

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	Docket No. 72-22-ISFSI
PRIVATE FUEL STORAGE, LLC)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel)	
Storage Installation))	September 29, 1998

STATE OF UTAH'S CONTENTIONS RELATING TO
THE LOW RAIL TRANSPORTATION LICENSE AMENDMENT

The Applicant submitted a significant license amendment dated August 28, 1998 to account for a proposed new rail transportation corridor and a proposed change in the location of the Rowley Junction intermodal transfer point ("ITP"). The State received a copy of the Applicant's license amendment on August 31, 1998.

The amendment describes a proposed new rail line which would originate off the Union Pacific mainline at the intersection of Interstate 80 and Low.¹ The new railroad would parallel the south side of Interstate 80 in a southeast direction for approximately 3 miles, turn due south for

¹ Low is located off Interstate 80 approximately 17 miles west of Rowley Junction. See Utah Highway map attached as Attachment 1 to NRC Staff's Response to Request for Hearing and Petition to Intervene Filed by the Confederated Tribes of the Goshute Reservation and David Pete

approximately 26 miles, then turn east for approximately 3 miles where it would terminate at the ISFSI. Environmental Report ("ER") Rev.1 at 2.1-3. The Applicant intends to construct the railroad on public lands and the Applicant has applied to the U.S. Bureau of Land Management ("BLM") for a 200 foot right-of-way to accommodate the proposed 32 mile route. ER Rev. 1 at 2.1-3, 4.4-1.

In the license amendment, the Applicant proposed a change in the location of the Rowley Junction ITP 1.8 miles to the west of the location described in the initial license application. Safety Analysis Report ("SAR"), Rev. 2 at 3.1-3. The ITP would still be located next to the Union Pacific mainline and in close proximity to Interstate 80 and the industrial salt plant. ER Rev 1 at 4.7-5 & 6. The facilities at the ITP remain the same as in the initial license application, *i.e.*, rail sidings off the Union Pacific mainline, a building housing a 150 ton gantry crane and a tractor/trailer yard. SAR Rev. 2 at 4.5-3.

The State has reviewed the license amendment and now files additional contentions based on the amendment. The States also amends the basis for admitted Contention B relating to Rowley Junction.

Contention ~~HEAVY HAUL~~⁴⁴. **The Low Rail Corridor and Fire Hazards**

CONTENTION: The Applicant's Environmental Report fails to give

adequate consideration to the potential for fire hazards and the impediment to response to wild fires associated with constructing and operating the Applicant's proposed rail line in the Low corridor.

Basis: The ER must consider the environmental effects of the proposed action. 10 CFR § 51.45(c). The ER must also address the regional environmental effects of the proposed action. 10 CFR § 72.10(b). The Applicant's proposed movement of casks by locomotive in the Low rail line corridor presents a new wildfire ignition source. This is a serious matter in an area that is prone to wildfires.

There is a history of wildfires moving south to north through Skull Valley along the eastern side of the Cedar Mountains. See Affidavit of David Schen, attached hereto as Exhibit 1. Also fires are often known to cross the Cedar Mountains from the west into the western edge of Skull Valley. *Id.* at ¶ 7. The Applicant's proposed rail corridor will run south along the eastern edge of the Cedar Mountains for a distance of 26 miles from Interstate 80 to the northwestern side of the Skull Valley Reservation. The vegetation in this area is primarily desert shrub and grass land. Vegetation includes native grasses, sage brush and Utah juniper, and introduced species such as June grass (cheat grass) and crested wheat grass. Due to frequent and recurring wild fire and a history of heavy grazing, the primary vegetation is June grass. Fuels in this plant

community dry in early June and ignite very easily. Id. at ¶ 8. There are few, if any, irrigated areas in the vicinity of the rail line that would interrupt a fire caused by the Applicant's use of the rail line. Id. at ¶ 9. Thus, construction, operation and activities associated with the rail line will introduce a new potential fire source into an area that already has a high potential for wildfires. Id. at ¶ 7.

First, various activities that will take place because of the Applicant's rail transportation system will introduce new sources of igniting wildfire. During construction of the rail line, activities such as welding, grinding of rail and the presence of fuel for the operation of machinery will present potential fire hazards. Id. at ¶ 10. Most of these activities will not cease once construction is completed because on-going track maintenance will create similar hazards. Id. When the transportation corridor is in active use, a wildfire could start, for example, from sparks caused by friction or from the train exhaust stack. A fire could also be caused from a hot brake shoe sheering off the locomotive or rail carriage wheels. Id. at ¶ 11.

The ER is woefully deficient in its discussion of fire hazards posed by the new railroad and it does ^{not} discuss, at all, the potential for starting wildfires. There is no mention of the potential for the operation of the rail line to ignite wildfires or how the Applicant will respond if it is responsible for causing a

wildfire. The sum and substance of the Applicant's discussion about wildfires appear to be a statement that to reduce the potential for fires the Applicant's rail corridor will be 40 feet wide and cleared of vegetation and the rail line will be constructed to an elevation that will be close to grade. ER Rev. 1 at 4.4-9.

It should be noted that the Applicant must rely on whatever width of right-of-way the BLM will grant it to cross public lands. Given the Applicant's plan to clear 776 acres of vegetation, there is no certainty that BLM will grant the Applicant the width it requests. *See* ER Rev. 1 at 4.4-1. Furthermore, a 40 foot wide corridor may not be sufficient to prevent sparks from being thrown beyond the cleared corridor. The ability of fire fighting equipment to cross the Applicant's rail line is discussed below.

Second, the ER fails to evaluate, or even mention, the increased risk of wildfires caused by an increase of human activity near the railroad. Presently, access to the west side of Skull Valley is poor but the railroad will be accompanied by more developed access. Usually, rail lines have an access road alongside to facilitate maintenance. In addition, improved points of access to the west side of Skull Valley may be developed during construction of the rail line. Thus, the improved access to the west side of Skull Valley may result in an increase in the occurrence of human caused fires. *Schen Affidavit at ¶ 12.*

Third, the Applicant's proposed rail line will create an impediment to

fighting wild fires. As mentioned above, current access to the west side of Skull Valley is poor. Id. at ¶ 13. Typically in this area responders use four-wheel drive vehicles and drive cross country to fight wild land fires. Hand crews may also be used but generally, heavy equipment is not used because of the damage it may cause to the fragile ecosystem. The four-wheel drive vehicles carry a water tank containing 200-300 gallons of water. The vehicles will have difficulty directly crossing the rail line. Even if the rail line is constructed close to existing grade, fire fighting vehicles will be unable to climb up the vertical grade and profile of the rail, especially given the gross weight of the vehicle and water tank and also because the vehicle will be unable to get any traction from the ballasted rail bed. Id. Thus, the rail line will cause response vehicles to detour to a constructed rail crossing instead of being able to follow a fire cross country. This is likely to significantly delay wildfire responses, thus increasing the risk that wildfires will spread.

