

September 15, 1997

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before the Atomic Safety and Licensing Board**

In the Matter of )  
 )  
PRIVATE FUEL STORAGE L.L.C. ) Docket No. 72-22  
 )  
(Private Fuel Storage Facility) )

**APPLICANT'S ANSWER TO REQUEST FOR HEARING AND PETITION TO  
INTERVENE OF THE CONFEDERATED TRIBES OF THE  
GOSHUTE RESERVATION AND DAVID PETE**

**I. INTRODUCTION**

Applicant Private Fuel Storage L.L.C. ("PFS") submits this answer opposing the Request for Hearing and Petition to Intervene ("Confed. Tribes Pet.") filed on August 29, 1997, by the Confederated Tribes of the Goshute Reservation ("Confederated Tribes") and David Pete (collectively, "the Petitioners"). The Petitioners request a hearing and seek to intervene with respect to the license application filed by PFS for the construction and operation of the Private Fuel Storage Facility ("the Facility") which is to be located with the support and consent of the Skull Valley Band of Goshute Indians ("Skull Valley Band") on their reservation in Utah. The Skull Valley Band and the Confederated Tribes are two distinct and independent Tribes. The Confederated Tribes' reservation straddles the Nevada-Utah border. The Skull Valley Indian Reservation is in central Utah, three mountain ranges and some 70 miles from the reservation of the Confederated Tribes.

The Request for Hearing and Petition to Intervene should be denied, because both the Confederated Tribes and Mr. Pete lack standing. Both are located so far from the Facility that they would not have standing even in a reactor operating licensing proceeding; and they are clearly too remote to have standing in a case such as this where only sealed canisters are handled and there is no potential for significant offsite consequences. Further, neither Confederated Tribes nor Mr. Pete has demonstrated a concrete and particularized injury-in-fact which is actual or imminent, as is required to establish standing. Their generalized assertions and claims pertaining to the aboriginal area (an area encompassing millions of acres in which the Confederated Tribes no longer have any legal interest) do not amount to any showing that the Facility poses any real risk of injury to these remote Petitioners.

The Confederated Tribes' additional request to participate as an interested governmental entity pursuant to 10 C.F.R. § 2.715(c) should also be denied. The Confederated Tribes has not demonstrated a sufficient cognizable interest in the proceeding to meet the Nuclear Regulatory Commission ("NRC") requirements for participation as a governmental entity.

## II. BACKGROUND

### A. The Proposed Facility

On June 20, 1997, PFS submitted a license application to the NRC to construct and operate an Independent Spent Fuel Storage Installation ("ISFSI") pursuant to 10 C.F.R. Part 72. On July 21, 1997, the NRC formally accepted the application as complete for review and docketed the application under 10 C.F.R. Part 72 as Docket No. 72-22. On July 31, 1997, the

NRC published a notice in the Federal Register that the NRC is considering the PFS license application and that interested persons could file a written request for hearing and petition for leave to intervene pursuant to 10 C.F.R. § 2.714 by September 15, 1997. 62 Fed. Reg. 41,099 (1997).

The proposed Facility will be sited in Tooele County, Utah, within the boundaries of the Skull Valley Indian Reservation.<sup>12</sup> The Facility will store spent fuel from domestic commercial nuclear power plants. A condition of the Facility license application is that the Facility will only accept and store spent fuel in double-seal-welded steel canisters that have been certified by the NRC as part of a transportation cask system approved pursuant to 10 C.F.R. Part 71 and a storage cask system approved pursuant to 10 C.F.R. Part 72. The sealed canisters will be designed, constructed, and sealed to American Society of Mechanical Engineers ("ASME") pressure vessel standards, and Facility operations are designed such that there is no credible way to breach a sealed canister at the Facility.

The canisters will be loaded with spent fuel and sealed by welding at the originating power plants. No individual spent fuel assembly repackaging and no canister loading and sealing will be performed at the Facility. See Private Fuel Storage Facility Safety Analysis Report ("PFSF SAR") at 10.2-6. The Facility will be licensed pursuant to 10 C.F.R. § 72.32(a) which does not

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<sup>12</sup> The Skull Valley Band entered into a lease with PFS in December 1996 to lease land within its reservation for the Facility. The lease was approved by the Bureau of Indian Affairs on May 23, 1997, conditioned on completion of the NRC's National Environmental Policy Act review and issuance of a license to operate the Facility.

allow spent fuel to be repackaged and/or processed at the Facility. See Private Fuel Storage Facility Emergency Plan, Chapter 1 at 1.2; see also 10 C.F.R. § 72.32(a), (b)<sup>2</sup>.

The canisters will be checked to confirm leak tightness before they are allowed to be shipped to the Facility. See PFSF SAR at 10.2-6 to 8. The canisters will be again inspected upon arrival at the Facility before they are accepted for storage at the Facility. Any canister that does not meet the Facility acceptance requirements established in the license conditions will be returned to the originating power plant. Handling operations at the Facility have been specifically designed and limited such that there is no credible way to breach the stainless-steel canisters that contain all spent fuel at the Facility.

