

**IN THE THIRD JUDICIAL DISTRICT FOR THE STATE OF TENNESSEE**  
**GREENE COUNTY CHANCERY COURT**

DONAHUE BIBLE,  
BEN DYER and wife, JANE DYER,  
JACK RENNER and wife, MARGARET RENNER,  
JOE NEILL and wife, GLENNA NEILL,  
APRIL BRYANT, EDDIE OVERHOLT,  
CHESTER PURGASON,  
KEVIN DUBOSE and wife, JAYNE DUBOSE,  
PEGGY SMILEY,  
ROGER COEN and wife, LYNN COEN,  
JIMMY FOX and wife, TAMMY FOX,  
CATHY STEELE, AMBER MOORE,  
LARRY SMITH, and RONALD RENNER,

Plaintiffs,

v.

NO. 20140036  
**JURY DEMANDED**

INDUSTRIAL DEVELOPMENT BOARD  
OF THE TOWN OF GREENEVILLE  
AND GREENE COUNTY; and  
US NITROGEN, LLC.

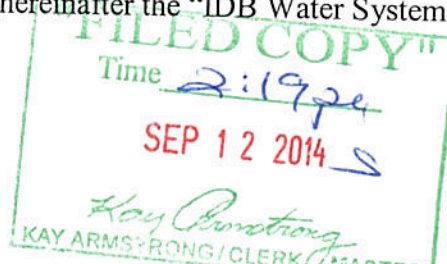
Defendants.

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**COMPLAINT FOR DECLARATORY JUDGMENT  
AND INJUNCTIVE RELIEF**

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Come the Plaintiffs, by and through counsel, and file the present action pursuant to the provisions of T.C.A. § 29-14-101 *et. seq.* (Declaratory Judgment Act), and T.C.A. § 8-44-101, *et. seq.* (Open Meetings Act) and Tennessee's common law seeking, *inter alia*, a declaration that (1) the Industrial Development Board of the Town of Greeneville and Greene County (hereinafter "the IDB") violated Tennessee's Open Meetings Act at the time it voted to approve its plan to construct and operate a water pipeline (hereinafter the "IDB Water System") for the



benefit of US Nitrogen, LLC (hereinafter “US Nitrogen”) and possible others; (2) that the IDB lacks the legal authority under T.C.A. § 29-14-101 *et. seq.* and its charter and bylaws to construct and operate the IDB Water System; and (3) that operation of the IDB Water System would constitute a private nuisance as well as an actionable interference with the riparian rights of some, if not all of the Plaintiffs. In support of their causes of action, the Plaintiffs would show this Court as follows:

### **JURISDICTION & VENUE**

1. This Court has jurisdiction over this action pursuant to T.C.A. § 29-14-102 and T.C.A. § 8-44-106(a).

2. Venue in this action is proper in Greene County, Tennessee, pursuant to the provisions of T.C.A. § 20-4-101, in that all the cause of action arose within Greene County, Tennessee.

### **PARTIES**

#### The Plaintiffs

1. Plaintiff Donahue Bible is a citizen and resident of Greene County, residing at 3175 Fish Hatchery Road, Mohawk, Tennessee, 37810.

2. Plaintiffs Ben Dyer and wife, Jane Dyer, are citizens and residents of Greene County, residing at 4440 Fish Hatchery Road, Mohawk, Tennessee, 37810.

3. Plaintiffs Jack Renner and wife, Margaret Renner, are citizens and residents of Greene County, residing at 2905 Fish Hatchery Road, Mohawk, Tennessee 37810.

4. Plaintiffs Joe Neill and wife, Glenna Neill, are citizens and residents of Greene County, Tennessee, residing at 395 Neill Lane, Mohawk, Tennessee, 37810.

