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DATE: October 21, 2015

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BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

RE: Fifty-Year Request for Extension of		
Time to Show Proof of Beneficial Use		
Application No. A35818: Water Right		PROTEST
Numbers 89-74, 89-1285, and 89-1513		
Held by Kane County Water Conservancy		
District		

I. Introduction

HEAL Utah and June Adams hereby protest the Kane County Water Conservancy District (KCWCD) Fifty Year Request for Extension of Time to Show Proof of Beneficial Use for Water Rights 89-74, 89-1285, and 89-1513 (29,600 acre feet). Parties hereby also request a hearing. We also hereby incorporate by reference the protest filed by Uranium Watch and Living Rivers.

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SALT LAKE

II. Protesting Parties

HEAL Utah is a public interest group that advocates on nuclear power, nuclear waste, and toxic waste issues. June Adams is a resident of Green River, Utah, who holds

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water right number 91-5211. This water right's source of supply is the Green River.

Therefore, the parties, filing jointly, have standing under Utah Code §73-3-12(2)(f).

Matt Pacenza of HEAL Utah is the primary contact for this Protest and Hearing Request.

III. Legal Framework: Diligence Review

Utah Code §73-3-12 (2)(g) states, "The approved extension of time is effective so long as the applicant continues to exercise reasonable and due diligence in completing the appropriation." Basically, if a water right holder does not put the water right to beneficial use within the allotted time and requests additional time to do so, the State Engineer is charged with evaluating whether the water right holder has been diligent in attempting to put the water right to beneficial use. According to Utah State Code §73-3-12(2)(k)(i)&(ii), if the State Engineer finds "unjustified delay or lack of diligence in prosecuting the works to completion," then the State Engineer can either deny the extension request entirely or grant an extension with additional conditions built in.

An extension was last granted in 2008. The new Application details "Work Completed Since Last Extension" but the fact remains that these water rights have not been put to beneficial use since 2008, or actually since the District acquired the rights in 2003. The information described in the Application only relates to work on the completion of a proposed nuclear reactor for the company Blue Castle Holdings, Inc. (BCH). The State Engineer approved the water rights for this company, however, this approval is currently being challenged in the Utah State Court of Appeals.

Regardless of the outcome of this challenge, BCH's proposed nuclear power project is grossly underfunded and has not seen any substantive growth or development
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since its inception. We would like to highlight several key areas which we, the Protestants, believe demonstrate a lack of due diligence on the part of the District and are indicative of the near certain likelihood that the BCH proposal never moves forward. These include the project's current lack of capital, the lack of significant or ongoing investment in the project and finally a lack of market demand. To be blunt: No one wants to invest in Blue Castle Holdings and no one wants to buy what they're selling – eight years after they announced their project. These issues bring us to the logical conclusion that the project is unlikely to ever be built.

Lack of Funding

From the September 2013 hearing in front of the 7th District Court, BCH's principals testified that they had raised a bit more than \$17 million dollars to date. The breakdown of this figure was from \$16 million dollars of cash flow from Willow Creek, LLC, \$750,000 in initial investments from the company's five founders, and an additional \$500,000 from an another 25 "other" investors.

The bulk of this funding was thus from the Willow Creek, LLC. This is a natural gas services company, which Blue Castle bought in 2010. Blue Castle acquired Willow Creek in exchange for a piece of the nuclear company. However, even if BCH did get all

of that money from Willow Creek, they sold the company in 2015.¹ Therefore, they certainly cannot expect to earn any additional revenue from this source, which according to their 2013 court testimony was to that date responsible for nearly 95 percent of their funding. Ultimately, this leaves BCH with no major or ongoing, funding source.

In the current application, the District claims that BCH has raised about \$19 million to date, meaning they've brought in an additional \$2 million over the past two years.

That is a fraction of the total \$50 to \$100 million needed apply for an Early Site Permit (ESP), according to Blue Castle's own estimates (An early site permit is a license granted by the Nuclear Regulatory Commission (NRC) to approve the site for a nuclear power project, basically the first big hurdle). At their current rate of revenue of \$1 million per year, it would take Blue Castle decades even to just apply to the NRC. And that assumes that with Willow Creek sold, Blue Castle is continuing to bring in \$1 million a year – a questionable assumption.

¹ Nuclear Intelligence Weekly, Jan. 9, 2015.

http://www.bluecastleproject.com/files/news_items/162-

010915%20NEWBUILD%20Blue%20Castle%20Twin%20Buttes%20Work%20on%20

Nuclear%20Plans%20%20NIW.pdf

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² Westinghouse Electric Company, Aug. 20, 2015

In addition, according to evidence filed by our collegial organization Uranium Watch, BCH has had no formal communication with the NRC since 2011. Thus, this telling lack of communication with the major governing federal body, compounded by the continued failure to produce any significant funding, ultimately indicates both a lack of progress and a lack of due diligence on the part of the District. They don't have anywhere near enough money to apply to build the project that would use this water – and their bid is so stalled that they aren't even bothering to talk to the federal agency that would grant them permission to move forward.

Absence Of Serious Investment

Another related financial issue associated with the project is the lack of secured future funding. Blue Castle has repeatedly crowed about an agreement the company signed in August 2014 with the Westinghouse Electric Company. However, we are deeply skeptical that this is anything other than a stalled project trying to create the illusion of actual progress where none exists.

