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Kent L. Jones, State Engineer  
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In response to information presented during the January 12 hearing regarding transfer applications a35874 and a35402:

The Sierra Club Utah Chapter continues to believe that the above transfer requests should be denied. According to regulations stipulated by the Utah Division of Water Rights, the State Engineer may only approve a request of transfer if:

- The proposed use will not impair existing rights or interfere with the more beneficial use.
- The proposed plan is physically or economically feasible.
- The applicant has the financial ability to complete the proposed work.

Based on testimony presented by proponents and protesters, it is apparent that the proposed project will most certainly affect the long-term interests of existing agricultural water right holders, those who earn their living on the river and endangered species who depend on the river for habitat. Of particular concern are the cumulative depletions at the point of withdrawal and below on a water source that is no doubt already over allocated. Clearly, this view is shared by the U.S. Fish and Wildlife Service and the Bureau of Reclamation, who are both protesting the proposed water diversion.

As the Blue Castle Holdings (BCH) business model is to conduct site preparation necessary for award of an Early Site Permit (ESP) in order to then sell the ESP at a future date to a utility who would then build the nuclear plant, it is impossible at this time to determine whether or not BCH will first, secure the \$100M necessary to complete the ESP process and second, identify an interested utility who will be able to secure the \$15 to \$18 billion necessary to build the plant.

As BCH is neither a utility nor a publicly owned company, it is unlikely they could receive a license from the Nuclear Regulatory Commission on their own. Other licensees are utilities and/or publicly traded companies. Thus, the success of this project relies on the ability of BCH to identify and secure the significant funding required to build and operate the plant—no small feat in the current economy.

It is noteworthy that during the history of nuclear plant permitting and construction, award and transfer of an ESP to a second party has never occurred (applicable regulations: 10 CFR 50.80; 56.16 (referring to 50.33(a) through (d) and (j)); and 52.17). If BCH in and of itself is not able to meet NRC requirements as a licensee, they may not be able to obtain an ESP. Referring back to Utah water right regulations, Utah law disallows water diversions "for purposes of speculation." That means the State Engineer must determine whether Blue Castle's multifaceted, 10- to 20-year business plan makes financial sense in a growing and shifting energy market—a plan that is entirely based on speculation.

The Sierra Club opposes nuclear power plant creation for two primary reasons. One, it is not a renewable energy resource and two, despite decades of nuclear plant operation in the United States, the industry and the federal government have yet to identify a suitable method for storage and disposal of spent nuclear fuel. Currently, as with other nuclear plants, the spent fuel rods would remain at the proposed site, which is approximately 5 miles northwest of the town of Green River. The radioactive rods would be stored in dry casks on a 1.5-acre pad at the plant. BCH claims the casks can be safely stored at the Green River plant site for 100 years. However, as the life expectancy of the plant is approximately 60 years, transfer and storage at another location would at some point be required. BCH has yet to present plans for storage and transfer following shutdown and dismantling of the plant.

In closing, the Utah Chapter of the Sierra Club believes these transfer requests to be premature and entirely speculative. Transfer of any water right, regardless of the amount, at a time when the future of Utah's water supply is facing uncertainty must be based on a solid foundation of benefit and business plan. Certainly, no new transfers or allocations should be awarded by the State Engineer until the Bureau of Reclamation Colorado River Basin Water Supply and Demand Study is completed and reviewed. This study (see attachment), scheduled for completion during January 2012, will analyze water supply and demand imbalances throughout the seven state study area through 2060, will provide a blueprint for future Colorado River Basin water allocation.

Clearly, Blue Castle Holding's proposed nuclear plant in Green River does not adequately benefit the citizens of Utah. Based on information presented at the January hearing, BCH has yet to demonstrate that this project will not negatively impact Utah citizens. Rather it seems likely the citizens of Utah would be facing an increase in their electric utility rates, a decrease in water flow and availability from the source and numerous issues related to safe storage of nuclear fuel either at the site or location to be determined.

By any measure, this project and the required water right transfers do not meet the critical criteria as specified by Utah water rights law for approval.

Sincerely,

Daniel R. Mayhew  
Chair, Conservation Committee  
Sierra Club Utah Chapter