5. Plaintiff April Bryant is a citizen and resident of Cocke County, residing at 817 Briar Thicket Road, Bybee, Tennessee, 37713.
6. Plaintiff Eddie Overholt is a citizen and resident of Cocke County, residing at 568 Briar Thicket Road, Bybee, Tennessee, 37713.
7. Plaintiff Chester Purgason is a citizen and resident of Greene County, Tennessee, residing at 591 Purgason Road, Mohawk, Tennessee, 37810.
8. Plaintiffs Kevin DuBose and wife, Jayne DuBose, are citizens and residents of Greene County, residing at 1897 Fish Hatchery Road, Mohawk, Tennessee 37810.
9. Plaintiff Peggy Smiley is a citizen and resident of Cocke County, residing at 817 Briar Thicket Road, Bybee, Tennessee, 37713.
10. Plaintiffs Roger Coen and wife, Lynne Coen, are citizens and residents of Cocke County, residing at 821 Briar Thicket Road, Bybee, Tennessee, 37713.
11. Plaintiffs Jimmy Fox and wife, Tammy Fox, are citizens and residents of Greene County, residing at 2555 Fish Hatchery Road, Mohawk, Tennessee, 37810.
12. Plaintiff Cathy Steele is a citizen and resident of Greene County, residing at 2620 Fish Hatchery Road, Mohawk, Tennessee, 37810.
13. Plaintiff Amber Moore is a citizen and resident of Greene County, residing at 2690 Fish Hatchery Road, Mohawk, Tennessee, 37810.
14. Plaintiff Larry Smith is a citizen and resident of Greene County, residing at 2750 Fish Hatchery Road, Mohawk, Tennessee, 37810.
15. Plaintiff Ronald Renner is a citizen and resident of Cherokee County, Georgia, residing at 204 Farm Path Court, Woodstock, Georgia, 30188.
16. All named Plaintiffs are classified as one or more of the following:

- a. owners of real property that adjoins the Nolichucky River with the property being downstream from the proposed discharge point for the proposed pipeline of U.S. Nitrogen, Inc.;
- b. owners of real property that adjoins the proposed pipeline that is to run from the manufacturing plant of defendant U.S. Nitrogen, Inc. to the Nolichucky River;
- c. persons who fish, swim, boat, or otherwise make recreational use of the Nolichucky River;
- d. persons who maintain wells for drinking water that are located in close proximity to the Nolichucky River; and/or
- e. taxpayers of Greene County.

#### The Defendants

17. Defendant, the Industrial Development Board of the Town of Greeneville and Greene County (hereinafter “the IDB”) is a corporation created and operated under Title 7, Chapter 53 of the Tennessee Code and is located in Greene County. Its purpose is set forth in T.C.A. § 7-53-102(a). It may be served through its Registered Agent, Jerry W. Laughlin, at 100 S. Main Street, Greeneville, Tennessee 37743.

18. Defendant, US Nitrogen, LLC (hereinafter “US Nitrogen”) is a Delaware limited liability company licensed to do business in Tennessee with its principal place of business located at 25800 Science Park Drive, Cleveland, Ohio 44122. It may be served through its Registered Agent, CT Corporation System, 800 South Gay Street, Knoxville, Tennessee 37929.

#### **FACTUAL BACKGROUND**

19. Since 2011, US Nitrogen has been planning and constructing an industrial manufacturing facility at 471 Pottertown Road which is located on IDB’s property in Midway, Tennessee (hereinafter the “US Nitrogen Facility”). The industrial manufacturing facility will

produce ammonium nitrate, which is a chemical used in the manufacture of fertilizers and civilian explosives.

20. Prior to the commencement of construction, US Nitrogen sought and obtained approvals from the Greene County Commission for rezoning and other assistance and approvals from other government agencies related to its plan to operate and construct the manufacturing facility.

21. At the time that the aforementioned approvals were being sought and obtained, US Nitrogen represented that it would need access to significant amounts of water for its manufacturing process, and that such needs would be satisfied by purchasing the water supply it needed from local utilities and providers.

22. Upon information and belief, at or about the same time as the aforementioned representations were being made, US Nitrogen was secretly planning to ultimately obtain water for free from the Nolichucky River.

23. Upon information and belief, the secret plan of US Nitrogen included entering into an undisclosed transaction with one or more members of the IDB and a member of a local utility to gain access to certain real property owned or controlled by such person(s), in order to facilitate the installation of a pump station and intake and discharge pipes into the Nolichucky River. Upon information and belief, transactions which conveyed control of the above referenced real property occurred before US Nitrogen announced that it would abandon its plans to make use of water supplied by local utilities in favor of constructing a ten mile pipeline to access "free water" from the Nolichucky River.

24. Upon information and belief, US Nitrogen, with the aid of at least one member of the IDB, devised a "bait and switch" procedure pursuant to which US Nitrogen gained certain

approvals, permits and/or licenses from various local and state agencies without disclosing the true nature of its plans and intentions, in order to deny the Plaintiffs, and other similarly situated persons, the opportunity to respond or oppose the secret plans of US Nitrogen.