The NRC's emergency planning regulations for ISFSI's recognize that there is no obvious potential for significant offsite consequences where spent fuel always remains sealed inside canisters. See 10 C.F.R. § 72.32(a)(3) and (b)(3). Under the regulations, an ISFSI that will not repackage spent fuel (such as the Facility) need only consider one level of emergency classification, an "Alert," an event that is not expected to require a response by offsite organizations to protect persons offsite. 10 C.F.R. § 72.32(a)(3); NUREG-1567, Standard Review Plan for Spent Fuel Dry Storage Facilities, Draft, Appendix C at C-6 to 7 (1996).

Furthermore, even the sealed canisters will not be handled alone at the Facility. The Facility license design establishes that sealed canisters will only be handled at the Facility inside an NRC-certified transportation cask, inside an NRC-certified storage cask, or inside a transfer cask

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<sup>2</sup> An ISFSI is not licensed to "process and/or repackage spent fuel" at the facility unless it is licensed pursuant to the provisions of 10 C.F.R. § 72.32(b). See 10 C.F.R. § 72.32(b).

licensed by the NRC. The transfer cask is designed to ensure the structural integrity of the canister within it and will only be lifted using overhead cranes that comply with the NRC's "single-failure proof crane" requirements. See PFSF SAR at 4.7-9; NUREG-0554, Single Failure Proof Cranes for Nuclear Power Plants (1979). The defense-in-depth principle has been applied with rigor to the Facility design and license conditions to assure that breach of a sealed canister at the Facility is not credible.

B. The Petitioners And Their Lack Of Relationship To The Facility

The Confederated Tribes and the Skull Valley Band are completely separate and independent political, economic, and legal entities.<sup>32</sup> The two reservations were created at different times by different Executive Orders: the Skull Valley Indian Reservation by Executive Orders in 1917 and 1918 (IV Kappler 1048, Sept. 7, 1917 and Feb. 15, 1918); the Confederated Tribes' Reservation by a separate Executive Order in 1914 (IV Kappler 1048, March 28, 1914). The two reservations have separate and independent governments. Neither tribe has any legal authority or influence over, or property interest in, the other's reservation.

The Confederated Tribes' Reservation is geographically distant and separate from the Skull Valley Indian Reservation where the Facility will be located.<sup>33</sup> The Confederated Tribes' Reservation is located on the Nevada-Utah border, about 70 miles away from the Skull Valley

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<sup>32</sup> See Bureau of Indian Affairs, "Indian Entities Recognized and Eligible to Receive Services from the U.S. Bureau of Indian Affairs", 61 Fed. Reg. 58,211, 58,212, 58,214 (1996). Petitioners recognize that the Skull Valley Band "is a separate federally recognized Indian tribe". Confed. Tribes Pet. at 3, 16.

<sup>33</sup> Moreover, each reservation is in a separate geographic administrative unit of the Bureau of Indian Affairs. The Skull Valley Indian Reservation is administered by the Uintah and Ouray Agency in Fort Duchesne, Utah. The Confederated Tribes' Reservation is administered by the Eastern Nevada Agency in Elko, Nevada.

Indian Reservation.<sup>57</sup> A United States Geological Survey map showing the locations of the two reservations is included as Attachment A. In addition to the substantial distance, the Confederated Tribes' Reservation is separated from the Skull Valley Indian Reservation and the Facility by three intervening mountain ranges. Starting from east to west, Petitioners' reservation is separated from the Facility by the Cedar Mountains (elevation over 5000 feet with a peak at 6922 feet), the Dugway Range (elevation over 5000 feet with a peak at 7068 feet), and the Deep Creek Range (elevation over 10,000 feet with a peak at 12,087 feet). These intervening mountain ranges are shown on Attachment A. Moreover, as the map shows, most of the land separating the two reservations is military testing and training reservations that are off-limits to the public.

The Petitioners' reservation is also geographically distant from lines of transportation to the Skull Valley Indian Reservation. The east-west Union Pacific Railroad main line that will be used to transport casks to the Facility, see PFSF SAR at 1.1-2, 1.4-1, at its closest approach comes no closer than about 50 miles from the Confederated Tribes' Goshute Reservation.<sup>67</sup>

While the Goshute people may be able to trace their origins to a common aboriginal land in the pre-statehood area that is now Utah, this does not affect the current and complete economic, political, and legal independence of the Confederated Tribes of the Goshute Reservation and the Skull Valley Indian Reservation. The Confederated Tribes and the Skull Valley Band were joint plaintiffs in a claim filed with the Indian Claims Commission against the United States contesting the ownership and just compensation for what were once aboriginal lands covering

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<sup>57</sup> In fact, 65 percent (70,500 acres) of the Confederated Tribes' Reservation is in Nevada. See U.S. Department of Commerce, Federal and State Indian Reservations and Indian Trust Areas, 515 (1974).

<sup>67</sup> The closest approach is near Wendover, Utah.

much of the northwestern part of what is now the State of Utah.<sup>7</sup> Goshute Tribe or Identifiable Group, Represented by the Confederated Tribes of the Goshute Reservation v. United States, Docket 326-J, 31 Ind. Cl. Comm. 225 (1973). The Commission's Interlocutory Order in that case ruled that "the date on which plaintiff's aboriginal title was extinguished was January 1, 1875." Id. at 307. By that date the Goshute Indians

had become concentrated at two locations known as Deep Creek and Skull Valley and, after that date, no longer used and occupied the remainder of their ancestral lands. Accordingly, as of January 1, 1875, the plaintiff's aboriginal title to the lands described in finding 22, with the exception of two small areas at Deep Creek and at Skull Valley, was extinguished.

