UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

Private Fuel Storage, a Limited Liability Company; (Independent Spent Fuel Storage Installation).	Docket No. 72-22 December 8, 1998

REPLY OF SOUTHERN UTAH WILDERNESS ALLIANCE (SUWA) TO STAFF AND APPLICANT RESPONSES TO SUWA's PETITION TO INTERVENE, REQUEST FOR HEARING AND CONTENTIONS.

I. Introduction

On August 28, 1998, PFS submitted, as part of its application to the Nuclear Regulatory Commission ("NRC") to store high level nuclear waste on the Reservation of the Skull Valley Band of the Goshutes, an amendment which included a proposal to construct and operate a rail spur from Low to the Reservation along the west side of Skull Valley. Before submitting a plan for the Low rail spur alignment, PFS had never suggested that it planned to build a rail spur in the western portion of the valley. Instead, in its original June 1997 license application, PFS referred to another available transportation option — the construction of a rail spur from Rowley Junction that would run near the Skull Valley Road to the reservation on the east side of the valley. The former project constituted a significant departure from the rail spur proposal only marginally addressed in the original application. Despite this significant change to its license application, PFS did not notify the public in any way of its new plan. Indeed, most of the intervenors in this proceeding did not receive a copy of the amendment until early October.

On November 18, 1998, the Southern Utah Wilderness Alliance ("SUWA") filed a Request for Hearing and Petition to Intervene in this proceeding and, in a separate document, its Contentions. SUWA established that it is entitled to intervene in this matter and has set forth specific issues which should be litigated in this proceeding because a genuine dispute exists with PFS on a material issue of law or fact and PFS's application does not contain important relevant information as required by law.

Despite this showing, the Nuclear Regulatory Commission Staff ("Staff") and the applicant, Private Fuel Storage, L.L.C, ("PFS" or the "Applicant") argue that SUWA's petition to intervene, request for hearing and contentions should be denied. Yet, the reasons that these parties give to argue against intervention are unavailing and should be dismissed. Furthermore, SUWA should be granted intervention and its contentions should be litigated in this matter.

II. The Arguments Advanced by the Staff and PFS Are Insufficiently Compelling to Reject Consideration of SUWA's Late-Filed Petition.

The Staff and PFS first argue that SUWA has not met the requirements for late intervention. For its petition to be accepted for consideration, SUWA must demonstrate that a balancing of the five factors set forth in 10 C.F.R. § 2.714(a)(1)(i)-(v) support accepting its petition. Those factors include: (1) good cause, if any, for failure to file on time; (2) the availability of other means whereby the petitioner's interest will be protected; (3) the extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record; (4) the extent to which the petitioner's interest will be represented by existing parties; and (5) the extent to which the petitioner's participation will broaden the issues or delay the proceeding.

With regard to the first factor — "good cause" — the Staff correctly suggests that the time period in which SUWA filed its petition appears reasonable. Staff's Response at 4. However, the Staff finds fault with SUWA for failing to indicate when it learned of the application amendment and thereby for failing to provide a measure from which reasonableness can be determined. Similarly, PFS suggests that SUWA's delay in filing is unexplained.

First, SUWA's time frame for filing its petition is reasonable and SUWA had good cause for filing when it did as a matter of law — PFS provided no notice of the amendment to the public.

Second, SUWA's "delay" in filing its petition is reasonable and explainable. SUWA learned of the rail spur amendment during the second week of October and therefore filed its petition within six weeks of learning of the amendment proposal. Given the complexity of this proceeding, that is a reasonable response time indeed. For example, in order to determine the impacts of the rail spur on its interests, SUWA had to have maps generated that would superimpose the rail alignment over the boundaries of the areas the organization had identified as having wilderness character. Next, SUWA had to become familiar with the NRC regulatory process, which is alien to those who do not practice in the area, and find a volunteer attorney to represent them in the process -- no easy task. SUWA also had to get internal permission to initiate its petition and had to prepare its pleadings and exhibits. Given that SUWA accomplished all of these time consuming activities during a time in which they could not drop other obligations, SUWA can readily state that it acted as quickly as possible in submitting its petition and also that it acted within a reasonable and explainable time frame. As a result of its prompt action, SUWA meets the requirements for establishing "good cause."

