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MG 15-04034 #15
PROTEST FEE PAID
MG 15-04035 #30

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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 |

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1. Introduction

Living Rivers and Uranium Watch 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.

The due date for protests on the KCWCD Fifty Year Request for Extension of Time to Show Proof of Beneficial Use for Water Rights 89-74, 89-1285, and 89-1513 (Application) is October 21, 2015. This Protest was hand delivered to the Utah Division of Water Rights office in Price, Utah, on October 21, 2015. Therefore it is timely.

Protest of KCWCD Fifty Year Request for Extension of Time to Show Proof of Beneficial Use for Water Rights 89-74, 89-1285, and 89-1513

2. Protesting Parties

Living Rivers is a public interest organization that educates and advocates for the protection of the Colorado River Basin. Uranium Watch is a public interest organization that educates and advocates for the protection of public health and the environment from the nuclear industry facilities in Utah.

Sarah Fields of Uranium Watch is the primary contact for this Protest and Hearing Request.

3. Legal Framework

3.1. The Utah statues applicable to 50-year request for extension of time to show proof of beneficial use of a Utah water right are found at Utah Code Annotated Section 73-3-12 and Section 73-1-4. Section 73-3-12 states:

73-3-12. Time limit on construction and application to beneficial use -- Extensions -- Procedures and criteria.

- (1) As used in this section:
 - (a) "Public water supplier" is as defined in Section 73-1-1.
 - (b) "Wholesale electrical cooperative" is as defined in Section 54-2-1.
- (2)(a) Within the time set by the state engineer under Subsection 73-3-10(5), an applicant shall:
 - (i) construct works, if necessary;
 - (ii) apply the water to beneficial use; and
 - (iii) file proof with the state engineer in accordance with Section 73-3-16.
- (b) Except as provided by Subsection (4), the state engineer shall extend the time in which an applicant shall comply with Subsection (2)(a) if:
 - (i) the date set by the state engineer is not after 50 years from the day on which the application is approved; and
 - (ii) the applicant shows:

- (A) reasonable and due diligence in completing the appropriation;
or
- (B) a reasonable cause for delay in completing the appropriation.
- (c) An applicant shall file a request for an extension of time with the state engineer on or before the date set for filing proof.
- (d) The state engineer may grant an extension of time authorized by Subsection(2)(b) if the state engineer sets a date:
 - (i) no later than 14 years from the day on which the application is approved if the applicant meets the requirements of Subsection (2)(b); and
 - (ii) after 14 years from the day on which the application is approved if:
 - (A) the applicant meets the requirements of Subsection (2)(b); and
 - (B) the state engineer publishes notice as provided in Subsection (2)(e).
- (e) (i) The state engineer shall publish a notice of the request for an extension of time:
 - (A) once a week for two successive weeks, in a newspaper of general circulation, in the county:
 - (I) in which the water source is located; and
 - (II) where the water will be used; and
 - (B) in accordance with Section 45-1-101 for two weeks.
- (ii) The notice shall:
 - (A) state that a request for an extension of time has been made; and
 - (B) specify where an interested party may obtain additional information relating to the request.
- (f) A person who owns a water right or holds an application from the water source referred to in Subsection (2)(e) may file a protest with the state engineer:
 - (i) within 20 days after the notice is published, if the adjudicative proceeding is informal; and
 - (ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.
- (g) The approved extension of time is effective so long as the applicant continues to exercise reasonable and due diligence in completing the appropriation.
- (h) The state engineer shall consider the holding of an approved application by a public water supplier or a wholesale electrical cooperative to meet the reasonable future water or electricity requirements of the public to be reasonable and due diligence in completing the appropriation for the purposes of this section for 50 years from the date on which the application is approved.

- (i) If the state engineer finds unreasonable delay or lack of reasonable and due diligence in completing the appropriation, the state engineer may:
 - (i) deny the extension of time; or
 - (ii) grant the request in part or upon conditions, including a reduction of the priority of all or part of the application.

(3) Except as provided by Subsection (4), an application upon which proof has not been filed shall lapse and have no further force or effect after 50 years from the date on which the application is approved.

(4) (a) If the works are constructed with which to make beneficial use of the water applied for, the state engineer may, upon showing of that fact, extend the time in which to file proof by setting a date after 50 years from the day on which the application is approved.

(b)(i) The state engineer may extend the time in which the applicant shall comply with Subsection (2)(a) by setting a date after 50 years from the day on which the application is approved if the applicant:

(A) is a public water supplier or a wholesale electrical cooperative; and

(B) provides information that shows the water applied for in the application is needed to meet the reasonable future requirements of the public.

(ii) The information provided by a public water supplier shall be in accordance with the criteria listed in Subsection 73-1-4(2)(f).

(iii) A wholesale electrical cooperative shall provide the information described in Subsection (4)(b)(i)(B) in a report that forecasts:

(A) the need for the water to produce power; and

(B) the power output of the project for the wholesale electrical cooperative within the next 40 years.

(c) The state engineer shall extend the time in which to file proof by setting a reasonable date after 50 years from the day on which the application is approved if the applicant:

(i) meets the requirements in Subsection (4)(b); and

(ii) has:

(A) constructed works to apply the water to beneficial use; or

(B) made substantial expenditures to construct the works.

[Emphasis added.]

3.2. Subsection 73-1-4(f)(i) states:

Protest of KCWCD Fifty Year Request for Extension of Time to Show Proof of Beneficial Use for Water Rights 89-74, 89-1285, and 89-1513

73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within seven years -- Nonuse application.

- (f) (i) **The reasonable future water requirement of the public is the amount of water needed in the next 40 years by the persons within the public water supplier's projected service area based on projected population growth or other water use demand.**
- (ii) **For purposes of Subsection (2)(f)(i), a community water system's projected service area:**
 - (A) **is the area served by the community water system's distribution facilities; and**
 - (B) **expands as the community water system expands the distribution facilities in accordance with Title 19, Chapter 4, Safe Drinking Water Act. [Emphasis added.]**

3.3. In sum, for a request for an extension of time to show proof of beneficial use after fifty years, the District must consider or demonstrate that:

3.3.1. The works are constructed with which to make beneficial use of the water applied for. Subsection 73-3-12(4)(a).

3.3.2. The applicant is a public water supplier or a wholesale electrical cooperative. Subsection 73-3-12. (4)(b)(i)(A).

3.3.4. The applicant provides information that shows the water applied for in the application is needed to meet the reasonable future requirements of the public. Subsection 73-3-12. (4)(b)(i)(B).