In addition, responders to fires will be put at increased risk because of the potential for collisions with trains in the dense smoke of a range fire. Id. at ¶ 14. Furthermore, the presence of hazardous material such as spent nuclear fuel may further endanger responders as well as impede their fire fighting activities around such hazardous material because firefighters will be reluctant to pursue a wildfire in the vicinity of a train load of spent nuclear fuel casks. If

firefighters are aware that high level nuclear waste is within the perimeter of the fire they will err on the side of caution and personal safety and back off until the subject area specialist ascertains that the hazardous cargo is contained and fire fighter safety guaranteed. Id. at ¶ 15. This will be likely be the case whether or not the spent nuclear fuel in the transportation cask will be at risk if it is engulfed by a wildfire. Id. The ER fails to address these additional risks.

To be complete, the Environmental Report must address how activities in the Low rail corridor may cause the potential to ignite wildfires, what mitigation measures the Applicant intends to take, and how the presence of high level nuclear waste affects fire fighting efforts. The ER must also analyze how the 26 mile north-south rail line may impede fire fighting activities.

Contention II. Costs and effects associated with the Low Rail Corridor

Contention: The Low Corridor License Amendment does not comply with 10 CFR § 72.100(b) or NEPA, including 10 CFR § 51.45(c), and 40 CFR § 1508.25 because it fails to evaluate, quantify and analyze the costs and cumulative impacts associated with constructing and operating the rail line on the regional environment.

Basis: NRC regulations require Applicant to define the potential effects of the ISFSI on the region. In particular, 10 CFR § 72.100(b) requires an evaluation of "the effects on the regional environment resulting from

construction, operation, and decommissioning of the ISFSI...." Moreover, 10 CFR § 51.54(c) requires an analysis in the environmental report of "other benefits and costs of the proposed action." Furthermore, Council on Environmental Quality ("CEQ") regulations require that an Environmental Impact Statement consider cumulative impacts. 40 CFR § 1508.25(c).

"Cumulative impact" is defined in 40 CFR § 1508.7 as:

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

CEQ regulations further require that "cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement." *Id.* § 1508.25(a)(2).

The Low Rail Corridor is being constructed solely to move spent nuclear fuel casks from the Union Pacific mainline at the junction of Interstate 80 and Low across public lands to the Skull Valley reservation. The rail corridor has no other independent utility other than to serve the Applicant's ISFSI. Thus, the Low Rail Corridor is inextricably part of the Applicant's ISFSI project and as such must be evaluated under the criteria in 10 CFR §§ 72.100(b) and 51.54(c) and CEQ regulations.

The Low Corridor License Amendment is wholly without discussion of the direct and indirect costs or cumulative impacts associated with the construction and operation of the rail line. Rather the amendment describes only the indirect benefits of the rail line, e.g., the rail line will provide "opportunities for further Band economic development projects." ER Rev. 1 at 7.2-3.

There are numerous costs and cumulative impacts associated with the Low Rail Corridor that must be evaluated and quantified, including the following:

1. The operation of the rail line creates an increased risk of fire in an area that is prone to range fire. See Contention ^{HH} ~~HEAVY HAUL~~ above, whose basis is incorporated herewith by reference. The ER fails to quantify the costs associated with fires ignited as a result of activities occurring in the rail corridor. Nor has the Applicant evaluated the cumulative impacts that these newly introduced fire hazards pose to the Skull Valley area.
2. There is the potential that endangered, threatened and candidate endangered species may be found in the Low Corridor, e.g., Ute Ladies-Tresses, Least Chub, Spotted Frog, Peregrine Falcon, Bald Eagle and Mountain Plover ER Rev. 1, Table 2.3-2. These species, other sensitive species, and their food base may be impacted by construction activities, noise levels and operation of

the railroad. Furthermore, some wildlife species will be permanently driven out of the area either because of destruction of habitat or from noise and other activities associated with construction, operation, and maintenance of the railroad. ER Rev. 1 at 4.4-4. Noise levels from construction and operation of the railroad may also disrupt mating and breeding activities. Furthermore, the railroad may act as an artificial barrier to the traditional range of some wildlife. For example, the railroad will probably cut off winter feeding range for wild horses and it may disrupt other established wildlife migration patterns for mule deer and pronghorn antelope. *Id.* None of these costs associated with the railroad has been quantified, nor the cumulative impacts sufficiently analyzed in the ER.

3. No account has been taken of the visual impact the railroad will have on the nearby BLM Cedar Mountains Wilderness Study Area ("WSA") or other locations in Skull Valley. The Cedar Mountains WSA is located parallel to and to the west of the Applicant's rail line. See 2 Utah BLM Statewide Wilderness Final Environmental Impact Statement at "Cedar Mountains WSA" Map 2 (showing WSA boundaries) (November 1990) attached hereto as Exhibit 2. In some places the WSA boundary is less than two miles from the railroad. *Cf.* Exh. 2 and License Application, Rev. 1, Fig. 1-1. Moreover, the Applicant has not quantified the costs associated with noise levels from construction activities

and operation of the railroad on wilderness and recreational areas. The railroad will be visible from the WSA and other recreation areas in Skull Valley and noise from the operation of the rail line will be heard, thus destroying the solitary values associates with wilderness areas.

4. Clearing and grubbing activities prior to railroad construction will destroy as much as 776 acres of acres of vegetation. ER Rev. 1 at 4.4-3. This vegetation provides habitat for a variety of wildlife species. Id. The Applicant claims it will be able to revegetate a significant amount (621 acres) of vegetation destroyed during construction, with a permanent loss of 155 acres of vegetation.

Id. The area of habitat destruction is located in a sensitive, slow growing, xeric environment. Such areas, notoriously sensitive to environmental impacts, are difficult to restore. The ER is inadequate because it fails to demonstrate how the Applicant plans to carry out revegetation of 621 acres in such an sensitive and slow growing environment. Any discussion of revegetation efforts must also show where and how the Applicant will obtain access to needed water.

5. The ER states that the rail line will cross the Hastings Trail and Donner-Reed Trail. ER Rev. 1 at 2.9-3. Thus, two significant historical resources may be lost where the rail line crosses these two pioneer trails. The ER does not quantify or otherwise evaluate this loss as a cost of obtaining a license to store

spent nuclear fuel on the Skull Valley reservation.

