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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

May 17, 2001

By Electronic Filing and U.S. Mail

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Office of the Secretary of the Commission
U. S. Nuclear Regulatory Commission
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Rockville, MD 20852-2738
Attn: Docketing & Services Branch

Re: Private Fuel Storage – Docket No. 72-22 – ASLBP No. 97-732-02

To the Secretary of the Commission:

Today, Private Fuel Storage (“PFS”) is submitting its Motion for Protective Order Restricting Scope of Continued Deposition of Leon D. Bear OGD Contention O – Environmental Justice. PFS is filing with its motion the transcript of the May 3, 2001 deposition of Leon D. Bear. The portion of the deposition transcript marked “CONFIDENTIAL” contains confidential commercial and financial information related to the financial affairs of the Skull Valley Band of Goshute Indians. That portion of the transcript also contains information concerning PFS lease payments to the Band which have previously been identified as PFS confidential commercial and financial information with respect to testimony and exhibits filed by PFS (and other parties) for Utah Contention E and related testimony given at the PFS licensing hearing in Salt Lake City on June 20-22 and June 27, 2000. Therefore, PFS and the Skull Valley Band request that the NRC treat the portion of the deposition transcript that is marked “CONFIDENTIAL” as confidential under 10 C.F.R. § 2.790. The reasons for the request are set forth in the affidavit of John D. Parkyn, dated May 15, 2000, which PFS filed in conjunction with PFS’s original pre-filed testimony and Exhibits for Utah Contention E on May 15, 2000 as well as a declaration of Leon D. Bear (who is currently not available) that PFS will file with the Commission upon Chairman Bear’s return to his office.

If you have any questions, please contact me at (202) 663-8429.

Sincerely,



Paul A. Gaukler

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SECY-02

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May 17, 2001
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Document #: 1116005 v.1

May 17, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
)
PRIVATE FUEL STORAGE L.L.C.) Docket No. 72-22
)
(Private Fuel Storage Facility)) ASLBP No. 97-732-02-ISFSI

**APPLICANT'S MOTION FOR PROTECTIVE ORDER RESTRICTING SCOPE
OF DEPOSITION OGD CONTENTION O – ENVIRONMENTAL JUSTICE**

Applicant Private Fuel Storage, L.L.C. (“Applicant” or “PFS”), as lead counsel for Ohngo Gaudadeh Devia (“OGD”) Contention O—Environmental Justice (“OGD O”), moves for a Protective Order pursuant to 10 C.F.R. § 2.740(c) restricting the scope of the deposition of Skull Valley Band Chairman Leon D. Bear (and any other deponents) by OGD to matters within the scope of OGD O. A protective order is warranted to bar discovery far afield from OGD O and to protect Mr. Bear (and other deponents) from annoyance, embarrassment, oppression or undue burden or expense during the deposition. During the May 3, 2001 deposition of Chairman Bear, counsel for OGD pursued lines of inquiry on internal tribal affairs far removed from environmental impacts. For example, OGD counsel stated that “a major element of our contention is that PFS money is being used inappropriately; and to the extent that that is internal [to the Skull Valley Band financial transactions], then that’s part of the contention.” Tr. at 129.¹ OGD stated their intent is “proving our contention of bias against opponents of the PFS project.” Tr. at

¹ References to the transcript refer to the Joint Deposition of Leon Bear and John Donnell of May 3, 2001. (Exhibit 1) (Exhibit 1A is the non-confidential portion of the transcript and Exhibit 1B is the confidential portion of the transcript.)

236. Counsel further challenged Mr. Bear's position as Chairman of the Band. *Id.* at 4-5, 26-30, 167-168, 230-35. Rather than a focused inquiry into potential disparate environmental impacts within the scope of OGD O as admitted by the Board, OGD is seeking to conduct an irrelevant inquiry into internal Band governance and financial matters and to use this proceeding in its campaign to oust Mr. Bear as Band Chairman.

I. BACKGROUND

Leon D. Bear is Chairman of the Skull Valley Band of Goshute Indians (the Band). On May 28, 1999, at the end of the general discovery period, OGD noticed a deposition of Chairman Bear and moved for an extension of discovery in order to take his deposition. The Board quashed the deposition, stating that OGD had failed to adequately justify its asserted inability to take the deposition during the three-month general discovery period and that OGD could depose Chairman Bear during the later period for discovery for environmental contentions. However, "that period is intended to provide a limited opportunity closer to the actual hearing for focused inquiry. ... The Board, however, would strongly suggest that OGD make arrangements to conduct such a deposition early in the discovery window so that any problems and objections can be dealt with at the outset rather than the close of that additional period."²

The limited discovery period ran from January 16 to March 15, 2001 and, upon a joint request, was extended to April 30, 2001 for deposition discovery only.³ On April 20, 2001, OGD noticed depositions of Chairman Bear and PFS Chairman John Parkyn, both for April 27, 2001. On April 30, 2001, OGD filed a joint request for an extension of time to conduct depositions of PFS witnesses, including Chairman Bear, which were re-

² Board Memorandum and Order (Ruling on Motions to Extend Discovery and to Quash Deposition Notice) of June 14, 1999 at pp. 6-7 (emphasis added).

