

Uranium Watch

P.O. Box 1306
Monticello, Utah 84535
435-260-8384

via electronic mail

February 9, 2021

Teresa Wilhelmsen
State Engineer
Utah Division of Water Rights
1594 West North Temple Suite 220
P.O. Box 146300
Salt Lake City, Utah 84114-6300
teresawilhelmsen@utah.gov

Re: San Juan County Water Conservancy District, Water Right 91-5233, Permanent Change Application 09-462 (a35874)

Dear Ms. Wilhelmsen:

This letter is submitted on behalf of Uranium Watch, Living Rivers, HEAL Utah, and Utah Rivers Council to the Division of Water Rights (DWR) in regards to the San Juan County Water Conservancy District (SJWCD) Water Right 91-5233, Permanent Change Application 09-462 (a35874).¹ The Water Rights change reflects the appropriation of 24,000 acre feet of water from the Green River for a the Blue Castle Project, a nuclear reactor proposed by Blue Castle Holdings, Inc. (previously, Transition Power Development LLC.

Uranium Watch, Living Rivers,² HEAL Utah,³ and Utah Rivers Council⁴ protested Change Application 09-462 and were plaintiffs in the appeal of the State Engineer's decision to appropriate water from the Green River in response to the 2009 SJWCD Permanent Change Application.

¹ <https://www.waterrights.utah.gov/cblapps/chprint.exe?chnum=a35874>

² Living Rivers, PO Box 466, Moab, Utah 84532

³ HEAL Utah, 824 400 W #111, Salt Lake City, Utah 84101

⁴ Utah Rivers Council, 1270 East 8600 South, Suite 16, Sandy, Utah 84094

BACKGROUND

On August 27, 2009, the SJWCD submitted Permanent Change Application 09-462 to the DWR to change the use, place of use, and purpose of use of existing water rights. The change was based on a Water Rights Lease Agreement with Transition Power Development LLC (TPD) and SJWCD. TPD later became Blue Castle Holdings Inc. (BCH).

This letter is to inform you that the SJWCD terminated the Water Rights Lease Agreement with BCH. *See Exhibit A.*⁵ Therefore, the Lease Agreement that was the foundation of the January 20, 2012, appropriation of water from the Green River for the proposed Blue Castle Project no longer has force and effect. There is now no factual or legal basis for the use, place of use, and point of diversion for Water Right 91-5233.

The DWR webpage for Water Right 91-5233 states:

The San Juan County Water Conservancy District (District) files the change application to use 24,000 acre-feet of water previously approved for a coal-fired steam generation power plant to be located in San Juan County, Utah. The District now proposes that the water be used for a nuclear power plant in Emery County, with a rated capacity of 1,500 to 3,000 MW, pursuant to a Water Rights Lease Agreement with Transition Power Development LLC (TPD).

TPD is a Utah limited liability company, which serves the electric power generation industry by identifying and developing new nuclear power plant sites in the western United States. The water rights for the change application are part of Utah's allocation under the Colorado River Compact. Rather than divert the water from the San Juan River as previously authorized, the application proposes to divert the water from another point on the Colorado River drainage in Emery County.

The original Application to Appropriate Number A37287a was approved for all the water diverted to be 100% depleted. Likewise, water under this change application may be 100% depleted. The hereafter points of diversion from the Green River and the hereafter places of use described in the change application represent alternative points and places of use. After construction the points of diversion and places of use not utilized will be abandoned.

In September 2009 the DWR noticed Permanent Change Application 09-462. In

⁵ Letter from Craig C. Halls, Attorney at Law, Blanding, Utah, to Blue Castle Holdings, Inc., Provo, Utah; Re: Termination of Lease; March 25, 2019.

response, several individuals, companies, and organizations protested. The State Engineer approved the appropriation of 53,600 acre feet of water from the Green River for the Blue Castle Project on January 20, 2012.⁶ This included the 24,000 acre feet of SJWCD Water Right 91-5233 and 29,600 acre feet from the Kane County Water Conservancy District (KCWCD), Water Right 91-5230, Permanent Change Application 89-74 (a35402).⁷

The State Engineer's decision was appealed by some of the protesters to the 7th Utah District Court for Emery County. Plaintiffs included Uranium Watch, Living Rivers, HEAL Utah, and Utah Rivers Council. On November 27, 2013, the 7th District Court issued a decision upholding the Utah State Engineer's appropriation of the 53,600 acre feet the Green River for the proposed Blue Castle Project.