With regard to the second factor, the Staff argues, without citation, that political avenues, such as the passage of legislation, should be considered an available means for protecting its interests. This reasoning is ill-construed because it would make this factor meaningless. After all, in theory, everyone and every entity has access to the political process to protect their interests and so all would fail this factor. Furthermore, as the Board stated in an exactly analogous situation, the State had no means -- other than the present matter -- to protect its interest. *Memorandum and Order, Ruling on Late-Filed Contentions* (November 30, 1998), LBP-98-29 at 12 .[1]

The Staff and PFS argue that SUWA has failed to meet the third factor because it has not identified with specificity the facts it will present to help create a sound record herein. However, the relevant regulations state only that a petitioner present "[a] concise statement of the alleged facts **or** expert opinion which support [its] contention on which the petitioner intends to rely in proving the contention at hearing . . . ." 10 C.F.R. § 2.714 (b)(2)(ii) (in the context of contentions). SUWA plans to have the following experts attest to the following facts:

> Dr. Jim Catlin will address: 1) the criteria for identifying public lands with wilderness character pursuant to the Wilderness Act; 2) how these criteria were applied to the North Cedar Mountain roadless area; 3) how the boundaries of the North Cedar Mountain roadless area were identified; and 4) how the construction and operation of the proposed rail spur will impact the wilderness character of the area, by addressing impacts on scenic and recreational values and impacts on opportunities for solitude.
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> Heidi McIntosh, Legal Director of SUWA, will address: 1) the legal requirements of the Wilderness Act; 2) the legal requirements of NEPA; 3) the criteria for identifying public lands with wilderness character; 4) SUWA's organizational mandate and focus on

[1] Certainly, the State of Utah and its high profile governor have more political clout than SUWA, a small non-profit organization.

protecting areas with wilderness character from development; and 5) the impacts of the proposed rail spur on the wilderness character of the North Cedar Mountains area.

Allison Jones, M.S. in Conservation Biology (specializing in desert environments), will address: 1) the need to preserve large roadless and relatively primitive areas to preserve biodiversity; 2) the need to prevent habitat fragmentation; 3) the need to take an ecosystem approach to land management; 4) the need to include, within large undeveloped areas, a gradient of elevations in order to protect biodiversity; 5) the importance of protecting the bench areas or foothills in a basin and range to preserve biodiversity, access from basin to range and habitat for animals and plants that depend upon this zone or ecosystem; and 6) the impact of the proposed rail spur on the forgoing .

Because these experts and the facts they will present, as well as the facts presented in SUWA's petition and contentions, will help develop a sound record in this proceeding, SUWA has met the third factor.

The Staff and PFS do not contest that SUWA meets the fourth factor. No other party will adequately represent its interests in this proceeding.

Finally, in its most recent ruling on late-filed contentions, the Board stated with regard to the fifth factor that "the fact [that] formal discovery has not yet commenced means prompt admission of this contention likely will not result in a protected delay in this proceeding." *Memo and Order* at 13. Because this is still true — formal discovery has not started — and the context of contentions is not different from the context of intervention, SUWA's participation in the proceeding will not unduly delay the proceeding.

Thus, the weighing of the late-filed criteria favor consideration of SUWA's petition.

III. SUWA Meets the Requirements for Intervention.

Where an organization asserts a right to represent the interests of members, the NRC will look to the judicial concepts to determine if the organization has standing to participate in the proceeding. These concepts require a showing that (1) it members would otherwise have standing in their own right; (2) the interests that the organization seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires an individual member's participation. See Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333 (1977). In addition, the organization must demonstrate that at least one member has authorized it to represent her or him in the proceeding. The Staff and PFS do not contest the second two factors,[2] but address on the first.

