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RELATED CORRESPONDENCE

DOCKETED
USNRC

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Private Fuel Storage, a Limited Liability
Company;

(Independent Spent Fuel Storage
Installation).

Docket No. 72-22
ASLBP No. 97-732-02-
ISFSI
March 8, 2001

**OHNGO GAUDADEH DEVIA'S (OGD) SUPPLEMENTAL RESPONSES TO
APPLICANT'S FIRST SET OF DISCOVERY REQUESTS
AND INITIAL RESPONSES TO APPLICANT'S SECOND
SET OF DISCOVERY REQUESTS.**

Ohngo Gaudadeh Devia (OGD) files the following supplemental responses to Applicant's (Private Fuel Storage L.L.C. (PFS)) First Set of Interrogatories and Document Requests directed to OGD and to PFS's Second Set of Formal Discovery Requests to Intervenor OGD:

I. Supplemental Responses to First Set of Requests:

INTERROGATORY NO. 2. Please provide the name, address, profession, employer, area of professional expertise, and educational and scientific experience of each person whom OGD expects to call as a witness or expert witness at the hearing and the subject matter about which each witness or expert witness will testify. For each expert witness please include a list of all publications authored by the witness within the preceding ten years and a listing of any other cases in which the witness has testified as an expert at a trial, hearing or by deposition within the preceding four years. Please describe the subject matter on which each of the witnesses is expected to testify at the hearing by detailing the facts and opinions to which each witness is expected to testify, including a summary of the grounds for each opinion, and identify the documents (including all pertinent pages or parts thereof), data or other information which each witness has reviewed and considered, or is expected to consider or to rely on for his or her testimony.

Response: OGD will call Margene Bullcreek as a witness in support of its contention.

Ms. Bullcreek is a member of the Skull Valley Band of Goshute Indians and will testify that the facility will have disparate adverse impacts on the Band. OGD has yet to identify the additional witnesses it will call to testify regarding its contention. As soon as possible and as soon as it knows, OGD will supplement this interrogatory.

Template = SECY-035

SECY-02

INTERROGATORY NO. 6. Identify and fully describe each of the specific environmental impacts of materials and activities at, or emanating from, the facilities enumerated in Contention OGD O¹ that OGD asserts would be cumulative with the environmental impacts of the construction, operation, or decommissioning of the PFS ISFSI, including the specific magnitude of the asserted impacts at the Skull Valley Reservation from the enumerated facilities and the ISFSI, the scientific and technical basis for each asserted specific impact at the Skull Valley Reservation, and the cumulative nature of the impacts.

In its initial reply to this interrogatory, OGD stated that it

has not yet finished its analysis of these specific and cumulative impacts. It will be assisted in doing so by the information contained in the environmental analyses associated with this project which it is the burden of the Staff to produce. When OGD completes its analysis, it will update this interrogatory accordingly.

The Staff has not yet completed the Final EIS for the proposed facility. In comments on draft EIS, OGD stated, *inter alia*, that the Staff's cumulative impact analysis with regard to the facility was insufficient. OGD is hoping that the Staff will heed these comments and complete a more thorough analysis. In any case, particularly if the Staff fails to produce an adequate analysis in the FEIS, OGD is planning on completing its own cumulative impact analysis, but has not yet secured the funding or the expert to do so. As soon as possible and as soon as has the relevant information, OGD will inform PFS of the details of this analysis and the name of the person who will perform it.

Other Interrogatories and Requests for Documents: OGD has no further updates to its responses to Applicant's First Set of Discovery Requests at this time. However, as soon as any relevant information becomes available, OGD will promptly disclose it to PFS.

¹ Those facilities are: 1) Dugway Proving Ground, 2) Desert Chemical Depot (including CAMDS and the TOCDF chemical weapons incinerators), 3) Tooele Army Depot, North Area, 4) Envirocare mixed waste and low-level waste landfill, 5) Clive hazardous waste storage facility, 6) Aptus hazardous waste incinerator, and 7) Grassy Mountain hazardous waste landfill.

II. Responses to Second Set of Discovery Requests.

A. Requests for Admission.

Request for Admission No. 1: Do you admit that the only pathway by which emissions from the PFS facility would be cumulative with emissions from the neighboring facilities enumerated in OGD O is air transport?

Response: OGD currently does not have the knowledge to respond to this request for admission. However, when it secures an expert to complete cumulative impact analysis for the proposed facility, it will be in a position to respond and will do so at the time.

Request for Admission No. 2: Do you admit that the prevailing wind patterns in the Skull Valley are either north to south or south to north?

Response: OGD currently does not have the knowledge to respond to this request for admission. However, when it secures an expert to complete cumulative impact analysis for the proposed facility, it will be in a position to respond and will do so at the time.

Request for Admission No. 3: Do you admit that in order to contribute to a cumulative impact, a facility must have some impact in the first place?

Response: No. Events, such as the construction and operation of a facility, can have collectively synergistic or cumulative impacts. Thus, an event could have an unquantifiable impact in isolation while it could have a cumulative or synergistic impact when combined with another event.

B. Interrogatories

Interrogatory No. 8: In OGD's comments on the DEIS, OGD asserts that a majority of the Band does not support the PFS ISFSI. If OGD contends that its assertion falls within the scope of Contention OGD O, specifically identify the bases for the assertion; in any event specify the reason(s) for disagreeing with the DEIS conclusion that the PFS project would result in a net increase in Band members living on the Reservation (*see, e.g.*, page 9-36 of the DEIS).

Response: OGD's basis for this statement is the personal experience of Margene Bullcreek and other Band members. Ms. Bullcreek and other Band members detailed much of this experience in affidavits filed with the United States District Court for the District of Utah in State of Utah v. United States Department of Interior, Case No. 2:98 CV 380 K. Other evidence submitted relative to this case provides a further basis for OGD's claim. Finally, much of the evidence that serves as a basis for this claim is in the possession of Mr. Leon Bear and/or his organization and/or the applicant.

