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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DEC 22 1998

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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|---------------------------|---|---------------------------|
| In the Matter of: |) | A. |
| |) | Docket No. 72-22-ISFSI |
| PRIVATE FUEL STORAGE, LLC |) | ASLBP No. 97-732-02-ISFSI |
| (Independent Spent Fuel |) | |
| Storage Installation) |) | December 17, 1998 |

**STATE OF UTAH'S MOTION TO AMEND
SECURITY CONTENTIONS**

The State of Utah has received new information from the Tooele County Attorney regarding the scope of the Tooele County Cooperative Law Enforcement Agreement ("CLEA") with the Bureau of Indian Affairs ("BIA") and the Skull Valley Band of Goshute Indians ("Band"). Based on the new information, the State files this Motion to Amend Utah Contentions Security C and also Security A and Security B.

On January 3, 1998, the State filed contentions based on the Applicant's confidential safeguards security plan. The Staff and Applicant filed responses on January 30, 1998, and the State filed a reply on February 11, 1998. The State raised two issues in Contention Security C ("Local Law Enforcement"): (1) the authority of the Tooele County Sheriff's Office to provide law enforcement assistance to incidents at the Applicant's independent spent fuel storage installation ("ISFSI"); and (2) the time required for Tooele County Sheriff's office to respond to incidents at the ISFSI. The Board admitted only the second issue. LBP 98-13 at 15-16.

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PDR ADOCK 07200022
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At a prehearing conference on the security plan contentions held at the NRC in Rockville, MD, on June 17, 1998, counsel for the Applicant produced a copy of a Cooperative Law Enforcement Agreement between the County, BIA and the Band dated June 3, 1997. The CLEA was signed on behalf of the County by Teryl Hunsaker, Chairman of the Tooele County Commission, and approved as to form by Douglas J. Ahlstrom, the Tooele County Attorney. A copy of the CLEA is attached hereto as Exhibit 1.

The NRC Staff generally took the position at the prehearing conference that by merely raising the question of whether or not Tooele County has law enforcement jurisdiction on the Skull Valley Reservation, the State had not established a sufficient legal basis for Contention Security C. TR at S-22. The Applicant generally argued that the June 3, 1997, CLEA established that Tooele County has law enforcement jurisdiction on the Skull Valley Reservation, and by extension, the Applicant has met the requirements for law enforcement liaison for its facility. TR at S-34.

In ruling on the State's security contentions, the Board found certain aspects of Utah Contention Security C¹ inadmissible because a cooperative law enforcement agreement between the County, BIA and the Band was "shown to exist." LBP 98-13 at

¹ Security C, Local Law Enforcement, states:

Contention: The Applicant has not met the requirements of 10 C.F.R. Part 73, App. C, Contents of the Contingency Plan, Law Enforcement Assistance.

16. Moreover, the Board ruled "nothing on the face of the cooperative agreement gives us cause to question its validity as it provides such jurisdiction on the Skull Valley Band's reservation for the designated LLEA [local law enforcement agency]." Id at n.

9. Furthermore, the Board ruled with respect to Contentions Security A (Security Force Staffing) and Security B (Equipment and Training):

to the extent the State seeks to rely on the issue of the designated LLEA's lack of jurisdiction and law enforcement authority on the Skull Valley Band's reservation as a basis for this contention, that assertion lacks adequate legal or factual support.

LBP 98-13 at 13-14.

The State filed a Motion for Reconsideration of the Board's Ruling on State of Utah Physical Security Plan Contentions, dated July 10, 1998, wherein the State raised the issue of whether the Tooele County Commission has passed the appropriate resolution for the June 3, 1997 CLEA to be in force. The Applicant and Staff responded to the State Motion for Reconsideration on July 22, 1998. The Board ruled, on August 5, 1998, it will admit contentions Security-A through Security-C on the issue:

[W]hether a June 1997 cooperative law enforcement agreement that permits the Tooele County sheriff's office to exercise law enforcement authority on the Skull Valley Band reservation has been properly adopted by Tooele County, thereby allowing the county sheriff's office to fulfill its role as the designated LLEA for the PFS facility.