A. Dr. Catlin Has Standing In His Own Right.

The Staff argues that Dr. Catlin lacks standing in his own right because he failed to demonstrate an ongoing connection with and presence in the area of land over which the proposed rail spur has been constructed. Dr. Catlin has clarified this issue in his Second Declaration, attached hereto, ¶¶ 3-15. There, he specifically states that he has developed a deep

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[2] As the Commission determined, in the leading case on the issue, the District Court of Appeals ruled that germaneness is established where "an organization's litigation goals be pertinent to its special expertise and the grounds that bring its membership together." Humane Society of the U.S. v. Hodel, 840 F.2d 45, 58-59 (D.C.Cir. 1988). SUWA is well situated to represent the interests of its members in preserving BLM lands that possess wilderness character on a regular basis and not just for the purposes of litigating this case.

bond with the exact land at issue and plans to cultivate his bond in the future. In answer to PFS's arguments, other clarifications in Dr. Catlin's Declaration establish that the injury to be caused him by the proposed project is both imminent and particularized. See, Second Declaration of Catlin ¶¶ 3-15; see also Virginia Elec. and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-5622, 9 NRC 54, 57 (1979) ("recreational" canoeing near reactor sufficient for standing); Georgia Institute of Technology (Georgia Tech Research Reactor, CLI-95-12, 42 NRC 111,117 (1995) ("driving by" a reactor daily sufficient for standing). Dr. Catlin has also clarified that he has authorized SUWA to represent him in this proceeding. Second Declaration of Catlin, ¶ 15.

PFS also argues that because Dr. Catlin has no legally valid interest in having the North Cedar Mountains roadless area designated as wilderness, he has no standing. This is because BLM has already rejected this area as unsuitable for wilderness designation. This argument ignores that the designation of wilderness is an ongoing process. For example, the Federal Land Policy and Management Act § 201 requires the Secretary of the Department of Interior to "prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values." 43 U.S.C. § 1711(a). Thus, the BLM may reevaluate the wilderness character of the North Cedar Mountains at anytime. See State of Utah v. Babbitt, 137 F.3d 1193, 1198-99 (10th Cir. 1998) (same).

In addition, in an analogous situation, the Ninth Circuit determined although "the ultimate decision regarding wilderness designation lies in Congress' . . . hands," plaintiffs have standing to challenge Forest Service decision to recommend against wilderness designation in a roadless area. Idaho Conservation League v. Mumma, 956 F.2d 1508, 1515 (9th Cir. 1992). Thus, where the

Forest Service recommended against wilderness designation and Congress had yet to act on any relevant wilderness designation, plaintiffs established standing based on a legally protected interest. Id.

Finally, Dr. Catlin and SUWA have an established and legal interest in preserving the North Cedar Mountain roadless area in its current primitive state. At least that this interest **will be analyzed** is guaranteed by the NRC's responsibilities under the National Environmental Policy Act ("NEPA"). Although participation in the NEPA process does not entitle a participant to become a party to the proceeding, NEPA does outline part of the responsibilities of the NRC - to look at the environmental impacts of and alternatives to the actions proposed to it. See 10 C.F.R. § 51.10 (b) ("The Commission recognizes a continuing obligation to conduct its domestic licensing and related regulatory functions in a manner which is [] receptive to environmental concerns"). Further, the environmental report, required in this case, must discuss "[t]he impact of the proposed action on the environment . . . ." 10 C.F.R. section 51.45(b).

B. SUWA Has Shown Harm and Injury In Fact Sufficient to Demonstrate Standing.

The Staff argues that SUWA has failed to show that it has more than "a mere interest in the problem" of the rail spur. To adopt the Staff's reasoning would mean that no environmental organization would meet this test. No organization could establish that it is more intimately involved in this problem than has SUWA. SUWA has demonstrated, with specificity, that it will be among the injured. SUWA has stated that its members use the exact tracts of land threatened by the proposed project, that these uses are specific, ongoing and frequent, and that these uses will be harmed by the proposed project. SUWA has also demonstrated its intense and long lasting

involvement in the North Cedar Mountain roadless area and confirmed that its organizational mandate includes its attempts to protect this area from development. For these reasons, SUWA's statement of injury is plainly distinguishable from the Sierra Club's in Sierra Club v. Morton, 405 U.S. 727 (1972) and the Staff's arguments otherwise are unconvincing.