3.3.5. The applicant has constructed works to apply the water to beneficial use; or has made substantial expenditures to construct the works. Section 73-3-12. (4)(c) (ii)(A) and (B).

3.3.6. The reasonable future water requirement of the public is the amount of water needed in the next 40 years by the persons within the public water supplier's

projected service area based on projected population growth or other water use demand.

Subsection 73-1-4(f)(i).

4. KCWCD Application

The KCWCD Fifty Year Request for Extension of Time to Show Proof of Beneficial Use for Water Rights 89-74, 89-1285, and 89-1513 (Application), designated Attachment A, includes a 40-Year Water Use Plan (Plan), designated Attachment B, required by Utah Code 73-1-4(f)(i).

4.1. The Application describes "Work Completed Since Last Extension." The last extension was granted by the State Engineer in 2008. The water rights have not been put to any beneficial use since 2008, nor since the District acquired the rights in 2003. The Application only discusses the work completed relating to a proposed nuclear reactor, the Blue Castle Project (BCP). The subject water rights were leased by Blue Castle Holdings, Inc.'s (BCH's) predecessor company, Transition Power Development Inc., in 2007, for the proposed BCP near Green River. The State Engineer approved the withdrawal from the Green River, based on an application to change the place of withdrawal, use, and place of use. The challenge of the State Engineer's decision is in the Utah Court of Appeals.

4.2. The Application describes completed work related to the BCP and includes a list of some of the Early Site Permit (ESP) related activities. The ESP is a license issued by the Nuclear Regulatory Commission (NRC) that approves the site for a nuclear reactor project. After the issuance of an ESP, BCH or other entity would have to obtain a license to construct and operate the power plant. It is at the EPS stage that the applicant and the

NRC must identify and evaluate the environmental impacts of the construction and operation of the nuclear power plant. According to a 2010 BCH news release, the capital requirements over the next 5 years would be \$100 million.¹ See Exhibit A. Some or all of that money would be used to develop the ESP application. It would cost over \$15 billion to license and construct a 2-unit reactor project, as proposed by BCH.

4.3. The ESP activities described are percentages of some of the EPS application requirements. The percentages do not shed light on the work done, when it was done, and the work yet to be done. Nor, do they describe all the required ESP application work and numerous other aspects of the application; for example, the important applicant Environmental Report which analyzes the environmental impacts of the project—over the life of the project.

4.4. KCWCD states that the Emergency Plan is 45% complete and that all key state and local emergency preparedness agencies engaged. To the best of protestants' knowledge there has been no activity related to the state and local involvement in the emergency planning since the spring of 2012, when some emergency planning meetings were held in Green River. According to the Utah Division of Emergency Management, emergency planning for the reactor project is on hold.

4.5. The Applicant lists NRC involvement, including NRC data collection letters, NRC participation in the seismic analysis process, and “multiple” NRC visits to the Blue

¹ “Nuclear Site Developer Blue Castle Acquires Willow Creek Companies,” Blue Castle Holdings news release, December 10, 2010.

http://www.bluecastleproject.com/files/news_items/83-122110%20Nuclear%20Site%20Developer%20Blue%20Castle%20Acquires%20Willow%20Creek.pdf

Castle Project. All of these NRC activities occurred in 2011. The "multiple" NRC site visits occurred in August and October 2011. There was a meeting with NRC staff at the NRC headquarters in Maryland on October 27, 2011. Since that time, there is no evidence of any meetings with the NRC or NRC site visits. *See* Exhibit B.² The last time BCH communicated with the NRC regarding the submittal of an ESP application was March 2011, when they anticipated the submittal of the ESP application in fall of 2012 and a combined construction and operation (COL) application within 12 to 18 months after ESP submittal.³ *See* Exhibit C. Apparently, in the last four and a half years, BCH has not updated the NRC in writing regarding the timing of the submittal of ESP and COL applications, nor has BCH engaged the NRC in pre-application meetings since 2011. These are examples of the lack of progress on the Blue Castle Project and the lack of "due diligence."

4.6. The Application states 2 reasons why the Blue Castle Project has not been completed and the water put to beneficial use: 1) the approved change applications for the necessary water rights for the Blue Castle Project were appealed and in litigation and 2) the standard time from for the licensure and construction of a nuclear reactor is 10 to 15 years. Although the water rights change applications are still in court and it takes many years to license and construct a reactor and put the water rights to beneficial use, as discussed herein, there are several reasons to conclude that the water rights will never be put to beneficial use for the construction and operation of the Blue Castle Project.

² Documents on NRC Docket No. PROJ0768, for the Blue Castle Project, as of October 19, 2015.

³ Letter from Blue Castle Holdings, Inc., Provo, Utah, to US Nuclear Regulatory Commission, Washington, D.C., regarding Submittal of ESP and COL Application, March 8, 2011.

Further, there has been a lack of due diligence in furthering the BCP.

4.7. The District does not explain why the water rights were not put to use between 1964 and 2003. The District does not explain why the water from the three water rights was not put to beneficial use between 2003, when KCWCD obtained the water rights, and 2009, when the change applications for transferring the water rights to the Green River outside of the KCWCD service area was filed. KCWCD does not give a full history of each water right and the many anticipated uses for power development, coal mining, agriculture, housing and community development, recreation, and other uses that never came to fruition in the past 50 years. A review of the history of the water rights shows that, just like today, the dreams of development and putting the water to use were just dreams, and were not supported by realistic evaluations of the water needs and future development in the District.