LBP-98-17 at 2. The State now requests the Board to expand its August 5 ruling based on new information the State has obtained from the Tooele County Attorney.

The State sent a letter to Commissioner Hunsaker, Chairman of the Tooele County Commission, inquiring into the scope of the June 3, 1997, CLEA that Chairman Hunsaker signed on behalf of the County. See Letter from Dianne R. Nielson, Ph.D, Executive Director, Department of Environmental Quality to Teryl Hunsaker, dated October 14, 1998, attached hereto as Exhibit 2. Dr. Nielson received a reply to her letter from Tooele County Attorney, Douglas J. Ahlstrom dated December 2, 1998, attached hereto as Exhibit 3.

Mr. Ahlstrom, the Tooele County Attorney, is the same person who approved the CLEA as to form. The Tooele County Attorney's view of the CLEA is antithetical to that the Applicant. In the words of the Tooele County Attorney:

I do not believe Tooele County is obligated to provide law enforcement protection to Private Fuel Storage and their proposed storage site.... At the time the CLEA was signed there was no discussion or contemplation that Private Fuel Storage would be part of the agreement. Moreover, the county has not yet entered into any agreement that has any bearing on locating the PFS storage facility on the reservation.

Given this new information, the State requests the Board to revise its August 5, 1998, ruling on the admissibility of the bases of Contentions Security C and also Security A and Security B.

On May 15, 1998, the NRC issued a final rule, codified at 10 CFR § 73.50, Requirements for Physical Protection for Licensed Activities. Pursuant to 10 CFR § 73.50(a), physical protection requirements applicable to ISFSIs licensed under Part 72, include the following requirement:

Documented liaison with a designated response force or local law enforcement agency (LLEA) must be established to permit timely response to unauthorized penetration or activities.

10 CFR § 73.51(d)(6) (*emphasis added*). In accordance with 10 CFR § 72.184, an ISFSI must also comply with 10 CFR Part 73, Appendix C, Licensee Safeguards Contingency Plans. The Law Enforcement Assistance in (3)(d) of Appendix C requires:

A listing of available local law enforcement agencies and a description of their response capabilities and their criteria for response; and a discussion of working agreements or arrangements for communicating with these agencies.

In light of the December 2, 1998, letter from the Tooele County Attorney, the Applicant cannot satisfy the requirements of 10 CFR § 73.51(d)(6) and Part 73, Appendix C(3)(d) by relying on the June 3, 1997 CLEA. The Tooele County Attorney's letter plainly shows that Tooele County will not provide law enforcement protection to the proposed ISFSI under the June 3, 1997 CLEA. Thus, the State has raised an additional legal challenge to the Applicant's ability to comply with 10 CFR § 73.51(d)(6) and Part 73, Appendix C(d)(3).² Furthermore, the lack of an agreement with Tooele County adds extra weight to the already admitted basis for this contention regarding the time a local law enforcement agency will take to respond to an incident

²The State requests Security C now read:

Contention: The Applicant has not met the requirements of 10 C.F.R. Part 73, App. C, Contents of the Contingency Plan, Law Enforcement Assistance nor has the Applicant met the requirements of 10 C.F.R. § 73.51(d)(6).

at the Applicant's ISFSI.

Finally, the State requests the Board broaden its August 5, 1998, ruling on Contentions Security A and Security B.³ The letter from the Tooele County Attorney clearly establishes that Tooele County will not provide law enforcement assistance to the PFS ISFIS under the CLEA. The State refers the Board to its original Security A and Security B Contentions, dated January 3, 1998, at 2-3 and the State's Reply to the NRC Staff and Applicant's Responses to Utah's Security Plan Contentions Security-A through Security-I, dated February 11, 1998 at 7-9, and requests the Board find that the new information provides support to broaden the bases for the admissibility of Contentions Security A and Security B.

³ Security A (Security Force Staffing) states:

CONTENTION: The Applicant has failed to establish a detailed plan for security measures for physical protection of the proposed ISFSI as required by 10 C.F.R. § 72.180, including failure to demonstrate that it has adequate staffing capability to cope with or respond to safeguards contingency events.