Further, the Staff argues that SUWA's injury is not concrete. This argument is similar to the argument advanced by PFS and must be rejected for the same reasons. As established in Idaho Conservation League, the fact that BLM has not designated the North Cedar Mountain roadless area as wilderness does not defeat SUWA's standing to sue. Idaho Conservation League, 956 F.2d 1508. There, the plaintiff's interest were less concrete than SUWA's and yet the Conservation League was still granted standing. Indeed, in Idaho Conservation League, plaintiff had standing to sue on the basis of a threat of development where the Forest Service had determined that a roadless area did not qualify for wilderness protection and where no development was authorized. In so ruling, the Ninth Circuit stated: "that the potential injury would be the result of a chain of events need not doom the standing claim." Id. at 1515 *citing* Wilderness Society v. Griles, 824 F.2d 4, 12 (D.C. Cir. 1987). Furthermore, "that the ultimate decision regarding wilderness designation lies in Congress' . . . hands" did not defeat standing. Id. Finally, with regard to the threat of harm from development in a roadless area not designated as wilderness, the Ninth Circuit reasoned that where harm was the result of the possible conduct of third parties, standing is not defeated. Id. *citing* Rockford League of Women Voters v. United States, 679 F.2d 1218 (7th Cir. 1982)(although a nuclear plant could not operate without further action by the NRC, plaintiffs had standing to sue for failure to revoke a permit).

Thus, SUWA's injury, particularly that in protecting the North Cedar Mountain roadless area from development until Congress has the opportunity to determine if the area qualifies for wilderness protection,[3] is more concrete than that found to establish standing in the cases referred above. Although one aspect of SUWA's injuries may depend on the actions of a third party, this does not defeat their status as intervenors.

Finally, the Staff argues that SUWA's injury will not be redressed by a favorable ruling in this proceeding. This argument too, is unconvincing. If the proposed rail spur is rejected, the North Cedar Mountain roadless area will maintain its wilderness character. Preserving this wilderness character, whether or not Congress ultimately designates the area as wilderness, is a stated and legitimate goal of SUWA. Of course the organization would prefer the wilderness designation, but the protection of the area is an interim and independent organizational goal.

In sum, SUWA has standing as of right in this proceeding and the arguments advanced by the Staff and PFS are insufficiently compelling to alter this conclusion. As argued above and in its original petition, the organization has sufficiently alleged a distinct and palpable personal injury, traceable to the challenged action that will likely be redressed by a favorable ruling. Bennett v. Spear, 520 U.S. 154, 167 (1997).

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[3] Of course, SUWA's interest in protecting the Cedar Mountain Roadless Area from development is not at all contingent on the BLM or Congress.

C. SUWA is Entitled to Discretionary Intervention

SUWA has previously addressed all of the factors relevant to the discretionary intervention inquiry. Already SUWA has demonstrated that its participation will assist in developing the record while showing that its late-filed petition should be considered herein. SUWA has also clearly established its interest in the proceeding in the context of showing that it has standing in this matter. SUWA has also, in the context of establishing its standing, focused on the fact that a favorable decision herein will redress the threatened harm to SUWA. Again, within its discussion of the factors relevant to consideration of a late-filed petition, SUWA has established that it has no other available means, other than this proceeding, for protecting its interests; that no other party will represent its interests; and that its participation will not inappropriately broaden or delay this proceeding. Because the discussions above and in its original petition show that the balancing of these factors favors SUWA, intervention should be granted.

IV. SUWA's Contentions are Admissible

A. Contention A

The Staff and PFS suggest that SUWA's Contention A is not admissible because PFS's Environmental Report (ER) sufficiently considers the issue of the impacts of the proposed rail spur on the North Cedar Mountains roadless area and SUWA has failed to show that it disputes facts in the application. However, the ER fails to identify the wilderness character of the area, much less address impacts on it. Furthermore, the ER fails to consider issues which should be a part of the license application.

Specifically, the ER fails to analyze important impacts of the construction and operation of the rail spur on wildlife and recreational opportunities in the North Cedar Mountain roadless area. For example, the report focuses on noise levels along the Skull Valley road, but fails to determine impacts on recreationists and wildlife in the areas above the rail spur which are particularly vulnerable to the penetration of noise. ER at 4.4-7 to 4-8. With regard to visual impacts, the ER admits that the construction and operation of the rail spur will alter the visual landscape - an alteration that will be evident from the benches and higher elevations of the North Cedar Mountains. However, the ER fails to address the impacts of this visual scar on the wild character of the foothills and peaks of this area. ER at 4.4-9.

