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September 21, 2000  
VIA FAX and MAIL

72-22

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RE: Comments of **Ohngo Gaudadeh Devia, Southern Utah Wilderness Alliance, and Margene Bullcreek** on the Private Fuel Storage Draft Environmental Impact Statement – Docket 72-22.

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Dear Chief Meyer:

**Ohngo Gaudadeh Devia, Southern Utah Wilderness Alliance and Margene Bullcreek** appreciate the opportunity to make the following comments on the Private Fuel Storage Draft Environmental Impact Statement – Docket 72-22 (the “DEIS”).

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While the cooperating agencies, the United States Nuclear Regulatory Commission (“NRC”), United States Bureau of Indian Affairs (“BIA”), United States Bureau of Land Management (“BLM”), and United States Surface Transportation Board clearly dedicated time and effort to the DEIS, the document is inadequate. The DEIS fails its purposes of informing the public regarding and allowing the decision maker to make a well informed decision in light of the potential environmental impacts of the operation and construction of the proposed Independent Spent Fuel Storage Installation and the related transportation facility (the “PFS Facility”).

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## **1. To Be Legally Sufficient, the NEPA Process Must be Objective and Must Proceed the Licensing Process.**

The DEIS is and was necessarily prejudiced by the ongoing NRC licensing process relative to the PFS Facility. This is because the NRC and the other cooperating agencies have already invested incredible resources and time and have thereby essentially committed themselves to approving the proposed project. Rather than conducting analysis pursuant to the National Environmental Policy Act ("NEPA") well before the licensing proceeding limited its options, the NRC inappropriately waited until its decision regarding the facility became from a practical standpoint, a foregone conclusion.

Thus, for the purposes of the DEIS, NEPA has become an exercise of post-hoc rationalization rather than a truly objective, information gathering process. As a result, the DEIS fails to address adequately and impartially basic questions such as whether the proposed facility is needed and whether there are real alternatives to the proposed facility. For example, the Wyoming alternative is not fully analyzed and not presented as a real alternative to the PFS Facility. As can be seen by the cursory treatment of the Wyoming alternative, these questions and the development of alternatives should have been addressed through the NEPA process long before the NRC committed itself to a single alternative via its licensing proceeding. These failures and pre-NEPA commitments means that the DEIS is necessarily invalid.

By the same token, the BIA has improperly prejudiced itself by approving a "conditional" lease for the proposed facility in May, 1997, well before the drafting of the DEIS. By investing itself so completely in the foregone conclusion and by encouraging and/or allowing the transfer of funds and other actions based on the lease, the BIA has impaired its ability to carry out impartially its trust responsibility to Skull Valley Band members.

Finally, by relying so heavily on the Oak Ridge National Laboratory, an entity with institutional prejudices in favor of nuclear power, the DEIS is also tinted. This is particularly true given that the BLM and BIA do not share the NRC's pro-nuclear mandate.

## **2. The BIA Must Analyze, in the Context of its Trust Relationship, the Impact of the Entire PFS Project on Members of the Skull Valley Band.**

The NRC improperly characterizes the scope of BIA's role in the proposed action as limited to an analysis the impacts of the proposed lease. DEIS at 1-15. While the lease is what requires the BIA to be involved in the decision making regarding the PFS Facility, once the agency is brought into this process, it must analyze the **entire** project pursuant to, *inter alia*, its trust relationship with Skull Valley Band members. This is because the entire project is a necessary consequence, or at very least, a foreseeable consequence of approval of the lease. The DEIS is fatally inadequate because, by unduly restricting the scope and

impact of the BIA's decision making, it fails to analyze the entire project in terms of that agency's trust responsibility to members of the Skull Valley Band.

Similarly, the DEIS mischaracterizes the focus of its trust responsibility. Rather than owing a responsibility to the Skull Valley Band as an entity, the BIA has a trust obligation to the members of the Skull Valley Band. Because the BIA so fundamentally misstates its responsibilities at this threshold level, and the entire DEIS is based on this misconception, the document is organically flawed.

For example, in the DEIS, the BIA ignores well documented instances of improper treatment of Band members by the Skull Valley Band government related to the proposed lease and related to the transfer of lease funds. This improper treatment includes the government's threats to withhold tribal membership and other tribal benefits, the actual withholding of funds, attempts to interfere with the attorney-client relationship, and attempts to interfere with tribal members ability to participate in tribal government.

This ill treatment is directly related to the position the Band member has vis-à-vis the PFS Facility. In other words, Band members who oppose the project are suffering from the actions of the Band government as a direct result of their opposition to the project. By focusing on the Band government rather than Band members, the DEIS attempts to avoid analysis of these impacts. However, this focus is improper. Because the DEIS makes no mention of this ill-treatment and because, in that document, the BIA fails to analyze this ill-treatment in light of its trust responsibilities to members, the document is woefully inadequate.