Security B (Equipment and Training) states:

CONTENTION: The Applicant has not described the type or location of security equipment available to security force personnel, nor has the Applicant described adequate training for fixed site guards or armed response personnel.

The State Satisfies the Commission's Late-Filing Criteria.

The State submits that it satisfies the criteria under 10 CFR § 2.714(a)(1) for amending the bases to Contentions Security C and also Security A and B.

First, the State has good cause for late filing, because the State only received the new information from the Tooele County Attorney on December 4, 1998. Counsel for the State was in Washington, D.C. last week, in part to attend a prehearing conference in this case, which precluded filing this pleading at an earlier date.

Second, the State has no means, other than this proceeding, to protect its interests in the issues identified above.

Third, the State's participation in this proceeding can reasonably be expected to assist in developing a sound record relating to legal issues regarding local law enforcement authority. Furthermore, the NRC Staff has no special expertise in addressing local law enforcement authority or issues relating to Indian law.

Finally, it is unlikely that admission of the question of local law enforcement authority would broaden or delay the proceeding because the issues could be addressed as part of the existing admitted security contentions. Thus, the State's filing will not delay the proceeding. Furthermore, any delay is outweighed by the significance of the issues raised with respect to law enforcement assistance to the Applicant's facility. Accordingly, the above amended bases satisfy the NRC's criteria for late consideration.

DATED this 17th day of December, 1998.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Denise Chancellor", written over a horizontal line.

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Diane Curran, Special Assistant Attorney General
Connie Nakahara, Special Assistant Attorney General
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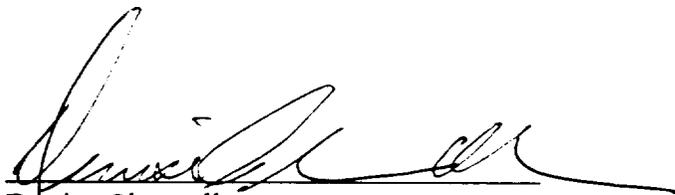
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Denise Chancellor
Assistant Attorney General
State of Utah

**COOPERATIVE LAW ENFORCEMENT AGREEMENT
BETWEEN TOOELE COUNTY
THE BUREAU OF INDIAN AFFAIRS
AND THE SKULL VALLEY
BAND OF GOSHUTE INDIANS**

RECEIVED JUN 13 1997

THIS AGREEMENT made and executed the 3rd day of June 1997, to be effective on the 1st day of April, 1997, by and between TOOELE COUNTY, (hereinafter called the "County"), the BUREAU OF INDIAN AFFAIRS, (hereinafter called the "Bureau"), and the SKULL VALLEY BAND OF GOSHUTE INDIANS, (hereinafter called the "Skull Valley Band").

WITNESSETH:

WHEREAS, the Skull Valley Band does not have all of the required resources and facilities to provide adequate law enforcement for the protection of the residents of the Skull Valley Reservation, Utah and its resources, and

WHEREAS, The Bureau and the Skull Valley Band desire to utilize the Tooele County Sheriff's department to provide law enforcement and detention for the Skull Valley Reservation, Utah pursuant to Title 25, Code of Federal Regulations, Part II; and

WHEREAS, the County is willing to provide the necessary services under certain terms and conditions.

NOW, THEREFORE, pursuant to Section II-13-5, Utah Code Annotated 1953, and in consideration of mutual promises contained herein, and for other good and valuable consideration, the County, the Skull Valley Band and the Bureau, pursuant to its authority to provide for the maintenance of law enforcement services in Indian Country, hereby agree as follows:

1. The County will provide all necessary qualified personnel for law enforcement and detention services covered in this agreement. The County recognizes that many non-Indians work or travel through the Skull Valley Indian Reservation requiring law enforcement patrols.
2. The County is designated as the party to administer this agreement by and through the Tooele County Sheriff.
3. The County will provide all equipment, materials and facilities required for conducting

the enforcement and detention services set forth in this agreement, and in the event of the termination of this agreement for any cause, all equipment, materials and facilities shall remain in the possession and ownership of the County.