The ER addresses recreational use impacts in one sentence, ER at 4.4-2, limiting its discussion to impacts on the use of off-road vehicles. No analysis is made of impacts to recreational users seeking solitude in the North Cedar Mountain roadless area. The ER fails to analyze, in any other way, the impacts of the construction and operation of the rail spur on recreation other than to say that "[b]ecause of the low level of recreational use of the area . . . the Low Corridor is not expected to be a significant impact to the scenic environment." ER at 4.4-9. This statement improperly assumes that visual impacts are measured by the number of people who view them.[4]

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[4] The Staff wrongly suggests that because the area is classified as a Class IV area, the scenic values of the North Cedar Mountain roadless area need not be addressed.

Although the ER admits that the alignment of the rail spur threatens the habitat and nesting and denning areas of important and special status species such as kit fox, burrowing owl, northern harrier, and ferruginous hawk, no analysis is made of these impacts or the impacts of noise, increased use of the area, or the maintenance of the fire buffer zone on these animals. ER at 4.4-3. Instead, the ER states flatly that PFS will conduct a survey before construction and if any animals are found within 0.5 miles of the spur, construction will be delayed or the animals will be moved. Yet, the ER fails to establish the basis for its 0.5 mile cut off, or its confidence that delaying construction or moving the animals is an effective mitigation measure. ER at 4.4-3.[5] The ER also fails to address the impact of the maintenance of the fire buffer on these animals and fails to guarantee that surveys will be conducted each time the fire buffer is grated and cleared.

Finally, the ER fails to address 1) the need to preserve large roadless and relatively primitive areas to preserve biodiversity; 2) the need to prevent habitat fragmentation; 3) the need to take an ecosystem approach to land management; 4) the need to include, within large undeveloped areas, a gradient of elevations in order to protect biodiversity; and, 5) the importance of protecting the bench areas or foothills in a basin and range to preserve biodiversity, access from basin to range and habitat for animals and plants that depend upon this transition zone. Thus, the ER is inadequate.

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[5] It is interesting that the Applicant, in its ER, is able to make statements with out providing a basis in expert opinion and fact while others challenging these statements must do so.

The Staff also unconvincingly argues that SUWA wants to have the ER analyze impacts to values which are based on a future designation — wilderness status. However, this argument wrongly ignores that those wilderness values exist in the North Cedar Mountain roadless area currently, as identified by the SUWA reinventory, regardless of its current designation. As established above, SUWA has a legitimate interest, which is properly the subject of this proceeding, in protecting the North Cedar Mountain roadless area from development and preserving its primitive character. This interest is independent of the actions of Congress. In addition, as argued previously, the contingency of wilderness designation does not defeat SUWA's standing and should not defeat its contentions.[6]

B. Contention B

The Staff and PFS object to Contention B because the ER has analyzed alternatives to the proposed rail spur. However, as 10 C.F.R. § 51.45 (b) (3) states, the ER must include, "[t]he discussion of alternatives shall be sufficiently complete to aid the Commission in developing and exploring, pursuant to section 102(2)(E) of NEPA, 'appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." Further, it is well established that the alternative section "is the heart of the environmental impact statement." Citizens for a Better Henderson v. Hodel, 768 F.2d 1051, 1057 (9th Cir. 1985); 40 C.F.R. § 1502.14. PFS and the ER have failed to consider a full range of meaningful alternatives to the proposed project as required by NEPA. Rather, PFS has only analyzed the no action alternative and two transportation alternatives that parallel the Skull Valley

[6] It is important to reiterate that SUWA will provide expert opinions and facts to support its contentions.

Road. Because these latter alternatives are essentially unworkable, see State of Utah's Low Rail Spur Contentions and Response to SUWA's Petition to Intervene, PFS is obligated to design and analyze other transportation alternatives. This is particularly true when an alternative, as suggested by Dr. Catlin, that would significantly preserve the wilderness character of the North Cedar Mountain roadless area readily presents itself as a viable option.

V. Conclusion

For the above reasons and because SUWA has established that its "late-filed" petition should be considered, that it has standing to participate in this proceeding, and that its contentions are admissible and should be addressed in this matter, SUWA's Request for Hearing and Petition for Intervention should be granted and its Contentions admitted for further litigation.

