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Attorneys for Applicant Kane Creek Preservation and Development, LLC

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE APPLICATION OF KANE CREEK PRESERVATION AND DEVELOPMENT, LLC FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO OPERATE AS A PUBLIC UTILITY RENDERING SANITARY SEWER SERVICE	DOCKET NO. 23-2639-01 REQUEST FOR RECONSIDERATION
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Applicant Kane Creek Preservation and Development, LLC (“**Kane Creek**”) respectfully submits this Request for Reconsideration (“**Request**”) seeking clarification and modification of one provision of the Order dated April 20, 2023 (“**Order**”) on this Docket.

I. INTRODUCTION & PROCEDURAL HISTORY

On February 17, 2023, Kane Creek submitted its Application for Certificate of Convenience and Necessity (“**Application**”) to operate a sanitary sewer system (the “**System**”). (A copy of the Application, excluding exhibits, is attached hereto as **Exhibit A.**)

On February 22, 2023, the Commission issued its Notice of Filing and Comment Period (“**Notice**”) indicating the deadline of March 20, 2023, for comments. While the Order grants the

relief requested by Kane Creek, there are aspects of the Order for which we request reconsideration and clarification.

On March 20, 2023, the Division of Public Utilities (“**DPU**”) submitted its comments in the form of an Action Request Response (“**Comments**”). (A copy of the Comments is attached hereto as **Exhibit B**.) The DPU recommended approval of the Application.

No other responses to the Notice were received by March 20, 2023.

On April 20, 2023, the Commission issued its Order, conditionally issuing Kane Creek a Certificate of Public Convenience and Necessity (“**CPCN**”). (A copy of the Order is attached hereto as **Exhibit C**.)

This Request relates to the condition in the Order regarding final approval by the Grand County Commission (“**GCC**”) of a proposed local district and its board of directors that must be satisfied before the CPCN is finalized, approved, and removed from conditional status.

II. GROUNDS FOR REVIEW & RELIEF REQUESTED

The Order requires Kane Creek to submit final approval by GCC of both the proposed Kane Springs Improvement District (“**District**”) and its board of directors. (*See* Order at p. 5 (“We issue the CPCN on a conditional basis and based on the understanding that Kane Creek will submit ... the final approval by the GCC of both the District and its board of directors...”)).

This appears to be based on an incomplete and incorrect understanding of the future potential role of the District in the context of the System proposed by Kane Creek. Under Utah public utility law, a public utility such as Kane Creek may be privately owned and operated as a “sewerage corporation” defined in Utah Code Section 54-2-1(29) and need not be approved by a local government such as a county or local district. The only role of the District with respect to the System is a potential alternative to regulation by the Public Service Commission

(“**Commission**”). If, at a future date, the District were to assume ownership and control of the System, the System would no longer be subject to Commission regulation because it would no longer be operating as a public utility (sewerage corporation) under Utah Code Section 54-2-1(29). The District would be a governmental entity which is generally exempt from Commission regulation. (See Utah Code Section 54-2-1(23)(e) and (29)). Kane Creek’s Application did not mention the potential assumption of the System by the District in any way.¹ DPU’s Comments outline some of the difficulties Kane Creek has experienced in establishing a District as a potential “body politic” to sponsor the System in satisfaction of Division of Water Quality (“**DWQ**”) regulations.² The relevant portion of the Comments reads:

The *Company worked with Grand County Commissioners* to facilitate the establishment of a particular special service district, Kane Springs Improvement District. During the County Commission’s regular meeting under “Citizens to be Heard,” *“Craig Smith, attorney for KCPD, spoke on behalf of the Kane Springs Improvement District* (Item H) and referenced a comment letter offered to the Commission in support of a board of directors made up of resident applicants and county commissioners....” The Commission passed a resolution on September 6, 2022. *The County Commissioners tabled the resolution. The establishment of the special service district is not yet final, based on discussions with Grand County staff.*

Comments, at p. 2 (emphasis added). Due to difficulties encountered in the creation of a satisfactory District and Board, thereafter, Kane Creek worked with DPU for an alternative to the District as the sponsoring body politic for the System. This resulted in Kane Creek filing the Application for the option of operating the System as a Commission-regulated public utility.

¹ In fact, the only line relating, albeit indirectly, to the District and Grand County reads: “In 2022, Grand County declined to provide sewer services to the Kane Creek area. Also in 2022, the Grand Water & Sewer Service Agency declined to provide sewer services in the Kane Creek Area.” Application at p. 5, para. 8.