4. The County will be responsible to investigate, charge and incarcerate persons charged with or alleged to be in violation of all offenses, whether enumerated under 18 U.S.C. or the Skull Valley Band of Goshute Indians Tribal Code, committed within the boundaries of the Skull Valley Indian Reservation, Utah, as established by Executive Order 1465, dated January 17, 1912; Executive Order 2699, dated September 7, 1917, and Executive Order 2809 dated February 15, 1918, and such other lands without such Reservation boundaries as may hereafter be added thereto under any law of the United States, except as otherwise provided by law.

5. The County will provide a minimum of three (3) regular patrols per week on the highway passing through the Skull Valley Indian Reservation and into the Village on the Reservation as part of regular patrols. The County will also include areas of patrol as requested by the Skull Valley Tribal Government.

6. The County will immediately notify the Criminal Investigator of the Uintah and Ouray Agency, Fort Duchesne, Utah, and the Federal Bureau of Investigations of all Federal offenses that occur within the boundaries of the Skull Valley Indian Reservation as set forth in paragraph 4 above. The County shall assist Federal law enforcement officials in the investigation of Federal offenses.

7. The County will provide the following reports and records to assist the Bureau and Skull Valley Band in preparing the Bureau's quarterly and annual statistical report:

a. full investigation reports of all misdemeanors and felonies occurring on the Reservation involving Indians;

b. a booking log of all arrests made on the Reservation indicating (1) date of birth (2) age, (3) charges, and (4) disposition for each Indian offender; and

c. a report on each incident responded to by the County on the Reservation.

8. The County shall be notified by telephone on all law enforcement matters, including emergencies.

9. The Bureau will pay five thousand five hundred dollars (\$5,500) for the County's services to be rendered April 1, 1997, through March 31, 1998. Should this agreement extend to additional years, the Bureau shall pay in April of each year the base sum of five thousand five hundred dollars (\$5,500), plus an amount equal to any percentage increase over the previous year in the Wasatch Front Cost of Living Index as published by First Security Bank, but not to exceed five percent (5%) in any given year. The Bureau will also pay the County thirty-five dollars

(\$35.00) per day, or any portion thereof, per person for the incarceration of persons at the County detention facility pursuant to this agreement. The Bureau will also pay such prisoner's medical costs. The County shall bill the Bureau for such costs with an itemized invoice listing of the prisoners and days they spend at the County detention facility, and any medical costs incurred.

10. The Bureau agrees to commission the Tooele County Sheriff and designated deputy sheriffs as Bureau of Indian Affairs Federal Law Enforcement Officers for the purpose of providing the services contained herein. The Skull Valley Band and the County agree to allow the County to call onto the Reservation such backup personnel from other law enforcement agencies as is necessary to carry out the terms of this agreement.

11. The Bureau and/or Tribal Attorney will provide technical assistance to the County in matters dealing with Tribal Government, Reservation jurisdiction, Federal jurisdiction and related matters.

12. The County, the Bureau and the Skull Valley Band will review this agreement annually on or before April 1st of each year for purposes of evaluating the services and effectiveness of the agreement.

13. Any party to this agreement may cancel or terminate this agreement upon thirty (30) days written notice to the other parties.

14. The term of this agreement shall be for one (1) year commencing April 1, 1997. It shall renew automatically thereafter for one year increments until such time as it is terminated pursuant to paragraph 13.

15. The County recognizes that the Skull Valley Indian Reservation is a separate sovereign political entity independent of the State of Utah.