On May 16, 2014, attorneys for the Plaintiffs filed a Notice of Appeal of the 7th District Court's decision to the Utah Court of Appeals. Oral arguments were held on January 26, 2016, before the Utah Court of Appeals. The opinion of the Court of Appeals, upholding the 7th District Court's decision was issued on July 21, 2016. Plaintiff's did not file a petition to the Utah Supreme Court for review of the Appeals Court decision within 30 days, finalizing the Appeals Court decision upholding the State Engineer's 2012 decision.

The court challenges concluded in September 2016, when Plaintiffs did not appeal the Court of Appeals affirmation to the Utah Supreme Court. Soon after, the first pre-operational payments to the Water Conservancy Districts were due: \$80,000 to SJWCD and \$100,000 to KCWCD. These yearly payments were mandated by the Water Rights Lease Agreements between BCH and the San Juan County and Kane County Water Conservancy Districts. Those initial Water Rights Lease Agreement payments were not made. BCH defaulted on its Water Rights Lease Agreement obligations starting in 2016.

A major issue in the Water Rights' protests, hearings, and court challenges was whether the proposed Blue Castle Project was economically feasible. and whether BCH had the financial ability to carry out this project. Protesters and Plaintiffs argued and provided evidence that the proposed BCP was not economically feasible and that BCH did not have, and would not in the future have, the financial where-with-all to carry out this project. However, in approving the Change Application, the State Engineer found that the nuclear reactor project was economically feasible. The State Engineer determined that: "The applicant, through the lessee, has demonstrated to the satisfaction of the State Engineer an ability to secure funding as needed, on a step-by-step basis, and a plan to continue to capitalize the project sufficient to establish a reason to believe that the applicant has the financial ability to complete the works." The State Engineer's decision was upheld by the Utah 7th District Court and Utah Court of Appeals.

⁶ <https://www.waterrights.utah.gov/docImport/0546/05461819.pdf>

⁷ <https://www.waterrights.utah.gov/docImport/0546/05461817.pdf>

As it turned out, BCH did not even have the ability to make the first Water Rights Lease Agreement payments to the SJWCD and KCWCD once those yearly payments became due starting in 2016, let alone submit an Early Site Permit Application to the NRC.

SJWCD LEASE AGREEMENT TERMINATION

The SJWCD Lease Agreement was terminated by the District, because BCH defaulted on its Lease Agreement payment obligations. BCH finally made some payments to the District from 2018 to 2020. *See* Exhibits B and C. The status of the Water Rights Lease Agreement between the KCWCD and BCH for 29,600 acre feet for the Blue Castle Project is unclear. However, there is no evidence that BCH fulfilled its financial obligations in accordance with the KCWCD and BCH Water Rights Lease Agreement. There was only partial fulfillment of the SJWCD Water Rights Lease Agreement. *See* Exhibits B and C.

NRC LICENSE AND LAND FOR THE BCP

BCH had anticipated submitting an application to the Nuclear Regulatory Commission (NRC) for an Early Site Permit to license the site for the proposed nuclear reactor project —the place of use of Water Right 91-5233. BCH and its contractors held meetings with the NRC, the NRC made visits to the site, and BCH began developing an Emergency Response Plan to be submitted to the NRC. However, the last letter BCH sent to the NRC is dated March 8, 2011.⁸

Additionally, BCH has no ownership of or claim on the land that is the place of use for the subject Water Right 91-5233. The land belongs to the Utah State Institutional Trust Lands Administration (SITLA) and is leased by Emery County (Special Use Lease Agreement 1622). BCH currently has no agreement with Emery County to lease or purchase the SITLA property.

CONCLUSION

In sum, the justification for the Water Right 91-5233, Permanent Change Application 09-462 (a35874), for the proposed BCH nuclear reactor no longer has any validity, based on the following:

1. SJWCD no longer has a Water Rights Lease Agreement with BCH.
2. BCH does not own or have a claim to the land west of Green River where the

⁸ <https://www.nrc.gov/docs/ML1106/ML110691038.pdf>

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24,000 acre feet of water would be used.

3. BCH has not actively pursued an NRC Early Site Permit since March 2011, almost 10 years ago.

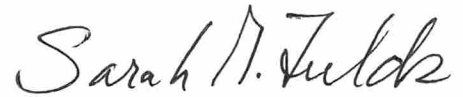
We urge the State Engineer to conduct an investigation into how the Division of Water Rights, previous State Engineer, and Utah Courts got this so wrong.