6. The Applicant's 26 mile long north-south railroad along Skull Valley will impede recreational users and ranchers from their established ability to cross Skull Valley from east to west (or west to east). While the ER mentions that the proposed rail line will cross several roads, it is unclear whether there will be constructed rail crossings for all roads, including dirt jeep trails. Moreover, the presence of the railroad nonetheless disrupts recreational activities such as off road vehicle use and hunting and it will also disrupt ranching activities. ER Rev. 1 at 4.4-8. Once again, the ER fails to quantify the costs or evaluate the cumulative impacts associated with the railroad – this time as they relate to recreational users and ranchers.

None of the above-mentioned costs and impacts have been adequately quantified and evaluated (if at all) by the Applicant in its Environmental Report and thus the ER is deficient to meet the requirements of NEPA.

Contention B-1. License Needed for Intermodal Transfer Facility

CONTENTION: PFS's application should be rejected because it does not seek approval for receipt, transfer, and possession of spent nuclear fuel at the Rowley Junction Intermodal Transfer Point ("ITP"), in violation of 10 CFR § 72.6(c)(1), in that the Rowley Junction operation is not merely part of the transportation operation but a de facto interim spent fuel storage facility at

which PFS will receive, handle, and possess spent nuclear fuel. Because the ITP is an interim spent fuel storage facility, it is important to provide the public with the regulatory protections that are afforded by compliance with 10 CFR Part 72, including a security plan, an emergency plan, and radiation dose analyses.²

BASIS (as amended): Initially the Applicant intended to locate an intermodal transfer point at Rowley Junction and either construct a rail line along Skull Valley Road or move casks from Rowley Junction by heavy haul truck along Skull Valley Road to the ISFSI. License Application, Rev. 0 at 1-1. In its recent license amendment, the Applicant retains two alternatives for shipping casks to the ISFSI: one by rail, the other by intermodal transfer from rail to heavy haul truck. The location of the rail line has changed from Rowley Junction to Low, but the Intermodal Transfer Point remains at Rowley Junction—albeit 1.8 miles to the west of the initial site.³ For all intents and

² The wording of this contention is as admitted by the Board. LBP-98-7 at 56-58, App. A at 1. The "Basis" is amended to account for proposed changes at the ITP as a result of the Applicant's license amendment dated August 28, 1998. Contention B-1 is supported by the Declaration of Dr. Marvin Resnikoff, attached hereto as Exhibit 3.

³ Although the Low railroad is the Applicant's professed preferred alternative for transporting the casks to the ISFSI (ER Rev. 1 at 2.1-3), many things need to happen before the Applicant may build and use the railroad. For this option to be viable, the Applicant must acquire a 776 acre (*i.e.* 32 mile long 200 foot wide) right-of-way across public lands from the U.S. Bureau of Land Management ("BLM"). ER Rev. 1 at 4.4-1. This major federal action will require BLM to prepare an EIS as well as comply with other procedures under the Federal Land Policy Management Act, 43 USC §§ 1701 to 1784. Consequently, the vitality of the Rowley

purposes, the factual and legal issues raised by the State and admitted by the Board in Contention B remain unchanged.

Like the original application, the proposed ITP consists of a "rail siding off the Union Pacific Railroad mainline, a 150 ton gantry crane, and a tractor/trailer yard area." SAR Rev. 2 at 4.5-3. The crane is single-failure proof, and housed in a weather enclosure. *Id.* At the ITP, spent fuel casks will be transferred from railroad cars to heavy-haul tractor/trailer trucks for transport along Skull Valley Road to the ISFSI. *Id.* at 4.5-4. The ITP would still be located next to the Union Pacific mainline and in close proximity to Interstate 80 and the industrial salt plant. ER Rev. 1 at 2.1-3, 4.4-1.

The Applicant's operations at Rowley Junction are not merely a part of the transportation operation. Cask receipt, handling and transfer mechanisms will be the same as proposed at the originally proposed ITP. The Applicant will be receiving and handing hundreds of tons of spent nuclear fuel at a fixed location, using fixed equipment that is owned and operated by the Applicant for the purpose of facilitating the onsite storage of spent fuel at the ISFSI.

Under the current license amendment, the ITP will still receive a substantial number of spent nuclear fuel casks. On average, the Applicant

Junction ITP as an integral of the Applicant's ISFSI operation still remains, at least until completion of the BLM approval process.

expects the Rowley Junction ITP to receive two shipments per week, with each shipment consisting of 1-3 transportation casks. See letter dated September 21, 1998, with attachment, from John Donnell, Private Fuel Storage to Glenn Carpenter, BLM, attached hereto as Exhibit 4. Thus, between 100-300 casks annually will be shipped to the Rowley Junction ITP. When the shipments come into Rowley Junction, the Applicant must offload each cask from the rail car using its gantry crane located at the ITP onto a heavy haul truck for transport along Skull Valley Road. It is doubtful that a heavy haul truck could perform more than one cask shipment due to the time required to load the cask onto the truck at the ITP, the vehicle's slow speed, and the time required to be spent at the ISFSI before the truck can be released for a return shipment. See SAR Table 5.1-2.

Neither the initial application nor the recent license amendment discusses the number of heavy haul trucks that will be available to transport the casks, the mechanical reliability of these units, and their performance under all weather conditions.⁴ SAR Rev. 2 at 4.5.4.2 states that the maximum weight of the loaded shipping cask will be 142 tons and require the use of overweight trailers. The tractor/trailer is 12 feet wide and travels at "low speeds." Given

⁴ Without such an explanation, a worse case scenario should be assumed.

the special design features, size and probable costs of these units (see SAR Fig. 4.5-4), it should be assumed that the Applicant will only have one unit available to transport casks from Rowley Junction ITP to the ISFSI.

Given the operational constraints on the ITP associated with the anticipated slow speeds and long travel distances (24 miles one-way) required for heavy haul transport from the transfer point to the proposed ISFSI, the anticipated number of shipments (100 to 300 casks annually, requiring 100 to 300 one-way heavy haul trips), and the anticipated use of a public highway (with no available heavy haul routing alternatives), a queuing of casks at the intermodal transfer point awaiting heavy haul transport is apparent. During the projected lifetime of the facility a large number of casks will be transported through Rowley Junction, and at least part of the time, a cask or casks will be present at Rowley Junction, thus making Rowley Junction a storage facility for nuclear materials.

Another factor that may significantly contribute to the queuing of casks at Rowley Junction is the fact that PFS intends to return defective or contaminated casks to the originating utility. Thus, there are likely to be heavy haul trucks going in both directions, necessitating greater use of cranes and more coordination of transfer operations.