² See Utah Administrative Rule R317-1-1.

The Order, however, misinterpreted the status of the District creation and concluded that the District would necessarily take over the System at some later date. The relevant portion of the Order reads:

*The PSC also understands that, as of March 20, 2023, the District had not yet been formally established and the GCC had not yet approved the **District's board of directors, which is the body that will manage the sewerage services once it is formed** and approved by the GCC at a regular GCC meeting and by resolution, before the System becomes operational. **We thus find that Kane Creek is in the process of obtaining final authorization for the formation of the District and its board of directors from the GCC.***

Order, pp. 4-5. (emphasis added). Neither of these statements are correct or supported by the Application or Comments.

The requirement of DWQ for a “sponsoring body politic” serves the same purpose as Commission regulation. This common purpose is to ensure the System is financially viable to serve the public. DWQ rules therefore require a sponsoring body politic to issue the permit to construct a wastewater treatment system. Under regulation by the Commission, DPU assumes the sponsorship role as part of its duties. Both the DPU, by entry into a Memorandum of Understanding with Kane Creek, and DWQ by issuance of its Approval-in-Concept for construction of the System, have recognized the role of DPU as the sponsoring body politic. (A copy of the Memorandum of Understanding is attached hereto as **Exhibit D**. A copy of the permit is attached as **Exhibit E**.)

For the avoidance of doubt, the Order properly includes references to the requirement for DWQ approval of a construction permit for the System, a proposed tariff with just and reasonable rates, and other Required Approvals. (*See* Order at p. 5). In addition, the Application specified that preliminary and final plat approval from Grand County is required. While it remains a possibility that the System will be ultimately owned and controlled by the District, that

possibility is independent of the Commission's regulation under the CPNC and should not be a condition of the final approval.

III. CONCLUSION

Kane Creek requests that the Commission issue a corrected Order incorporating the clarifications outlined herein and removing the requirement that Kane Creek provide the final District and Board approvals from GCC. Kane Creek would comply with the remaining requirements.

DATED this 22nd day of May 2023.

SMITH HARTVIGSEN, PLLC

/ Jay L. Springer _____
J. Craig Smith
Jay L. Springer
Attorneys for the Applicant

Certificate of Service

I certify that on this 22nd day of May 2023, a true and correct copy of the foregoing
REQUEST FOR RECONSIDERATION was emailed to the following:

Chris Parker
Division of Public Utilities
chrisparker@utah.gov

Patricia Schmid
Assistant Attorney General
pschmid@agutah.gov

Public Service Commission Filing Email
psc@utah.gov

/s Jay L. Springer
Jay L. Springer

Exhibit List

Exhibit A	—	Application (excluding exhibits)
Exhibit B	—	Comments
Exhibit C	—	Order
Exhibit C	—	Memorandum of Understanding
Exhibit E	—	DWQ Approval-in-Concept

Exhibit A

J. Craig Smith
Jay L. Springer
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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE APPLICATION OF KANE CREEK PRESERVATION AND DEVELOPMENT, LLC FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO OPERATE AS A PUBLIC UTILITY RENDERING SANITARY SEWER SERVICE	DOCKET NO. 23-2639-01 APPLICATION
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Applicant Kane Creek Preservation and Development, LLC (“**Kane Creek**”) respectfully submits this Application for a Certificate of Convenience and Necessity (“**Application**”) to construct and operate a public utility sewage system in Grand County, Utah which will collect, treat, and discharge treated effluent under permits issued by the Utah Division of Water Quality.

I. INTRODUCTION

Kane Creek is developing approximately 180 acres of real property (the “**Project**”) in unincorporated Grand County, situated approximately two miles west of Moab, Utah, adjacent to the Colorado River. The Project will include lodging and dining including lodging that will be sold to the public. The Project will provide an opportunity to live, visit, and recreate, among the

spectacular red rocks and cliffs and the iconic Colorado River. A map depicting the area where the Project will be located is attached as **Exhibit A**.

II. BACKGROUND

Currently, no sanitary sewer service or connections are available or feasible to serve the Project because of the distance from, and rugged intervening terrain, that separates the Project from existing sewer systems, including canyons and plateaus. Due to the inability to obtain sewer service from any provider in the general area, Kane Creek has, by necessity, planned and designed its own sewage system (the “**System**”) that will be independent of other providers in Grand County and will serve only the Project.

