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and David Pete

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BEFORE THE UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF THE ESTATE OF)

PRIVATE FUEL STORAGE, LLC)
(Independent Spent Fuel Storage
Installation).)

Docket No. 72-22

) REQUEST FOR HEARING and
) PETITION TO INTERVENE
) OF THE CONFEDERATED
) TRIBES OF THE GOSHUTE
) RESERVATION and DAVID
) PETE.

I. INTRODUCTION

Petitioners Confederated Tribes of the Goshute Reservation (herein, "the Tribe") and David Pete (herein, "Pete") hereby submit the following Request for Hearing and Petition to Intervene regarding the application of Private Fuel Storage (herein, "PFS") for a license to store spent nuclear fuel at an Independent Spent Fuel Storage Installation ("ISFSI") in Tooele County, Utah (see 62 Fed. Reg. 41099).

This Petition is supported by the attached Affidavit of the Chairman of the Tribe as Chairman and in his individual capacity as a member of the Tribe.

II. REQUEST FOR HEARING AND PETITION TO INTERVENE

The Notice of Docketing affords the opportunity to request a hearing and petition to intervene. 10 C.F.R. §2.105; Notice of Docketing, 62 Fed. Reg. 41099. Pursuant to the Notice and regulation, Petitioners herein request a hearing and leave to intervene in this proceeding under 10 C.F.R. §§2.714 and 2.715(c).

III. FACTUAL BACKGROUND

A. The Confederated Tribes of the Goshute Reservation

The Tribe is located on the west side of Tooele County, along the western border of Utah, just south of Ibapah. Tooele County is geographically large, but is sparsely inhabited. Most of the area is a part of the "Western High Desert Region" and is characterized by wide vistas, beautiful mountains, and salt flats. Because of the low average rainfall (less than 10 inches annually), plant life is particularly fragile. Moreover, the location of various plants is widely scattered, necessitating that Tribal members travel to various points throughout the area to collect needed plants and nuts.

Approximately 450 individuals comprise the current membership of the Tribe, about half of whom reside on the Reservation. Most of the remainder of the Tribe's members reside in surrounding communities. The Tribe's Reservation consists of approximately 150,000 acres, half in Utah and half in Nevada. The Tribe is federally

recognized and is therefore a sovereign entity subject to the plenary control of Congress.

The Skull Valley Band of Goshutes (one of the participants of PFS and the host for the location of the ISFSI), is a separate federally recognized Indian tribe, consisting of persons who are "cousins" to the Tribal members at Ibapah. The Skull Valley Band's membership is only about one-fourth the membership of the Tribe.

When the Goshute Indian claim was filed against the United States, both federally recognized Goshute groups participated in the case and ultimately shared in the final judgment. The claim was based upon the aboriginal Goshute area which included all of Tooele County and much of the lands surrounding.¹ From time immemorial, the Goshutes have hunted, fished, gathered, and lived, died and were buried within their aboriginal area. The proposed location of the ISFSI is entirely within the adjudicated aboriginal area of the Tribe.

Today, members of the Tribe, including David Pete, hunt, fish, and gather within the same aboriginal area, including the vicinity of the Skull Valley Reservation. In addition, the Tribe and its members, including David Pete, regard ancient burial sites located within the aboriginal area (including Skull Valley) as sacred places, and from time to time, visit such sites to honor deceased ancestors and relatives.

¹ The Goshute aboriginal area consisted of about 7.2 million acres and 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. See Indian Claims Commission Docket 326 B and J.

The Tribe's headquarters is located in Tooele County. The headquarters facility contains the Tribe's administrative, education, health, law enforcement, elderly, day care, and social work offices. Approximately 25 Tribal members are employed at the headquarters. In addition, the Tribe owns a welding fabrication shop located nearby at which 15 to 20 Tribal members have been employed in the past.² The Tribal children attend school at Ibapah and also Wendover, both within Tooele County.

The Tribe and its members depend heavily upon ranching for employment and income. Some of the Tribe's lands are also leased for grazing by livestock owned by non-Tribal members. In addition, the Tribe operates a big-game hunting enterprise which primarily involves the harvest of elk on the Reservation. The natural ranging area of the elk, however, extends off the Reservation toward Dugway and Skull Valley. Much of the area is used for recreation by the Tribal members and others. The Tribe has begun to develop a tourism business allowing off-road vehicles access to certain parts of the Reservation from locations on the Skull Valley side of the Reservation.