As a result, the ITP will constitute a de facto interim spent fuel storage

facility, as defined in 10 CFR § 72.3, at which PFS will receive, handle, and possess spent nuclear fuel for extended periods of time. Accordingly, PFS should not be granted a license unless it includes possession of spent nuclear fuel at the ITP.

Moreover, Part 72 licensing is necessary in order to protect the public health and safety. The ITP is stationary in nature, including the construction and installation of a facility and heavy equipment, the continuous presence of spent fuel arriving at or departing from the ITP, and the potential long-term storage of some of the fuel. Because of the stationary nature of the ITP, it is important to provide the public with the regulatory protections that are afforded by compliance with 10 CFR Part 72. For instance, PFS should have a security plan that protects the site from intruders according to NRC standards. There should also be an emergency plan to protect workers and the public in the event of an accident at the ITP. PFS should also provide assurance that the ITP is designed in a way that protects public health and safety, using appropriate structures, equipment, and protective measures. The SAR and the recent license amendment fail to address these concerns. In the absence of such measures, the ITP poses an unacceptable safety and health risk to workers and the public.

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 late-filing the two new contentions and a contention with an amended basis:

First, the State has good cause for late filing, because the license amendment on which it relies only became available when PFS provided it to the State on August 31, 1998. Since that time the State has worked with State agencies and experts in reviewing the information and developing contentions based on the amendment. During the past month, the State's time and resources have also been consumed in reviewing informal discovery material and responding the Applicant's discovery requests. The State submits that, given the need to review the material and work with experts to evaluate it and prepare contentions, and given the other competing demands of litigation, it is reasonable to submit these contentions within thirty days of receiving the material.

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. The State is represented by experienced counsel, and assisted by experts from State agencies as well as those whom the State has retained to provide expert assistance for this and other

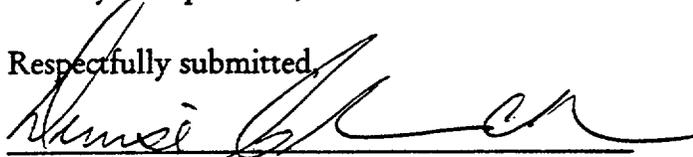
contentions. See Affidavit of David C. Schen (Exhibit 1) and Declaration of Dr. Marvin Resnikoff (Exhibit 3).

Fourth, there are no other parties who will represent the State's interests with respect to the issues raised in the above Contentions.

Finally, it is unlikely that admission of these contentions would broaden or delay the proceeding significantly, as the scope of issues submitted by the State and ruled on by the Board is quite broad already. Moreover, Contention B has already been admitted and Contention ^{HH}~~HEAVY HAUL~~ is similar to the fire issues admitted in Contention R. Moreover, other intervenors who have not yet received a copy of the license amendment will be entitled to file contentions after their review of the material. Thus, the State's filing now will not delay the proceeding. Furthermore, any delay is outweighed by the significance of this issue raised as a result of the new transportation corridor. Accordingly, the above Contentions satisfy the NRC's criteria for late consideration.

DATED this 29th day of September, 1998.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of STATE OF UTAH'S CONTENTIONS RELATING TO THE LOW RAIL TRANSPORTATION LICENSE AMENDMENT were served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 29th day of September, 1998:

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

AFFIDAVIT OF DAVID C. SCHEN

I, DAVID C. SCHEN, being first duly sworn upon oath, depose and state as follows:

1. I am employed as Ecosystem Management Coordinator at the Division of Forestry, Fire, and State Lands, Utah Department of Natural Resources, and have worked within this Division since 1971.
2. I earned a Bachelors of Science degree in Forestry in 1971, from Utah State University.
3. I worked as Area Forester (1971-1979) in the Division's Bear River Area office, where I was responsible for the fire protection program; as

the Division's Regional Manager (1979-1982) responsible for delivering fire protection services to three areas; and as Forest Stewardship Coordinator (1982-1995).

4. As Ecosystem Management Coordinator (1995 to present), my duties have included oversight of the fire management program and management of fire crews within the Division, which is responsible for fire protection services on 15 million acres of forest, range, and watershed lands within the State of Utah. I have taken part in numerous fire qualification and certification courses as part of my duties. In addition, since 1985 I have served on incident management teams which are used for fire suppression, and am qualified as operations section chief, responsible for directing fire suppression during particular incidents.

5. As part of my duties, I have reviewed the License Amendment Application dated August 28, 1998, submitted to the Nuclear Regulatory Commission by Private Fuel Storage, LLC, Applicant for an Independent Spent Fuel Storage Installation on the Skull Valley Goshute Reservation.

6. The License Amendment Application describes a new transportation route along which the Applicant proposes to transport spent

nuclear fuel by rail spur from the Union Pacific main rail line near Low, Utah to the Skull Valley Goshute Reservation. The spur is proposed to be constructed along the eastern edge of the Cedar Mountains for a distance of 26 miles.

7. In my opinion, based upon my experience and training, the License Amendment Application does not adequately address a number of fire hazard issues pertinent to this new transportation corridor (the Low rail corridor), because this area is prone to wildfires. There is a history of fires moving south to north through Skull Valley along the eastern side of the Cedar Mountains; such fires have been known to frequently cross over the Cedar Mountain from the west spreading into the western part of Skull Valley.

8. The vegetation in Skull Valley is primarily desert shrub and grass land. Fuels in this plant community dry in early June and ignite very easily. Vegetation includes native grasses, sage brush, Utah juniper, and introduced species such as June grass (cheat grass) and crested wheat grass. Due to frequent and recurring wild fire and a history of heavy grazing, the primary vegetation is June grass.

9. I am aware of only a few irrigated areas in Skull Valley, but they

are located nearby the ranches on the east side of the valley and close to the reservation. There are also some mudflats in the north end of the valley. Neither of these two types of areas are sufficient to interrupt a wildfire occurring in Skull Valley.

10. The activity associated with the construction and maintenance of the rail spur, such as welding, grinding of rail and the presence of fuel for the operation of machinery will present potential fire hazards.

11. Additionally, fires can result in sparks caused by friction or from the train exhaust stack, or from a hot brake shoe sheering off the locomotive or rail carriage wheels.

12. The rail spur may result in an increase in the occurrence of human caused fires. Rail lines typically have an access road alongside to facilitate maintenance. In this case additional or improved points of access to the west side of Skull Valley might be developed from the highway during construction of the rail line. Since the Low Corridor is proposed to cross primarily public land, the improved access on the west side is likely to result in more recreational use of the area, and thus, a greater potential for human caused fires.