16. This contract is contingent upon the appropriation of funds by Congress.

BUREAU OF INDIAN AFFAIRS:

COUNTY OF TOOELE, UTAH


Acting Superintendent


TERYL HUNSAKER, Chairman
Tooele County Commission

**SKULL VALLEY BAND OF
GOSHUTE INDIANS**

ATTEST:


Tribal Chairman


DENNIS D. EWING, Clerk

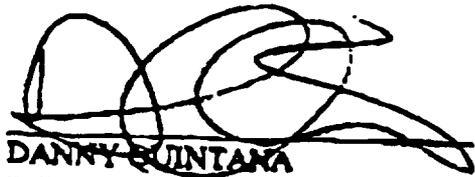

Tribal Vice-Chairman




Tribal Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:


DANNY QUINTANA
Tribal Attorney


DOUGLAS J. AHLSTROM
Tooele County Attorney

Approved as to form this 3rd day of June, 1997.


FRANK SCHARMANN
Tooele County Sheriff



State of Utah

DEPARTMENT OF ENVIRONMENTAL QUALITY OFFICE OF THE EXECUTIVE DIRECTOR

Michael O. Leavitt
Governor

Dianne R. Nielson, Ph.D.
Executive Director

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October 14, 1998

Teryl Hunsaker
Tooele County Commissioner
Tooele County Courthouse
47 South Main
Tooele, UT 84074

Dear Commissioner Hunsaker:

It has come to my attention that Tooele County has entered into a cooperative law enforcement agreement with the Skull Valley Band of Goshute Indians and the Bureau of Indian Affairs. I understand that the agreement states that it will be Tooele County's responsibility to investigate, charge and incarcerate persons charged with or alleged to be in violation of offenses committed within the boundaries of the Skull Valley Indian Reservation.

The purpose of this letter is twofold. First, I would like to understand the extent of assistance that Tooele County will render for law enforcement on the Skull Valley Reservation.

1. Will such assistance change if Private Fuel Storage, LLC, successfully locates its nuclear waste storage facility on the reservation?
2. Does the coverage under this agreement extend to high level nuclear waste storage site or operation on the Skull Valley Reservation?

Second, I would like to make a request of the County to provide me with a courtesy copy of any agreement that the County enters into that may have any bearing on locating the PFS high level nuclear waste storage facility on the reservation. For example, the Cooperative Law Enforcement Agreement, signed by you as Chairman of the Tooele County Commission, is dated June 3, 1997. The State first became aware of the agreement on June 17, 1998, when PFS's attorneys produced the document during oral argument at the Nuclear Regulatory Commission in a closed session dealing with security contentions. It was represented that this agreement covered operations related to the PFS facility. However, in a recent discussion with David Bird at the Radiation Control Board meeting, I understood you to say that there is no agreement with the County regarding law enforcement covering the PFS site and operations.

October 14, 1998

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For your convenience, I have enclosed a copy of the above-referenced Cooperative Law Enforcement Agreement to this letter. It is my hope that the County and the State can work cooperatively on the issue.

Best regards,

A handwritten signature in cursive script that reads "Dianne". The signature is written in black ink and is positioned above the printed name.

Dianne R. Nielson, Ph.D.
Executive Director

enclosure

Office of
TOOELE COUNTY ATTORNEY



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December 2, 1998

Dianne R. Nielson
Executive Director
State Department of Environmental Health
168 North 1950 West
P.O. Box 144810
Salt Lake City, Utah 84114-4810



Dear Ms. Nielson:

Thank you for your letter dated October 14, 1998, regarding Tooele County's Cooperative Law Enforcement Agreement (CLEA) with the Bureau of Indian Affairs and the Skull Valley Band of Goshute Indians. Teryl Hunsaker, Commission Chair, referred it to me for response.

I do not believe Tooele County is obligated to provide law enforcement protection to Private Fuel Storage and their proposed storage site. Tooele County patrols areas as requested by Skull Valley Tribal government. If they desire to include the Private Fuel Storage site we will have to revisit the CLEA and negotiate to provide this service. At the time the CLEA was signed there was no discussion or contemplation that Private Fuel Storage would be part of the agreement. Moreover, the county has not yet entered into any agreement that has any bearing on locating the PFS storage facility on the reservation.

Sincerely,

A handwritten signature in cursive script that reads "Douglas J. Ahlstrom".

DOUGLAS J. AHLSTROM
Tooele County Attorney

cc: Tooele County Sheriff