Id. at 226. The final award in the Indian Claims Commission claim was entered in a settlement in 1975 which extinguished all of the plaintiffs' claims in the aboriginal lands, except for the two reservations, in return for \$7,300,000 in compensation. Thus the Confederated Tribes has no rights or claims in the aboriginal lands outside of the boundaries of their own reservation, and no rights or claims to the Skull Valley Indian Reservation.

### III. NRC LEGAL REQUIREMENTS FOR STANDING

Under the Atomic Energy Act and NRC regulations, a hearing for the review and approval of a license application for an ISFSI pursuant to 10 C.F.R. Part 72 is not mandatory. Instead, such a hearing is only required if requested by a person with a sufficient interest that might be affected (i.e., a person with standing). See 42 U.S.C. § 2239(a). Persons requesting a hearing

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<sup>7</sup> As discussed above, by the time the claim was filed, two separate reservations had been established for the two separate, federally-recognized Indian tribes. Neither tribe had any interest in the other's reservation.

must therefore file a timely petition that "set[s] forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in paragraph (d)(1) of [§ 2.714]." 10 C.F.R. § 2.714(a)(2).<sup>82</sup> Because a hearing is not required and because a petitioner is the proponent of an order granting a hearing, a petitioner carries the burden to demonstrate the need for a hearing. 10 C.F.R. § 2.732. Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 N.R.C. 72, 81 (1993); see Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).

In making the determination whether to grant a petitioner's request to hold a hearing, the Board must consider whether the petitioner has established sufficient standing to participate in such a hearing by considering the following factors:

- (1) the nature of the petitioner's right under the Atomic Energy Act to be made a party to the proceeding;
- (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and
- (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

10 C.F.R. § 2.714(d)(1).

The Commission applies "'contemporaneous judicial concepts' of standing to determine whether a petitioner has a sufficient interest in a proceeding to be entitled to intervene as a matter

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<sup>82</sup> A person seeking a hearing must also set forth contentions which meet NRC regulatory requirements. 10 C.F.R. §2.714(b).

of right." Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 N.R.C. 325, 329 (1989). In order to establish standing to participate in a proceeding,

a petitioner must demonstrate that (1) it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute; (2) that the injury can fairly be traced to the challenged action; and (3) that the injury is likely to be redressed by a favorable decision.

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-1, 43 N.R.C. 1, 6 (1996).

See Lujan, 504 U.S. at 560-61. To demonstrate a distinct and palpable injury-in-fact sufficient to establish standing, the petitioner must demonstrate that the injury-in-fact is both "(a) concrete and particularized and (b) 'actual or imminent,' not 'conjectural' or 'hypothetical.'" Lujan at 560;

Sequoyah Fuels Corp. (Gore, Oklahoma Site), CLI-94-12, 40 N.R.C. 64, 72 (1994). Where there is no current injury and a party relies wholly on the threat of future injury, the fact that one can imagine circumstances where a party could be affected is not enough. The petitioner must demonstrate that "the injury is *certainly impending*." Northwest Airlines Inc. v. FAA, 795 F.2d 195, 201 (D.C. Cir. 1986) (emphasis in original) (citing Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289, 298 (1979)). In the NRC licensing context, it has been established that "unsupported general references to radiological consequences are insufficient to establish a basis for injury" to establish standing. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-92-23, 36 N.R.C. 120, 130 (1992).

The NRC commonly employs a "geographic-proximity" presumption for proceedings involving reactor construction permits, operating licenses or significant amendments having obvious potential for offsite consequences. Apollo, LBP-93-4, supra, 37 N.R.C. at 83. Under

this rule of thumb, petitioners residing within 50 miles of a reactor are presumed to have standing in such cases, while those residing beyond 50 miles are presumed to lack standing.

In materials licensing cases (such as this), and even in reactor cases not involving an obvious potential for significant offsite consequences, 50-mile proximity is insufficient to establish standing. "Informal Hearing Procedures for Materials Licensing Adjudications", 54 Fed. Reg. 8,269, 8,272 (1989) and 52 Fed. Reg. 20,089, 20,090 (1987); St. Lucie, CLI-89-21, supra, 30 NRC at 329-330. Accord Apollo, LBP-93-4, supra, 37 N.R.C. at 83-84, n.28; Rancho Seco, LBP-92-23, supra, 36 N.R.C. at 129. Instead, in these cases, the petition must demonstrate some specific injury-in-fact.