13. Access to the west side of Skull Valley has always been poor for fire response vehicles and personnel. In this area responders typically use four-wheel drive vehicles and drive cross country to fight wild land fires. Hand crews may also be used but generally, heavy equipment is not used because of the damage it may cause to the fragile ecosystem. The four-wheel drive vehicles carry a water tank containing 200-300 gallons of water. The vehicles will have difficulty directly crossing the rail line. Even if the rail spur is constructed close to existing grade, fire fighting vehicles will be unable to climb up the vertical profile of the grade and rail, especially given the gross weight of the vehicle and water tank and also because the vehicle will be unable to get any traction from the ballasted rail bed.

14. Responders to fires will be put at increased risk because of the potential for collisions with trains in the dense smoke of a range fire.

15. In my opinion, if fire fighters were aware that high level nuclear waste was within the perimeter of the fire, they would err on the side of caution and personal safety. Firefighters will be reluctant to pursue a wildfire in the vicinity of a train load of spent nuclear fuel casks. They may very likely back off until a subject area specialist ascertained that the hazardous cargo was

contained and fire fighter safety was guaranteed.

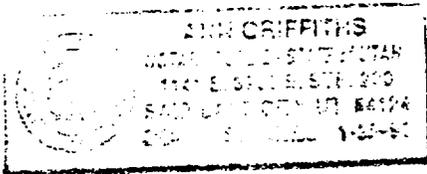
FURTHER AFFIANT SAYETH NOT.

DATED this September 29, 1998.



DAVID C. SCHEN

Voluntarily signed and sworn to before me this 29 day of September, 1998, by the signer, whose identity is personally known to me or was proven to me on satisfactory evidence.





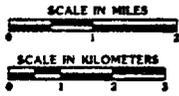
NOTARY PUBLIC
Residing at: Murray UT
My Commission expires: 1-25-99

CEDAR MOUNTAINS WSA

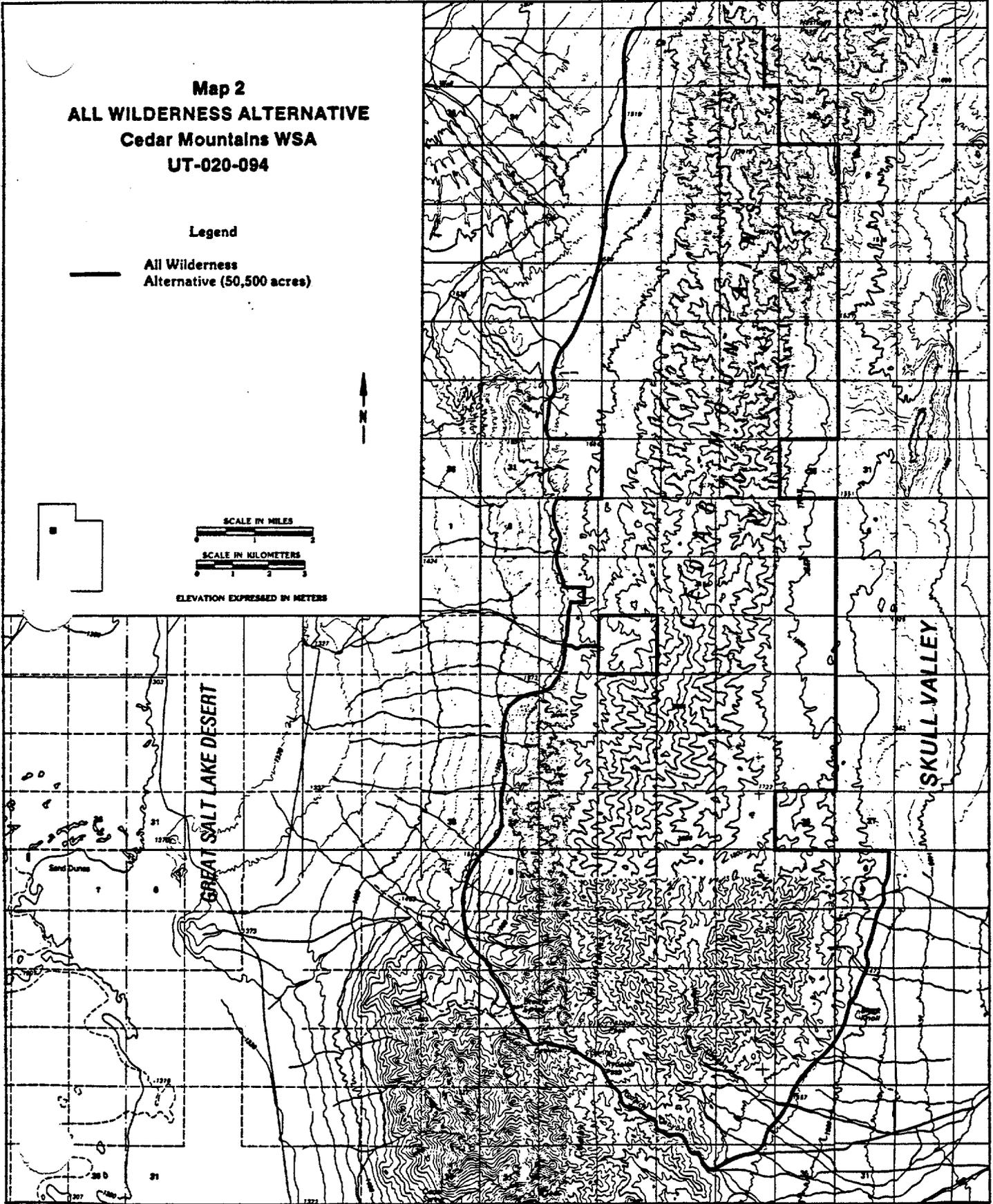
Map 2 ALL WILDERNESS ALTERNATIVE Cedar Mountains WSA UT-020-094

Legend

— All Wilderness
Alternative (50,500 acres)

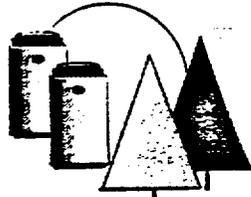


ELEVATION EXPRESSED IN METERS



R. 11 W.

R. 10 W.



Private Fuel Storage, L.L.C.