4.8. There is information available that does not support the assumption that the Blue Castle Project is a viable project that will move forward in the near future. These include:

4.8.1. BCH has not announced the participation of any public utility in the proposed nuclear reactor project. No public utility in Utah or nearby state has announced that they will join the project to 1) purchase electricity from the project; 2) participate in the project as a partner or otherwise; 3) provide funding for the project, 4) purchase the license, water rights, or other project asset; or 5) in any way participate in the proposed reactor project. A utility in Page, Arizona, wanted to participate for 50 megawatts (MW) of the proposed 3000 MW plant, but has not signed a final agreement, because there is

currently no way to transmit the electricity from Green River to Page.

4.8.2. BCH has not held a meeting with the NRC or otherwise communicated with the NRC regarding the submittal of the ESP application since 2011.

4.8.3. According to testimony by BCH at the hearing before 7th District Court Judge George Harmond in September 2013, BCH had raised \$17 million from the reactor project and much of the funding comes from a Colorado oil and gas pipeline company, Willow Creek LLC, acquired by BCH. BCH announced the acquisition of Willow Creek LLC in December 2010. *See* Exhibit A. However, BCH no longer owns Willow Creek LLC, and the company has reverted to its previous owner, Russ Fowles.⁴ News of the sale of Willow Creek LLC is found in a January 2015 article in Nuclear Intelligence Weekly,⁵ which states: "The company [BCH] is a fully privately held and draws most of its investment capital through another company that the owners held in the oil and gas business and sold off recently." *See* Exhibit D. For some reason, BCH has not announced on their website that they no longer own the Willow Creek Pipeline Company; the outdated news release announcing that acquisition remains on BCH website. The minimal funding for the project does not represent "due diligence."

In sum, BCH no longer owns its primary source of funding for the reactor project licensing. BCH has not announced the participation of new investors or new major sources of income. Whatever business plan BCH had is no longer supported by a major, ongoing source of funding.

⁴ Personal communication with Willow Creek LLC, Grand Junction, Colorado.

⁵ Nuclear Intelligence Weekly, "Newbuild: Blue Castle, Twin Buttes Work on Nuclear Plans," January 9, 2015.

4.8.4. In the Application, the District states that BCH has raised \$19 million for the project. This means that they have raised \$2 million in the past 2 years. It will require from \$50 to \$100 million to obtain just an ESP. At the current fundraising rate, it would take an additional 30 to 80 years to have sufficient funding to submit an ESP application. However, based on the lease agreements with KCWCD⁶ and the San Juan Water Conservancy District,⁷ if the water rights protest is settled in their favor, BCH must start to pay \$180,000 per year for the first 5 years and \$580,000 thereafter until the reactor comes online. This means that, after 5 years, over half a million dollars will go to payment of the water rights lease, greatly extending the time to accumulate the funds necessary to submit an ESP application.

4.8.5. The District has not demonstrated that the points of diversion for the proposed Blue Castle Project, as approved by the State Engineer, are suitable for the proposed reactor project. The approved points of diversion are adjacent to the Green River Sewage Treatment Plant, with only an earthen berm between the Plant and the River. There is no land between the River, the Plant, the nearby I-70 bridge and highway for the diversion structures, pumps, security fencing, transmissions lines, backup diesel engines, large pipelines, buildings, parking, and other equipment and structures necessary to take water out of the Green River and convey it safely and reliably to the reactor site.

⁶ Water Rights Lease Agreement, entered into as of September 20, 2007, between Kane County Water Conservancy District and Transition Power Development LLC (later assigned to Blue Castle Holdings Inc.).

⁷ Water Rights Lease Agreement, entered into as of November 30, 2007, between San Juan County Water Conservancy District and Transition Power Development LLC (later assigned to Blue Castle Holdings Inc.).

Neither BCH, nor the KCWCD, produced an engineering feasibility study that demonstrated the feasibility of diverting and transporting water from the Green River at the approved diversion location.

4.9. As shown by the District and BCH actions and lack of action, the District and BCH have not exercised due diligence to put the subject water rights to use.

5. KCWCD 40-Year Water Use Plan

5.1. According to an August 8, 2013, State Engineer Decision in response to a request by the San Juan Spanish Valley Special Service District, Water Right No. 09-249 (A37788e):

Typically, the information supplied in support of an extension request beyond 50-years has been in the form of an engineering analysis detailing the water right held by the public water supplier, the current water use demand and the projected water use demand based on projected population growth or other water use demands within the public water supplier's projected service area. [Emphasis in original.]

However, the District's 50-year extension request associated with 29,600 acre feet of water does not include an "engineering analysis detailing the water rights held by the public water supplier, the current water use demand and the projected water use demand based on projected population growth or other water use demands within the public water supplier's projected service area."

5.2. The Application outlines the Future Water Requirements of the District and Municipal Water Demands (Section 2.1, page 3). KCWD anticipates 3,450 new families and the need for 11,000 acre feet of municipal water within the next 40 years. KCWCD states that the District realizes that existing municipal systems have some excess capacity

to supply limited growth, but data to take that factor into account are not available.

Therefore, there is no information regarding how existing water systems and other water rights could be used to accommodate population growth over the next 40 years. There is no information regarding the availability of the water from other sources within the district.

KCWCD does not state whether the water needed for municipal growth would be diverted directly from Lake Powell (89-74 and 89-1285) or Wahweap Creek (89-1513). Since the current points of diversion on Lake Powell are very isolated, it is likely that for those water rights to be used for municipal and other purposes, the rights would have to be transferred to another source. This would require a change in the point of diversion, use, and place of use. KCWCD does not provide information regarding such a source, or sources, and show that there is water available for the projected municipal use. Nor, does KCWCD explain why a completely new application could not be submitted appropriate water from a new source to supply municipal water, rather than transferring a water right from the Colorado River to that source.

Water Right 89-1513 is currently to be diverted from Wahweap Creek, near Big Water Town, originally for road construction, dust control, and associated uses for anticipated coal development. In 2003 an extension was granted for anticipated uses for a housing development on State Lands, recreation, agriculture, and other multiple uses. KCWCD does not explain whether the water will be taken from Wahweap Creek or some other source for municipal uses or provide information regarding the water works that have been constructed or proposed for such use.