Of course, proximity remains a pertinent consideration in deciding whether a petitioner's allegations of injury are sufficiently concrete and imminent to demonstrate injury in fact. Clearly, the smaller the risk of offsite consequences, the closer one must reside to be realistically threatened. This principal is illustrated by Boston Edison Co. (Pilgrim Nuclear Power Station), LBP-85-24, 22 N.R.C. 97 (1985), in which the Board held that greater proximity was required in a spent fuel pool reracking case than in a power reactor proceeding. The Pilgrim Board clearly differentiated between the potential risk from a power reactor and that from spent fuel storage alone, stating "[w]hatever the risk to the surrounding community from a reactor and its associated fuel pool, the risk from the fuel pool alone is less than the distance of residence from the pool for which standing would be appropriate would, accordingly, be less." Id.(original emphasis). In that case, a distance of 43 miles from the facility coupled with generalized claims of injury from radiation were held insufficient to establish standing. Id.; accord, Rancho Seco, LBP-92-23,

supra, 36 N.R.C. at 129-130, 131 (holding that residence 43 miles from the facility is insufficient to establish standing in a case involving reactor decommissioning). The Board in Pilgrim stated that "[i]n making this ruling, we note that we know of no scenario under which radiation attributable to the fuel pool could affect a residence 43 miles distant from the fuel pool; and petitioner has not informed us of any such scenario." Pilgrim, LBP-85-24, supra, 22 N.R.C. at 99.

Close proximity to a radioactive waste transportation route alone is not sufficient to establish standing. Northern States Power Co. (Pathfinder Atomic Plant), LBP-90-3, 31 N.R.C. 40, 43-44 (1990); accord Exxon Nuclear Co., (Nuclear Fuel Recovery and Recycling Center), LBP-77-59, 6 N.R.C. 518, 520. This is true even when the petitioner resides one mile from the identified route. Pathfinder, LBP-90-3, supra, 31 N.R.C. at 42-44. In denying the petitioner's standing, the Pathfinder Board noted,

Nuclear waste safely and regularly moves via truck and rail throughout the nation under regulations of the NRC and Department of Transportation (49 C.F.R. Parts 100-179). The mere fact that additional radioactive waste will be transported if decommissioning is authorized does not ipso facto establish that there is a reasonable opportunity for an accident to occur [on a transportation route one mile from petitioner's residence], or for the radioactive materials to escape because of accident [sic] or the nature or the substance being transported.

Id. at 43 (emphasis added). A petitioner cannot establish standing based solely on an increase in radioactive waste transportation on routes in close proximity to petitioner's location, but must rather demonstrate that the subject licensing action "is defective in a manner so as to cause the injuries described." Id. at 44.

An Indian tribe is treated as an organization for purposes of establishing standing. Sequoyah Fuels Corp. (Gore, Oklahoma Site), LBP-94-19, 40 N.R.C. 9, 11-12 (1994); Northern States Power Co. (Independent Spent Fuel Storage Installation), LBP-96-22, 44 N.R.C. 138, 141 (1996). In order to establish standing, an organization must show that the action will cause injury in fact either to its organizational interests or to the interests of its members. Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-94-03, 39 N.R.C. 95, 102 n.10 (1994).<sup>2</sup> Where the organization seeks to establish standing based on its organizational interests, it must demonstrate that one of its own interests has been adversely affected to the same injury-in-fact standard as for an individual. Rancho Seco, LBP-92-23, *supra*, 36 N.R.C. at 126; Sequoyah Fuels, LBP-94-19, *supra*, 40 N.R.C. at 13-14.

An organization may invoke representational standing when (1) its members have standing in their own right; (2) the interests the organization seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of the individual members. Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977). See also Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 N.R.C. 377, 396-97 (1979). Where an organization seeks to derive standing from its members, the organization must "identify at least one of its members by name and address and demonstrate how that member may be affected . . . and show (preferably by affidavit) that the group is authorized to request a hearing on behalf of that member." Northern States Power, LBP-96-22, *supra*, 44 N.R.C. at 141 (citations omitted).

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<sup>2</sup> Of course, the injury must be within the zone of interests protected by the Atomic Energy Act. Yankee Atomic, 39 N.R.C. at 102 n.10.

The Board may grant an "interested" governmental entity such as a "State, county, municipality, and/or agencies thereof," the opportunity to participate in a hearing.<sup>10/</sup> 10 C.F.R. § 2.715(c). This provision extends only to "units of the government *which . . . have an interest in the licensing proceeding.*" 43 Fed. Reg. 17,798, 17,800 (1978) (emphasis added). NRC regulations on intervention in 10 C.F.R. § 2.714 and on non-party participation in 10 C.F.R. § 2.715(c) use the terms "interest" and "interested," without providing further definition. NRC case law on intervention uses the term "interest" as synonymous with "standing" (see, e.g., Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), LBP-87-7, 25 N.R.C. 116, 118 (1987)), but does not suggest that the term has any different meaning in the context of section 2.715(c).

Based on NRC's normal use of the term "interest," it appears that a governmental entity must have some legitimate interest akin to standing -- some real stake in the proceeding -- in order to be allowed to participate under 10 C.F.R. § 2.715(c). This legitimate interest could be some form of jurisdictional responsibility for the site, the facility, or the inhabitants affected by the facility. Where an entity's location is remote, such that its inhabitants are not affected, and it has no jurisdictional responsibility for the site or the facility, the entity's petition to participate under 10 C.F.R. § 2.715(c) should be denied. To hold otherwise would be to read the "interest" requirement out of section 2.715(c), and would produce illogical results such as allowing for

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<sup>10/</sup> A Board decision to provide a governmental entity with an opportunity to participate under the provision of section 2.715(c) does not trigger a hearing. Northern States Power Co. (Tyrone Energy Park, Unit 1), CLI-80-36, 12 N.R.C. 523, 527 (1980); Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), LBP-83-45, 18 N.R.C. 213, 216 (1983); Duquesne Light Co. (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 N.R.C. 393, 426 (1984).

example the State of Alaska to participate as an "interested State" in a proceeding for a facility in Florida.

