

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "*Agreement*") is made and entered into by and between Kent L. Jones in his capacity as the Utah State Engineer (the "*State Engineer*"), Utah School and Institutional Trust Lands Administration ("*SITLA*"), Central Iron County Water Conservancy District (the "*District*"), Utah Alunite Corporation ("*UAC*"); and Beaver County (the "*County*") (collectively referred to as the "*Parties*").

### RECITALS

The Parties are involved in a consolidated lawsuit captioned *Central Iron County Water Conservancy District v. Jones*, Case No. 140500016, pending in the Fifth Judicial District Court in and for Beaver County, State of Utah (the "*Litigation*"). The Litigation involves *de novo* judicial review of three applications to appropriate groundwater: A76677 (69-101) filed by the District to appropriate 12,000 acre-feet (AF) of groundwater from Wah Wah Valley; A76676 (14-118), filed by the District to appropriate 15,000 AF of groundwater from Pine Valley; and F79462 (69-115), filed jointly by UAC and SITLA to appropriate 6,500 AF of groundwater from Wah Wah Valley. The State Engineer approved A76677 (69-101) for the appropriation of 6,525 AF; approved A76676 (14-118) for the appropriation of 15,000 AF; and approved F79462 (69-115) for the appropriation of 6,500 AF for a 30-year fixed-time period. Also related to the litigation is unapproved application A76677a (69-118), a segregated portion of application A76677 filed by the District.

The District anticipated using water available under the District's applications to supply water to District customers through the District's planned West Desert Pipeline Project. The joint UAC/SITLA application was filed to provide water for mining and processing purposes on SITLA lands in Wah Wah Valley known as the Blawn Mountain Property. Since the time of filing, UAC has conveyed its interest in water right 69-115 to SITLA and retained a contract right to use water available to SITLA for mining and processing at the Blawn Mountain Property.

In addition to the above, the County has filed two applications to appropriate: A78814 (69-109) to appropriate 6,650 AF of groundwater from Wah Wah Valley, and A78815 (14-124) to appropriate 13,900 AF of water groundwater from Pine Valley. The State Engineer has not yet acted on the County's applications, and those applications are not the subject of *de novo* review. But, the County seeks approval to appropriate water from the same sources as the District's and UAC's applications. The County claimed a portion of the unappropriated groundwater in Wah Wah Valley should be reserved for use in that valley, and a portion of the unappropriated groundwater in Pine Valley should be reserved for use in that valley.

This Settlement Agreement contains settlement terms which will resolve the Litigation, allow the District's West Desert Pipeline Project to proceed, allow mining and processing at the Blawn Mountain Property, allow the County to acquire a portion of the water from Wah Wah Valley for use in that valley, and allow the County to proceed to seek approval of its application to appropriate water from Pine Valley.

## AGREEMENT

The Parties exchange the following consideration and agree as follows:

**1. Water Availability.** The Parties acknowledge they have a difference of opinion regarding the amount of water available for development in the Wah Wah Valley and the Pine Valley – namely, the safe yield of the aquifers in those valleys. By way of this Agreement the State Engineer will allow the non-State Engineer Parties to proceed with plans to develop the amount of water stated herein with the understanding that the non-State Engineer Parties assume all risk and full responsibility for the possibility that the safe annual yield of the Wah Wah Valley aquifer and/or the Pine Valley aquifer is less than the amounts referenced in this Agreement. The non-State Engineer Parties expressly understand and acknowledge that the State Engineer is making no warranty or representation about the amount of water available for development in the Wah Wah Valley and the Pine Valley, and that approvals provided under this Agreement may be for more water than future facts demonstrate is actually available for long-term beneficial use. They further understand and acknowledge that under Utah Code Section 73-5-15, the State Engineer may regulate groundwater withdrawals within a specific groundwater basin by adopting a groundwater management plan in accordance with that section for any groundwater basin or aquifer or combination of hydrologically connected groundwater basins or aquifers. Nothing in this Agreement affects or is intended to affect the State Engineer's authority under that section as it presently exists and as it may change. The non-State Engineer Parties expressly understand and acknowledge that proper exercise of that authority may result in a reduction of the amount of water authorized for diversion under this Agreement.