5.3. KCWCD anticipates the need for 1,000 acre feet to provide water demands for tourism and 2,000 acre feet for recreational development. There is no discussion of why those needs cannot be met by current appropriations of water from other sources. There is no mention of the source, or sources, of water that will provide the 3,000 acre feet for tourism and recreational development over the next 40 years. The District must show that the anticipated, unidentified sources have sufficient water to sustain new appropriations. It is not enough to have a large un-used appropriation from Lake Powell. The District must also be able to show that within the next 40 years the water will be 1) diverted from Lake Powell, or 2) diverted from a source near the place of use and that the new source has sufficient unappropriated water and the change would satisfy other requirements for the transfer of a water right from one location, use, and place of use to another. The District failed to show this. Additionally, the Application did not include any engineering analysis in support of their assertions regarding the needs for future municipal uses.

5.4. The District's discussion of Industrial Water Demands (Section 2.3, page 6) states that they have committed 8,000 acre feet to meet potential industrial uses, including potential coal mining. There is no discussion of where this committed water will come from: the sources, existing water rights, new water rights, or transfer of rights from the subject water rights. If the 8,000 acre feet, or a portion thereof, are to come from subject water rights on Lake Powell, then there must be a discussion of the new potential sources and whether they can be used to support industrial development. There is no discussion of proposed coal mines or an explanation as to why these coal resources

have not previously been exploited. Nor is there information on the works constructed to supply the industrial water demands or the other appropriated water rights that can supply that demand.

5.5. The District's discussion of the Blue Castle Power Plant (Section 2.4, page 7) states that the District has entered into an agreement to lease Water Rights 89-74, 89-1285, and 89-1513 (29,600 acre feet) to Blue Castle Holdings Inc., for the proposed nuclear reactor. Unless the appropriation is not finalized by the court or the lease is vacated for some reason, the subject water rights will be subject to the terms of the lease as long as the lease is in effect. The lease allows the District to use, rent, or lease the water if the water is not being used by BCH. It also authorizes the sublease of the water by BCH. However, such changes in the use of the water would require change applications to be submitted to the Division of Water Rights.

At no time since the last extension of time was granted in 2008 and since the lease between was signed in 2007 has KCWCD or BCH proposed putting any of the 29,600 acre feet of leased water to beneficial use for other purposes.

The Application states, "Under Change a35402 the water is proposed to be diverted from the Green River near the town of Green River, Utah." However, the Application fails to discuss the feasibility of the points of diversion as an area for large amounts of water (a total of 53,600 acre feet) to be diverted and pumped through large pipes to the reactor site. There is no engineering study that demonstrates the feasibility of withdrawing the water from the Green River diversion location and transferring the water

(including pipelines under or over an interstate highway access ramp and local roads) to the reactor site.

5.6. The District's discussion of the Big Water Block (Section 2.5, page 8) estimates that 5,000 acre feet are needed to supplement the 400 acre feet from Water Rights 89-1498 and 89-1626. Water Right 89-1498 (325 acre feet) would be diverted from four 4 underground wells at the proposed Sleepy Hollow Coal Mine for the purposes of mining, dust suppression, culinary and sanitation uses at the mine. The mine never commenced operation and the water has never been put to beneficial use for the Big Water Block or any other purpose. The points of diversion for Water Right 89-1626 (75 acre feet) would be from 9 wells at the Sleepy Hollow Mine site. Water Right 89-1498 was filed in 1992 and Water Right 89-1626 was filed in 1964.

These 2 water rights have not been put to beneficial use, and the 50-year term limit for both rights was September 30, 2015. The KCWCD has not explained why it needs an additional 5,000 acre feet to supplement a water right for 400 acre feet that has not been put to beneficial use in 50 years.

A private company also holds water rights (WR 89-1155) to 6 of the 9 underground water wells that are associated with KCWDC WR 89-1626. The total flow for the 9 WR 89-1626 wells is 75 acre feet. The total flow for 8 wells for the privately held WR 89-1155 is 1525.91 acre feet. Six of WR 89-1155 wells are the same as those for WR 89-1626, and one of those 6 has already been abandoned. The proof due date for WR 89-1155 is September 2016, so it is not known how much of the 1,525.91 acre feet

has been put to beneficial use. This demonstrates that other water is available for use in the Big Water area and other water has been developed and put to use in that area.

The data is available to evaluate the water availability and the history of use for the other Big Water water rights, but was not included in the Application. There is no data in the Application on the history of development in the Big Water area, the availability of water under existing rights, and how that water has been used or not been used over the past 50 years. Therefore, there is no basis for the District's assertion that even the 400 acre feet of water (89-1498 and 89-1626) are required within the next 40 years, let alone an additional 5,000 acre feet from the subject water rights.

KCWCD does not provide information regarding where the 5,000 acre feet will be diverted or whether those sources can provide some or all of the water that is currently sourced at Lake Powell and Whaweap Creek. There is no mention of District's water works that could be used to provide the water to the Big Water area.

5.7. The District's discussion of Agricultural Development (Section 2.6, page 9) states a need for an additional 30,000 acre feet for a Big Water Agricultural Project and East Kanab Water Project. The particulars regarding these projects are vague and incomplete. It is all ifs and maybes. There is no data on the expected sources of the water for these projects, the amount of unappropriated or unused water in those sources, existing unused sources, potential new sources, and other pertinent information. There is no discussion of the used of water associated with Kanab Creek and how the Creek's water would be able to provide for additional water uses, based on a transfer of the subject water rights to Kanab Creek.

There is no explanation as to why water from wells for the Big Water Agricultural Project could not be from new appropriations, rather than a transfer of water rights from the Colorado River to the new source.

5.8. The District's Summary (Section 3, page 10) asserts that a total of 86,600 acre feet of water could be used for various projects and needs over the next 40 years. Except for the Blue Castle Project Power Plant, which would divert water from the Green River, the source of the water for the other projects and the amount of available water in those sources is completely unknown. The projects are all speculative or imaginary. No data or engineering study has shown that 1) there is unused or unallocated water in the anticipated sources (wherever they may be) to support the projects, 2) water from other water rights could not be used to support the anticipated projects, or 3) completely new appropriations from existing or new sources could not be used to provide for the projects or future needs.