This independent approach is necessitated by the local geography and land ownership, where the Colorado River runs the length of the Project and it is otherwise surrounded primarily by BLM and Utah State property. Those lands will not have any development activity that would bring the existing systems from the Moab area within a reasonable range of the Project. For all practical purposes, the Project is an isolated island off the grid when it comes to sewer services.

Kane Creek’s subdivision and development plan for the Project has been in process with Grand County for over two years. The only remaining item before the Project’s preliminary and final plat can be approved by Grand County is evidence of the ability to provide sanitary sewer service to the Project.

Ultimately, the dwelling units within the Project will be sold to members of the public as owners who will be the public served by the System. It is Kane Creek’s understanding and agreement, in part through commitments to the Utah Division of Public Utilities, that the System will be regulated by the Public Service Commission of Utah (“**Commission**”) and subject to Commission jurisdiction once it begins operations for buyers of the units. Prior to the

commencement of service to the public, Kane Creek will apply for and obtain a Tariff approved by the Commission.

The Applicant will assume responsibility for providing sewer service to the Project and has already completed system design and begun off-site engineering and manufacturing. The timing for on-site installation is pending final approvals and manufacturing timelines of the System. In the short term, the Applicant intends to continue owning and controlling all portions of the Project at least until the System is operational. For the long term, the Applicant anticipates operating the System in accordance with the Commission's regulations and any applicable Tariffs. Once Kane Creek has constructed the System, it may consider transferring the operations of the System to a special purpose entity created exclusively for that purpose.

The proposed System will not conflict with or adversely affect the operations of any existing certificated public utility, development of the System will not constitute an extension of any such existing utility.

III. PUBLIC INTEREST

Approval of the Certificate of Public Convenience and Necessity is in the public interest for several reasons, including:

- a. There are no alternatives for sewer service in the area, making it impossible to make economically viable use of the land within the service area of the System.
- b. For many years, camping along the Colorado River has occurred within the proposed service area including tents, trailers, and motorhomes, for extended periods without adequate sanitary sewer service. This has degraded water quality and fostered unhealthy and unsanitary conditions. The introduction of the System will help alleviate this problem.

IV. APPLICATION

1. **Applicant Name:** Kane Creek Preservation and Development, LLC, a Delaware limited liability company
2. **Address:** 10466 North Iverson Lane, Highland, UT 84003
3. **Service Area:** The Applicant's service area will be the Applicant's project boundaries as shown on the plat attached as **Exhibit A**.
4. **Legal Status:** Applicant is a limited liability company duly created and existing under the laws of the state of Delaware, with foreign registration on record with the Utah Division of Corporations. The Applicant's sewer system will be a public utility, a sewerage corporation, subject to regulation by the Commission. *See* UCA § 54-4-25.
5. **Governance and Management.** The Applicant is a manager-managed entity governed by a three-person board with relevant experience in the development and operation of sewage systems. Copies of the narrative biographies of the board are attached as **Exhibit B**.
6. **Sewerage Capacity and Assets.** The Applicant is or will be the owner of a sufficient sanitary sewer capacity and operational knowledge to enable the Applicant to reliably provide sanitary sewer service to all of the Applicant's customers, when applicable. The design and specifications of the System are the Applicant's property.
7. **Finances.** The Applicant will solely fund the construction of the System, except as grants or other public funding mechanisms are identified. The Applicant will fund ongoing operations by charging usage fees as indicated in a yet-to-be-submitted or -approved Tariff.

8. **Necessary and Convenient Service.** The Applicant's provision of sanitary sewer services in its service area is both necessary and convenient. In 2022, Grand County declined to provide sewer services to the Kane Creek area. Also in 2022, the Grand Water & Sewer Service Agency declined to provide sewer services in the Kane Creek Area. There are no sewer service providers that could feasibly extend their service area to the development.
9. **No Adverse Effect or Conflict with Existing Utility.** Pursuant to Utah Code § 54-4-25(4)(b) Kane Creek also states that any proposed line, plant, or system will not conflict with or adversely affect the operations of any existing certificated fixed public utility which supplies the same product or service to the public and that it will not constitute an extension into the territory certificated to the existing fixed public utility. There is no sewer service in the area of the Project of any kind.
10. **Required Permits.** The only required permit to construct the System is a Construction Permit issued by the Utah Division of Water Quality pursuant to Utah Division of Water Quality Rule R317-1-2.1(E). Kane Creek has applied for and is in the process of obtaining this Permit in accordance with Utah Code § 54-4-25(4)(a). All of the lands within the proposed service area are within unincorporated Grand County and owned by Kane Creek or an affiliate thus no franchise is required. The Project is "use by right" and is in the process of perfecting the entitlements and obtaining building permits from Grand County.

