Exhibit 10

Martin K. Banks (#5443)
martin.banks@stoel.com
Jason T. Morgan
jason.morgan@stoel.com
STOEL RIVES LLP
201 S Main Street, Suite 1100
Salt Lake City, UT 84111
Telephone: (801) 328-3131

Attorneys for Intervenor-Defendant
Enefit American Oil Co.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

LIVING RIVERS, *et al.*, Plaintiffs, v. DAVID BERNHARDT, *et al.*, Federal Defendants, ENEFIT AMERICAN OIL CO., Intervenor-Defendant.	**INTERVENOR-DEFENDANT'S ANSWER BRIEF** Civil No. 4:19-CV-00041-DN-PK Judge David Nuffer Magistrate Judge Paul Kohler

Pursuant to DUCivR 7-4(a)(6), Intervenor-Defendant Enefit American Oil Co. ("Enefit") submits this Answer Brief in response to Plaintiffs' Opening Brief (ECF No. 81). Enefit also joins in and adopts by reference Federal Defendants' Answer Brief, and joins with the Federal Defendants and denies that the decisions of the Federal Defendants approving and issuing the rights-of-way across federal public land violate the National Environmental Policy Act ("NEPA"), the Endangered Species Act ("ESA"), the Administrative Procedures Act ("APA"), or their respective implementing regulations. Enefit also joins with the Federal Defendants and

demand. Although each has it pros and cons, Enefit has never "disavowed"[87] any of them. Instead, the FEIS rightly characterizes them as "[a]dditional water supply options."[88]

a. Potential for Withdrawing Water from the White River.

As to the possibility of "withdraw[ing] water from the White River," that there may have been "'insufficient lands available' along the White River for the necessary water-withdrawal infrastructure"[89] to satisfy the entire water demand does not mean that this alternative could not be developed at a smaller scale to at least contribute to the water demand. Similarly, that "'[f]rom an economic standpoint, diversion from the White River would likely not be comparable to the proposed action'"[90] does not render the diversion is economically infeasible. Similarly, that "withdrawing water from the White River would 'likely require'" relocating existing pipelines, applying for other authorizations, and incurring other "costly" expenses does not render the withdrawal infeasible.[91]

b. Potential for Converting Existing Groundwater Monitoring Wells into Water Supply Wells and Pumping Groundwater Under Water Right No. 49-258.

As to "converting existing groundwater monitoring wells on the South Project to water supply wells and pumping groundwater under the same water right (No. 49-258) [Enefit] planned to use for its Green River withdrawal,"[92] that this alternative may "require authorization" to change the water right's withdrawal location does not render it infeasible. Although Enefit is not the designated holder of that water right, BLM understood that Enefit could change the withdrawal location,[93] as Enefit has a contractual right to it, which obligates the holder to

[87] Opening Brief 30.
[88] BLM_8125 (emphasis added).
[89] Opening Brief 27 (citing BLM_41-42).
[90] *Id.* (and adding emphasis).
[91] *Id.* (citing BLM_41-43).
[92] *Id.* 28 (citing BLM_7063).
[93] BLM_15, BLM_1539-40.

"undertake all other actions reasonable necessary to preserve and develop WRN 49-258 for use by the Project."

Similarly, that "'testing on the [monitoring] wells to determine long-term availability and yield' of the aquifer"[94] may need to occur before submitting the application to change the withdrawal location does not render this alternative "speculative." Plaintiffs' reference to a portion of a paragraph in the DEIS stating that "'[i]t is unlikely the existing monitoring wells on the Applicant's private property could be converted to supply wells'" ignores the context of that sentence, which is the "existing" condition of those wells, and omits the important trailing language: "However, additional studies would be needed to determine if the wells could be fully developed to provide a sufficient quality, quantity, and rate of delivery….."[95]

c. Potential for Trucking Water to the South Project.

As to "truck[ing] water to the South Project,"[96] again, this possibility is not an either/or option, but would likely constitute one, among multiple, means of contributing toward the total water demand. Plaintiffs' extra-record calculation of the number of needed trucks is overstated as it does not account for a more limited role.[97] Plaintiffs' reference to only part of another paragraph, that "'supply[ing] the balance' of the South Project's water demand via trucking ... '*would almost certainly be both technically and economically infeasible,*'"[98] is misleading. In reading the entire paragraph, it is clear that what may be infeasible was trucking in the entire amount, not the balance.[99]

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[94] Opening Brief 28 (citing BLM_1540).

[95] *Id.* (citing BLM_7284); BLM_8124-25 ("Completion records from a historic gas well at the same location indicated significant water was encountered…, further improving reliability of this water source.").

[96] *Id.* 29 (citing BLM_7063).

[97] *Id.* 29.

[98] *Id.* (citing BLM_1544 and adding emphasis).

[99] BLM_1544.