

Court upholds nuke project's water rights

Rudy Herndon Moab Sun News | Posted: Thursday, July 28, 2016 8:54 am

The developer of a proposed nuclear power plant in Emery County is celebrating its latest legal victory. But critics of the controversial project say that it still faces major obstacles going forward.



Aaron Tilton

[Photo courtesy of Blue Castle Holdings]

The Utah Court of Appeals last week upheld 7th District Judge George Harmond's ruling in favor of Blue Castle Holdings' applications to divert water from the Green River to the project site about 5 miles northwest of the town with the same name.

Blue Castle Holdings CEO Aaron Tilton noted that everyone from Utah State Engineer Kent Jones to Judge Harmond and a three-member appeals court panel have scrutinized his company's water rights applications in depth. Along the way, they all reached the same conclusions.

"We have fully complied and satisfied all the requirements of the law," Tilton said. "We can assure the public that the high level of scrutiny that has been applied to this process is welcomed."

But Uranium Watch Executive Director Sarah Fields of Moab said the state and others overlooked the considerable challenges that the project faces in its early stages, including the availability of project financing.

"There are a lot of real stumbling blocks, and the state engineer never wanted to address those," she said. "Neither did Blue Castle Holdings or (water rights owner) Kane County."

Living Rivers Conservation Director John Weisheit said he believes that the proposal is ultimately doomed to fail.

"This is a project that's going nowhere, and it's just a waste of time," he said.

Tilton countered that there is no basis for the criticisms or concerns that the appellants raised, noting that the appeals court most recently found that they didn't back up their arguments with adequate documentation.

"These guys have been wrong at every turn," Tilton said.

The appellants in the case – including Uranium Watch and Living Rivers – have 30 days from the date of the court's July 21 ruling to appeal the decision, and if they choose not to, they could put Blue Castle in an awkward position.

Fields said that if the decision stands, the Orem company would soon have to begin paying two

southern Utah water districts for the water it's leasing from them. To start off with, Fields said it would owe the Kane County Water Conservancy District \$100,000 per year – an amount that would climb to \$500,000 a year in five years. On top of that amount, Blue Castle would have to pay the San Juan County Water Conservancy District \$80,000 per year for the right to lease its water rights, Fields said.

“And that seems like a big drain on their resources,” she said. “We have no idea whether they'll be able to pay for it ... It's been almost 10 years since they haven't had to pay for the lease of that water.”

In 2012, Jones approved the company's applications to change the two districts' points of water diversion upstream, from locations in San Juan and Kane counties to the Green River in Emery County.

If Blue Castle ultimately moves forward with the project, the 2,200-megawatt plant would use nearly all of that apportioned water – more than 17.46 billion gallons, altogether.

In the event that it's able to build the plant, the company said it will increase Utah's power generation capacity by nearly one-third, while using less than 1 percent of the state's current water diversions.

Under state code, applicants can change a point of diversion as long as state regulators find that they don't hurt existing water rights holders, or interfere with more beneficial uses of that water, among other things. If there's reason to believe that there is still unappropriated water in the proposed source – and if an applicant has the financial ability to complete a proposal that is not detrimental to the public welfare – the point of diversion can be changed.

Lead appellant HEAL Utah of Salt Lake City went on to appeal the state engineer's decision, and in September 2013, the case reached Judge Harmond. At the time, the group and its co-appellants maintained that there is no unappropriated water left to divvy up in the Green River – a claim that Judge Harmond ultimately rejected.

They repeated those claims in their latest appeal, but the panel found that HEAL Utah often failed to adequately support its arguments, and referred selectively to related case law and the judge's decision.

Weisheit said he isn't surprised by the appeals court's ruling.

“Living Rivers has never won a lawsuit, so why should I expect that to change?” he said.

However, he and other appellants hope to make their case against the proposal in the court of public opinion by documenting their concerns.

“The big thing is to build up a record and expose to the public all of the uncertainties about Blue Castle Holdings,” Weisheit said.

Tilton said the company is about halfway through its work on a federal application for an Early Site Permit, and Fields said she would “almost welcome” that lengthy process.

“Because then we'd be able to show that the project really isn't feasible,” she said.

If the company files its application, Fields predicts that any federal review process that follows could take years from beginning to end. In particular, Fields anticipates that U.S. Nuclear Regulatory Commission (NRC) officials would take a “much harder” look at the long-term availability of water in the Green River.

“They don't want a nuclear reactor being built when all of a sudden, somebody else has a priority for the water, particularly in a drought situation,” she said. “They would want to know that the reactor would be stable – that it wouldn't go off and on, based on the availability of water.”

If the review period drags on, Fields questions whether the company has the financial wherewithal to develop the project, which could cost an estimated \$15 billion to \$20 billion to build.

In the past, Blue Castle Holdings reported that it earned revenues through its acquisition of Willow Creek Companies, a Rifle, Colorado-based pipeline construction firm. But that connection no longer exists, Fields said.

“They were using those profits, but they don't own the company anymore,” she said. “They don't have that source of income.”

Tilton noted that his company is debt-free, and has already invested heavily in the project.

“I think the interesting thing that is continually expressed by the protesters that's wholly inaccurate – short of calling them deceptive – is the fact that they continue to state something about \$500,000 is the only outside money that the company has raised,” he said. “We've already put in excess of \$20 million.”

It's spent \$10 million on data collection alone, from hydrological and seismological studies to all of the other “ologies” that go into project studies.

“That's really where we have determined at this stage that the data collection all points to a good site,” Tilton said.

However, Fields sees challenges to project financing: Blue Castle Holdings is not a publicly traded company, so it isn't listed on any stock exchanges and can't sell stock on the open market.

Weisheit maintains that utilities in Utah and surrounding states haven't shown any interest in the project.

“They have no utility that wants to be a part of their power plant,” Weisheit said.

Tilton said the lack of involvement with any utilities is by design. During this phase of the project,

he said, his company is working to minimize the costs and risks to utilities with the hope that it can ultimately shorten the permitting phase.

“At this stage, we're not encouraging the utilities to be involved in the process at all,” he said.

The company believes it's ultimately well-positioned to capitalize on seismic changes within the energy industry. It's anticipating that utilities will eventually shut down their aging coal-fired power plants and turn to reliable power from a carbon-free source of energy that does not contribute to global climate change.

For now, though, it's keeping mum about investor interest in the project.

“All of the details of the agreements and the entities that we're working with are confidential,” Tilton said. “They wouldn't be disclosed, anyways.”