To date, the Tribe has not been consulted with respect to the proposed ISFSI. No effort has been made by the Skull Valley Band or PFS to obtain in-put from the Tribe or its members regarding the proposed installation. In June 1997 the Tribe was

² Currently, the shop is closed, but the Tribe is actively negotiating with regard to re-opening the facility.

invited to attend an information dissemination meeting, but when it learned that its counsel was not welcome at the meeting, elected not to participate.

The Tribe, through its Business Council (the governing body of the Tribe), has adopted a resolution expressing concern about the proposed ISFSI and remains vitally interested in this proposed project.

B. PFS License Application for ISFSI

On June 20, 1997, PFS applied for a materials license under the provisions of 10 C.F.R. part 72 to possess spent fuel and other radioactive materials associated with spent fuel storage in an ISFSI located on the Skull Valley Goshute Indian Reservation in Skull Valley, Utah. The proposed term of the license is 20 years.

It appears that PFS has been unsuccessful in finding any location within lands subject to a state's jurisdiction for the ISFSI and has now turned its efforts to an Indian reservation, hoping to avoid state regulation.

IV. THE TRIBE AND PETE HAVE STANDING TO INTERVENE

Under the Atomic Energy Act and the rules and regulations of the Nuclear Regulatory Commission, "any person whose interest may be affected by a proceeding and who desires to participate" may file a petition to intervene. 10 C.F.R.

§2.714(a)(1). A party's right to intervene under the Atomic Energy Act, Section 189(a) is based upon whether (1) the action being challenged could cause injury-in-fact to the party, and (2) such injury is arguably within the zone of interest protected by the Atomic Energy Act or the National Environmental Policy Act (herein, "NEPA"). *Vermont Yankee Nuclear Power Station*, LNP-90-6, 31 NRC 85, 89 (1990), citing *Portland General Elec. Co.*, CLI-76-27, 4 NRC 610, 613-14 (1976).

A. The Tribe Has a Right to Intervene

The Confederated Tribes of the Goshute Reservation would suffer injury-in-fact well within the zone of interest protected by the Atomic Energy Act and NEPA if PFS is allowed to proceed with its proposed ISFSI. Also, as an Indian tribal government, the Tribe has a right to intervene under 10 C.F.R. §2.715(c). *Northern States Power Co.*, Docket No. 72-18-ISFSI (Nov. 5, 1996), p. 10, n.5.

The proposed ISFSI threatens injury to the Tribe and its members that is "distinct and palpable." *Kelly v. Selin*, 42 F.3d 1501, 1508 (6th Cir.), cert. denied, 115 S.Ct. 2611 (1995), quoting *Warth v. Seldin*, 422 U.S. 490, 501 (1975). The injury is also directly "traceable" to the proposed license application and can be redressed by a decision denying the application. *Id.* If the proposed facility is licensed, there is a risk of an accidental radioactive release from the facility that would injure and compromise the health and safety of the Tribe's members and the

integrity of the natural environment. The Tribe is in part responsible for maintaining its member's health and safety. A greater number of health problems or injuries suffered by Tribal members would place a burden on limited Tribal resources in an effort by the Tribe to provide care.

An accidental release could contaminate the air, ground, and surface water, the land, and the surrounding people, animals, and plants. For example, in a cask explosion scenario, or terrorist sabotage, the members of the Tribe could suffer immediate severe radioactivity related illness or death from high-level radiation exposure. In addition, areas which have been available to the Tribe and its members in the past for grazing, forage, hunting, fishing, and gathering could be contaminated or destroyed. The loss of such vital resources would impact the Tribe directly, forcing it to turn to its limited assets to assist in meeting the needs of its members. Other situations involving high or low level exposure could result in increased cancer and leukemia rates or cellular and genetic defects many years into the future. An accident release would also cause significant adverse economic consequences as well as endangerment of the area's livestock and agricultural base.

Such an accidental release could occur by means of a transportation accident, or a design or manufacturing flaw in the casks used. A criticality accident could cause a radiological explosion. An accident could also occur by sabotage or terrorism, or by many other means. See PFS Emergency Plan. The impacts of such an event upon

the Tribe and its members would be similar to those described above.