SEP 24

ENVIRONMENTAL

P.O. Box C4010, La Crosse, WI 54602-4010

Phone 303-741-7009 Fax: 303-741-7806

John L. Donnell, P.E., Project Director

September 21, 1998

Mr. Glenn Carpenter
District Manager
Bureau of Land Management
2370 South 2300 West
Salt Lake City, UT 84119

**APPLICATION FOR TRANSPORTATION ON FEDERAL LANDS
PRIVATE FUEL STORAGE FACILITY
PRIVATE FUEL STORAGE L.L.C.**

Reference: 1) Private Fuel Storage LLC letter, Parkyn to Carpenter, Application for Transportation on Federal Lands, dated August 28, 1998

Enclosed is a revised first page to the right-of-way application for the Intermodal Transfer Point that was transmitted in Reference 1. A clarification has been made for Project Description items 7 (e) and (f) in explaining the number of rail shipments per week and transportation casks per shipment. The text has been changed from "less than one rail shipment per week" to "two rail shipments on average" in 7 (e), and from "each rail shipment consists of 3 - 5 transportation casks" to "1 - 3 transportation casks" in 7 (f).

We hope that this change has not cause you any inconvenience. If you have any questions, please contact me at 303-741-7009.

Sincerely,

John L. Donnell, Project Director
Private Fuel Storage L.L.C.

Enclosure

Copy to: L. Bear
D. Allison
M. Delligatti
J. Silberg
M. Swimmer

J. Donnell
~~De~~Chancellor
D. Allison
P. Winmill

APPLICATION FOR TRANSPORTATION AND
UTILITY SYSTEMS AND FACILITIES
ON FEDERAL LANDS

FORM APPROVED
OMB NO. 1004-0060
Expires: August 31, 1998

FOR AGENCY USE ONLY

NOTE: Before completing and filing the application, the applicant should completely review this package and schedule a preapplication meeting with representatives of the agency responsible for processing the application. Each agency may have specific and unique requirements to be met in preparing and processing the application. Many times, with the help of the agency representative, the application can be completed at the preapplication meeting.

Application Number

Date Filed

1. Name and address of applicant (include zip code)

Private Fuel Storage L.L.C.
PO Box C4010
La Crosse, WI 54602-4010

2. Name, title, and address of authorized agent if different from item 1 (include zip code)

John Donnell, Project Director
PO Box 5406
Denver, CO 80217-5406

3. TELEPHONE (area code)
303-741-7009

Applicant Private Fuel Storage L.L.C.

Authorized Agent

4. As applicant are you? (check one)

- a. Individual
- b. Corporation*
- c. Partnership/Association*
- d. State Government/State Agency
- e. Local Government
- f. Federal Agency
- g. Limited Liability Corporation

5. Specify what application is for: (check one)

- a. New authorization
- b. Renewing existing authorization No.
- c. Amend existing authorization No.
- d. Assign existing authorization No.
- e. Existing use for which no authorization has been received*
- f. Other*

* If checked, provide details under item 7

* If checked, complete supplement page

6. If an individual, or partnership are you a citizen(s) of the United States? Yes No

7. Project description (describe in detail): (a) Type of system or facility, (e.g., canal, pipeline, road); (b) related structures and facilities; (c) physical specifications (Length, width, grading, etc.); (d) term of years needed; (e) time of year of use or operation; (f) Volume or amount of product to be transported; (g) duration and timing of construction; and (h) temporary work areas needed for construction (Attach additional sheets, if additional space is needed.)

- (a) The right of way (ROW) will be used to construct an intermodal transfer point (ITP) next to the Union Pacific mainline 1.8 miles West of Timpie, Utah, on a parcel of ground within the N $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T.1N., R.8W., SLBM, which is public land administered by the BLM. See attached Figure 2.1-1 drawings 0599601-EY-09 & 0599602-EY-14. The ITP is discussed in more detail in the Environmental Report (ER) at Section 3.2.1.4, "INTERMODAL TRANSFER POINT/SKULL VALLEY ROAD."
- (b) The ITP will be use as part of the transportation of spent commercial nuclear fuel to the Private Fuel Storage Facility (PFSF), a temporary spent fuel storage site. The sealed transportation casks will be transferred from rail cars to trucks at the ITP for further shipment to the PFSF via Skull Valley Road. See description of the PFSF in ER Sec. 3.2.1.2, "STORAGE FACILITY."
- (c) The ROW is approximately 9 acres of flat land located between the Union Pacific mainline and the I-80 frontage road (2 acres of Union Pacific land will also be used). The facilities will include one metal building (80 ft by 200 ft) and a 30 ft wide by 500 ft long access road connecting the ITP to an existing frontage road. The ITP also includes rail sidings, which are on Union Pacific right of way. See ER Sec. 3.2.1.4, "INTERMODAL TRANSFER POINT/SKULL VALLEY ROAD."
- (d) Term of use expected to be 50 years.
- (e) During the initial years of operation until the storage facility reaches its capacity of 4000 stored canisters, it is expected that between 100 to 200 shipments of transportation casks will be shipped to the site each year, resulting in two rail shipments on average per week being transferred to trucks at the ITP throughout the year. At the end of the storage facility's life, the 4000 canisters will be shipped from the site to the Department of Energy. See details in ER Section 3.3, "FACILITY OPERATION."
- (f) Each rail shipment consists of 1 - 3 transportation casks to be transferred to trucks. See ER Sec. 1.2, "NEED FOR THE FACILITY," for a more detailed discussion of the anticipated shipment volumes.
- (g) Construction of the ITP is scheduled to begin at the beginning of 2001 and last about 1 year. See ER Sec. 1.3, "PROPOSED PROJECT SCHEDULE."
- (h) All work will be performed within the request ROW boundaries and Union Pacific land.

Attach a map covering the area and show location of project proposal

See attached Figure 2.1-1 and drawings 0599601-EY-09 and 0599602-EY-14

9. State or Local government approval: Attached Applied for Not Required

(Continued next page)



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Committee on Commerce Hearing
Witness
Hearing Regarding: Nuclear Waste Policy
Act of 1999

Date	Subcommittee(s)	Status	Panel
03/12/99	Subcommittee on Energy & Power	Testified	Panel 1, Witness 1

See Also

[Energy](#)

[Yucca Mountain](#)

[H.R. 45](#)

Statement of The Honorable Bill
Richardson

Secretary
 U.S. Department of Energy
 1000 Independence Avenue, SW
 Washington, DC 20585

Thomas Links

[H.R. 45](#)

Thank you, Mr. Chairman, and Members of the Subcommittee, for the opportunity to appear before you today to discuss alternatives for the management of spent nuclear fuel from civilian nuclear power plants until we are able to permanently dispose of it in a geologic repository.