The reasons for which OGD disagrees with the assertion that the project would result in a net gain for Band members are that: 1) individual members of the Band have been, are being and apparently will be denied economic, social and other benefits, and thereby suffering disparate adverse impacts, as a result of their real and/or perceived opposition to the PFS facility or as a result of other issues relevant to the facility; 2) the operation and construction of the proposed facility will have disproportionate adverse impacts on the Skull Valley Band, including its cultural integrity, the perpetuation of its language and traditions, and its relationship to its lands; 3) the operation and construction of the proposed facility will have disproportionate adverse impacts on the Skull Valley Band members because of the individual and cumulative adverse impacts of the facility; 4) the Skull Valley Band is not a voluntary host community; and 5) the analysis in the Draft EIS is inadequate.

Interrogatory No. 9: Identify and fully explain each specific respect in which OGD claims that the Draft Environmental Impact Statement does not adequately consider any of the environmental justice claims previously raised by OGD in Contention OGD O as admitted by the Board.

The Draft EIS is deficient because it fails to analyze adequately or at all the fact that: 1) individual members of the Band have been, are being and apparently will be denied economic,

social and other benefits, and thereby suffering disparate adverse impacts, as a result of their real and/or perceived opposition to the PFS facility or as a result of other issues relevant to the facility; 2) the operation and construction of the proposed facility will have disproportionate adverse impacts on the Skull Valley Band, including its cultural integrity, the perpetuation of its language and traditions and its relationship to its lands; 3) the operation and construction of the proposed facility will have disproportionate adverse impacts on the Skull Valley Band members because of the individual and cumulative adverse impacts of the facility; and, 4) the Skull Valley Band is not a voluntary host community.

C. Document Requests

Document Request No. 1: Any documents prepared by OGD or its consultants to educate tribal members or the public in general about interim storage of spent fuel in general or the PFS ISFSI in particular.

Other than those it has already produced, OGD has no documents that responsive to this request.

Document Request No. 2: All documents prepared in response to an OGD flyer, entitled *Opposition to High Level Waste Storage at Skull Valley Goshute Reservation*, which identifies seven activities recommended for those that support OGD's cause. The flyer was produced in response to the last PFS document request as part of the documents supplied to Utah by OGD. (pages UT-23905 to UT-23908).

Other than those it has already produced, OGD has no documents that responsive to this request.

Document Request No. 3: Any document that relates to the Skull Valley Band or PFS ISFSI the conclusions expressed in previously provided documents (*State of Nevada Socioeconomic Studies, Biannual Report 1993-1995*, pages 91-103 and 108-115 [UT 13958-13970 and 13975-13982]) regarding stigma or impacts on Indian Tribes in the area around the proposed Yucca Mountain geologic nuclear waste repository.

Other than those it has already produced, OGD has no documents that responsive to this request.

Document Request No. 4: In its comments on the DEIS, supra note 2, OGD alleges instances of improper treatment of Band members by the Skull Valley Band government related to the lease with PFS and related to the transfer of lease funds. If OGD claims that its allegations fall within the scope of OGD O, provide all documents related to the allegations, including but not limited to 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.

Most documents responsive to this request are in the possession of Mr. Leon Bear and/or his organization and/or the applicant. Other relevant documents have been filed in as evidence in State of Utah v. United States Department of Interior, Case No. 2:98 CV 380 K, in which the applicant is a party. Other than those it has already produced, OGD has no documents that responsive to this request.

Document Request No. 5: In its comments on the DEIS, supra note 2, OGD claims that the Band government does not have, or has coerced, the support of Band members for the PFS ISFSI. If OGD asserts that its claim falls within the scope of OGD O, provide all documents which support or are related to the claim.

Most documents responsive to this request are in the possession of Mr. Leon Bear and/or his organization and/or the applicant. Other relevant documents have been filed in as evidence in State of Utah v. United States Department of Interior, Case No. 2:98 CV 380 K, in which the applicant is a party. Other than those it has already produced, OGD has no documents that responsive to this request.

Document Request No. 6: All documents related to the differences among and differing impacts on those Band members living on the Reservation and those living off the Reservation, including but not limited to differing world views and differing attitudes toward and support for the PFS ISFSI.

Other than those it has already produced, OGD has no documents that responsive to this request.

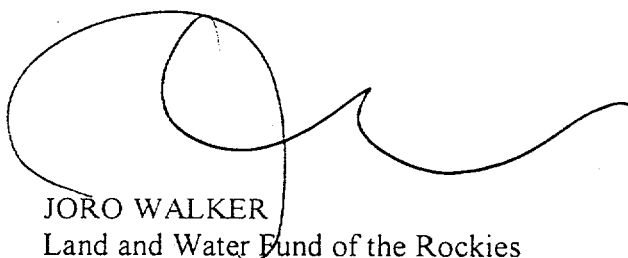
Document Request No. 7: All documents relating to OGD's claim that emissions from neighboring facilities will be cumulative with emissions from PFS during construction or operation to the extent asserted in this contention as admitted by the Board.

Other than those it has already produced, OGD has no documents that responsive to this request.

Document Request No. 8: All documents, data or other information related to the claims made by OGD within the scope of OGD O that environmental justice has been inadequately addressed in the PFS Environmental Report or the DEIS.

Other than those it has already produced, OGD has no documents that responsive to this request.

DATED March 8, 2001 (International Women's Day).

A handwritten signature in black ink, appearing to read 'Joro Walker', with a large, stylized initial 'J' and a long, sweeping tail.

JORO WALKER
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