As discussed in more detail in Section D below, the Tribe and Pete are concerned that PFS' license application for the ISFSI lacks sufficient measures to protect them from such an accidental release, thus posing an undue risk to their health and safety. These concerns may be redressed by denial of the license application on the ground that it fails to provide sufficient measures to protect health and safety.

The Tribe and Pete are also concerned that the environmental documents prepared to support the license application contain insufficient information on which to base a decision on the relative risks, costs, and benefits of the proposed project, or on alternatives to the project. This is discussed more fully below.

The Tribe and Pete believe that if the supporting environmental documents were to fully disclose the costs and risks of the proposed ISFSI, the NRC would decide not to license the facility. Thus, preparation of a complete and accurate Environmental Report and Environmental Impact Statement would, in all likelihood, result in the denial of the license, and thereby redress the Tribe's and Pete's concerns.

B. Pete Has a Right to Intervene

Under 10 C.F.R. §2.714, Pete also has a right to intervene. As indicated above, and for many of the same reasons as those which impact the Tribe, Pete will

suffer injury-in-fact if the NRC licenses the proposed facility in Tooele County. His injury, too, is directly traceable to the proposed license application and can be redressed by a decision denying the application.

An accidental release of the types described above could directly interfere with his ability to hunt and fish within the traditional Goshute areas. Similarly, such a release could interfere with ability to gather plants and food and to visit the shrines scattered throughout the area. Such a release could cause death or illness if he were to continue to pursue the activities which have always been a part of his life. Also, because he earns his living through ranching, such a release could deprive him of an opportunity for income on the Reservation and could force him to relocate from his ancestral area.

C. The Tribe's and Pete's Interests Fall Within the Zone Protected by the Atomic Energy Act and NEPA.

The Tribe's and Pete's concerns regarding the health and safety risks posed by the proposed ISFSI fall within the "zone of interest" protected by the Atomic Energy Act, whose purposes include the protection of the public from undue hazards posed by the nuclear industry. *Vermont Yankee*, supra, 31 NRC at 89; 42 U.S.C. §§2133(d), 2210(b). NEPA's "zone of interest" also encompasses the Tribe's and Pete's interests in protect the quality of the environment and conserving a sound economic base for the Tribe and its members through maintenance of the environment in a condition

that is conducive to agriculture, fishing, hunting, recreation, and preserves its unique historic character. See, *Kelly v. Selin*, 42 F.3d at 1509, citing *Lujan v. Defenders of Wildlife*, 112 S.Ct. 2130, 2149 (1992) (holding that injury to economic interests though loss of property values confers standing under NEPA).

V. STATEMENT OF ASPECTS ON WHICH THE TRIBE AND PETE WISH TO INTERVENE.

Pursuant to 10 C.F.R. §2.714(b)(2), the Tribe and Pete are required to set forth the “specific aspects or aspects of the subject matter of the proceeding” as to which they wish to intervene. The purpose of this requirement is not to decide the admissibility of the issues presented. *Consumers Power Co.*, 8 NRC 275,278 (1978). Rather, the purpose of the requirement is to determine whether the Tribe and Pete can specify “proper aspects” for the proceeding. *Id.* Thus the Tribe and Pete may satisfy the requirement “by identifying general potential effects of the licensing action or areas of concern that are within the scope of matters that may be considered in the proceeding.” *Vermont Yankee*, *supra*, 31 NRC at 89.

Thus, the aspects of the subject matter on which the Tribe and Pete seek to intervene are as follows: The license application poses undue risks to public health and safety because the application:

1. lacks sufficient provisions for prevention of and recovery from accidents during storage resulting from such causes as sabotage.

2. proposes to site the ISFSI in the drainage leading to the Great Salt Lake, immediately adjacent to human habitation, without adequate emergency response capabilities, and without having developed appropriate base-line data or risk assessment, site selection, site characterization and facility operation criteria.
3. creates the potential for unacceptable radiation exposure to the public during transportation of irradiated fuel to the proposed facility.
4. increases the ability of terrorists to cause uncontrolled, cataclysmic radiological releases.
5. lacks sufficient provisions for protection against transportation accidents, including a criticality accident.
6. fails to provide for an adequate emergency plan. For example, PFS has not yet secured commitments from emergency responders; it contains inadequate training.
7. does not provide for adequate protection against flooding, wild fires, and groundwater contamination.
8. does not provide for adequate protection against lightning.
9. fails to provide adequate protection against intruders.
10. has not fully complied with all transportation companies' requirements, including railway and trucking design and permits.