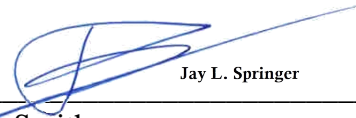
V. CONCLUSION

The Applicant requests that the Commission issue a Certificate of Convenience and Necessity for the Applicant to construct a sanitary sewer system and provide sanitary sewer

services within the Applicant's service areas as described in this application. The Applicant intends to begin constructing the sanitary sewer system as soon as practicable, pending final approvals from the Division of Water Quality and Grand County. The Applicant has initiated off-site manufacturing.

DATED this 17th day of February, 2023.

SMITH HARTVIGSEN, PLLC



Jay L. Springer

J. Craig Smith
Jay L. Springer
Attorneys for the Applicant

Certificate of Service

I certify that on this 17th day of February, 2023, a true and correct copy of the foregoing APPLICATION was emailed to the following:

Chris Parker
Division of Public Utilities
chrisparker@utah.gov

Patricia Schmid
Assistant Attorney General
pschmid@agutah.gov

Public Service Commission Filing Email
psc@utah.gov

/s Jay L. Springer
Jay L. Springer

Exhibit List

Exhibit A — Project Plat

Exhibit B — Biographies for Management

Exhibit B



SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

UTAH DEPARTMENT OF COMMERCE

Division of Public Utilities

MARGARET W. BUSSE
Executive Director

CHRIS PARKER
Division Director

Action Request Response

To: Public Service Commission of Utah

From: Utah Division of Public Utilities

Chris Parker, Director
Brenda Salter, Assistant Director
Abdinasir Abdulle, Utility Technical Consultant Supervisor
Shauna Benvegna-Springer, Utility Technical Consultant
Gary Smith, Utility Technical Consultant
Tamra Dayley, Utility Analyst

Date: March 20, 2023

Re: **Docket No. 23-2639-01**, Application of Kane Creek Preservation and Development, LLC for a Certificate of Convenience and Necessity to Operate as a Public Utility Rendering Sanitary Sewer Service

Recommendation (Approval)

The Division of Public Utilities (Division) recommends that the Utah Public Service Commission (Commission) issue a Certificate of Public Convenience and Necessity (CPCN) to Kane Creek Preservation and Development, LLC (Company or KCPD) for a maximum of 599 residential and commercial sewer connections.

Issue

The Company filed its application for a CPCN with the Commission on February 17, 2023, indicating that it qualifies for a CPCN to provide a sanitary sewer system. The Commission issued the Division an Action Request on February 17, 2023, requesting the Division review the application and file a recommendation by March 20, 2023.

Background

The Company is a Delaware limited liability corporation registered as a foreign entity with the Utah Division of Corporations (UDC) on June 23, 2021, and has a current "Active" or

Division of Public Utilities

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good standing status with UDC. The Company plans to serve a 176.4-acre¹ mixed-use service territory along the Colorado River in the unincorporated Grand County, two miles west of Moab City.

Discussion

The Company applied for a Construction Permit with the Division of Water Quality (DWQ). The DWQ has reviewed its system and approved the system content plan but has not officially approved the sewer system.² In discussions with the Division, DWQ indicated that the proposed sanitary sewer system would be sound and reasonable.

No existing sewer system is available for the KCPD project, either with Moab City or Grand County, because of “rugged intervening terrain,” distance, canyons, and plateaus.³ The KCPD project is surrounded by BLM land and Utah State property with no future plans for development.

The Company worked with Grand County Commissioners to facilitate the establishment of a particular special service district, Kane Springs Improvement District. During the County Commission’s regular meeting⁴ under “Citizens to be Heard,” “Craig Smith, attorney for KCPD, spoke on behalf of the Kane Springs Improvement District (Item H) and referenced a comment letter offered to the Commission in support of a board of directors made up of resident applicants and county commissioners...”⁵ The Commission passed a resolution on September 6, 2022. The County Commissioners tabled the resolution.⁶ The establishment of the special service district is not yet final, based on discussions with Grand County staff.