The Administration continues to believe that the overriding goal of the Federal Government's high-level radioactive waste management policy should be the establishment of a permanent, geologic repository. Such a repository is essential not only to dispose of commercial spent fuel, but also to dispose of: spent fuel and high-level waste from the cleanup of the Department's nuclear weapons complex, unique commercial spent fuel transferred to the Department (such as Three Mile Island and Fort St. Vrain spent fuel), and spent fuel and high-level waste associated with the Navy's nuclear-powered fleet. A permanent repository is also important to our non-proliferation efforts to demonstrate alternatives to reprocessing, important for the disposition of foreign research reactor fuel being returned to the U.S., and an option for disposition of surplus plutonium from nuclear weapons stockpiles.

YUCCA MOUNTAIN

Before addressing the proposed legislation -- H.R. 45, the Nuclear Waste Policy Act of 1999 --and an alternative approach, I would like to review quickly how this

Administration has moved the Civilian Radioactive Waste Management Program forward in the last several years. In many of the earlier years it appeared that there was little progress towards siting a repository. In 1993, however, the Department broke ground and began drilling the miles of tunnel needed for scientific investigations, completing the five-mile loop in 1997. We also drilled a cross-drift at the horizon of the potential repository area. Reaching these areas, we are now able to verify model predictions that could not be confirmed without being inside the mountain. We are conducting three different thermal tests to evaluate how the heat of the waste could impact the surrounding rock and the repository structure. We are also now able to study water movement through the mountain. The verification of our models with real data from the mountain reduces the uncertainties in our assessment of whether Yucca Mountain will work as a permanent repository.

We are reaching the conclusion of our site characterization effort at Yucca Mountain. In December 1998, I submitted the Viability Assessment of a Repository at Yucca Mountain to the Congress and to the President. This subcommittee received testimony on the Viability Assessment in February when the Acting Director, Lake Barrett, appeared before you.

The Viability Assessment revealed no technical "showstoppers," but it did identify additional scientific and technical work needed before a decision can be made whether to recommend Yucca Mountain as the site for a repository. Consequently, we have asked for close to a \$50 million increase in the FY2000 budget for site characterization activities to address these concerns - a 17.4 per cent increase. We will study the presence and movement of water through the repository block, the effects of water movement on the waste package, and the effects of heat from the decay of radioactive materials inside the waste packages on the site's geologic and hydrologic behavior.

It is important to underscore that the scientific and technical work being carried out at Yucca Mountain represents cutting-edge science on a first-of-a-kind project. The United States is at the forefront in developing a geologic repository, and the decisions we make will have impacts throughout the international community.

We are on target to decide in 2001 whether Yucca Mountain is suitable to be the location of a repository and to submit a license application to the U.S. Nuclear Regulatory Commission in 2002. In short, since 1993, although we were

not able to make up for time lost during the early years of the program, we have maintained steady progress and met the key milestones of our Program Plan.

CONTRACTUAL OBLIGATIONS FOR SPENT FUEL MANAGEMENT

I want to assure you that I am very conscious of the Department's contractual obligation to take spent fuel from utilities beginning in 1998. Notwithstanding the progress being made at Yucca Mountain, the nuclear utility industry and state utility commissions are understandably concerned about the Department's inability to accept spent fuel on the schedule anticipated at the time of enactment of the Nuclear Waste Policy Act of 1982. The inventory of spent fuel in the United States continues to grow. Spent fuel from nuclear power reactors is now stored at 72 commercial reactor sites in 33 states. We know some have already reached their capacity and many are reaching their capacity. Each year reactor sites will require additional on-site storage either in pools or with dry cask storage. There are currently 10 utilities with dry storage facilities in 8 states, and many utilities are concerned about the costs and physical and regulatory limitations on their continued storage of spent fuel at their reactor sites.

As you are aware, the Department is in litigation with a number of utilities related to the Department's contractual obligation to take spent fuel from utilities. The U.S. Circuit Court of Appeals for the District of Columbia has found that the Department has a contractual obligation to commence spent fuel disposal no later than January 31, 1998. The Court, however, has twice rejected the request from utilities for an order directing the Department to physically move spent fuel from their sites and found that the contracts the Department has with the utilities provide a potentially adequate mechanism for relief. Pursuant to the ruling of the Court of Appeals, the Department announced that it would process claims presented to it under the contract, and we have entered into settlement discussions with several utilities.

In separate litigation, ten utilities have filed claims for damages. In the first three cases the Court found that the Department had breached its contracts, and the Department is now engaged in determining the amount of damages owed to these utilities. The other Court of Claims cases are in very preliminary stages with potentially years of litigation still ahead. As indicated by the Justice Department in its testimony before this Subcommittee on February 10, the damages being sought by the ten utilities before the Court of Claims could

total \$8.5 billion. This is more than the existing balance in the Nuclear Waste Fund and is roughly 85 percent of the remaining cost to open the repository in 2010. Potential claims from other utilities could be many times this amount.

The Justice Department also stated that a decision on whether payments for these judgments would come out of the Nuclear Waste Fund is still pending. Should it become necessary to use the Fund to pay these claims, the Department's ability to complete the repository program would be in jeopardy. Ironically, claims against the Fund could also require a significant increase in the fee charged utilities to maintain the program, and could trigger yet another round of litigation and claims.

I also want to point out that several utilities have come and talked to us about their specific problems and proposed potential solutions. Some of these utilities have asked the Department to take title to their spent fuel onsite at their reactors.

ADMINISTRATION VIEWS OF H.R. 45

The Administration opposes H.R. 45, which would require the Department to begin accepting waste at an interim storage facility in Nevada no later than June 30, 2003. Making a decision now to put interim storage in Nevada is not the right approach. It simply does not make sense to transport spent fuel across country to Yucca Mountain until we have completed the scientific work and know where a final repository will be. Spent fuel is currently being stored safely at reactor sites, under U.S. Nuclear Regulatory Commission oversight, and can continue to be stored safely until a repository is open.

From a budgetary standpoint, enactment of H.R. 45 could also have several negative impacts on the repository program. First, it will add the cost of construction of an interim storage facility to the program budget, and it will advance the costs of transportation much earlier than now planned. Between now and the year 2010, we estimate that H.R. 45 would add approximately \$1.5 billion to the total cost of the civilian radioactive waste program because of the additional cost of the interim storage facility. It would also require expending \$2-3 billion dollars for transportation prior to knowing whether Yucca Mountain will be the site for a permanent repository.

In addition to these new budgetary burdens, and perhaps more significantly, H.R. 45 would not provide the Department or the Federal Government relief from the billions of dollars of potential damages likely to be awarded through litigation. By

imposing new statutorily defined obligations and deadlines, H.R. 45 would also create the potential for new litigation if the Department were unable to meet these requirements or if it had the effect of altering the existing utility contracts.