11. has not given due consideration to the concerns of the Tribe and the State of Utah.
12. fails to address the status of compliance with all permits, licenses, and approvals required for the facility.
13. fails to comply with NEPA because it has not given adequate consideration to the adverse impacts of the proposed ISFSI, including risks of transportation accidents.
14. fails to comply with NEPA because it has not made a reasonable comparison of the costs and benefits of the proposed ISFSI.
15. fails to comply with NEPA because it has not adequately dealt with the historic district and archeological heritage of the area, agriculture, commercial hunting, recreation, wildlife, and endangered species.
16. fails to comply with NEPA because it has not adequately considered the impact of the proposed facility upon loss of revenues for agriculture and ranching, fishing, hunting, recreation and tourism and other factors affecting the economic base of the Tribe's Reservation.
17. fails to provide adequately for any plans to handle the decommission of the facility and removal of all radioactive material at the conclusion of the 20 year permit term.

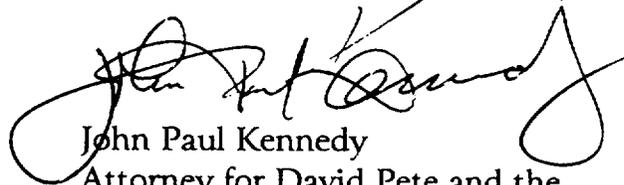
18. fails to consider the risks and costs associated with such inevitable decommission of the facility at the end of the permit term.

VI. CONCLUSION

Based upon the foregoing and the record as a whole, the Tribe and Pete urge that a hearing be granted and that they be permitted to intervene, pending admission of their contentions.

Dated: August 28, 1997.

Respectfully submitted,



John Paul Kennedy
Attorney for David Pete and the
Confederated Tribes of the Goshute Reservation

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Attorney for Petitioner Confederated Tribes of the Goshute Reservation

**BEFORE THE UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

IN THE MATTER OF THE ESTATE OF)

PRIVATE FUEL STORAGE, LLC) Docket No. 72-22
(Independent Spent Fuel Storage) AFFIDAVIT IN SUPPORT OF
Installation).) REQUEST FOR HEARING and
) PETITION TO INTERVENE
) OF THE CONFEDERATED
) TRIBES OF THE GOSHUTE
) RESERVATION and DAVID
) PETE.

STATE OF UTAH)
) : SS
COUNTY OF SALT LAKE)

DAVID PETE, being first duly sworn on his oath, deposes and states:

1. He is a petitioner to intervene in the above matter and has personal knowledge of the matters set forth herein. He submits this affidavit in his individual capacity and also his official capacity as a Tribal officer.
2. He is currently serving as the duly-elected Chairman of the Business Council of the Confederated Tribes of the Goshute Reservation, Ibapah, Utah (herein, the "Tribe"). He is a duly enrolled member of the Tribe.

3. He has given his personal authorization for John Paul Kennedy to represent him in this matter.

4. As Chairman of the Tribe, he knows that John Paul Kennedy is presently serving under a contract approved by the Secretary of the Interior as General Counsel for the Tribe. Mr. Kennedy has authority to represent the Tribe in this proceeding.

5. The Tribe's Reservation is located on the west side of Tooele County, along the western border of Utah, just south of Ibapah. Tooele County is geographically large, but is sparsely inhabited. Most of the area is a part of the "Western High Desert Region" and is characterized by wide vistas, beautiful mountains, and salt flats.

Because of the low average rainfall (less than 10 inches annually), plant life is particularly fragile. Moreover, the location of various plants is widely scattered, necessitating that Tribal members travel to various points throughout the area to collect needed plants and nuts.

6. Approximately 450 individuals comprise the current membership of the Tribe, about half of whom reside on the Reservation. Most of the remainder of the Tribe's members reside in surrounding communities. The Tribe's Reservation consists of approximately 150,000 acres, half in Utah and half in Nevada. The Tribe is federally recognized and is therefore a sovereign entity subject to the plenary control of Congress.

