Why did Utah oil shale developers give away priceless water rights?

Environmental group alleges secret deal with Deseret Power to preserve the 11,000-acre right that should have expired.

The developers of a stalled Utah oil-shale project once owned invaluable rights to 11,000 acre-feet of Green River water. But for a mere $10, they sold those rights to the
operators of Utah’s Bonanza Power Plant, a coal-fired generating station whose days may be numbered.

In a formal protest on file with the Utah State Engineer, the Grand Canyon Trust contends this 2013 deal is part of an illegitimate scheme to keep the water rights alive long after 2015, the year it should have been retired.

The trust is one of several environmental groups fighting the oil shale mine and processing plant proposed by an Estonian state-owned energy company, which hopes to produce 50,000 barrels a day from shale extracted in the Uinta Basin southeast of Vernal. Without the water, though, the oil shale project would be dead.

Now the Grand Canyon Trust alleges that after Deseret Power Electric Cooperative obtained the water rights, it entered a contract with Enefit American Oil promising to provide its oil shale project with water.

“The deal between Deseret Power and Enefit is depriving Utahns of billions of gallons of water that should be available to the public,” said Travis Bruner, conservation director with the trust. “The water right should be forfeited and returned to the people of Utah rather than used to produce one of the most carbon-intensive fossil fuels on the planet.”

The group learned of the contract in the course of a lawsuit it
is litigating against the Bureau of Land Management regarding a utility right of way it granted across public land for the oil shale mine. It has asked the State Engineer to subpoena the document, which is not publicly available.

The State Engineer will hold a hearing on the protest Tuesday, but only to examine the issue of whether the trust has standing to pursue such an action.

In their responses, lawyers for Deseret Power say the utility intends to use this water to meet the region’s growing electricity needs, although no firm plans for expanding the Bonanza plant are currently underway.

The water right in question was first awarded in 1965 and has been held by various energy developers over the years, landing finally with Enefit American Oil in 2011 when that company acquired the assets of Oil Shale Exploration Co.
Many have tried to develop Utah’s massive oil shale resources, and all have failed. A subsidiary of the world’s largest shale processor, Enefit believes it has the secret sauce to cook Utah shale into liquid gold. For the past decade, it has developed ambitious plans to strip mine oil shale deposits in the eastern Uinta Basin near the White River. The plan is to produce up to 50,000 barrels of oil a day in a huge plant that would process ore from a surface mine that could sprawl across 9,000 acres.
But the South Project has bogged for years under the weight of depressed energy prices. Today’s soaring oil prices will likely enhance the project’s financial viability, but it could still be years before Enefit begins working the earth, even with $100-a-barrel oil. The project’s biggest obstacle may now be access to water, which oil shale processing requires in vast amounts.

Enefit’s water right was to be put to “beneficial use” by 2015, or it would expire under the “use or lose it” framework of Western water law, according to the protest the Grand Canyon Trust with PVR Inc., a Moab ranch that holds rights to the Colorado River.

The protest alleges that Enefit transferred the right to Deseret to avoid seeing the privilege to use the water evaporate.

According to public records on file with the State Engineer, Enefit relinquished the water right, which translates to nearly 10 million gallons a day, to Deseret for just $10 in 2012. That volume of water nearly equals all the water used for industrial and municipal uses in the Uinta basin, according to the protest. Imagine a stream flowing ceaselessly at 15 cubic feet per second, pulled from the already depleted Colorado River system.

After acquiring the right, Deseret filed what’s known as a
“change application,” altering the proposed uses and points of diversion for the water. The State Engineer granted the change, along with a 10-year extension to the deadline for demonstrating beneficial use, pushing it back to 2025.

The trust’s protest alleges the extension and change application were awarded under false pretenses and should be voided. It believes the utility is simply holding the right for Enefit until such time it can begin mining and processing oil shale.

“It looks like Deseret Power struck a deal to help Enefit avoid losing its water right,” said Michael Toll, a staff attorney with the trust. “Deseret Power is unlawfully holding it so that Enefit can use the water to mine and process oil shale.”

In its filings, Deseret does not deny the existence of the deal. Nor does it even mention Enefit. Instead, it claims it intends to deploy the water in a second 500-megawatt generating unit at Bonanza that it might build in the next 5 to 15 years and a third unit after that.

“Electricity demand throughout Deseret Power’s service area and the State of Utah will increase in the future. This point is undisputed,” wrote the cooperative’s lawyer Richard Hall in a rebuttal filed with the State Engineer. “Recent studies indicate that the population in Utah will increase by over 2.2 million people (a 66% increase) over the next 40
However, environmental groups contend the Bonanza plant faces early retirement as soon as 2030 under a legal settlement regarding its emissions from burning coal. But Hall contends the utility could extend the plant’s life if it operates on a seasonal basis, installs emission control equipment on the existing coal-burning unit, or adds combined cycle units that burn natural gas.

“Furthermore, Deseret Power is exploring opportunities for carbon capture and sequestration in connection with the operation of [Bonanza] Unit 1,” Hall wrote. “Such environmental pollution control technologies would require extensive water resources, but would allow Deseret Power to continue operating Unit 1 well beyond 2030.”

The disputed water right gives the company “important optionality” toward charting a new path for the plant.

“While Unit 1 will likely be retired as a coal-fired unit at some point in the future, that date has not been determined,” Hall wrote. “More importantly, the retirement of Unit 1 will not mean the closure of the plant.”

Whatever happens with the plant, Hall wrote, no one can protest its water right until 2025, when Deseret applies for another extension.