As I stated in my introductory remarks, it is critical to many national goals that we develop the capability to permanently dispose of high-level radioactive waste and spent fuel. We believe H.R. 45 could seriously jeopardize our ability to carry out this effort. For these reasons, and because of the central fact that we have not completed the work necessary to make a decision to recommend Yucca Mountain as a permanent repository site, the Administration remains unequivocally opposed to the enactment of legislation requiring construction and operation of an interim storage facility at Yucca Mountain, and I would recommend a veto of any such legislation.

PROPOSAL TO TAKE TITLE ON-SITE

As the Subcommittee has requested, I would like to discuss the Department taking legal title to utilities' spent fuel at reactor sites until a repository is opened. Let me emphasize first that the Department is only at the beginning of the process of analyzing this approach and discussing it with the utility industry and other interested parties. However, it appears to be a practical option that would provide a near-term solution to utilities' spent fuel storage needs and would be relatively easy to implement. The chairman's invitation letter raised a number of specific questions such as how it would be funded, when it would be implemented, who would own and regulate these sites, and how it would affect the Department's contractual liability. These are all very important questions that the Department is in the process of answering, and many of those answers will depend upon the specific needs of individual utilities.

Let me discuss briefly some of the concepts we believe are appropriate to consider as part of that discussion.

Conceptually, the Department could offer to take title to spent fuel consistent with our schedule for acceptance provided under its contracts with utilities. By taking title to the spent fuel, the Department could either assume financial responsibility for the utility's continued management of the spent fuel or possibly assume possession and responsibility for management of the spent fuel. We assume that utilities may have differing opinions on these alternatives, based upon their individual circumstance. For example, a utility with a permanently shut down reactor and no ongoing nuclear operations may want the Department to assume complete

responsibility for the management of the spent fuel and storage facilities, while other utilities with operating reactors may prefer the Department only to take financial responsibility.

As part of an agreement to take title, the Department could agree either to reimburse the utility for the incremental cost of storing that spent fuel or to take a more direct role in the management of the spent fuel and storage facilities. We believe we could implement this proposal by modifying the existing contracts with utilities. We would still have to address a range of issues, including liability, financial and operational responsibilities.

While we want to hear from utilities and other interested parties on how taking title to spent fuel could most efficiently be implemented, our initial thoughts are that a continued reliance on the utilities to manage their spent fuel, rather than the Department, would be most practical and least intrusive on utility operations. Again, the purpose of initiating this dialogue is to better understand what the utilities think and to obtain other relevant perspectives on the issue. Under any approach, the Nuclear Regulatory Commission would continue to provide regulatory oversight of spent fuel storage activities at sites.

In return for the Department taking title and financial responsibility for the spent fuel, the Department would expect the utilities to terminate their litigation and claims; something that H.R. 45 does not address. This would end the uncertainty that continuing the litigation brings to all parties and ensure the continuance of a repository program. The potential cost of current litigation damages already places the repository program in jeopardy. If the Department is unable to proceed with a permanent solution, future costs could be even greater. Consequently, the cost to take title appears to be minimal compared to the potential cost of damages, which as I noted above could end up being assessed against the Nuclear Waste Fund.

The cost of taking title onsite would depend on the final arrangements worked out with utilities for spent fuel management. We have not done a detailed cost estimate. Our rough estimate is that it could cost up to \$2 to \$3 billion between now and 2010. That cost estimate assumes that we would take title of the fuel in accordance with our contract acceptance schedule. There may also be ways in which these costs can be reduced. For example, one of the major costs of continued onsite storage is the cost of dry storage casks. It may be possible to consider federal purchase or lease of these

casks. Here again, we need to hear from the industry on their views on how we can best address these issues.

Funding for the DOE to take title on-site could be achieved through a variety of means, ranging from deferral of ongoing spent fuel disposal fee payments, to direct reimbursement for costs incurred, to advance payments for anticipated costs. As with other program costs, payments could come from a mix of Nuclear Waste Fund balances, current payments, or appropriated funds. Again, we need to hear from the industry on their views of payment and funding options.

PROGRAM FUNDING REQUIREMENTS

As we continue to discuss and develop the specifics of a take title alternative to centralized interim storage, we need to take a serious look at how such a proposal would be paid for without imposing undue burdens on either utility ratepayers or the taxpayers. I also want to analyze further proposals that would ensure that the revenues raised by the nuclear waste fee remain available to complete the job of safe management and disposal of nuclear waste.

Both the Administration and the Congress have been aware for some time that the overall constraints of the federal budget process have the potential to limit the availability of funding for the nuclear waste program in the out years. Therefore, I would like to work together with the Congress to assure the repository program continues to be adequately funded. If the Yucca Mountain site is found suitable, it is critical that funding is available after 2001 to meet our obligations as program demands increase and to ensure our ability to meet a date certain for disposal of waste.

In exploring any funding alternatives, I want to preserve the two important objectives I mentioned above : (1) that we do not impose undue burdens on either utility ratepayers or the taxpayers; and (2) that the revenues raised by the nuclear waste fee remain available to complete the job.

CONCLUSION

Mr. Chairman, we are reaching the conclusion of our site characterization effort. We know technical questions about the site remain. We need to finish our scientific and technical work. Ultimately, it is not only the Department of Energy, but also the Nuclear Regulatory Commission (NRC) that will need to pass judgment on whether a repository can be constructed and operated safely. Therefore, in completing the remaining work at the site, we need to ensure that we have an adequate

technical basis to support a rigorous NRC licensing process. This will require a continued and sustained effort over the next couple of years. However, the completion of the characterization effort is in sight.

I know that you and many other Members of Congress are frustrated because we have not accepted spent fuel and want to be responsive to utilities and state regulatory commissions that have had to deal with additional spent fuel management responsibilities. I want to reiterate the Administration's view that enactment of interim storage legislation is not the solution. Shipping 10,000 metric tons of spent fuel to Yucca Mountain, as proposed in H.R. 45, is inconsistent with the process and principles established for making a decision on the permanent disposal of our Nation's spent nuclear fuel.

I ask this Subcommittee not to proceed with adoption of interim storage legislation and to work with me to fashion a more practical solution. This legislation would place significant additional financial, programmatic, and legal liabilities on the Department's civilian nuclear waste repository program. It would prejudice the selection of Yucca Mountain. And it would not resolve the billions of dollars in claims arising out of the delay in accepting utility spent fuel. We need to address the utilities' spent fuel problems, and I believe that we are at a point where there is a genuine opportunity to explore alternatives.

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