To meet the requirements of DWQ, the Division will act as the body politic for the project.

¹ The application in Docket No. 23-2639-01, page 1 describes the project as “180 acres of real property.” In their management biographies accompanying the application, Craig Weston, Trent Arnold, and Tom Gottlieb to use the real property as a “177-acre master-planned residential community” The master plan map states that in the Area Schedule Table, the project is 176.4 acres which the Company confirmed.

² Shauna Benvegnu-Springer, The Division discussed the sewer system with Glenn Lischeske, DWQ Engineer, on February 27, 2023.

³ 23-2639-01, KCPD Application for CPCN, page 2, February 14, 2023.

⁴ Grand County Commission Regular Meeting, September 6, 2022, Minutes, Item H, page 7 of 14.

⁵ Grand County Commission Regular Meeting, September 6, 2022, Minutes, Item I, page 8 of 14.

⁶ Ibid.

As outlined in the Commission Rules R746-401 and R746-700, the Company understands that construction plans and a proposed tariff with just and reasonable rates must be submitted to the Commission before beginning construction and operation.

The biographies of KCPD management appear to demonstrate the skills and knowledge necessary for the project's success. All three general partners have in-depth experience, including residential and resort development exceeding 30 years, entrepreneurship, start-ups, and investment platforms experience. Their projects have been located throughout the US and worldwide. Academic knowledge includes construction and facilities management, accounting, business management, and investment management.

Conclusion

The Division has reviewed the application for CPCN and has held meetings with Company representatives and the Division of Water Quality. The Division recommends that the Commission approve the Kane Creek Preservation and Development, LLC application for CPCN, with a maximum of 599 residential and commercial connections.

cc: L. Jay Springer, Smith Hartvigsen, PLLC
J. Craig Smith, Smith Hartvigsen, PLLC
Patricia Schmid, Assistant Attorney General
Glenn Lischeske, DWQ

Exhibit C

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Application of Kane Creek Preservation and Development, LLC for a Certificate of Convenience and Necessity to Operate as a Public Utility Rendering Sanitary Sewer Service	<u>DOCKET NO. 23-2639-01</u> <u>ORDER</u>
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ISSUED: April 20, 2023

SYNOPSIS

The Public Service Commission (PSC) approves the request of Kane Creek Preservation and Development, LLC ("Kane Creek") for a conditional certificate of public convenience and necessity (CPCN) authorizing Kane Creek to operate a public utility sewage system in Grand County.

On February 17, 2023, Kane Creek filed its *Application of Kane Creek Preservation and Development, LLC for a Certificate of Convenience and Necessity to Operate as a Public Utility Rendering Sanitary Sewer Service* ("Application"). The PSC requested comments by March 20, 2023, and reply comments by April 4, 2023. The Division of Public Utilities (DPU) filed comments March 20, 2023, recommending the PSC issue a CPCN to Kane Creek ("DPU Comments"). No other comments or reply comments were filed.

THE APPLICATION

The Application states that Kane Creek is developing approximately 180 acres in an unincorporated area of Grand County, Utah (the "Project"). The Project is isolated from existing sewerage systems by rugged terrain, plateaus, and canyons. Kane Creek has therefore, "by necessity, planned and designed its own sewage system . . . that will

be independent of other providers in Grand County and will serve only the Project.”¹ According to Kane Creek, the Project has been in process with Grand County for two years and the “only remaining item before the Project’s preliminary and final plat [approval] is evidence of [Kane Creek’s] ability to provide sanitary sewer service to the Project”² (the “System”). Kane Creek represents that it will assume responsibility for providing sewer service to the Project and has already completed System design and begun off-site engineering and manufacturing.

Kane Creek also states it has applied for and is in the process of obtaining the permit required by the Utah Division of Water Quality (DWQ). Kane Creek represents that the System “will not conflict with or adversely affect the operations of any existing certificated public utility, [and] development of the System will not constitute an extension of any such existing utility.”³ Finally, Kane Creek asserts that the issuance of a CPCN is in the public interest because “[t]here are no alternatives for sewer service in the area, ... [f]or many years, camping along the Colorado River has occurred within the proposed service area . . . for extended periods without adequate sanitary sewer service. This has degraded water quality and fostered unhealthy and unsanitary conditions. The introduction of the System will help alleviate this problem.”⁴

¹ Application at 2.