#### IV. ARGUMENT

A. Mr. Pete Has Not Demonstrated Standing and Consequently The Confederated Tribes Have Not Established Representational Standing

The only member identified by name and affidavit in the petition filed by the Confederated Tribes is David Pete, Chairman of the Confederated Tribes' Business Council. Confed. Tribes Pet. at 14 (Pete Affidavit). The petition does not identify Mr. Pete's address, as required by NRC case law. Northern States Power, LBP-96-22, supra, 44 N.R.C. at 141. No other members are identified by name or address, nor supported by affidavit. Generalized harms to unidentified "tribal members," none of whom are further identified by name and address, or supported by affidavit, does not meet the test for particularized, actual or imminent injury-in-fact. Thus, the Confederated Tribes must establish representational standing based solely on the alleged injuries to Mr. Pete.

Mr. Pete also petitions to intervene on his own right through the joint petition. Confed. Tribes Pet. at 1. Because Mr. Pete is the only member on whom representational standing can be based, the outcome of Mr. Pete's standing analysis for intervention on his own right also determines the outcome of the representational standing analysis. The following analysis therefore addresses both the standing of Mr. Pete and the representational standing of the Confederated Tribes on his behalf.

Mr. Pete's affidavit identifies one potential injury to himself on the Confederated Tribes' reservation and a variety of potential injuries to himself off of the reservation. All of the injuries are based on a loss of activity due to a radioactive release affecting either the land of the Confederated Tribes' reservation or the off-reservation "aboriginal lands."

1. Mr. Pete's Alleged Injuries On the Confederated Tribes' Reservation are Too Distant from the Facility to Establish Standing

The Pete Affidavit's alleged injuries on the Confederated Tribes' reservation are too distant from the Facility to establish standing. The Affidavit states that "because Affiant earns his living through ranching, such a release [of radiation] could deprive him of an opportunity for income on the Reservation and could force him to relocate from his ancestral home [due to a loss of ranching]." Id. at 21. The Affidavit claims that "[s]uch an accidental release could occur by means of a transportation accident, or a design or manufacturing flaw in the casks used . . . , [a]n accident could also occur by sabotage or terrorism, or by many other means." Id. at 19-20. Without additional facts or other specificity, these alleged causes of a release are too conjectural and hypothetical to represent an actual or imminent injury to Mr. Pete.<sup>117</sup> NRC case law has established that a distance of 43 miles from a spent fuel pool (where fuel is handled and there is a far greater potential for accidents) coupled with generalized claims of injury from radiation are insufficient to establish standing. Pilgrim, LBP-85-24, supra, 22 N.R.C. at 99; Rancho Seco, LBP-92-23, supra, 36 N.R.C. at 129-130, 131. The Confederated Tribes' reservation on which Mr. Pete does his ranching is even

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<sup>117</sup> In this regard, case law states "that when, as here, a petitioner is challenging the legality of government regulation of someone else, injury in fact as it relates to factors of causation and redressability is 'ordinarily 'substantially more difficult' to establish.'" Apollo, LBP-93-4, supra, 37 N.R.C. at 81 n.20; see Lujan, 504 U.S. at 562.

more remote, being separated by some 70 miles and three mountain ranges from the Skull Valley Indian Reservation where the Facility will be located.

The petitioner in Pilgrim claimed an injury from the effects of a radioactive release on fish and berries gathered near his residence, 43 miles from where the spent fuel was being stored. Pilgrim, LBP-85-24, supra, 22 N.R.C. at 98-99. The Board in Pilgrim concluded that the petitioner had no standing because it knew of "no scenario under which radiation attributable to the fuel pool could affect a residence 43 miles distant from the fuel pool; and petitioner has not informed us of any such scenario." Pilgrim, LBP-85-24, supra, 22 N.R.C. at 99.

In this proceeding, where the spent fuel will be sealed inside double-seal-welded steel canisters, the Pilgrim Board's conclusion should be even more applicable. Petitioners have not informed the Board of any scenario by which radiation from the Facility could traverse some 70 miles and three mountain ranges to reach the Confederated Tribes' Reservation.

Nor does Mr. Pete's allegation that he might be injured from a transportation accident (Confed. Tribes Pet. at 19) establish standing. Close proximity to a radioactive waste transportation route alone is not sufficient to establish standing, even when the petitioner resides one mile from the identified route. Pathfinder, LBP-90-3, supra, 31 N.R.C. at 42-44. In Pathfinder, the petitioner claimed he would be injured by transportation accidents and radioactive releases stemming from radioactive waste shipments on a transportation route (identified by the applicant) one-mile from petitioner's residence. The Pathfinder Board denied petitioner's standing on the basis of radioactive waste transportation. Here, as in Pathfinder, the Petitioners claim an injury from an increase in radioactive waste transportation caused by the Applicant's licensing

action. In this case Petitioners are 50 miles away from the transportation route, not one mile as in Pathfinder, making Petitioners' claim even more tenuous. Consistent with the Board's holding in Pathfinder, Petitioners' claim here of standing based on proximity to an identified transportation route should be denied. The Confederated Tribes' Reservation is much too far from the rail route. Again, the Petitioners have not identified any credible scenario by which a transportation accident could adversely affect Mr. Pete, the Confederated Tribes, or their reservation.