³ Board Memorandum and Order (General Schedule Revision) of February 22, 2001; Board Memorandum and Order (Granting Group III Contentions Deposition Schedule Extensions) of March 5, 2001.

scheduled for May 3, 2001 and were expected to be completed in one day. The Board granted the request, provided that depositions were completed by May 11, 2001.⁴

On May 2, 2001, counsel for OGD (Steadman & Sheply, LC) filed suit in Utah Federal Court alleging, in part, a conspiracy to discriminate against OGD members and challenging the election of Chairman Bear and the validity of the Band's lease with PFS.⁵

On May 3, 2001, OGD deposed Chairman Bear and John Donnell, PFS Project Director. In large part, the deposition focused on material irrelevant to OGD O. For example, despite repeated objections from Applicant's counsel, OGD's counsel continued to delve into resolutions for Band governance; Tr. at 19-21, 42-54, 169-200; the process for budgeting Band resources, even that income not derived from PFS; Tr. at 102-109, 116-119, 121-142, 173-8; Chairman Bear's feelings about OGD; Tr. at 144-5, 153-160; and whether Chairman Bear is chair of the Band; Tr. at 4-5, 26-30, 167-8, 230-235. By letter of May 8, 2001, counsel for OGD stated, in part, that OGD considered the deposition of Chairman Bear to be incomplete and vaguely identified the topics remaining to be addressed. OGD stated its intent to continue its earlier irrelevant inquiry, purportedly to address Chairman Bear's compensation, bias, competence and veracity as a witness.⁶ As PFS shows below, however, that does not allow OGD to continue down an unending path of inquiry into collateral matters.⁷ Therefore, PFS moves for an order to preclude discovery unrelated to OGD O.

⁴ Board Memorandum and Order (Granting Deposition Extension Request) of May 2, 2000.

⁵ Complaint, Blackbear v. Norton, Case No. 2:01CV00317C (D.C. Utah, 2001). (Exhibit 2). Counsel for OGD also represented OGD members and other plaintiffs in a 1999 suit against the Department of the Interior challenging, *inter alia*, the validity of the Band's lease with PFS. Complaint, Blackbear v. Babbitt, Case No. 2:99CV0156K (D.C. Utah, 1999).

⁶ On May 11, 2001, OGD filed a request on behalf of itself and PFS to complete the deposition of Chairman Bear during the last week of May. The request identified that it was subject to the Board ruling on a PFS motion for a protective order to be filed later (this motion).

⁷ OGD Response to PFS Motion for Entry of Order to Compel (May 14, 2001) at 3-4 identifies paragraphs of Exhibit 2 that OGD claims are relevant, thus showing the sweeping scope of the planned inquiry.

II. LEGAL BASIS

A. Protective Order

Upon good cause shown, the presiding officer may make a protective order to limit the scope of discovery if justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense. 10 C.F.R. § 2.740(c)(4). An order limiting discovery to matters relevant to a contention is appropriate to limit burden and, where pertinent, protect privacy interests.⁸ An order may limit the scope of questioning at a deposition to relevant matters. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-83-64, 18 NRC 766, 771-72 (1983). It may also bar discovery intended for use outside the case in question.⁹ A protective order is warranted here to focus inquiry along relevant lines and to preclude undue burden on PFS and its witness at this late stage of this proceeding.¹⁰

A protective order is further warranted for Chairman Bear in deference to the sovereignty of the Band.¹¹ U.S. Government policy is to deal with federally recognized Indian tribes on a government-to-government relationship.¹² In the same vein, federal courts have repeatedly refused to be drawn into intra-tribal disputes.¹³ Therefore, irrele-

⁸ Memorandum and Order (Ruling on Contention Utah Z Discovery Production Requests) (Nov. 9, 2000) at 4-5 (citing Yankee Atomic Electric Co. (Yankee Nuclear Power Station), LBP-99-27, 50 NRC 45, 55 (1999)); see Illinois Power Co. (Clinton Power Station, Unit 1), LBP-81-61, 17 NRC 1735, 1740 (1981) (privacy); see also Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-9 (1983) (interrogatories outside scope of intervenor's contentions deemed burdensome).

