

**Retainer Agreement  
Living Rivers and  
Western Resource Advocates**

***PR Springs Tar Sands Mine Challenge***

Living Rivers (Client) and legal counsel Western Resource Advocates (WRA) enter into this Retainer Agreement (Agreement), which establishes the terms and conditions for WRA's legal representation of Client.

**I. Independent Counsel**

WRA establishes an attorney-client relationship with Client, and is subject to the obligations imposed by that relationship.

**II. Scope of Representation**

Client and WRA agree that WRA will represent Client with respect to an administrative action before the Board of Oil, Gas and Mining challenging the sufficiency of the Division of Oil, Gas and Mining's approval of the PR Springs Notice of Intent to mine. The scope of the representation will be limited to challenging this decision in before the Board of Oil, Gas and Mining. Legal work on Client's behalf will not extend to responsibility for other matters unless Client and WRA specifically agree in writing to extending the scope of representation.

**III. Nature of Representation**

Client's expectations concerning legal services must be understood and agreed upon for WRA to provide effective services and representation. Client agrees to describe and document its claims and objectives. WRA agrees to consult with Client regarding what legal services can be provided and what results are likely to be obtained by pursuing different legal strategies. If there is a difference between what Client seeks from legal services and what WRA believes can be provided, Client is entitled to pursue other arrangements, including retention of other legal counsel. Client shall immediately inform WRA of any such acts that will affect this Agreement, including the nature and scope of representation.

Client and WRA recognize that administrative actions generally are only one part of a strategy for achieving Client's objectives. Each party agrees to share ideas and advice about how the representation pursuant to this Agreement might benefit Client's other efforts to achieve its objectives. Each party agrees to work closely with the other to obtain as much as possible from the legal services, but to recognize and account for the inherent limitations of those services. Specifically, Client will work toward strategies that will build upon success or failure in obtaining results from the legal services provided under this Agreement. Client and WRA recognize that each plays a vital role in this representation. Each must contribute to the efforts of the other party to ensure a successful resolution of the matter.

#### **IV. Attorney Fees**

Client shall be represented by WRA on a volunteer basis with no charge for attorney fees to Client. Client will not be billed for secretarial or clerical services performed by WRA. In consideration for receiving legal services at no charge, Client agrees to take no action that would impair WRA's ability to recover fees from the opposing party or opposing counsel. Further, Client hereby irrevocably assigns to WRA any and all rights it may have to recover attorney fees arising out of this matter. If court-awarded fees are awarded and collected, all such fees shall be divided among WRA and Clients proportionally, according to legal fees borne by each party.

#### **V. Reporting**

WRA shall maintain monthly accounts of time expended on this matter, including a description of services rendered and costs incurred and will provide these to Client upon request. WRA will provide electronic copies of all pleadings or other materials filed in this matter to one liaison for each Client. Client agrees promptly to forward any relevant information or documents received by Client to WRA.

#### **VI. Opposing Counsel Fees or Costs**

Clients are solely liable for any fees or costs of opposing counsel in the event that a court of competent jurisdiction awards fees or costs to opposing counsel for defending Client's litigation or action. Client agrees to pay any such fees or costs and indemnify WRA for the same.

#### **VII. Costs**

WRA shall pay all costs associated with this representation, such as copying, facsimile, unusual or courier expenses, document/transcript costs, long distance telephone, administrative or judicial filing fees, witness fees, travel and mileage expenses, and expert consultant fees. Client and WRA shall cooperate in seeking outside funding sources for any significant costs related to this matter, such as costs related to the retention of expert witness.

#### **VII. Public Relations and Media**

WRA has expertise in and contacts with representatives of both the electronic and print media and is interested in having local and regional coverage of its work. WRA recognizes that Client also is interested in working with public relations and media and has its own expertise and contacts. WRA and Client agree that all press releases, interviews, or other contacts with the media will identify the other party and will be jointly managed with representatives of the other party to the greatest extent feasible.

#### **IX. Client Liaison**

For purposes of this Agreement, **John Weisheit** is designated client liaison for Living Rivers. Client agrees that WRA and the client liaison will confer on a regular basis regarding administrative matters associated with the litigation. WRA will seek approval of each Client before making important strategic decisions regarding the litigation.

#### **X. Countersuits**

WRA has reason to believe that there is potential for a countersuit to be brought against Client as a result of this representation and has consulted with Client on this issue. Generally,

such countersuits have been unsuccessful in the context of environmental litigation. In the event that any retaliatory countersuits are filed against Client as a result of this representation, WRA will use its best efforts to locate *pro bono* counsel to defend Client in such litigation. Client agrees that WRA is not obligated to represent Client in a countersuit.

**XI. Appeals**

In the event that the administrative action is unsuccessful and before deciding to proceed with further legal action, such as an appeal to the district court or other higher courts, Client and WRA shall consult regarding the objectives of the representation and the possible precedential effect of an adverse ruling on appeal. Client acknowledges that the scope of representation under this Agreement is limited to prosecution of this action before the Board of Oil, Gas and Mining and that any potential appeals could require formal review and approval according to WRA internal procedures.

Client and WRA acknowledge their review and understanding of the terms and conditions of this Retainer Agreement by signing and dating it below. By executing below, the undersigned represent that each is authorized to enter this agreement on behalf of their respective organization.

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Living Rivers

September\_\_\_\_\_, 2010\_



Rob Dubuc, Staff Attorney  
Utah Office of Western Resource Advocates

September 25, 2010\_