This focus on the Band rather than Band members also misleads the DEIS analysis in that the document does not account for differences among tribal members – particularly difference among and differing impacts on those living on the Reservation and those living off the Reservation. These differences also include differing world views and differing attitudes toward and support for the facility.

### **3. The Statement of the Purpose of BIA's Action is Inappropriate.**

Although the NRC concedes that the BIA has a "unique role" in approving or disapproving the proposed lease, DEIS at 1-15, the NRC improperly characterizes this purpose of the BIA's actions related to the lease. Without citation, the NRC suggests that the purpose of BIA's decision is to promote the economic development objectives of the Skull Valley Band. As is characteristic of the NRC and BIA relationship to the proposed project throughout the DEIS, this statement of purpose connotes a foregone conclusion.

Indeed, the cooperating agencies have precluded a meaningful assessment of proposed project and alternatives to the proposed action by beginning its analysis with an artificially restrictive statement of the purpose and need for proposed project. By characterizing the purpose of the project this way, the BIA has foreclosed objective

consideration of any alternative that would not accomplish exactly what PFS and the Skull Valley Band government has proposed to do.

Rather than addressing the well-being of the Band members, the DEIS improperly focuses on the objectives of the tribe, taking these objectives as inherently desirable, rather than analyzing, pursuant to its trust responsibilities, the propriety of these objectives. Particularly given the Band government's improprieties, it is not at all clear that the economic or other well being of the Band members is in any way analogous to the economic development objectives of the Skull Valley Band. This is particularly true given that there is much evidence that the government does not have, or has coerced the support of Band members for the project. As a result of the failure of the DEIS to address the well being and the desires of tribal members in terms of the BIA's trust responsibility, the document is unlawfully inadequate.

#### **4. The BIA's Analysis of the Environmental Justice Implications and Socioeconomic Impacts of the Proposed License is Insufficient.**

To the extent that the DEIS attempts to address the BIA's role in the decision regarding the lease (even to the extent that BIA defines it), the treatment is inadequate. The DEIS's treatment of environmental justice issues and socioeconomic impacts exhibits little insight into the social, cultural and religious affairs of the Skull Valley Band members. The DEIS repeatedly makes foundationless statements concerning small and not so small impacts on, for example, cultural resources, without providing an expert or culturally sensitive basis for these conclusions.

Further, the DEIS is inadequate with respect to addressing impacts on traditional social interactions and cultural activities of Band members. The DEIS does not adequately analyze the potential inability tribal members who fear or abhor the project to leave the Reservation or the psychological impact this inability may have on them and their culture. The document fails to consider long term impacts to the survival of the traditional culture, religion and language of Skull Valley Band members.

In addition, perhaps because the BIA's analysis of the project is subsumed by that NRC, the DEIS fails consider aspects and impacts of the proposed project that are necessarily the subject of BIA review, but not necessarily appropriate for NRC review. For example, the DEIS makes assumptions about the safety of nuclear waste and the impacts of the project based upon NRC regulations and precedent. However, the BIA is not, and should not be constrained by NRC regulation and precedent in its analysis of the project, particularly given the BIA's trust responsibility to the members of the Skull Valley Band.

## **5. The BIA and NRC Analysis of Environmental Justice, Health and Cumulative Impacts from Exposure to Toxic and Hazardous Emissions is Severely Wanting.**

More generally, with regard to its discussion of cumulative impacts and environmental justice impacts relative to exposure to pollutants, including hazardous and/or toxic pollutants, the DEIS is inadequate. Essentially, the DEIS relies on a determination that impacts from the proposed PFS facility would be small to forego any determination of current and reasonably foreseeable exposure levels. This is inappropriate under NEPA.

The purpose behind cumulative impact analysis is to examine the cumulative effects of even individually insignificant actions and impacts. Thus, the determination that the PFS facility may not lead to significant additional exposure to harmful emissions does not excuse the NRC from examining cumulative exposure levels by combining past, present and reasonably foreseeable releases of all types of hazardous and toxic pollutants and emissions.

Such analysis should also include impacts of reasonably foreseeable single or multiple accidental releases of toxic and hazardous emissions in combination with emissions and impacts from the proposed PFS facility. For example, the DEIS is inadequate because it does not consider the potential impacts that could occur if there is a release of chemical warfare agent(s) that would require the proposed facility to be abandoned for days, weeks, or months.

For the same reason, the DEIS analysis of human and wildlife health impacts for the purposes of cumulative and environmental justice analysis is inadequate. Because NEPA requires this analysis and the DEIS fails to include it, the document is deficient.