(b) Mr. Pete's Alleged Injuries in the "Aboriginal Lands" are Insufficiently Particularized to Establish Standing

The Affidavit's allegations of injury outside of the Confederated Tribes' Reservation also fail to establish standing because they are insufficiently concrete and particularized, and too conjectural and hypothetical. The alleged injuries are insufficient because both their location and their nature are extremely vague, and Mr. Pete's rights and claims to be on the land in the vicinity of the Facility are undefined and unsubstantiated.

The Pete Affidavit states that he hunts, fishes, and gathers within the Goshute "aboriginal area," including "in the vicinity of the Skull Valley Reservation," and that he visits burial sites within the aboriginal area from time to time. Confed. Tribes Pet. at 16. The Affidavit claims that an accidental release of the types described above could directly interfere with Mr. Pete's ability to hunt and fish within "the traditional Goshute areas," and the Affidavit similarly claims that such a release could interfere with his ability to gather plants and food and to visit the shrines and burial sites throughout the area. Id. at 21.

The "traditional Goshute areas" to which the Affidavit refers (Confed. Tribes Pet. at 21) are unidentified, though presumably it is referring to the aboriginal area. The aboriginal area,

however, is an area of "about 7.2 million acres [that] extended approximately from Salt Lake City on the east to the Ruby Mountains in Nevada on the west, and from the town of Delta, Utah, on the south to the Great Salt Lake on the north." Confed. Tribes Pet. at 3, fn. 1. This is a huge area covering more than one state, several Federal military installations, and considerable private lands, including that in Salt Lake City. The Pete Affidavit does not describe with any particularity where on the aboriginal lands it is referring to. Most of this huge area is far from the Skull Valley Indian Reservation. Even with respect to land between the Confederated Tribes' Reservation and the Skull Valley Indian Reservation, most is made up of Dugway Proving Grounds and Utah Test and Training Range, military testing installations with restricted access that are off limits to civilians. Similarly, Mr. Pete has no rights to perform any activities on the Skull Valley Indian Reservation. In sum, the Affidavit's obscure references to the aboriginal area, the traditional Goshute areas, and the vicinity of the Skull Valley Indian reservation are so vague as to be meaningless.

The Pete Affidavit's assertion of off-reservation activities of hunting, fishing, gathering, and visiting burial sites are also vague. The Affidavit does not indicate how often such activities occur, which of these activities might bring Mr. Pete near the Facility, or under what rights or claims he undertakes these activities on other peoples' land. The settlement signed by the Confederated Tribes in 1975 in return for compensation in their Indian Claims Commission claim extinguished all rights and claims of the Confederated Tribes to the "aboriginal lands" outside of their own reservation. Nor does Mr. Pete allege any unique rights or claims to the Skull Valley Indian Reservation.

In addition to the lack of particularity as to location and rights, the causes of a release which the Affidavit alleges could lead to injury are again too conjectural and hypothetical to establish injury-in-fact sufficient for standing. The Affidavit has made no showing that the risk of an offsite accident is actual, realistic, or imminent.

In summary, the Affidavit has demonstrated no judicially cognizable injury-in-fact sufficient to establish standing either for the Confederated Tribes, through representational standing, or for Mr. Pete on his own. Since Mr. Pete is the only member identified in the petition by name and affidavit, the failure to establish Mr. Pete's standing means the Confederated Tribes has failed to establish representational standing.

**B. The Confederated Tribes Has Not Established Standing in Its Own Right**

The Confederated Tribes also appears to claim standing based on its own organizational interests. It appears, however, that the Confederated Tribes' interests are essentially the same as those of its members. The petition outlines four organizational activities of the Confederated Tribes that use their reservation to generate income: ranching, grazing, big-game hunting, and tourism. Confed. Tribes Pet. at 4. Just like the ranching interest alleged by Mr. Pete, all of these organizational activities take place on the Confederated Tribes' Reservation some 70 miles and three mountain ranges away from the Skull Valley Indian Reservation and the Facility. Just as Mr. Pete's ranching on the reservation is too remote to establish standing under NRC case law, see discussion supra page 14, so are the Confederated Tribes' ranching, grazing, hunting, and tourism on the same reservation also too remote to establish standing.

The Confederated Tribes also claim an indirect interest in the interests of their members. In particular, the Confederated Tribes state that it is responsible for maintaining its members' health and safety. Confed. Tribes Pet. at 7. It also claims an interest in the environment used by its members, both on and off its reservation. Id. The Confederated Tribes' indirect interest claim is essentially the same as representational standing. The Confederated Tribes cannot establish standing on this basis unless their members can establish standing in their own right. Since as discussed above none of these claims is sufficiently supported to establish standing, the Confederated Tribes has also failed to establish organizational standing in its own right.