Read the announcement closely and all the companies are doing is "developing a scope of activities" which sound like plans on paper that are a million miles away from building a project.

The only evidence for this agreement, as far as we know, is a press release which Westinghouse published.² And that release, which is mostly optimistic language about the project and each company, describes the agreement solely that “the companies will work together to develop a scope of activities.”

We’re not exactly sure that that means, but here’s our best guess: The two companies have decided they’ll soon start planning to make a plan. In other words, they’re talking. Not investing, or building, or signing a contract, or committing. Talking about planning. Which means that Blue Castle still has the same problems it’s always had: Investors aren’t interested in investing in nuclear reactors.

In the Application from the District, this agreement with Westinghouse or Memorandum of Understanding (MOU) was one of the foremost pieces of evidence that the District pointed to as a sign of growth and listed under “Progress Made Since the Last Extension.” However, the KCWCD has apparently not seen the actual MOU.

² Westinghouse Electric Company, Aug. 20, 2015

<http://www.westinghousenuclear.com/About/News/View/Westinghouse-Blue-Castle-Working-to-Bring-Benefits-of-AP1000%C2%AE-Plant-Technology-to-Western-US>
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According to an email from KCWCD's Billing Clerk, Amanda Buhler, following a Government Records Access and Management Act (GRAMA) request, she affirmed "KCWCD does not have a copy of the MOU Between Blue Castle Holdings and Westinghouse Electric Company, and we will not be able to provide you with any other the info you are seeking." Thus, we cannot see how the District can claim to have done due diligence, while relying strictly on the statements alleged in a very vague press release. This demonstrates serious negligence on the part of the District.

Nonexistent Market Demand

Finally, this plan will be unlikely to come to fruition because of the simple fact that there is no one interested in buying its expensive power. Blue Castle Holdings, in eight years, has attracted no viable utility interest.

In fact, to date, BCH has not found a single public utility to participate in the proposed project on any level. No utility has pledged to purchase their power, to partner with their project's development, to purchase any of their assets, or to offer funding contributions. Only one utility has expressed a small interest in the project, a utility in Page, Arizona. However, this utility has not signed any agreement due to the fact that there is no way to shunt the electricity from Green River to Page. Plus, it is worth mentioning that they were only potentially interested in 50-megawatts of power, a small fraction of the total proposed 3,000-megawatt plant.

This lack of demand is further evidenced by Rocky Mountain Power's most recent Integrated Resource Plan³ (IRP), which states, "At this time other than technology monitoring, the Company is not actively involved in development efforts of either the Blue Castle project or any specific SMR technologies. Currently nuclear power is not considered a viable resource option until the 2025-2030 timeframe. Significant considerations are capital cost uncertainty (both for EPCs as well as Owner's costs), schedule risk, the high cost of development and permitting over an extended period, cost recovery uncertainty associated with unsuccessful development efforts, sociopolitical resistance and regulatory obstacles."

So this all speaks to a clear trend. Utilities in the west have universally shunned new nuclear power. And the fact remains that no utility in the west is planning on investing in new nuclear, leaving Blue Castle with not just no money to build their project – but no hopes of selling the expensive source of power they can't afford to build.

It's important to understand what a significant issue this is. Blue Castle's business plan is simple: They want to sell a package to a utility or consortium of utilities. That

³ Rocky Mountain Power Integrated Resource Plan – Page 15

https://www.rockymountainpower.net/content/dam/pacificorp/doc/Energy_Sources/Integrated_Resource_Plan/2015IRP/PacifiCorp_2015IRP-Vol11-MainDocument.pdf

package would consist of water rights, land and permissions from the NRC. Blue Castle made clear, in the 2013 hearing, that they don't intend to actually try to raise the \$17-\$20 billion it would actually cost to build the nuclear reactor project. Rather, the idea, Blue Castle does all the hard work to get permits and land and water and sells to a utility.

But here's the problem: No utility wants what they're selling. Utah's main utility certainly doesn't.

This fact, paired with Blue Castle's failure to raise money, paired with Blue Castle's loss of its only significant income, certainly throws into serious question the District's claim that this project is making significant progress.

IV. Hearing

HEAL Utah and June Adams request a hearing on the extension of time requested by the District for water rights 89-74, 89-1285, and 89-1513.

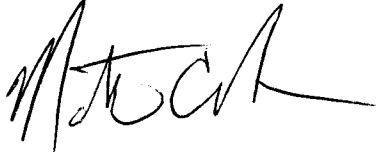
V. Conclusion

Wherefore, HEAL Utah and June Adams respectfully request that the State Engineer deny the Extension Request. The District has failed to meet its burden of convincing the State Engineer that the request for a time extension should be granted. Additionally, if the State Engineer does approve the extension, we request that it be for a very limited period of time, not to exceed three years. If the company cannot prove that they have the capital resources and the market demand to put the water to beneficial use, and ultimately move forward with project development, the District must do its due diligence and put the water to beneficial use.

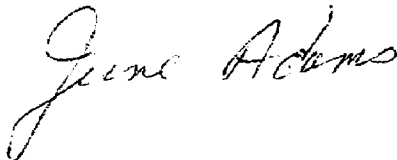
Utah State Engineer
October 21, 2015

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Respectfully submitted,



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