² *Id.*

³ *Id.* at 3.

⁴ *Id.*

DPU COMMENTS

DPU states that Kane Creek is registered as a foreign entity and is in good standing with the Utah Division of Corporations. DPU verified Kane Creek's interactions with the DWQ.⁵ DPU represents that DWQ has reviewed the System and, while DWQ found it to be reasonable and sound, DWQ had not yet issued its permit as of March 20, 2023, the date of the DPU Comments.

DPU also summarizes the Grand County Commission (GCC) regular September 6, 2022 meeting minutes in which the GCC addressed Kane Creek's efforts to establish the Kane Springs Improvement District ("District").⁶ DPU also comments on the capabilities of Kane Creek's management and states that Kane Creek understands that, before construction and operation, it must submit construction plans and a proposed tariff with just and reasonable rates.⁷ DPU further comments that it will act as the body politic for the Project to meet DWQ's requirements. Finally, after reviewing the Application and meeting with Kane Creek and DWQ, DPU recommends

⁵ DPU Comments at 2.

⁶ The DPU Comments specifically state Kane Creek "worked with Grand County Commissioners to facilitate the establishment of a particular special service district, Kane Springs Improvement District. During the County Commission's regular meeting[,] . . . [th]e Commission passed a resolution on September 6, 2022. The County Commissioners tabled the resolution. The establishment of the special service district is not yet final, based on discussions with Grand County staff." DPU Comments at 2 (citing Grand County Commission Regular meeting, September 6, 2022, Minutes, Item H, p. 7; quoting and citing Grand County Commission Regular meeting, September 6, 2022, Minutes, Item I, p. 8). See also, <https://www.grandcountyutah.net/AgendaCenter/ViewFile/Item/610?fileID=41892>.

⁷ See DPU Comments at 3 (noting the applicability of Utah Admin. Code R746-401 (construction plans requirement) and R746-700 (tariff requirement)).

the PSC approve the Application for a CPCN with the number of residential and commercial connections limited to 599.

FINDINGS AND CONCLUSIONS

Kane Creek's System is still in the process of being finalized. Applicants for a CPCN like Kane Creek must provide evidence establishing, among other things, that it "has received or is in the process of obtaining the required" approvals.⁸ The PSC has the discretion to issue a conditional CPCN even if final Required Approvals or other items have not yet been obtained or provided.⁹

In this case, the PSC understands that as of March 20, 2023, DWQ had not yet issued its permit for construction of the System. According to DPU, DWQ has, however, reviewed and approved the System content plan but has not officially approved the System. We thus find that Kane Creek is in the process of obtaining the final permit from DWQ. The PSC also understands that, as of March 20, 2023, the District had not yet been formally established and the GCC had not yet approved the District's board of directors,¹⁰ which is the body that will manage the sewerage services once it is formed and approved by the GCC at a regular GCC meeting and by resolution, before the System becomes operational. We thus find that Kane Creek is in

⁸ Utah Code Ann. § 54-4-25(4)(a)(i). These approvals include the required consent, franchise, or permit of the proper county, city, municipal, or other public authority ("Required Approvals").

⁹ See Utah Code Ann. § 54-4-25(4)(a).

¹⁰ See DPU Comments at 2.

the process of obtaining final authorization for the formation of the District and its board of directors from the GCC.

Based on representations made in the Application and DPU's Comments, we also find that the current management team for Kane Creek appears to have the skills, knowledge, and experience to complete the Project. We also find, based on Kane Creek's representations, that the System "will not conflict with or adversely affect the operations of any existing certificated fixed public utility which supplies the same product or service to the public and that it will not constitute an extension into the territory certificated to the existing fixed public utility."¹¹ And, consistent with DPU's recommendation, we also find that limiting the CPCN to a maximum number of 599 residential and commercial sewer connections is appropriate. We further find that the isolation of the Project and the lack of sewerage services in the area support our finding that a sewerage system is just, necessary, and in the public interest.

Accordingly, we issue the CPCN on a conditional basis and based on the understanding that Kane Creek will submit to the PSC the approved and final DWQ construction permit for the System, the final approval by the GCC of both the District and its board of directors, the proposed tariff with just and reasonable rates, and any other Required Approvals before construction and operation of the System begins.