## **6. In the DEIS, the NRC Does Not Adequately Consider the Disparate Impacts of the PFS Facility on Skull Valley Band Members.**

In analyzing impacts to Skull Valley Band Members, the NRC does not adequately consider factors "peculiar to th[is] communit[y]." For example, the agency fails to identify the existence and magnitude of impacts that are oppressive or more oppressive given the unique situation of the Skull Valley Band members. Band members have a unique interest in preserving their traditional worldview, lifestyle and relationship to the land, in part, because without their participation, these cultural views face extinction. Furthermore, given their minority status, Band members are much more prone to losing their cultural identity given the prevalence and force of the majority culture.

Finally, the NRC fails to give the strength of these cultural views and their vulnerability to the massive PFS project adequate weight and examination. For example, the DEIS should, but does not adequately analyze the impact of the proposed facility and rail line on the connection between Band members and their Reservation, their ancestral

rail line on the connection between Band members and their Reservation, their ancestral lands, on access to these lands and on artifacts and other elements of historical and cultural significance that may be present there while giving true weight to the power of these concerns among some Band members.

Similarly, the DEIS does not adequately consider that substantial trust funds exist to promote agricultural development on the Skull Valley Reservation. The DEIS should analyze what impact the construction, operation and decommissioning of the proposed facility will have on the ability of Band members to utilize and/or access these funds. The existence of these funds, as well as other potential sources of revenue that were seriously discounted by the DEIS, should also be considered in the evaluation of the project.

**7. The DEIS Must Consider as Reasonably Foreseeable that the PFS Facility will be Improperly Decommissioned and/or that the SNF Will Remain at the Skull Valley Site Indefinitely, or At Least Longer than the Lease Anticipates.**

Especially in its cumulative impact analysis, but in every facet of the DEIS, the NRC has failed to address adequately the reasonably foreseeable possibility that waste will be on site at the PFS Facility for longer than 20 to 40 years and that the site location may well be permanent. Similarly, in all contexts, the DEIS fails to consider the cumulative impacts of the reasonably foreseeable prospect that the facility will be improperly decommissioned. Such analysis is particularly warranted based on the BIA's trust relationship with Band members.

**8. In the DEIS, the NRC Fails to Analyze the Site Selection Process for Discriminatory Intent.**

Although all indications suggest that the site selection process for the PFS Facility was discriminatory or had the effect of discriminating against low income and minority populations, the DEIS fails to analyze this aspect of the proposed project. This analysis is particularly warranted given the BIA's trust responsibility to the members of the Skull Valley Band and to Native Americans generally.

**9. The DEIS Fails to Take a Hard Look at the Impacts of the Proposed PSF Facility on the Environment.**

The DEIS fails to consider adequately the impacts of the PFS Facility and transportation alternatives on the wilderness character and the potential wilderness designation of roadless public lands in the area. Similarly, the document fails to develop and analyze a meaningful range of alternatives to the facility and related transportation alternatives that will preserve the wilderness character and the potential wilderness designation of roadless public lands in the area. The DEIS should, but does not consider the potential impacts of the construction, operation and decommissioning of the proposed

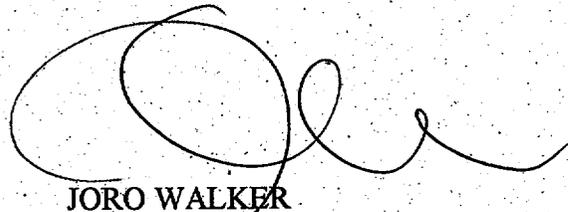
project on the Great Salt Lake, especially on the shore and migratory bird populations and wetlands habitat.

**10. The Scope of the DEIS Analysis of Accidents, Sabotage, and Natural Disasters Is Wrongfully Constrained by NRC Regulation and Mandate.**

Essentially, NRC mandate and regulations drive the scope of the DEIS regarding everything from cask safety to the breathe of the environmental justice inquiry. However, because the BIA and the BLM have to make important decisions guided by the DEIS, the scope of the DEIS should not be limited by NRC concerns and issues. For example, the DEIS should not be constrained by NRC Commission orders and opinions in determining the range and the adequacy of the environmental justice inquiry or how to analyze accident potential or how to quantify the psychological impact of living next to a high level nuclear waste dump.

Just as the BIA's trust responsibility must guide all inquiry into every aspect of the impacts of the project and the lease, so must BLM's balancing responsibilities under the Federal Land Policy and Management Act guide that agency's inquiry into the propriety and analysis of the proposed rail line and transportation corridors related to lands under its jurisdiction. Because the DEIS does not have a sufficiently broad scope to represent the mandates of the cooperating agencies and is unduly restricted by the NRC's mandate, precedent and regulation, the DEIS is fatally flawed.

Thank you again for the opportunity to comment on the DEIS. We hope that these comments will be helpful and will influence your development of a final environmental document for the proposed project.



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