The District states that the life of the Blue Castle Project would be at least 40 years. Since, under the best of circumstances, it would be 10 to 15 years before the reactor project would be built and commence operation, the water would be needed for over 40 years. Projected needs beyond 40 years are not relevant to the extension request.

5.9. Water Works: The District has not provided any information regarding the water works that have been constructed to apply the subject water rights to beneficial use or the expenditures that have been made of construct works that are not complete.

The District mentions water systems operated by the Glen Canyon Special Service District, but provides no information regarding how the KCWDC would provide

water to those water systems. There is no information regarding the amount of existing water provided to those systems and the anticipated needs that would have to be supplied by the KCWCD by changing the source, use, and place of use of the subject water rights.

5.10. The District has not shown that there has been any substantial progress in the form of physical developments associated with any of the water needs for the next 40 years.

6. Extension Request Requirements

6.1. Subsection 73-3-12. (4)(b)(i)(A) requires that works be constructed with which to make beneficial use of the water. The District has provided no information regarding the District water works that have been constructed to make beneficial use of the subject water rights over the next 40 years. There is no data or engineering analysis of the water works and their ability to provide water to the anticipated users and uses by transporting the water from various unknown sources to various prospective users at unknown locations.

For the use of water for a proposed nuclear reactor, as discussed above at Section 4.8.5 above, the District has not shown that it is feasible to construct the necessary water works to make beneficial use of the water appropriated for the Blue Castle Project.

6.2. Subsection 73-3-12. (4)(b)(i)(A) requires that the applicant is a public water supplier or a wholesale electrical cooperative. Protestants agree that KCWCD is a public water supplier.

6.3. Subsection 73-3-12. (4)(b)(i)(B) requires that the District provide information that shows the water applied for in the application is needed to meet the

reasonable future requirements of the public. The District has not met that requirement. As discussed above, the information regarding the future water use requirements is vague, speculative, and unsupported by an engineering analysis of the water available in potential water sources (to which the subject water rights must be transferred), water works, other water available for the projects, actual feasibility of the projects, and other facts.

6.4. Section 73-3-12. (4)(c)(ii)(A) and (B) requires that the District has constructed works to apply the water to beneficial use, or has made substantial expenditures to construct the works.

The Application provides no information on the water works constructed or expenditures to construct water works on the part of the District. There is no information regarding the existing or future water works that would be used to distribute the water from the proposed sources of the diversion of 29,600 acre feet of water to the proposed locations of use. The proposed, but as yet unknown locations of diversion, must be the subject of change applications to transfer the subject water rights to the new points of diversion.

As discussed above at Section 6.1, the District or BCH have not provided an engineering study demonstrating that it is feasible to construct water works to divert 29,600 acre feet of water and transfer that water from the Green River for the proposed reactor project.

6.5. Subsection 73-1-4(f)(i) states: "The reasonable future water requirement of the public is the amount of water needed in the next 40 years by the persons within the

public water supplier's projected service area based on projected population growth or other water use demand.” Subsection 73-1-4(f)(i) also states that, for purposes of Subsection (2)(f)(i), a community water system's projected service area is the area served by the community water system's distribution facilities and expands as the community water system expands the distribution facilities.

The proposal to provide water for the proposed reactor at Green River by withdrawing water from the Green River does not meet the requirements of Subsection 73-1-4(f)(i), because the proposed point of diversion and place of use is outside the service area of the KCWCD. Green River is in Emery County—miles away from Kane County and Kanab—and is not served by the KCWCD community water system's distribution facilities or any projected expansion of those distribution facilities. There is no information that shows that the proposed use of the water to produce electricity from a nuclear power plant will serve citizens and projects within the KCWCD service area.

Kane County's electrical power are provided by Garkane Energy Cooperative, Inc. (Garkane). There is no information on the Garkane website⁸ or other readily available document that indicates that Garkane has agreed to participate in the Blue Castle Project and intends to provide electrical power to its Kane County customers from electricity produced at the Green River plant. One reason for this is that there are no transmission lines between Green River and Kane County. Therefore, the electricity that may be produced by the Blue Castle Project would not serve the needs of Kane County.

The KCWCD is not a wholesale electrical cooperative. There is no information

⁸ <https://www.garkaneenergy.com/>

on the record or generally available to the public that shows that any of the electricity provided by the proposed BCP would be purchased by, or in any involve the use of the electricity by, a Utah wholesale electrical cooperative.

To the best of protestants' knowledge, there is no publicly available information or a statement by BCH that demonstrates that any of the electricity produced by the proposed nuclear power plant will supply electricity to citizens in Utah. At this time, the future users of the speculative power plan are completely unknown.

6.6. The District must show that the full amount of the water right is "needed" meet a "reasonable future requirement of the public." The District has only speculated about various projects or new community members whose water use requirements might require the transfer of the subject water rights to a new or existing source in order to meet those requirements. The District has not shown that there is sufficient, unappropriated water in those sources and that there are no other possible sources or providers of water to meet those needs.

6.7. Speculative future power development for unknown users in unknown locations in unknown states is not a "reasonable future requirement of the public" within the meaning of Utah Code Ann. § 73-3-12. (4)(b)(i)(B).

6.8. A private power plant proposal outside of district boundaries does not meet the requirements of Utah Code Ann. § 73-1-4(2)(f) as a reasonable future water requirement of the public within the public water supplier's projected service area.

6. Conclusion

In conclusion, the District has not met the statutory requirements for an extension

of time beyond 50 years to show proof of beneficial use. The District has not shown:

6.1. That there are works constructed with which to make beneficial use of the water applied for. Subsection 73-3-12(4)(a).

6.2. The water is needed to meet the reasonable future requirements of the public within the District's supplier's projected service area. Subsection 73-3-12. (4)(b)(i)(B) and Subsection 73-1-4(f)(i).

6.3. The District has constructed works to apply the water to beneficial use; or has made substantial expenditures to construct the works. Section 73-3-12. (4)(c)(ii)(A) and (B).