¹¹ See Utah Code Ann. § 54-4-25(4)(b).

ORDER

Based on the foregoing findings and conclusions, and that the Application is unopposed, Kane Creek is granted the conditional CPCN attached as Exhibit A, incorporated by reference into this Order. The CPCN is limited to a maximum number of 599 residential and commercial sewer connections. Kane Creek is directed to file with the PSC all final Required Approvals, and all other required items identified herein that have not yet been obtained or provided, after they are obtained and before construction and operation of the System begins. Once the foregoing have been filed and accepted by the PSC, the CPCN will no longer be conditional.

DATED at Salt Lake City, Utah, April 20, 2023.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#327680

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

DOCKET NO. 23-2639-01

- 8 -

EXHIBIT A

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Application of Kane Creek Preservation and Development, LLC for a Certificate of Convenience and Necessity to Operate as a Public Utility Rendering Sanitary Sewer Service	<u>DOCKET NO. 23-2639-01</u> <u>CERTIFICATE NO. 2639</u>
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ISSUED: April 20, 2023

The Public Service Commission of Utah (PSC), pursuant to Utah Code Ann. § 54-4-25, issues a Certificate of Public Convenience and Necessity authorizing KANE CREEK PRESERVATION AND DEVELOPMENT, LLC to construct and operate a public utility sewage system as described in Kane Creek's February 17, 2023, Application and consistent with satisfying the conditions described in the PSC Order dated April 20, 2023, in the above referenced docket.

DATED at Salt Lake City, Utah, April 20, 2023.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#327680

CERTIFICATE OF SERVICE

I CERTIFY that on April 20, 2023, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

J. Craig Smith (jcsmith@shutah.law)
Jay L. Springer (jspringer@shutah.law)
Smith Hartvigsen, PLLC
Attorneys for Kane Creek Preservation and Development, LLC

Patricia Schmid (pschmid@agutah.gov)
Patrick Grecu (pgrecu@agutah.gov)
Assistant Utah Attorneys General

Madison Galt (mgalt@utah.gov)
Division of Public Utilities

Administrative Assistant

Exhibit D

**MEMORANDUM OF UNDERSTANDING BETWEEN KANE
CREEK PRESERVATION AND DEVELOPMENT, LLC AND
THE UTAH DIVISION OF PUBLIC UTILITIES**

The Utah Division of Water Quality requires Kane Creek Preservation and Development, LLC, a Delaware limited liability company (Kane Creek) to have a sponsoring body politic in order to implement and obtain a construction permit for Kane Creek's sewer system (Kane Creek Sewer Project). Grand County, where the Kane Creek Sewer Project is located, has not been willing to serve as that body politic. The Utah Division of Public Utilities (Division) is willing to serve as the sponsoring body politic for the Kane Creek Sewer Project subject to certain conditions. Kane Creek agrees to certain conditions pertaining to the Division's agreement to serve as the Kane Creek Sewer Project's body politic. This Memorandum of Understanding memorializes these conditions agreed to by Kane Creek and the Division.

Kane Creek and the Division agree that:

1. The Division's agreement to serve as Kane Creek's body politic for the Kane Creek Sewer Project is conditioned upon Kane Springs' performance of its obligations set forth below.
2. The Division's agreement to serve as Kane Creek's body politic for the Kane Creek Sewer Project is non precedential.
3. The Division's agreement to serve as Kane Creek's body politic for the Kane Creek Sewer Project does not change in any way the Division's statutory duties and responsibilities.
4. The Division will act consistent with its statutory responsibilities.
5. The Division's agreement to serve as Kane Creek's body politic for the Kane Creek Sewer Project does not affect or predetermine any position the Division may take regarding any relevant application or relevant matter Kane Creek or others may bring before the Public Service Commission of Utah (Commission) or any court.
6. Kane Creek agrees that by the Division agreeing to be the sponsoring body politic for the Kane Creek Sewer Project, the Division is not agreeing to any duties beyond the scope of its statutory authority.
7. Kane Creek will pursue timely and reasonable development and implementation of the Kane Creek Sewer Project's sewer system.
8. In furtherance of 7 above, Kane Creek will file with the Commission an application for a certificate of convenience and necessity (CPCN) no later than Friday, February 17, 2023.
9. Kane Creek agrees that it has the sole responsibility to pursue and obtain the CPCN for the Kane Springs Sewer Project.
10. Kane Creek will pursue Commission approval regarding the Kane Springs Sewer Project for an appropriate sewer system rate structure and terms of service and will comply with any conditions imposed by the Commission.

