointly drafted by the Parties. Accordingly, the Parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Agreement.

27. Effective Date: This Agreement will be effective upon signature of all Parties, subject to final approvals pursuant to Paragraph [9].

28. Entire Agreement: This Settlement Agreement shall constitute a complete and final settlement of all claims that were asserted, or could have been asserted, by Petitioners against EPA in the Petitions. All prior conversations, meetings, discussions, drafts, and writings of any kind are specifically superseded by this Settlement Agreement.

29. Modification: The provisions of this Agreement can be amended or modified only by the written agreement and signature of all Parties.

30. EPA's Discretion: Nothing in this Settlement Agreement shall be construed to limit or modify EPA's discretion to promulgate, alter, amend or revise any regulations, guidance, policy, or interpretation EPA may issue in accordance with, or on matters related to, this Settlement Agreement from time to time or to promulgate or issue superseding regulations, guidance, policies, or interpretations. If such event renders provisions of this Settlement Agreement moot, EPA shall have the right to withdraw from this Settlement Agreement and shall notify the Parties of its reason for doing so.

31. Funding and Authority: No provision of this Settlement Agreement shall be interpreted as or constitute a commitment or requirement that the Parties obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or take actions in

contravention of the Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-706, the CAA, or any other law or regulation, either procedural or substantive.

32. Costs and Attorney Fees: Each Party shall bear its own costs and attorney fees in this matter. In the event that any action should be necessary to enforce the terms and conditions of this Agreement, each party shall bear its own costs and attorney fees, including the costs and fees of enforcing any judgment. This paragraph does not apply to any future action to enforce any terms of a permit issued pursuant to the CAA, other than the terms in Paragraph [10].

33. Voluntarily Entered: This Settlement Agreement is entered into voluntarily by and between each of the Parties. The Parties agree that this Agreement has been negotiated by the Parties in good faith, that the settlement of the claims against EPA in this case will avoid prolonged litigation among the Parties and preserve Board resources, and that this Agreement is fair, reasonable, and in the public interest in accordance with the CAA.

34. No Third-Party Rights: Nothing in this Agreement shall be construed to make any other person or entity not executing this Agreement a third-party beneficiary to this Agreement.

35. Lapse in Appropriations: If a lapse in the appropriations that fund EPA occurs prior to any of the deadlines applicable to EPA in this Agreement, the deadline(s) shall be extended automatically one day for each day of lapse in appropriations.

36. Written Notices: Any notices required or provided for by this Agreement shall be in writing and shall be deemed effective (1) upon receipt if sent by U.S. Postal Service, or (2) upon the date sent if sent by overnight delivery, facsimile, or email. To be effective, any such notice must be sent to the following:

For Sierra Club:

Sierra Club Environmental Law Program
85 Second St, Second Floor
San Francisco, CA 94105
Attn: Aaron Isherwood, Andrea Issod

For WildEarth Guardians:

WildEarth Guardians
Attn: Climate and Energy Program
516 Alto St.
Santa Fe, NM 87501

For EPA:

U.S. Environmental Protection Agency
Region 8 Office of Regional Counsel (8-ORC)
1595 Wynkoop Street
Denver, CO 80202-1129
Attn: Sara Laumann

For Deseret:

Deseret Generation and Transmission Cooperative
10714 South Jordan Gateway, Suite 300
South Jordan, Utah 84095
Attn: David Crabtree, General Counsel

37. Use of Settlement Agreement: Except as provided herein, this Settlement Agreement shall not constitute an admission or evidence of any fact. This Agreement shall not constitute an admission of wrongdoing, misconduct, or liability on the part of any Party.

IN WITNESS WHEREOF, the Parties' duly authorized representatives have executed this Settlement Agreement on the dates indicated below:

DATE 10/5/2015

Sara I. Tasmania
Associate Regional Counsel
Office of Regional Counsel
EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-2466

DATE 10/5/15

Kristin Smith
~~Attorney-Adviser~~ Assistant General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington D.C. 20460

DATE: 10/5/15

Andrea Issod
Senior Attorney
Sierra Club Environmental Law Program
85 2nd Street, 2nd Floor
San Francisco, California 94105

DATE: 10.5.15

John Horning
Executive Director, Climate and Energy Program
WildEarth Guardians
516 Alto Street
Santa Fe, New Mexico 80751

DATE: Oct 2nd 2015

Kimball R. Rasmussen
President, Chief Executive Officer
Deseret Generation and Transmission Cooperative
10714 S. Jordan Gateway, Suite 300
South Jordan, Utah 84095