7. Request for Relief

7.1. The State Engineer must demand an "engineering analysis detailing the water right held by the public water supplier, the current water use demand and the projected water use demand based on projected population growth or other water use demands within the public water supplier's projected service area." The report must include information that the District failed to provide in the Application, including, but not limited to:

7.1.1. The constructed water works that would be used to provide the water to water users.

7.1.2. The points of diversion and sources of water that would provide the water to the anticipated water users, such that the subject water rights would be transferred to those sources and put to beneficial use.

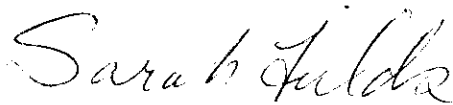
7.1.3. The feasibility of the construction of water works at the location of points of diversion on the Green River for the Blue Castle Project.

7.1.4. The water available from municipal and private systems that have a capacity to supply future anticipated growth within the District's area.

7.2. For the reasons set forth above, Protestants request that the State Engineer Deny the District's Fifty Year Request for Extension of Time to Show Proof of Beneficial Use for Water Rights 89-74, 89-1285, and 89-1513.

7.3. If the State Engineer decides to approve the fifty-year extension request, it must be for a very limited period of time, not to exceed three (3) years. BCH and KCWCD must demonstrate due diligence to put the water to beneficial use. BCH must also demonstrate that they have the financial and other resources readily available (not 30 to 80 years from now) to put the water to beneficial use, pay the annual lease fees, apply for the required permits and licenses, and move forward in the physical development of the project, or otherwise put the water to beneficial use.

Respectfully submitted,



Sarah Fields
Director
Uranium Watch



John Weisheit
Conservation Director
Living Rivers

LIST OF EXHIBITS

Exhibit A: "Nuclear Site Developer Blue Castle Acquires Willow Creek Companies," Blue Castle Holdings news release, December 10, 2010.

Exhibit B: Documents on NRC Docket No. PROJ0768, for the Blue Castle Project, as of October 19, 2015.

Exhibit C: Letter from Blue Castle Holdings, Inc., Provo, Utah, to US Nuclear Regulatory Commission, Washington, D.C., regarding Submittal of ESP and COL Application, March 8, 2011. NRC Docket No. PROJ0768.

Exhibit D: Nuclear Intelligence Weekly, "Newbuild: Blue Castle, Twin Buttes Work on Nuclear Plans," January 9, 2015.



Blue Castle Holdings

IMMEDIATE RELEASE
December 21, 2010

NUCLEAR SITE DEVELOPER BLUE CASTLE ACQUIRES WILLOW CREEK COMPANIES

Provo, UT – Blue Castle Holdings Inc. (BCH), developer of a proposed new nuclear power plant project in Green River, Utah, is pleased to announce that it has acquired 100% of Willow Creek Companies (WCC). WCC is primarily engaged in the construction, replacement and repair of natural gas pipelines, crude oil pipelines, storage facilities and civil site work in Colorado, Utah, Wyoming, North Dakota and New Mexico. Willow Creek Companies Inc. will now operate as Willow Creek LLC, a wholly owned subsidiary of Blue Castle Holdings Inc. Terms of the transaction were not disclosed.

The WCC acquisition will provide needed early stage civil construction services for the nuclear site project infrastructure development. Additionally, BCH plans to expand Willow Creek's energy infrastructure services to include the construction of high voltage transmission and substation facilities, which will also be needed for the new nuclear project.

The acquisition of WCC is of strategic importance for the Blue Castle nuclear project site development, providing a broader economic and business infrastructure base for the proposed nuclear project. Moreover, based on the current and projected consolidated financial performance of the companies, it is anticipated that the ongoing cash flow of the consolidated companies will provide sufficient working capital to complete the NRC licensing process for the Blue Castle project. The nuclear site licensing capital requirements are approximately \$100 million over the next 5 years.

The acquisition of Willow Creek positions BCH for strategic growth in two companion sectors in the Western US: the oil and gas infrastructure services sector—an already established and profitable operation in WCC; and the nuclear power sector, with the larger scale, longer term proposed BCH nuclear power project, with an anticipated 60-year operating plant life.

Russ Fowles, President of Willow Creek LLC, said: “We get the best of both worlds with current strong growth from natural gas and oil energy infrastructure development and an opportunity to develop long term stable revenues typically achieved with a nuclear power project. I immediately understood the value of being involved with the new nuclear project. BCH is leading the West in new nuclear development with one of the most experienced management teams in the business.”

Aaron Tilton, President and CEO of BCH, commented: “WCC's past and current growth is impressive. WCC is a good strategic fit. The quality of the management and ability to innovate and improve on pipeline construction practices demonstrates they have

December 21, 2010 Press Release Blue Castle Holdings Inc.

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Blue Castle Holdings

significant potential for continuing growth. Those capabilities will be used to meet the new demand for natural gas and oil pipelines, as well as to directly support the development of our new nuclear site infrastructure.”

The Blue Castle Project is on the Nuclear Regulatory Commission’s list of expected new nuclear power plant licensing applications. Four Early Site Permits for new nuclear power plants have been issued in the U.S. between 2007 and 2009, and 15 applications for combined construction and operating licenses (COLs) are under active review by the NRC. The first COL license is scheduled to be granted in December, 2012.

About Blue Castle Holdings

Blue Castle Holdings Inc. (BCH) is a Utah based company, focusing on reducing the risk of deploying new clean power resources for electric utilities. The Blue Castle Project is the leading Western U.S. new nuclear power plant site. The BCH business mission is to select, acquire, enhance, and license plant sites which are uniquely well suited for the deployment of new nuclear power generation. www.bluecastleproject.com

About Willow Creek

Willow Creek Companies is based in Colorado and is primarily engaged in the construction, replacement and repair of natural gas, crude oil pipelines, storage facilities and civil site work in Colorado, Utah, Wyoming, North Dakota and New Mexico. www.willowcreekllc.com

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Accession Number: ML113540430
Document Title: Sign In Sheet.
Document Date: Thu Oct 27 00:00:00 EDT 2011
Estimated Page Count: 2
Docket Number: PROJ0768
Content Size: 446706.0

