

**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,  
RONALD RENNER, DENNIS WOODS and wife,  
CATHY WOODS, RANDY MCCAMEY and wife,  
BETH MCCAMEY, MICKEY MCCAMEY  
and wife, LINDA MCCAMEY, BILL SNOWDEN  
and daughter, DONNA SNOWDEN,  
JACK DANIELS and wife, RUBY DANIELS,  
BOB SAPP, RALPH JONES and wife,  
ONEITA JONES, SAMMY VOILES,  
BARBARA WAMPLER, DANIEL WAMPLER,  
KYLE SMITH and wife, SHERRY SMITH,  
RUBY COMBS, GARY STEPHENS and wife,  
BARBARA STEPHENS, BROCK WAMPLER,  
KIM STEPHENS and wife, PHYLLIS STEPHENS,  
CHESTER ATKINS and wife, BLANCHE ATKINS,

Plaintiffs,

v.

NO. 2014 0236  
**JURY DEMANDED**

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

Defendants.

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**MOTION FOR  
TEMPORARY INJUNCTION**

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Come the Plaintiffs, by and through counsel, and move this Honorable Court, pursuant to Rule 65.04 of the Tennessee Rules of Civil Procedure for a Temporary Injunction in the above-captioned cause enjoining the Industrial Development Board of the Town of Greeneville and Greene County (hereinafter “the IDB”) from proceeding with any actions “approved” in violation Tennessee’s Open Meetings Act and/or from engaging in acts prohibited by Tennessee Statutes, namely its participation in a plan to construct and operate a water pipeline. In support thereof Plaintiffs would state as follows:

1. The IDB, with US Nitrogen, LLC (hereinafter “US Nitrogen”) acting as its agent, are presently engaged in a plan to construct a pipeline (the “IDB Water System”) for the purpose of obtaining free water from the Nolichucky River in order to serve the commercial needs of one or more private companies, including primarily US Nitrogen.

2. Upon information and belief, the Defendants originally, intended for US Nitrogen to construct, operate, maintain and own the pipeline, but the Tennessee Department of Transportation refused to grant US Nitrogen a permit to use the public the right-of-way to install the pipeline, in whole or in part because the proposed pipelines would be for the private use of US Nitrogen and would not provide any public services to the general community. A true and accurate copy of a permit denial letter from the Tennessee Department of Transportation to US Nitrogen is attached as **Exhibit 1.**

3. Upon information and belief, in an effort to obtain the necessary approval from the Tennessee Department of Transportation, the Defendants have entered into an agreement pursuant to which US Nitrogen will construct, operate and maintain the pipeline, but the IDB will be the owner. A true and accurate copy of the Minutes from the July 18, 2014 Special Meeting of the IDB is attached as **Exhibit 2.**

4. The IDB has sought, and upon information and belief has obtained, a permit from the Tennessee Department of Transportation, to construct the pipeline within the right-of-way of Tennessee State Highways 340 and 348. A true and accurate copy of the IDB's permit application to the Tennessee Department of Transportation is attached as **Exhibit 3**.

5. At the present time, the installation of the pipeline has begun, is proceeding rapidly, and it is anticipated that the entire project will be completed long before an adjudication on the merits of Plaintiffs' lawsuit can be had.

6. All of the 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;
  - b. owners of real property that adjoins the proposed pipeline that is to run from the manufacturing plant of defendant U.S. Nitrogen 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.

7. The Plaintiffs have asserted in their Complaint and Amended Complaint that the IDB violated the Tennessee Open Meetings Act and T.C.A. §7-53-303(c) on July 18, 2014, when it voted to go forward with the IDB Water System. Consequently, the Plaintiffs have averred that any decisions made or actions purportedly taken at that meeting are void.

8. The Plaintiffs have asserted in their Complaint and Amended Complaint that the IDB lacks the legal authority under T.C.A. § 7-53-101, *et. seq.* and its Charter and Bylaws to construct and operate the IDB Water System.

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

10. 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.” 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.

11. Through this Motion for Temporary Injunction, Plaintiffs merely seek to enjoin the IDB from: (1) taking any actions that were “approved” in violation of the Tennessee Open Meetings Act and/or T.C.A. §7-53-303(c); and (2) taking any action that it lacks the legal authority to do under T.C.A. § 7-53-101, *et. seq.*, until an adjudication on the merits of Plaintiffs’ Declaratory Judgment Action can be had.

12. The Plaintiffs would aver that their rights are being violated by the IDB and that the IDB's expedited construction of the IDB Water System, through its agents, will tend to render any final judgment in favor of the Plaintiffs ineffectual.

13. The Plaintiffs would aver that a Temporary Injunction is necessary to preserve the status quo until this matter is fully adjudicated by the Court. The Plaintiffs would aver that a Temporary Injunction is appropriate because Plaintiffs are likely to prevail on the merits of their claims.

14. The Plaintiffs would aver that the harm to Plaintiffs if this Temporary Injunction is not entered outweighs the harm to the IDB if it is granted.

15. The Plaintiffs would further aver that the interests of the public will not be disserved by granting Plaintiffs' motion.

THIS IS THE SECOND APPLICATION FOR EXTRAORDINARY RELIEF<sup>1</sup>.

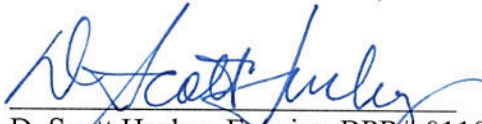
WHEREFORE, Plaintiffs pray that this Honorable Court enter a Temporary Injunction enjoining the IDB, their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them, from (1) taking any actions that were "approved" in violation of the Tennessee Open Meetings Act and/or T.C.A. §7-53-303(c); and (2) taking any action that it lacks the legal authority to do under T.C.A. § 7-53-101, *et. seq.*, its Charter and/or Bylaws, namely any further participation in a plan to construct and operate the complained of water pipeline.

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<sup>1</sup> Plaintiffs' first application for Extraordinary Relief resulted in an Agreed Order being entered by this Court.

Respectfully submitted this 30 day of October, 2014.

THE HURLEY LAW FIRM, P.C.

By:   
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served upon counsel of record and unrepresented parties in interest at the address(es) set forth below, by mailing same United States Mail, postage pre-paid, via facsimile, as indicated below, or via hand-delivered to said counsel, this 30 day of October, 2014.

Industrial Development Board of the  
Town of Greeneville and Greene County  
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