Respectfully submitted this 8th day of December, 1998.

Joro Walker/RC

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UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

Private Fuel Storage, a Limited Liability Company; (Independent Spent Fuel Storage Installation).	Docket No. 72-22 December 8, 1998

SECOND DECLARATION OF JIM CATLIN
FOR PETITIONER SOUTHERN UTAH WILDERNESS ALLIANCE (SUWA)

I, **Jim Catlin**, based on personal knowledge, declare as follows:

1. I am an adult citizen and resident of Salt Lake County, Utah. I was raised in Utah and have leaved there almost all of my life.

2. I have a PhD from the University of California, Berkeley in Natural Resource Management and Geographic Information Systems (GIS). I have been practicing in this field for 20 years.

3. I am a member in good standing of the Southern Utah Wilderness Alliance (SUWA), petitioner in this matter, and was one of the original members of the organization. I joined this organization in part, because of its work to identify and preserve public lands which process wilderness character from development.

4. The North Cedar Mountain roadless area possesses wilderness character. This area includes land at both higher and lower elevations. The latter, called benches or foothills, were purposefully included in the North Cedar Mountain roadless area. This is because the benches

also possess wilderness character and are important to preserving biodiversity as well as the wilderness character of the whole area. All references I have made and will make to the North Cedar Mountain roadless area are to the area identified on the map attached as exhibit 2 to SUWA's petition which includes both the benches and mountainous terrain within that roadless area.

5. Because one of the goals of the 1998 inventory process was to use wilderness designation as a means to protect biological diversity, Wilderness Act, 16 U.S.C.A. § 1131(3)(4), the technical review team, in consultation with biologists, gave priority to areas containing large elevation gradients, large complexes on contiguous roadless areas, and riparian areas. The bench section of the North Cedar Mountain roadless area represents an important elevation gradient and is part of the large elevation gradient of the entire roadless area. The North Cedar Mountain roadless area, as a whole, represents a large complex within a contiguous roadless area.

6. The construction and operation of the Low Rail Spur and the construction and maintenance of the fire buffer zone will irreversibly impair the wilderness character of the North Cedar Mountain roadless area, including its benches.

7. If constructed pursuant to the license amendment, the Low Rail Spur will significantly intrude into the North Cedar Mountain roadless area so that it will no longer be an area which "generally appears to have been affected primarily by the forces of nature, with the imprint of [human] work substantially unnoticeable; . . ." Wilderness Act, 16 U.S.C.A. § 1131(c)(1). In addition, the operation of the rail spur will significantly intrude upon the area's currently "outstanding opportunities for solitude. . . ." Id., § 1131(c)(2). Finally, the construction and

operation of the rail spur will have adverse impacts on the area's wildlife and plant life, values which are essential to the ecological health of the area. Id., § 1131(c)(4).

8. Although the proposed rail spur will be constructed on the bench of the area, its impacts will intrude well into the North Cedar Mountain roadless area and will harm the wilderness character of a large portion of the area. Impacts to recreational values, scenic values, ecosystem values and opportunities for solitude will be felt on the lands (within the North Cedar Mountains roadless area) immediately impacted by the proposed rail spur and will be felt within a large portion of the area, not just the smaller section over which the rail spur will traverse. This is because these impacts are not confined to the smaller area, but have far reaching effects.

9. An alternative alignment to the proposed rail spur that avoided the North Cedar Mountains roadless area, exhibit "2", and/or ran two miles to the east of the current alignment (avoiding sensitive wetlands, etc.) would have less impact on the wilderness character of the North Cedar Mountain roadless area as identified by exhibit "2" attached to SUWA's petition to intervene..