Accession Number: ML113530762
Document Title: Presentation Slides BCH NRC HQ Visit 10-27-2011, 3 SSHAC.
Document Date: Thu Oct 27 00:00:00 EDT 2011
Estimated Page Count: 69
Docket Number: PROJ0768
Content Size: 2729223.0

Accession Number: ML112860680
Document Title: 10/27/11 Forthcoming Meeting To Discuss Blue Castle Holdings (BCH) Pre-Application Activities and Seismic Issues Involved With The Pending Blue Castle Project ESP Application.
Document Date: Fri Oct 14 00:00:00 EDT 2011
Estimated Page Count: 6
Docket Number: PROJ0768
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Accession Number: ML11245A074
Document Title: NRC Visit to The Blue Castle Project Site to Observe Early Site Permit Pre-Application Subsurface Investigation Activities.
Document Date: Fri Sep 02 00:00:00 EDT 2011
Estimated Page Count: 8
Docket Number: PROJ0768
Content Size: 110462.0

Accession Number: ML110691038
Document Title: Blue Castle Holdings, Inc. - Submittal of ESP and COL Application Blue Castle Generating Project.
Document Date: Tue Mar 08 00:00:00 EST 2011
Estimated Page Count: 2
Docket Number: PROJ0768
Content Size: 112764.0

B

Accession Number: ML12256A828
Document Title: Department of the Interior - Application for Utility Corridor and Road.
Document Date: Tue Sep 04 00:00:00 EDT 2012
Estimated Page Count: 2
Docket Number: PROJ0768
Content Size: 80646.0

Accession Number: ML113530617
Document Title: 10/27/2011 Summary of Public Meeting with Blue Castle Holdings to Discuss Pre-Application Activities And Seismic Issues Involved with the Pending Blue Castle Project ESP.
Document Date: Fri Jan 20 00:00:00 EST 2012
Estimated Page Count: 4
Docket Number: PROJ0768
Content Size: 76074.0

Accession Number: ML113410311
Document Title: Trip Report- October 2-6, 2011, Pre-Application Readiness Assessment (C-1) Visit for an Early Site Permit at the Blue Castle Project Site.
Document Date: Thu Dec 15 00:00:00 EST 2011
Estimated Page Count: 12
Docket Number: PROJ0768
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Accession Number: ML113530666
Document Title: Presentation Slides BCH NRC HQ Visit 10-27-2011, 1 Intro.
Document Date: Thu Oct 27 00:00:00 EDT 2011
Estimated Page Count: 33
Docket Number: PROJ0768
Content Size: 2308161.0

Accession Number: ML113530693
Document Title: Presentation Slides BCH NRC HQ Visit 10-27-2011, 2 Site Characteristics.
Document Date: Thu Oct 27 00:00:00 EDT 2011
Estimated Page Count: 16
Docket Number: PROJ0768
Content Size: 599439.0

Accession Number: ML100330389
Document Title: Transmittal of Replacement Letter Dated 01/27/2010 from Blue Castle Holdings, Inc., with Signed Copy.
Document Date: Wed Jan 27 00:00:00 EST 2010
Estimated Page Count: 1
Docket Number: PROJ0768
Content Size: 20676.0

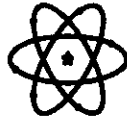
Accession Number: ML100330390
Document Title: Blue Castle Holdings, Inc. and Transition Power Development, LLC, Submittal of ESP and/or COL Application, Blue Castle Generation Project. (Replacement Letter)
Document Date: Wed Jan 27 00:00:00 EST 2010
Estimated Page Count: 2
Docket Number: PROJ0768
Content Size: 99308.0

Accession Number: ML080370387
Document Title: Transition Power Development, LLC - Submittal of ESP and/or COL Application, Blue Castle Generation Project.
Document Date: Wed Jan 30 00:00:00 EST 2008
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NEWBUILD: Blue Castle, Twin Buttes Work on Nuclear Plans

More potential nuclear newbuilds in the US are popping up in the wake of ongoing reactor construction projects in South Carolina, Georgia and Tennessee, although at this stage they are still iffy at best. Blue Castle Holdings (BCH) is lining up its ducks for a two-unit AP1000 nuclear power plant at BCH's Green River site in Utah, while an obscure group called Twin Buttes Enterprises has proposed a reactor site in Idaho near the Idaho National Laboratory (INL). While BCH signed a memorandum of understanding with Westinghouse to build the AP1000s back in August, adding heft to its plans, Twin Buttes' plans are less defined and some doubt there is a project yet.

Westinghouse reported back in August that it will work with BCH to define the "scope of activities" for enabling a project under a definitive agreement, "including marketing, nuclear safety licensing, permitting, design, engineering, procurement, construction, installation, commissioning, start-up, testing, nuclear fuel, refueling, operation and maintenance of the two-unit plant" (NIW Aug. 22, 14). In an interview with NIW, BCH Chief Executive Aaron Tilton confirmed this, and reported that the two companies are currently in talks with utilities over their needs and longer-term power demand projections.

While he wouldn't disclose which utilities they are in talks with, citing nondisclosure agreements, Tilton said "renewables seem to be the topic that continually comes up" in discussions. "There's a very good sweet spot for nuclear to serve" in the region, especially with the phase-out of coal-fired generation and the shift to renewables, which as intermittent sources need baseload power backup, Tilton said. "Then it becomes a competition between gas and nuclear" to provide that baseload power, he noted.

BCH is halfway through preparing an early site permit application for the project, which would be a first-of-its-kind in the area, and anticipates it could be ready to submit to the US Nuclear Regulatory Commission (NRC) in the next two-and-a-half to three years. It plans to submit a combined license application along with Westinghouse six months after that. The estimated all-in project cost, including financing, is \$10 billion-\$13 billion, Tilton said, noting that funding is expected to come from a consortium of utilities and that BCH does not intend to own or operate the plant, just to develop it.