C. The Confederated Tribes Has Failed to Demonstrate a Sufficient Cognizable Interest to Participate as a Governmental Entity

The Confederated Tribes has not established a sufficient cognizable interest in this proceeding to be permitted to participate as a non-party governmental entity. The Confederated Tribes has made only conjectural and hypothetical claims about how activities on the Skull Valley Indian Reservation will have any impact on the Confederated Tribes' reservation some 70 miles away. It is also clear that the Confederated Tribes is in no way politically, economically, or legally connected to the Skull Valley Band; and that the two groups have been separate for over one hundred years; and that the Confederated Tribes extinguished all rights and claims over any aboriginal lands outside of its own reservation. In light of its complete independence from the Skull Valley Indian Reservation, its lack of any ownership or control over the lands between the two reservations, and the 70 miles and three mountain ranges separating the Confederated Tribes from the Skull Valley Indian Reservation. The Confederated Tribes have no cognizable interest in this proceeding concerning a spent fuel storage facility on the Skull Valley Indian Reservation,

and have no real stake or interest in its outcome. Therefore the request of the Confederated Tribes to participate as an "interested" governmental entity in this proceeding should be denied.

#### V. RESPONSE TO PETITIONER'S STATEMENT OF ASPECTS

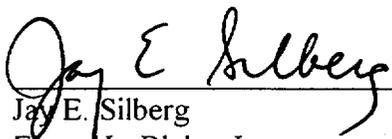
Petitioners present a statement of aspects on which they wish to intervene pursuant to 10 C.F.R. § 2.714(a)(2), but cite instead 10 C.F.R. § 2.714(b)(2), the provision on contentions. Petitioners' statement of aspects does not meet the requirements for contentions. PFS will treat this section as statement of aspects pursuant to 10 C.F.R. § 2.714(a)(2), rather than a list of contentions, and reserves the right to respond to any contentions submitted by Petitioners. Some of the aspects raised by Petitioners appear beyond the scope of this proceeding (e.g., compliance with transportation companies' requirements) while others appear to challenge NRC regulations. PFS will address these matters if and when contentions are filed.

#### VI. CONCLUSION

For the reasons stated above, PFS respectfully submits that the Confederated Tribes and Mr. Pete have not identified sufficient injury-in-fact to establish standing pursuant to 10 C.F.R. § 2.714, and the Confederated Tribes has not established a sufficient interest to be granted

participation as an interested governmental entity pursuant to 10 C.F.R. § 2.715(c). Accordingly,  
the petition should be denied.