25. On or about September 19, 2013, US Nitrogen filed an Application for Aquatic Resource Alteration Permit (ARAP) with the Tennessee Department of Environment and Conservation (TDEC) to construct a water intake structure on the Nolichucky River. In this application US Nitrogen states that it plans to withdraw water from the Nolichucky River to supply water for the operation of the US Nitrogen Facility. TDEC issued the ARAP to US Nitrogen effective June 3, 2014.

26. On or about December 11, 2013, US Nitrogen filled an Application for an NPDES Permit with the Tennessee Department of Environment and Conservation (TDEC) to discharge cooling water and backwash (effluent) from a planned water treatment plant into the Nolichucky River from the US Nitrogen Facility. TDEC issued the NPDES Permit to US Nitrogen effective June 3, 2014.

27. On or about May 2, 2014, US Nitrogen filed an Application with the Tennessee Department of Transportation (TDOT) requesting permission to install and maintain water and effluent pipelines on the right-of-ways of State Routes 340 and 348 in Greene County, Tennessee. TDOT denied US Nitrogen's application to use the State's right-of-way for a private purpose effective June 9, 2014.

28. On or about July 18, 2014, the IDB held a public meeting and voted to approve its plan to have US Nitrogen construct and operate water and effluent pipelines for the benefit of US Nitrogen, LLC and possible others.

29. In or around July of 2014, IDB filed an application with the Tennessee Department of Transportation seeking a permit to install and maintain water and effluent pipelines on the aforementioned State right-of-ways in Greene County, Tennessee. Specifically, the IDB application sought permission to install the following:

Water intake and outfall pipelines between the US Nitrogen facility and the Nolichucky River at the following described location: In the right-of-way of State Highways 340 and 348, between the US Nitrogen facility adjoining 348 (McDonald Road) in Midway, running to State Highway 340 (Fish Hatchery Road), then along State Highway 340 to a parcel adjacent to the Nolichucky River near the Conway Bridge on Briar Thicket Road.

30. Upon information and belief, U.S. Nitrogen and/or the IDB plans to install the above described water service pipeline system (the "IDB Water System") to serve the private water needs of US Nitrogen. Upon information and belief, the water pipeline project will be constructed, operated and maintained by US Nitrogen, but will purportedly be owned by the IDB. Upon information and belief, US Nitrogen, as the operator of the IDB Water System, will be responsible for obtaining any federal and state environmental permits for the operation of the pipeline. Upon information and belief, US Nitrogen will operate a water treatment plant to treat water for its industrial uses. Upon information and belief, US Nitrogen will be responsible for operating and maintaining the pipeline as public operations and utilities maintain their pipelines. Upon information and belief, at least two other companies who plan to locate industrial facilities on the IDB's property in Greene County on Pottertown Road in Midway, Tennessee ("the IDB Property") intend on using the water withdrawn and treated by US Nitrogen.

31. Upon information and belief, the IDB Property and likewise the US Nitrogen Facility located thereon, lie within the territory of the Old Knoxville Utility District. Upon information and belief, the Old Knoxville Utility District is currently providing water service to

some or all of the US Nitrogen Facility. Upon information and belief, the Old Knoxville Utility District is willing and able to provide water services to the facilities planned on the IDB Property.

## CAUSES OF ACTION

### Violation of Open Meetings Act

32. Plaintiffs would aver that an actual justiciable controversy has developed between the parties regarding whether the IDB violated the Tennessee Open Meetings Act, otherwise known as the Sunshine Law, codified in T.C.A. § 8-44-101, *et seq.*

33. Plaintiffs would aver that the IDB is a governing body as defined in T.C.A. §8-44-102(b)(1).

34. Plaintiffs would aver that as a governing body, the IDB is subject to the Tennessee Open Meetings Act and its meetings are required to be open to the public pursuant to T.C.A. § 8-44-102(a).

35. Plaintiffs would further aver that pursuant to T.C.A. §7-53-303(c), “[a]ny meeting held by the board of directors for any purpose whatsoever shall be open to the public.”

36. Plaintiffs would aver that, on or about July 18, 2014, the IDB held a public meeting and voted to approve its plan to construct and operate the IDB Water System for the benefit of US Nitrogen, LLC and possible others. Plaintiffs would aver that the aforementioned meeting violated the Tennessee Open Meetings Act in that the numerous citizens in attendance were purposefully or negligently prevented from hearing the deliberations of the IDB.

37. Plaintiffs would aver that during the aforementioned meeting, board members of the IDB conducted deliberations while sitting around a table, a number of them with their backs turned to the public. Plaintiffs would aver that despite the fact that the meeting place was



equipped with microphones, the IDB did not make use of them and one citizen was arrested when he asked the board to speak louder because citizens could not hear the deliberations.