It is yet to be seen whether those numbers will hold. The Vogtle AP1000 project in Georgia was originally slated to come online in April 2016, but now faces completion dates of 2017 and 2018, or later, for its respective units. Similarly, VC Summer in South Carolina was originally targeted to reach first commercial operation by 2016, but now faces a target date somewhere between 2018 and 2019. Both projects have experienced vendor delivery delays and

equipment problems, multiple design changes and spiking costs (NIW Dec. 5, 14). Overseas, AP1000 projects in China have been hampered by similar issues (NIW Sep. 12, 14). The only other reactor construction project in the US involves completing the Tennessee Valley Authority's long-delayed and over-budget Watts Bar-2, which is scheduled for fuel-loading in mid-May.

Tilton acknowledged the issues that have plagued the AP1000 projects in the US and China, but explained that "fortunately part of our business plan was not to be a first-of-a-kind project." By the time BCH's project is ready to start construction, Tilton projected there will have been seven or eight of these already built. "We believe all those things will be resolved and learned from by the time we're ready to be constructed," he said.

The company is fully privately held, and draws most of its investment capital through another company that the owners held in the oil and gas business and sold off recently. The management includes, among others, Nils Diaz, a former NRC chairman who retired in 2006. Tilton's background includes work negotiating with municipal and investor-owned utilities in the Southwest. He was also a representative in the Utah state legislature serving on the House public utilities and technology committee.

Twin Buttes

Meanwhile, in the neighboring state of Idaho, the local investment group Twin Buttes is looking for a nuclear developer to build a nuclear plant on a 1,840-acre tract of land owned by the Pancheri family. According to a presentation to the Butte County Commission in December, the group, composed of eight people including a former INL executive, has worked on the project for the past three years, and is hoping for a developer to buy it. The property is bordered by INL on two sides.

While there have been reports that Utah Associated Municipal Power Systems (UAMPS) could be a developer for the site, LaVarr Webb, speaking on behalf of UAMPS, said that he hadn't heard of Twin Buttes' proposal. Moreover, UAMPS is part of a regional program supporting NuScale's plans for a small modular reactor in Idaho, possibly at INL (p5).

Tilton also was not familiar with Twin Buttes' plans and said there was no connection between BCH's plans and theirs. Twin Buttes did not respond to requests for an interview. ☒

Rosa Lin, Washington

C



BlueCastleProject

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March 8, 2011

U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555-0001

Attn: Mr. David B. Matthews, Director
Division of New Reactor Licensing
Office of New Reactors

Mr. Scott Flanders, Director
Division of Site and Environmental Reviews
Office of New Reactors

Re: Blue Castle Holdings, Inc.
Submittal of ESP and COL Application
Blue Castle Generation Project

We are pleased to update our previous letter on the continued development of the Blue Castle Project. Our management structure has not changed with our recent acquisition of Willow Creek LLC. (WC); WC is now a wholly owned subsidiary of Blue Castle Holdings Inc. The original principal executives continue to direct the company, with Aaron Tilton as CEO and President of Blue Castle Holdings (BCH), Tom Retson as Chief Operations Officer and Nils Diaz as Chief Strategic Officer.

Blue Castle Holdings continues to develop and solidify assets directed to implement its business model, which is focused on enabling the deployment of a two-unit nuclear power plant, the Blue Castle Project, at our preferred site located near Green River in East-Central Utah. It is the intention of Blue Castle Holdings to submit an Early Site Permit application to the Nuclear Regulatory Commission by the fall of 2012 for the Blue Castle Project (BCP), and to commence pre-application activities in the very short term. We expect to be fully engaged in licensing application activities requiring NRC review by October 1st, 2011. The ESP application will envelop multiple selected reactor technologies. Furthermore, we intend to submit a COL application referencing the ESP and the selected reactor technology -with a certified design- within 12 to 18 months after ESP submittal.

A summary of important milestones have been achieved or are in final stages of completion for the Blue Castle Project, including:

- The acquisition of WC was completed in December 2010, which provides a broader economic and business infrastructure to the company, and is already providing needed preliminary stage infrastructure work for the proposed nuclear project site.
- BCH has leased 53,600 acre-feet per year of water to service the Blue Castle Project two-unit nuclear generating station. The lease water supplies were previously assigned for use

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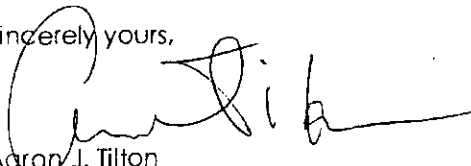
in future coal-fired power plants, from Utah's allocation of the Upper Colorado Basin. The application to change the point of diversion has undergone requisite public hearing and reviews by the Utah State Water Engineer; a decision is expected near term.

- BCH has executed a land purchase agreement.
- BCH has contracted with ENERCON to prepare, submit, QA and manage the Early Site Permit (ESP) application, with an option to carry out substantial portions of the COL application, supported by a reactor vendor with an NRC certified design.
- BCH has begun the preparation for the ESP license application for the Blue Castle Project. The BCP ENERCON licensing team was on site during the first week of February 2011, and a 60 meter meteorological tower has been erected and anchored on site. A geological program including a regional geologic survey, borings, test probing, geophysical surveys, seismology and other site studies will begin after the middle of March, once the required QA program is established.
- BCH is currently conducting a preliminary evaluation of reactor technologies that have received or are scheduled to receive NRC Design Certification in the near term, within the current licensing application timeframe. In this regard, we have already invited and received expressions of interest from vendors, and are evaluating their replies.

In summary, BCH respectfully requests to initiate ESP pre-application activities with the NRC for the Blue Castle Project, as early as your schedule permits. In this regard, we would like to schedule a visit of BCH principals with the staff at your earliest convenience, to ensure we establish now the appropriate communication channels to fulfill NRC requirements and maintain the project on schedule. We intend to schedule courtesy visits with the Chairman and the Commissioners on the same timeframe. Following our visit with the staff, the BCH ENERCON licensing team would like to visit with the staff and plan pre-application activities, which would include planning a public meeting on an appropriate schedule.

If you have any questions regarding the activities or the schedule being developed, please contact Mr. Tom Retson at (910)256-B477.

Sincerely yours,



Aaron J. Tilton
President and CEO
Blue Castle Holdings, Inc.

cc: Tom Retson, BCH
Dr. Nils Diaz, BCH
Bob Evans, ENERCON