7. The Skull Valley Band of Goshutes (one of the participants of PFS and the host for the location of the ISFSI), is a separate federally recognized Indian tribe, consisting of persons who are "cousins" to the Tribal members at Ibapah. The Skull Valley Band has only about one-fourth of the members of the Tribe.

8. When the Goshute Indian claim was filed against the United States, both federally recognized Goshute groups participated in the case and ultimately shared in the final judgment. The claim was based upon the aboriginal Goshute area which included all of Tooele County and much of the lands surrounding.

9. The Goshute aboriginal area consisted of about 7.2 million acres and 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. See Indian Claims Commission Docket 326.

10. From time immemorial, the Goshutes have hunted, fished, gathered, and lived, died and were buried within their aboriginal area. The proposed location of the ISFSI is entirely within the adjudicated aboriginal area of the Tribe.

11. Today, members of the Tribe, including Affiant, hunt, fish, and gather within the same aboriginal area, including the vicinity of the Skull Valley Reservation. In addition, the Tribe and its members, including Affiant, regard ancient burial sites located within the aboriginal area (including Skull Valley) as sacred places, and from time to time, visit such sites to honor deceased ancestors and relatives.

12. The Tribe's headquarters is located in Tooele County. The headquarters facility contains the Tribe's administrative, education, health, law enforcement, elderly, day care, and social work offices. Approximately 25 Tribal members are employed at the headquarters. In addition, the Tribe owns a welding fabrication shop located nearby at which 15 to 20 Tribal members have been employed in the past. Currently, the shop is closed, but the Tribe is actively negotiating with regard to re-opening the facility. The Tribal children attend school at Ibapah and also Wendover, both within Tooele County.

13. The Tribe and its members depend heavily upon ranching for employment and income. Some of the Tribe's lands are also leased for grazing by livestock owned by non-Tribal members. In addition, the Tribe operates a big-game hunting enterprise which primarily involves the harvest of elk on the Reservation. The natural ranging area of the elk, however, extends off the Reservation toward Dugway and Skull Valley.

14. Much of the aboriginal area is used for recreation by the Tribal members and others. The Tribe has begun to develop a tourism business allowing off-road vehicles access to certain parts of the Reservation from locations on the Skull Valley side of the Reservation.

15. To date, the Tribe has not been consulted with respect to the proposed ISFSI. No effort has been made by the Skull Valley Band or PFS to obtain in-put from the

Tribe or its members regarding the proposed installation. In June 1997 the Tribe was invited to attend an information dissemination meeting, but when it learned that its counsel was not welcome at the meeting, elected not to participate.

16. The Tribe, through its Business Council (the governing body of the Tribe), has adopted a resolution expressing concern about the proposed ISFSI and remains vitally interested in this proposed project.

17. He believes that the proposed ISFSI would cause injury-in-fact to himself and the Tribe and its other members, and also that such injury is within the zone of interest protected by the Atomic Energy Act or the National Environmental Policy Act (herein, "NEPA").

18. He also believes that the Confederated Tribes of the Goshute Reservation would suffer injury-in-fact well within the zone of interest protected by the Atomic Energy Act and NEPA if PFS is allowed to proceed with its proposed ISFSI.

19. The proposed ISFSI threatens injury to the Tribe and its members that is "distinct and palpable." The injury is also directly "traceable" to the proposed license application and can be redressed for both the Tribe and himself by a decision denying the application.

20. He believes that if the proposed facility is licensed, there is a risk of an accidental radioactive release from the facility that would injure and compromise the health and safety of himself and other Tribal members and the integrity of the natural

environment.

21. The Tribe is in part responsible for maintaining its member's health and safety.

A greater number of health problems or injuries suffered by Tribal members would place a burden on limited Tribal resources in an effort by the Tribe to provide care.

22. An accidental release could contaminate the air, ground, and surface water, the land, and the surrounding people, animals, and plants. For example, in a cask explosion scenario, or terrorist sabotage, the members of the Tribe could suffer immediate severe radioactivity related illness or death from high-level radiation exposure.

23. In addition, areas which have been available to the Tribe and its members in the past for grazing, forage, hunting, fishing, and gathering could be contaminated or destroyed. The loss of such vital resources would impact the Tribe directly, forcing it to turn to its limited assets to assist in meeting the needs of its members. Other situations involving high or low level exposure could result in increased cancer and leukemia rates or cellular and genetic defects many years into the future.