10. Members of SUWA frequently visit, use and enjoy the natural resources of the North Cedar Mountain roadless area, including its benches and including the section of this area that will be traversed by the proposed rail spur, for many health, recreational, scientific, spiritual, educational, aesthetic, and other purposes and will do so frequently in the future. Sometimes SUWA members visit these areas for days at a time or several times within a relatively short period of time and develop an ongoing and deep bond with the land and its wilderness character which they hope to cultivate in the future. SUWA members frequently enjoy and will, in the

future, with some frequency, enjoy hiking, camping, birdwatching, study, contemplation, solitude, photography, and other activities in and around the North Cedar Mountains roadless area including the exact tract of land — the bench of the North Cedar Mountains -- over which the proposed rail spur will traverse. SUWA and its members also participate in information gathering and dissemination, education and public outreach, commenting upon proposed government actions, and other activities relating to the management of and impacts on BLM lands, including the North Cedar Mountains and benches (including the exact tract of land over which the rail spur will travel) and other public lands and resources in the area managed by the BLM. These health, recreational, scientific, spiritual, educational, aesthetic, informational, and other interests will be directly affected and irreparably harmed by a decision to allow construction and operation of the Low Rail Spur and by other agency actions which may impact the North Cedar Mountains, including the exact tract of land — the bench of the North Cedar Mountains -- over which the proposed rail spur will traverse.

11. I have a personal interest in and have frequently visited, used and enjoyed the natural resources of the North Cedar Mountains and benches, including the section of this area that will be traversed by the proposed rail spur, for many health, recreational, scientific, spiritual, educational, aesthetic, and other purposes and will do so frequently in the future. I have visited these areas, including the exact tract of land within the North Cedar Mountains area that will be traversed by the proposed rail spur, and have developed an ongoing and deep bond with the land and its wilderness character which I will continue to cultivate in the future. I frequently enjoyed and will, in the future with some frequency, enjoy hiking, camping, birdwatching, study,

contemplation, solitude, photography, and other activities in and around the North Cedar Mountains roadless area, including the exact tract of land — the bench of the North Cedar Mountains -- over which the proposed rail spur will traverse. I will be personally harmed and my health, recreational, scientific, spiritual, educational, aesthetic, informational, and other interests will be directly affected and irreparably harmed by a decision to allow construction and operation of the Low Rail Spur and by other agency actions which may impact the North Cedar Mountains, including the exact tract of land — the bench of the North Cedar Mountains -- over which the proposed rail spur will traverse.

12. The North Cedar Mountains, including the exact tract — the bench area over which the rail spur will traverse will be harmed if the proposed rail spur is constructed and operated. The area will become developed and I will be unable to enjoy its relatively primitive nature. I will be able to feel the presence and hear the noise of the construction and operation of the proposed project well within the North Cedar Mountains roadless area and this will harm me, particularly when I spend long periods of time there. In addition, the construction and operation of the Low Rail Spur will threaten the ecological values of the North Cedar Mountains. If these values are harmed, I too will be harmed.

13. In determining the boundaries of North Cedar Mountain roadless area, the technical review team considered: 1) the need to preserve large roadless and relatively primitive areas to preserve biodiversity; 2) the need to prevent habitat fragmentation; 3) the need to take an ecosystem approach to land management; 4) the need to include, within large undeveloped areas, a gradient of elevations in order to protect biodiversity; and, 5) the importance of protecting the

bench areas or foothills in a basin and range to preserve biodiversity, access from basin to range and habitat for animals and plants that depend upon this transitional zone. For these and other reasons, we identified and included the benches of the area within the North Cedar Mountains roadless area.

14. If the proposed rail spur is constructed and operated on the benches of the North Cedar Mountains, these biodiversity values and goals will be harmed. I also will be harmed because I enjoy visiting the various elevation gradients and viewing the diversity of plants and animals that depend upon them. SUWA also will be harmed because the goals of the organization — protecting large tracts of land from development in order to meet these biodiversity principles — will be harmed.

15. I authorize SUWA to represent me in this proceeding (the matter of Private Fuel Storage, LLC before the Atomic Safety and Licensing Board) and otherwise act in this proceeding on my behalf.

I DECLARE, under penalty of perjury, that the foregoing is true and correct.

Executed on this December 9, 1998

Jim Catlin

JIM CATLIN

CERTIFICATE OF SERVICE

I hereby certify that copies of REPLY OF SOUTHERN UTAH WILDERNESS ALLIANCE (SUWA) TO STAFF AND APPLICANT RESPONSES TO SUWA's PETITION TO INTERVENE, REQUEST FOR HEARING AND CONTENTIONS, dated December 8, 1998, were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 8th day of December 1998.

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