**2. District Wah Wah Valley Application A76677 (69-101).** A76677 (69-101) will be approved for the permanent appropriation of 6,525 AF (100% consumptive) of groundwater.

**3. District Segregated Wah Wah Valley Application A76677a (69-118).** The portion of A76677 not approved by the Engineer (5,475 AF) was segregated and assigned Water Right No. 69-118 (Application to Appropriate No. A76677a). To accommodate the terms of this Agreement, the District segregated 725 AF from A76677a (69-118) to A76677aa (69-120) and 4,025 AF from A76677a to A76677ab (69-121) leaving 725 AF in A76677a (69-118). As a result, the District has three segregated applications to appropriate: A76677a (69-118) for the appropriation of 725 AF, A76677aa (69-120) for the appropriation of 725 AF, and A76677ab (69-121) for the appropriation of 4,025 AF. Those pending applications' status is currently unapproved.

a. A76677a (69-118). A76677a (69-118) will be approved for the permanent appropriation of 725 AF (100% consumptive) of groundwater. The Parties agree to reduce the priority of Water Right 69-118 to October 18, 2006.

b. A76677aa (69-120). A76677aa (69-120) will be approved for the permanent appropriation of 725 AF (100% consumptive) of groundwater. The Parties agree to reduce the priority of Water Right 69-120 to October 19, 2006.

c. A76677ab (69-121). A76677ab (69-121) will be approved for a 40-year fixed-time appropriation of 4,025 AF (100% consumptive) of groundwater. The Parties agree to reduce the priority of Water Right 69-121 to October 19, 2006.

Upon completion, the quantities of water and priorities will be as follows:

69-101	6,525 AF	October 17, 2006
69-118	725 AF	October 18, 2006
69-120	725 AF	October 19, 2006
69-121	4,025 AF	October 19, 2006

**4. Conveyance of District Segregated Wah Wah Valley Application A76677a (69-118).** The District will deed Water Right 69-118, which will have been approved for the permanent appropriation of 725 AF (100% consumptive) of groundwater, to the County via water right special warranty deed in the form attached as Exhibit A. The District will deliver an executed copy of Exhibit A to Escrow to be recorded as provided in Paragraph 12. The County shall pay the recording fees for the deed. After the conveyance described in this Paragraph, the County may, in compliance with statute, file any applications seeking to modify the use of Water Right 69-118.

**5. Execution of SITLA/District Water Supply Agreement.** SITLA and the District will execute a water supply agreement in the form attached as Exhibit B, to be delivered in counterparts to Escrow. The water supply agreement will be effective upon delivery by Escrow as provided in Paragraph 12.

**6. SITLA Wah Wah Valley Application F79462 (69-115).** SITLA will withdraw its Application to Appropriate A79462 (later F79462 and 69-115) in its entirety. It will deliver an executed withdrawal request, in the form attached as Exhibit C, to Escrow, to be filed as provided in Paragraph 12. Upon withdrawal of A79462/F79462, the State Engineer's issued order on F79462 (69-115) will be void.

**7. County Wah Wah Valley Application A78814 (69-109).** Application to Appropriate A78814 (69-109) was filed by the County for 6,650 AF of groundwater from Wah Wah Valley and has not been acted on by the State Engineer. The County will withdraw its Application to Appropriate A78814 (69-109) in its entirety. It will deliver an executed withdrawal request, in the form attached as Exhibit D, to Escrow, to be filed as provided in Paragraph 12.

**8. District Pine Valley Application A76676 (14-118).** The District's Pine Valley Application to Appropriate, A76676 (14-118), will be approved for permanent appropriation of 15,000 AF (100% consumptive) of groundwater.

**9. County Pine Valley Application A78815 (14-124).** Application to Appropriate A78815 (14-124) was filed by the County for 13,900 AF of groundwater from Pine Valley. The State Engineer has not acted on A78815 (14-124). The County will reduce Application to Appropriate A78815 (14-124) from 13,900 AF to 1,650 AF. It will deliver an executed letter, in the form attached as Exhibit E, to Escrow, to be filed as provided in Paragraph 12. Once the Utah Division of Water Rights amends Application to Appropriate A78815 (14-124) on its database reducing the amount to 1,650 AF in response to the County's letter, the District will withdraw its protest to A78815 (14-124). It will deliver an executed letter withdrawing its protest, in the form

attached as Exhibit E, to Escrow, to be filed as provided in Paragraph 12. The County shall not apply to appropriate or claim a right to more than 1,650 AF under Application to Appropriate A78815 (14-124) following the letter to the Utah Division of Water Rights described in this Paragraph.