24. An accidental release would also cause significant adverse economic consequences as well as endangerment of the area's livestock and agricultural base.

25. Such an accidental release could occur by means of a transportation accident, or a design or manufacturing flaw in the casks used. A criticality accident could cause a radiological explosion. An accident could also occur by sabotage or terrorism, or by

many other means. The impacts of such an event upon the Tribe and its members would be similar to those described above.

26. The Tribe and Affiant are concerned that PFS' license application for the ISFSI lacks sufficient measures to protect them from such an accidental release, thus posing an undue risk to their health and safety. These concerns may be redressed by denial of the license application on the ground that it fails to provide sufficient measures to protect health and safety.

27. The Tribe and Affiant are also concerned that the environmental documents prepared to support the license application contain insufficient information on which to base a decision on the relative risks, costs, and benefits of the proposed project, or on alternatives to the project.

28. The Tribe and Affiant believe that if the supporting environmental documents were to fully disclose the costs and risks of the proposed ISFSI, the NRC would decide not to license the facility. Thus, preparation of a complete and accurate Environmental Report and Environmental Impact Statement would, in all likelihood, result in the denial of the license, and thereby redress the Tribe's and Affiant's concerns.

29. For many of the same reasons as those which impact the Tribe, Affiant will suffer injury-in-fact if the NRC licenses the proposed facility in Tooele County. His injury, too, is directly traceable to the proposed license application and can be

redressed by a decision denying the application.

30. An accidental release of the types described above could directly interfere with Affiant's ability to hunt and fish within the traditional Goshute areas. Similarly, such a release could interfere with his ability to gather plants and food and to visit the shrines and burial sites scattered throughout the area. Such a release could cause death or illness if he were to continue to pursue the activities which have always been a part of his life.

31. Also, because Affiant earns his living through ranching, such a release could deprive him of an opportunity for income on the Reservation and could force him to relocate from his ancestral area.

32. Both the Tribe and Affiant have a strong interest in protecting the quality of the environment and conserving a sound economic base for the Tribe and its members through maintenance of the environment in a condition that is conducive to agriculture, fishing, hunting, recreation, and preserves its unique historic character. proposes to site the ISFSI in the drainage leading to the Great Salt Lake, immediately adjacent to human habitation, without adequate emergency response capabilities, and without having developed appropriate base-line data or risk assessment, site selection, site characterization and facility operation criteria.

33. The location of the proposed facility lies within the drainage leading to the Great Salt Lake.

34. The location of the proposed facility is in an area which receives many lightning strikes and which has experienced many wildfires.

35. The location of the proposed facility is in an area which is remote, but accessible from all sides by intruders.

36. The location of the proposed facility is within an area of historic and cultural significance, having the Pony Express Trail running nearby. Many tourists visit the area.

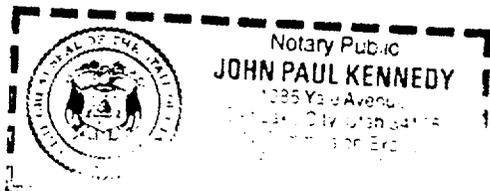
Dated: 8/21/97

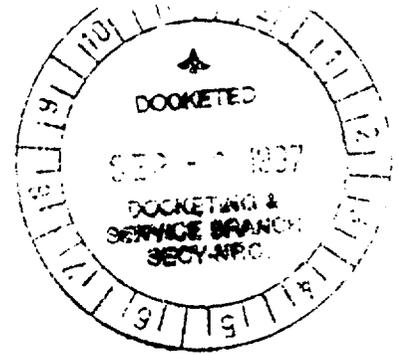
David Pete
DAVID PETE

Subscribed and sworn to before me on 8/28/97.

[Signature]
Notary Public

My commission expires: 2-24-2001
Residing at Salt Lake City, Utah.





CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that a copy of the foregoing was served upon the persons listed below by regular U.S. Mail on the date indicated:

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Office of General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing & Services Branch
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Danny Quintana, Counsel for Skull Valley Goshute
8 East Broadway, #735
Salt Lake City, Utah 84111

Dated: August 29, 1997

Danny Quintana, Esquire
Counsel for Skull Valley Goshute
John Paul Kennedy, Sr.
Counsel for Confederated Goshute Tribes
and David Pete