Respectfully submitted,

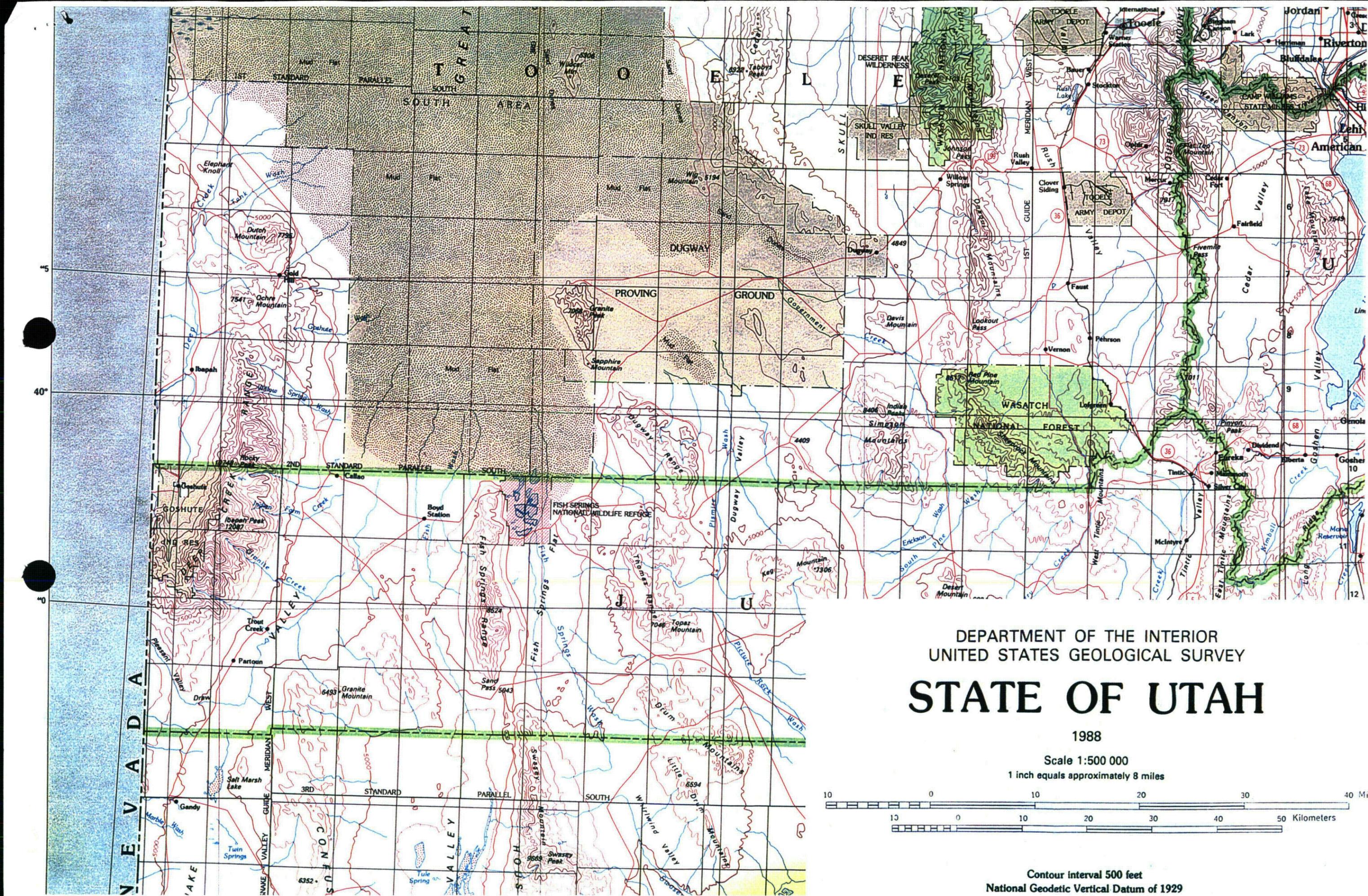
  
Jay E. Silberg  
Ernest L. Blake, Jr.

SHAW, PITTMAN, POTTS & TROWBRIDGE  
2300 N Street, N.W.  
Washington, D.C. 20037  
(202) 663-8000

Counsel for Private Fuel Storage L.L.C.

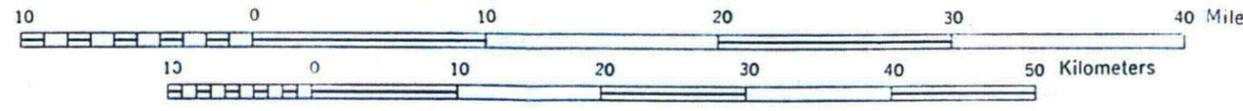
Dated: September 15, 1997

**Attachment A**



DEPARTMENT OF THE INTERIOR  
UNITED STATES GEOLOGICAL SURVEY  
**STATE OF UTAH**  
1988

Scale 1:500 000  
1 inch equals approximately 8 miles



Contour interval 500 feet  
National Geodetic Vertical Datum of 1929

September 15, 1997

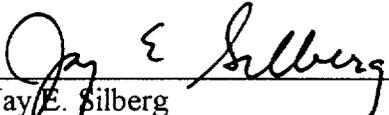
**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before the Atomic Safety and Licensing Board**

In the Matter of )  
 )  
PRIVATE FUEL STORAGE L.L.C. ) Docket No. 72-22  
 )  
(Private Fuel Storage Facility) )

**NOTICE OF APPEARANCE**

The undersigned, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia and the State of New Jersey, as well as various federal courts including the United States Supreme Court, hereby enters his appearance as counsel on behalf of applicant Private Fuel Storage L.L.C., in any proceeding related to the above-captioned matter.

  
\_\_\_\_\_  
Jay E. Silberg  
SHAW, PITTMAN, POTTS &  
TROWBRIDGE  
2300 N Street, N.W.  
Washington, DC 20037-1128  
(202) 663-8063

September 15, 1997

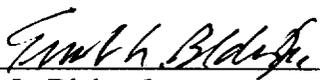
**UNITED STATES OF AMERICA  
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 )  
(Private Fuel Storage Facility) )

**NOTICE OF APPEARANCE**

The undersigned, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia and the State of Colorado, as well as various federal courts including the United States Supreme Court, hereby enters his appearance as counsel on behalf of applicant Private Fuel Storage L.L.C., in any proceeding related to the above-captioned matter.

  
\_\_\_\_\_  
Ernest L. Blake, Jr.  
SHAW, PITTMAN, POTTS &  
TROWBRIDGE  
2300 N Street, N.W.  
Washington, DC 20037-1128  
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**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before the Atomic Safety and Licensing Board**

In the Matter of )  
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 )  
(Private Fuel Storage Facility) )

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the "Applicant's Answer to the Request for Hearing and Petition to Intervene of the Confederated Tribes of the Goshute Reservation and David Pete," dated September 15, 1997, and the Notices of Appearance of Jay E. Silberg and Ernest L. Blake, were served on the persons listed below by deposit in the U.S. mail, first class, postage prepaid, this 15th day of September, 1997.

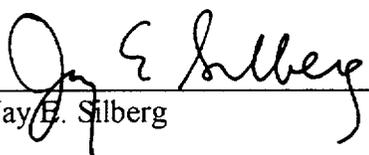
Rulemakings and Adjudications Staff  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Catherine L. Marco, Esq.  
Sherwin E. Turk, Esq.  
Office of the General Counsel  
Mail Stop O-15 B18  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Charles J. Haughney  
Acting Director, Spent Fuel Project Office  
Office of Nuclear Material Safety and  
Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

John Paul Kennedy, Sr., Esq.  
1385 Yale Avenue  
Salt Lake City, Utah 84105

  
Jay E. Silberg

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