**10. Non-Opposition.** SITLA, UAC, the District, and the County will not protest, and will not cause or encourage others to protest, change applications, exchange applications, applications for extension of time to submit proof, applications for extension of fixed-time period, or applications for non-use relating to A76677 (69-101), A76677a (69-118), A76677aa (69-120), A76677ab (69-121) changed to F76677ab (69-121), A76676 (14-118), or A78815 (14-124), except with respect to issues relating to local interference or water quality concerns. Before filing such a protest, the would-be Party-protestant will first make efforts that are reasonable under the circumstances to discuss its concerns with the applicant.

**11. Dismissal of the Litigation.** Upon execution of this Agreement and confirmation from Escrow that all documents identified in Paragraph 12 have been received, the District will file the Stipulated Motion for Entry of Judgment and Dismissal attached to this Settlement Agreement as Exhibit G, which has previously been reviewed and approved by counsel for the Parties, requesting that the Court enter judgment consistent with Paragraphs 2, 3, and 8 of this Settlement Agreement and dismiss all remaining claims with prejudice. The Parties have approved the proposed Stipulated Judgment attached to this Settlement Agreement as Exhibit H, which shall be filed with the Stipulated Motion for Entry of Judgment and Dismissal.

**12. Escrow and Closing.** John Schutz of Mabey, Wright & James shall serve as the escrow agent (Escrow) for this Agreement. Provided Escrow has received the documents from all Parties as provided in this Agreement, this Agreement shall be closed as follows:

a. Escrow shall provide notice to all Parties that all required documents have been received and that he is ready to close. Upon such notice, the District shall file the Stipulated Motion for Entry of Judgment and Dismissal with the associated proposed Stipulated Judgment described in Paragraph 11 (Exhibits G and H to this Agreement);

b. Upon notice that the Court has entered the Stipulated Judgment described in Paragraph 11 (Exhibit H to this Agreement), which any Party may provide, Escrow shall, in the following order: (1) file the withdrawal requests described in Paragraphs 6 and 7 with the Utah Division of Water Rights; (2) record the deed described in Paragraph 4; (3) deliver executed copies of the water supply agreement described in Paragraph 5 to the District and SITLA; and (4) file the reduction letter described in Paragraph 9 with the Utah Division of Water Rights;

c. Upon confirmation that the Utah Division of Water Rights has updated its records to reflect the reduction described in Paragraph 9, Escrow shall file the withdrawal letter described in Paragraph 9 with the Utah Division of Water Rights, at which point the closing shall be complete.

**13. No Precedential Value.** This Agreement is unique and does not serve as precedent for any other situation, settlement, or basis for State Engineer evaluation or decision on any other water right application or in any other matter. The Agreement's singularity is not limited to

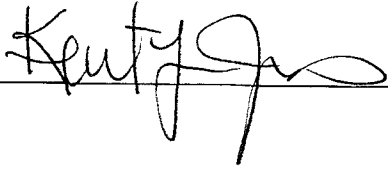
circumstances, party sophistication, or case posture, and in no circumstances may the Agreement's content, or its perceived or imagined means or underlying reasoning for settlement terms be used in any other case, matter, or proceeding.