I wish to be kept informed on that status of Water Right 91-5233, which no longer has any factual or legal justification.

Please contact me if you have any questions.

I request that this letter be placed on the docket of Water Right 91-5233.

Sincerely,



Sarah Fields
Uranium Watch

John Weisheit
Living Rivers

Scott Williams
HEAL Utah

Zachary Frankel
Utah Rivers Council

cc: Blake Bingham, DWR
Marc Stilson, DWR
Attachments: As stated

CRAIG C. HALLS

ATTORNEY AT LAW
403 SOUTH MAIN STREET
BLANDING, UTAH 84511

Email:
craigchalls@yahoo.com

Telephone: (435)678-3333
Facsimile: (435)678-3330

March 25, 2019

Blue Castle Holdings, Inc.
Att: Aaron Tilton
86 N. University Ave, Ste 400
Provo, Utah 84601

Re: Termination of Lease

Dear Mr. Tilton,

On March 15, 2018, we sent you a letter indicating that you were in default on the Lease Agreement dated September 15, 2010. You were given 120 days to cure the default pursuant to paragraph 12(a) of your Lease Agreement. Several discussions were had in which you requested some additional time to resolve issues of how much water you actually needed, and to resolve some issues with Kane County. We have had a couple of conversations since that time, and as of the date of this letter, apparently those efforts have been unfruitful. This letter is your notice, pursuant to paragraph 12(a) of your Lease Agreement that your lease is hereby terminated.

It is unfortunate that you were unable to conclude this transaction.

Sincerely,



Craig C. Halls
Attorney for San Juan Conservancy District

Exhibit A

San Juan County Water Conservancy District
 Castle Holdings Water Lease
 Amortization Schedule

Prepared by Steven C Black, CPA
 9/30/2019

Rate 18%

Date	Payment	Pre-Operation Payment Due	Late Fee	Interest	Change in Balance	Balance
2/9/2018	(10,000.00)	96,666.00	4,333.30		90,999.30	90,999.30
2/9/2019		80,000.00	4,549.99	16,379.87	100,929.86	191,929.16
10/1/2019	(6,000.00)			22,148.10	16,148.10	208,077.26
11/1/2019	(6,000.00)			3,121.16	(2,878.84)	205,198.42
12/1/2019	(6,000.00)			3,077.98	(2,922.02)	202,276.40
1/1/2020	(6,000.00)			3,034.15	(2,965.85)	199,310.54
2/1/2020	(6,000.00)			2,989.66	(3,010.34)	196,300.20
3/1/2020	(6,000.00)			2,944.50	(3,055.50)	193,244.71
4/1/2020	(6,000.00)			2,898.67	(3,101.33)	190,143.38
5/1/2020	(6,000.00)			2,852.15	(3,147.85)	186,995.53
6/1/2020	(6,000.00)			2,804.93	(3,195.07)	183,800.46
7/1/2020	(6,000.00)			2,757.01	(3,242.99)	180,557.47
8/1/2020	(6,000.00)			2,708.36	(3,291.64)	177,265.83
9/1/2020	(6,000.00)			2,658.99	(3,341.01)	173,924.82
10/1/2020	(176,533.69)			2,608.87	(173,924.82)	-
Totals	(258,533.69)	176,666.00	8,883.29	72,984.40	-	

Exhibit B

San Juan Water Conservancy District

From: Craig Halls (craigchalls@yahoo.com)

To: tomretson@bluecastleproject.com

Date: Tuesday, October 1, 2019, 01:08 PM MDT

Dear Tom,

I am sending with this email a calculation of the amount owed to the San Juan Water Conservancy District, taking into account the 18% per annum amounts as set forth in the contract. This gives credit for the original payment of \$10,000 on 2/9/2018. The subsequent obligations, including interest, leaves a balance of \$176,533.69 as of 10/1/2020. I am sending you this calculation and requesting that you agree to these numbers. I do not want to have a misunderstanding in October of 2020 as to the amount of the balance due. Would you please confirm your consent to this calculation by return email.

I thank you for your consideration in this matter.

Sincerely,

Craig C. Halls, Esq.
403 South Main Street
Blanding, Utah 84511
Tele: 435-678-3333



SJC Water Conservancy District - Blue Castle Holdings Amortization Schedule.xlsx
12.4kB

Exhibit C