38. Plaintiffs would aver that the Tennessee Open Meetings Act and T.C.A. §7-53-303(c) not only require that the IDB's meetings be conducted in public, but Tennessee law requires citizens to be able to reasonably hear the deliberations and decisions which occur at the public meeting.

39. Plaintiffs would aver that following the July 18, 2014 meeting of the IDB, fifty-nine (59) citizen complaints were filed with the State's Open Records Counsel.

40. Plaintiffs bring the present suit *inter alia* to obtain a declaration that the IDB violated the Tennessee Open Meetings Act and T.C.A. §7-53-303(c) on July 18, 2014 and consequently any decisions made or actions purportedly taken at that meeting are void; to obtain an injunction to prohibit future violations of the Open Meetings Act and/or T.C.A. §7-53-303(c); to impose appropriate penalties; and to generally enforce the purposes of the Open Meetings Act and T.C.A. §7-53-303(c).

#### Illegal Transaction

41. Plaintiffs would aver that an actual justiciable controversy has developed between the parties regarding whether the IDB has the legal authority under T.C.A. § 29-14-101 *et. seq.* and its charter and bylaws to construct and operate the proposed IDB Water System.

42. Plaintiffs would aver that that the IDB lacks the legal authority under T.C.A. § 29-14-101 *et. seq.* and its charter and bylaws to construct and operate the proposed IDB Water System. Likewise, the Plaintiffs would aver that any coordinated actions taken by the IDB and/or US Nitrogen in furtherance of the proposed IDB Water System are illegal as they exceed the scope of powers granted to the IDB.

43. Plaintiffs would aver that that the IDB is an industrial development corporation created and operated under Title 7, Chapter 53 of the Tennessee Code. As creature of statute, IDB only has the powers articulated in T.C.A. § 7-53-101, *et. seq.*

44. Plaintiffs would aver that T.C.A. § 7-53-102(a) provides that “[i]t is not intended by this chapter that any such corporation shall itself be authorized to operate any such manufacturing, industrial, governmental, educational, commercial, or agricultural enterprise, hotel, motel, or apartment building or pollution control facility.”

45. Plaintiffs would further aver that pursuant to T.C.A. § 7-53-302(b) the IDB “does not have the power to operate any project financed under this chapter as a business.”

46. Plaintiffs would aver that operation of the proposed IDB Water System by the IDB is prohibited by T.C.A. § 7-53-102(a), as such activity would necessarily constitute the operation of a “manufacturing, industrial [or] commercial . . . enterprise . . . or pollution control facility.”

47. Plaintiffs would aver that the operation of the proposed IDB Water System by the IDB is also prohibited by T.C.A. § 7-53-302(b), as the IDB “does not have the power to operate any project financed under this chapter as a business.” Plaintiffs would further aver that if the IDB is prohibited from operating such a system, it lacks the capacity to convey, assign or otherwise transfer the right or ability to operate such a system to any other person or entity, including U.S. Nitrogen.

#### Permanent Private Nuisance

48. Plaintiffs would aver that an actual justiciable controversy has developed between the parties regarding whether the proposed IDB Water System would constitute a private nuisance.

49. Plaintiffs would aver that the proposed pipeline and U.S. Nitrogen's use of such pipeline will create a continuous and permanent private nuisance under Tennessee Law.

50. Plaintiffs would aver that as a direct and proximate result of this nuisance, Plaintiffs' property values will be diminished as will their use of the Nolichucky River.

51. The Plaintiffs would aver that the Defendants intend to utilize the proposed IDB Water System to withdraw approximately one million three hundred and eighty-five thousand gallons (1,385,000) of water from the Nolichucky River per day and to discharge approximately five hundred and seventy-three thousand (573,000) gallons of effluent back into the River per day.

52. The Plaintiffs would aver that the IDB Water System, as currently designed, is capable of removing approximately two million gallons (2,000,000) per day from the Nolichucky River and the effluent pipeline is capable of delivering approximately one million gallons (1,000,000) of industrial waste water back into the river.

53. The Plaintiffs would aver that the IDB has indicated, that with modifications and additions, the IDB Water System would be capable of removing significantly more water from the Nolichucky River per day (than the above referenced estimates) for industrial consumers willing to locate in the Potterstown Road industrial area. The Plaintiffs would further aver that the IDB has likewise indicated that the IDB Water System would be capable of delivering significantly more industrial waste water back into the river.