**14. Miscellaneous.**

- a. No Third-Party Beneficiaries. The Parties expressly acknowledge and agree that there are no third-party beneficiaries to this Agreement.
- b. Binding on Successors. This Agreement shall be binding on the Parties' successors and run with the water rights referenced herein.
- c. Integration. This Agreement constitutes the entire understanding and agreement of the Parties with regard to the subject matter of this Agreement, and any and all prior understandings or representations are hereby terminated and cancelled in their entirety and are of no force and effect.
- d. Amendment. No amendment, change, or modification of this Agreement shall be valid unless in writing and signed by the Parties.
- e. Waiver. The waiver by any Party to this Agreement of a breach of any provision of the Agreement shall not be deemed a continuing waiver or waiver of any subsequent breach, whether of the same or another provision of this Agreement.
- f. Attorneys' Fees. In the event any suit or action is instituted to interpret or enforce the terms of this Agreement or to rescind this Agreement, the prevailing Party shall be entitled to recover from any non-State Engineer Party at fault such sum as the Court may adjudge reasonable as attorneys' fees at trial, on any appeal, and on any petition for review, and in any bankruptcy proceedings related to this Agreement, in addition to all other sums provided by law. No attorneys' fees or any other related sums may be recovered from the State Engineer.
- g. Fees and Expenses. The Parties shall each bear their own respective costs and expenses, including attorneys' fees, incurred in connection with the Litigation and this Agreement.
- h. Choice of Law. This Agreement shall in all respects be governed by the laws of the State of Utah. Nothing contained herein shall be construed to require the commission of any act contrary to law. Wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation, the latter shall prevail, and the affected provision of this Agreement shall be curtailed and limited to the extent necessary to bring it within the requirements of the law.
- i. Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts, each of which when executed and delivered shall be deemed to be an original, binding between the Parties, and all of which together constitute one and the same instrument. Original, facsimile or power of attorney signatures shall be binding upon the Party.

KENT L. JONES, UTAH STATE ENGINEER

Date: 2-21-2019



**UTAH SCHOOL AND INSTITUTIONAL  
TRUST LAND ADMINISTRATION**

Date: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest:

**CENTRAL IRON COUNTY WATER  
CONSERVANCY DISTRICT**

Date: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest:

**UTAH ALUNITE CORPORATION**

Date: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

KENT L. JONES, UTAH STATE ENGINEER

Date: \_\_\_\_\_

\_\_\_\_\_

Attest:

UTAH SCHOOL AND INSTITUTIONAL  
TRUST LAND ADMINISTRATION

Date: 2/26/19

By David Ure  
Name: DAVID URE  
Its: DIRECTOR

Attest:

CENTRAL IRON COUNTY WATER  
CONSERVANCY DISTRICT

Date: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest:

UTAH ALUNITE CORPORATION

Date: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**KENT L. JONES, UTAH STATE ENGINEER**

Date: \_\_\_\_\_

\_\_\_\_\_

Attest:

**UTAH SCHOOL AND INSTITUTIONAL  
TRUST LAND ADMINISTRATION**

Date: \_\_\_\_\_

By \_\_\_\_\_


Name: \_\_\_\_\_

Its: \_\_\_\_\_

Attest:

**CENTRAL IRON COUNTY WATER  
CONSERVANCY DISTRICT**

Date: 2-20-2019

By  \_\_\_\_\_

Name: Brent F. Hunter

Its: Chairman

Attest:

  
Paul Monroe

**UTAH ALUNITE CORPORATION**

Date: \_\_\_\_\_

By \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_



**KENT L. JONES, UTAH STATE ENGINEER**

Date: \_\_\_\_\_

\_\_\_\_\_

**UTAH SCHOOL AND INSTITUTIONAL  
TRUST LAND ADMINISTRATION**

Date: \_\_\_\_\_

By \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Attest:

**CENTRAL IRON COUNTY WATER  
CONSERVANCY DISTRICT**

Date: \_\_\_\_\_

By \_\_\_\_\_

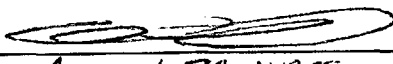
Name: \_\_\_\_\_

Its: \_\_\_\_\_

Attest:

**UTAH ALUNITE CORPORATION**

Date: FEB 26 / 2019

By  \_\_\_\_\_

Name: ANDREW SQUIRES

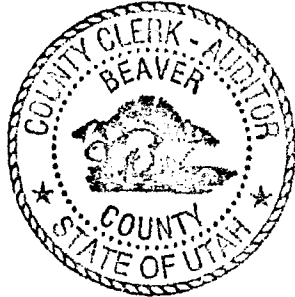
Its: DIRECTOR

BEAVER COUNTY

Date: 2/19/19

By: *Michael Datto*  
Name: Michael Datto  
Its: Beaver Comm Chairman

Attest: *Mary-Jane Skell*, Clerk Auditor



4831-0268-1222, v. 1