

Nuke proponents seeking new deal with two Utah water districts

By Brian Maffly | The Salt Lake Tribune
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Nuclear power • After legal victory, Blue Castle has yet to pay Kane and San Juan counties per water lease agreements.

One selling point for the proposed Green River nuclear power plant has been the project's promise to inject a hearty revenue stream into two cash-strapped southern Utah water districts and help defray costs associated with another grand proposal, the Lake Powell Pipeline.

Yet two months after "pre-operational" payments were due to the San Juan and Kane county water conservancy districts, Blue Castle Holdings has yet to hand over the money and now is renegotiating its financial obligations, which currently amount to \$80,000 a year to San Juan and \$100,000 to Kane in exchange for 53,000 acre feet of water to cool the project's nuclear reactors.

This summer Blue Castle Holdings got what it wanted from the courts: final affirmation that the water-rights transfer, or change application, supporting the project was properly handled by the Utah State Engineer's Office. That legal closure triggered a contractual deadline to begin making annual payments starting Sept. 19, yet the water districts remain unpaid.

This is because the agreement's terms no longer make much sense after years of delays and need to be changed to reflect changed market conditions according to Blue Castle principal Aaron Tilton. The value of the water has soared into the hundreds of millions of dollars since the agreements were signed nine years ago and the company is now trying to secure title to the water rights.

"Now that we have won in the courts, we are modifying the commercial arrangement with the water districts," Tilton said. "They get greater near-term benefits, and we get increased financial strength through ownership of the water at a certain point in the process."

He said Blue Castle is making progress on its proposal to build a two-unit, 2,200-megawatt plant on state land near the town of Green River. The firm has an agreement with Westinghouse to purchase the reactors and is preparing to select a contractor, while remaining in steady contact with the Nuclear Regulatory Commission, the federal agency that holds sole permitting authority over the project.

But the project's critics suspect Blue Castle's delayed water-district payments indicates its finances remain too flimsy to sustain the costly efforts to obtain regulatory approval and design a large electrical-generating station. Living Rivers and Uranium Watch, two Utah environmental groups fighting the project, are now citing the missed payments in a new challenge to Kane and San Juan counties' water rights underlying the nuclear project.

In recent filings with the State Engineer's Office, they argue that the state should retire the water rights because decades have passed without the counties putting this liquid asset to "beneficial use" as required under Western water doctrines. And there appears to be little evidence Blue Castle will put this water to use anytime soon, according to John Weisheit, the Moab-based conservation director for Living Rivers.

"Blue Castle Holdings has not provided the money for this water so it's a nebulous water right and should not be renewed," he said. Nor has the company demonstrated "due diligence" necessary to justify extending the counties' claim to the water, he said.

The project's naysayers are misreading the situation, Tilton contends.

"These guys' facts never play out. This is their last-gasp attempt to raise money or stir up trouble," Tilton said. "The financial aspects have improved. We have put \$20 million into this. It is nonsensical to say we would let it go away over a couple hundred thousands dollars."

In a response filed with the State Engineer, Kane County's lawyers acknowledged the district is reworking the contract with Blue Castle.

"The water lease between the District and Blue Castle Holdings is still in good standing contrary to speculative allegations of the protestants," wrote attorney John Mabey. "To facilitate the mutual financial and regulatory compliance interests of the District, Blue Castle and outside entities, the water lease require some modifications. Under discussion is the District accelerating their financial benefits, and potential ownership by Blue Castle of a portion of the water right once the water is put to beneficial use."

Mabey's Salt Lake City firm also represented Blue Castle in the prior water-transfer battle, which had been the subject of four years of litigation.



(| Tribune File Photo) A drift boat floats the upper section of the Green River below Flaming Gorge Reservoir in Daggett County. The county has proposed the river be designated as scenic under the Wild and Scenic Rivers Act as part of Rep. Rob Bishop's Public Lands Initiative.

In 2007, Blue Castle signed agreements with the two water districts, leasing the counties' water rights, amounting to 29,600 acre feet from Kane and 24,000 from San Juan, for use in the nuclear project. The counties had been awarded these water rights to pull from the Colorado River system decades before, but had yet to develop them. The environmental groups challenged these water rights transfers in state court and lost three years ago. The case dragged on and came to a final resolution in July when the groups decline to appeal an adverse ruling to the Utah Supreme Court.

"That was a major — both regulatory/legal and financial — victory for us, huge, very significant. We have third parties that are becoming involved in the process. They have commercial considerations that have to be adapted into the [water] leases," Tilton said.

But the Kane water district's response to the legal resolution suggests its managers were expecting a check, not an invitation to rework their deal with Blue Castle. The board followed the court case closely and was elated when Blue Castle won at the Utah Court of Appeals in July.

"This is great news and our attorney said the chances for an appeal is almost none. We will have our \$100,000 in 30 days," reads the minutes from the board's July 21 meeting. Under the Kane contract, that annual fee increases to \$500,000 after six years, then to \$1 million after the nuclear plant is constructed. Late payments are subject to a 5 percent fee and 18 percent annual interest.

In the two times the Kane water board has met since the Sept. 19 payment deadline, it discussed the Blue Castle contract in closed session, according to board agendas. Weisheit contends these discussions should occur in open session.

"Because it's being done in secret, it sounds even more incestuous. There should be sunshine," Weisheit said. "Under normal circumstances, Kane County would say, 'We don't care what your problems are, give us our money.'"

Calls Thursday to the Kane district's executive director, Mike Noel, and board chairman Tony Chelewski were not returned. Reached Thursday, the San Juan district's manager, Norman Johnson, declined to discuss the Blue Castle situation.

"Everything is going through attorneys and I am not going to be able to respond," he said.

Brian Maffly covers public lands for The Salt Lake Tribune. Maffly can be reached at bmaffly@sltrib.com or 801-257-8713. Twitter: [@brianmaffly](https://twitter.com/brianmaffly)

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