Dated this 15 day of February 2023.



Kane Creek Preservation and Development, LLC, a Delaware limited liability company	Division of Public Utilities
By:  Craig Weston, Manager	By:  Chris Parker, Division Director

Exhibit E



State of Utah

SPENCER J. COX
Governor

DEIDRE HENDERSON
Lieutenant Governor

Department of
Environmental Quality

Kimberly D. Shelley
Executive Director

DIVISION OF WATER QUALITY
John K. Mackey, P.E.
Director

March 27, 2023

VIA EMAIL
(Read Receipt Requested)

Craig Weston, Manager
Kane Creek Preservation and Development, LLC
10466 Iverson Lane
Highland, Utah 84003
Craig@builderfusion.com

Subject: **Approval-in-Concept for Wastewater Treatment**
Kane Creek - Proposed Development Grand County, Utah

Dear Mr. Weston,

The Division of Water Quality (the Division) has reviewed the Water and Wastewater Feasibility Report¹ submitted by William H. Anderson of Anderson Engineering on October 18, 2022, containing preliminary plans for the development. The proposed cumulative wastewater discharge flows are estimated to be a maximum of 270,000 gpd, with an average day demand of 135,000 gpd. The anticipated wastewater discharge will be treated for discharge to the Colorado River. The method of treatment is proposed as a four stage Bardenpho process with membrane bioreactor (MBR) facility including Ultraviolet (UV) disinfection as designed by Cloacina. An Approval-in-Concept, as constituted by this letter, is hereby issued subject to the following conditions:

1. A four stage Bardenpho MBR including UV disinfection as shown in the Water and Wastewater Feasibility Report is an acceptable method for treatment, provided it meets the limits as listed below.

Per the feasibility report and anti-degradation report¹ submitted to the Division, the effluent quality will meet or exceed that of the existing Moab treatment facility. The effluent standards are anticipated to be applied with no mixing zone, i.e., end-of-pipe. Effluent standards may be required as follows but will be determined during the UPDES permit issuance:

- a. Monthly average BOD₅ concentrations of less than 10.0 mg/L
- b. Monthly average total suspended solids (TSS) concentrations of less than 10.0 mg/L
- c. Monthly average turbidity of less than 5.0 NTU
- d. Monthly average ammonia as N concentrations of less than 2.2 mg/L

- e. Monthly average *E. coli* of less than 2.2 CFU/100 mL
 - f. Monthly average total nitrogen as N concentrations of less than 5.0 mg/L
 - g. Monthly average total phosphorus as P concentrations of less than 1.0 mg/L
2. The owner shall obtain a construction permit before beginning any excavation, construction, or installation of equipment. A construction permit application, consisting of an engineering report, design calculations, engineered plans, and construction specifications, shall be submitted for the Division review and issuance of a construction permit.
 3. In accordance with Utah Administrative Code R317-3-1.1.E.1. the Public Service Commission (PSC) will be serving as the sponsoring body politic.
 4. This Approval-in-Concept is not a construction permit or a permit to operate. Construction may not begin until plans and design specifications are approved and a construction permit is issued. The issuance of this Approval-in-Concept does not relieve the system owner or the owner's agent, in any way, of any obligations to comply with all applicable regulatory requirements, or obtaining applicable permits from other agencies. We recommend you contact Orion Rogers of the Southeast Utah Health Department at (801)-557-6978 for compliance with other local requirements.
 5. Culinary service to the proposed project shall meet quality and quantity requirements of the Utah Department of Environmental Quality, Division of Drinking Water prior to DWQ issuing an operating permit for this project.

We appreciate the cooperation of you and your consulting engineers. If we can be of further assistance in any way, please contact Glen Lischeske, P.E., of my staff at (385) 228-5739 or via email at glischeske@utah.gov.

Sincerely,



John K. Mackey, P.E.
Director

GL:JKM:is

cc: Via Email
William H. Anderson, P.E., Anderson Engineering
Russell Seeley, P.E. DEQ DE
Orion Rogers, Southeast Utah Health Dept.
Jacques Hadler, Commission Chair Grand County
Gabriel Woytek, Clerk Grand County
Chris Parker, Director Division of Public Utilities
Ken Hoffman & Glen Lischeske, DWQ