54. The Plaintiffs would aver, upon information and belief, that the Nolichucky River will not support the demands of the proposed IDB Water System without creating dangerous and/or undesirable conditions.

55. The Plaintiffs would aver, upon information and belief, that creation and use of the proposed IDB Water System would not only harm the Nolichucky River, but would do so to such an extent as to constitute an unreasonable invasion of Plaintiffs' legally protectable interests that would interfere, annoy and/or disturb the free use of their property and the Nolichucky River.

Interference with Riparian Rights

56. Plaintiffs would aver that the IDB Water System and its planned use (which includes not only U.S. Nitrogen's use, but is believed to also include the future use of at least two other companies who plan to locate industrial facilities on the IDB Property) will unreasonably interfere with their riparian rights.

57. Plaintiffs would aver, upon information and belief, that the IDB Water System would interfere with Plaintiffs' rights to:

- a. make recreational use of the river, including activities such as fishing, swimming, and boating;
- b. maintain wells for drinking water that are located in close proximity to the river; and
- c. use the river for agricultural purposes, including irrigation and watering of livestock.

53. Plaintiffs would aver, upon information and belief, that the Old Knoxville Utility District is willing and able to provide water services to the facilities planned on the IDB Property. Plaintiffs would further aver, upon information and belief, that the Defendants' proposed use of the Nolichucky River as an industrial water source and as a dumping ground to discharge cooling water and backwash (effluent) is not necessary, but is instead an attempt to

obtain water service at a substantially discounted rate at the expense of the Plaintiffs, the taxpayers of Greene County, Tennessee, the local water utility, and the Nolichucky River.

**THIS IS PLAINTIFFS' FIRST APPLICATION FOR EXTRAORDINARY RELIEF.**

WHEREFORE, Plaintiffs pray as follows:

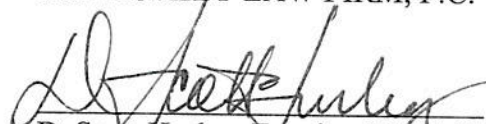
1. That proper process issue and be served upon the Defendants, requiring them to appear and answer this Complaint;
2. That a jury of twelve persons be empanelled to try all factual issues in this cause;
3. That the Court issue a Declaratory Judgment establishing that the IDB violated Tennessee's Open Meetings Act, T.C.A. § 8-44-101, *et seq.* and/or T.C.A. §7-53-303(c) on July 18, 2014, and that any actions or decisions taken on that date are void;
4. For the Court to issue an injunction to prohibit future violations of the Open Meetings Act and/or T.C.A. §7-53-303(c);
5. For the Court to impose appropriate penalties for violations of the Open Meetings Act;
6. That the Court issue a Declaratory Judgment establishing that the IDB lacks the legal authority under T.C.A. § 29-14-101 *et. seq.* and its charter and bylaws to construct and operate the IDB Water System;
7. For the Court to issue a Declaratory Judgment establishing that Defendant IDB, as a creature of government, is unauthorized to convey the right to construct, manage, and operate a pipeline to U.S. Nitrogen, a private business;

8. For the Court to issue a Declaratory Judgment establishing that the Defendants' proposed construction and operation of a pipeline running from the IDB Property and/or the manufacturing plant of U.S. Nitrogen to the Nolichucky River would constitute a permanent nuisance;
9. For the Court to issue a Declaratory Judgment establishing that the Defendants' proposed use of the pipeline would interfere with Plaintiffs' riparian rights;
10. That this Honorable Court award the costs of this cause, including any and all discretionary costs, to the Plaintiffs;
11. For such other further, general, and equitable relief as this Court may deem the Plaintiffs to be entitled.

Respectfully submitted this 12<sup>th</sup> day of September, 2014.

THE HURLEY LAW FIRM, P.C.

By:



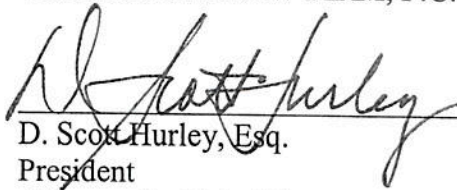
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Attorneys for the Plaintiffs  
205 Mohican Street  
Knoxville, Tennessee 37919  
(865) 523-1414

COST BOND

We acknowledge ourselves as surety for all costs and taxes in this cause in accordance with Tennessee Code Annotated Section 20-12-120.

This the 12<sup>th</sup> day of September, 2014.

THE HURLEY LAW FIRM, P.C.

By:   
D. Scott Hurley, Esq.  
President  
Attorney for Plaintiffs