⁹ See Sequoyah Fuels Corp. (Gore, Oklahoma Site Decontamination and Decommissioning Fund), LBP-95-5, 41 NRC 253, 260 (1995). A protective order may even in appropriate circumstances bar discovery of material that may be relevant. See, e.g., Farnsworth v. Proctor and Gamble, 758 F.2d 1545 (11th Cir. 1985).

¹⁰ The generally applicable procedures of 10 C.F.R. § 2.740a(d), to record evidence challenged on relevancy grounds subject to objection fail to protect Chairman Bear and PFS from OGD's abuse of the discovery process through repeated and lengthy excursions beyond the scope of OGD O.

¹¹ Band sovereignty is recognized by the U.S. Government. See Executive Order 1465 (1912), Executive Order 2699 (1917) and Executive Order 2809 (1918) cited in CHARLES J. KAPPLER, INDIAN AFFAIRS LAWS AND TREATIES, Volume III, 691 and Volume IV, 1049 (GPO 1929)

¹² See, e.g., Executive Order 13175, 65 Fed. Reg. 67,249 (2000).

¹³ See, e.g., Tillett v. Lujan, 931 F.2d 636,642 (10th Cir. 1991) ("[t]o the extent Tillett sought to invoke the jurisdiction of the federal court to decide issues concerning the [tribal council] members' alleged failure to

Footnote continued on next page

vant inquiry into the Band's internal tribal affairs is particularly offensive in this case.

This limited discovery window was authorized by the Board for focused inquiry on environmental issues. OGD should not be allowed to go on a fishing expedition to support its federal court suit or to antagonize Chairman Bear on the pretext of investigating his suitability as a witness in this proceeding. Whether or not OGD's inquiries might be properly raised in another forum, they clearly have no place here.

B. The Scope of Discovery is Limited by the Scope of the Contention

The scope of discovery is defined by the subject matter of the contention to which it is related. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), LBP-88-25, 28 NRC 394, 396-7 (1988).¹⁴ An intervenor must state explicitly the issues it seeks to litigate in its contention and it may not expand them by raising new issues for the first time in discovery. Id.

OGD O, as admitted, asserts that "the license application poses undue risk to public health and safety because it fails to address environmental justice issues." LBP-98-7, 47 NRC at 233, recons. granted in part and denied in part, LBP-98-10, 47 NRC 288, 298-99 (1998). In admitting the contention, the Board ruled that the scope of the contention is "limited to the disparate impact matters outlined in bases one, five, and six." LBP-98-7, 47 NRC at 233.¹⁵ Basis one of OGD O asserts that the PFSF will have negative economic and sociological impacts on the native community of Goshute Indians who live near the site. Basis five of OGD O asserts that the PFS Environmental Report

Footnote continued from previous page

acknowledge their recall and the misuse of tribal funds, the district court properly concluded that such matters were 'clearly intratribal disputes' for which Tillett would have to seek tribal remedies" (footnote and citation omitted); Runs After v. United States, 766 F.2d 347 (8th Cir. 1985) (federal court had no jurisdiction in an appeal concerning the validity of tribal resolutions relating to a tribal election).

¹⁴ See also Board Memorandum and Order (Denying Motion to Compel) (Dec. 3, 1999).

¹⁵ See also Board Memorandum and Order (Denying Motion to Compel) (Dec. 3, 1999) at 2

(ER) fails to consider cumulative impacts from enumerated facilities in Tooele County that may be suffered by members of the Skull Valley Goshutes.¹⁶ Basis six of OGD O asserts that the ER fails to address the disparate impacts that the facility will have on property values in and around the Skull Valley Goshute community. LBP-98-7, 47 NRC at 233; PFS Ans. at 591-93;¹⁷ see Contentions at 26-34.¹⁸ Thus, by its terms, OGD O is limited to analysis of disparate high and adverse environmental effects on minority and low-income communities.¹⁹ The NRC's goal with respect to the environmental justice "disparate impact" analysis is to assess adverse environmental effects "on low-income and minority communities that become apparent only by considering factors peculiar to those communities."²⁰

III. DISCUSSION

A. The Protective Order Should Bar Inquiry into Internal Tribal Affairs To Protect Against Undue Burden, Annoyance and Embarrassment

OGD has improperly attempted to interrogate Chairman Bear to support assertions—irrelevant to OGD O—that the PFS project has had harmful impacts on the intra-Band political process,²¹ that the Band "has not properly considered or approved the pur-

¹⁶ The Board specifically limited the scope of OGD O Part 5 to consideration of impacts from Dugway Proving Ground, Deseret Chemical Depot, Tooele Army Depot, Envirocare Mixed Waste storage facility, APTUS Hazardous Waste Incinerator, and Grassy Mountain Hazardous Waste Landfill. LBP-98-10, 47 NRC at 298-99, 301.

¹⁷ Applicant's Answer to Petitioners' Contentions (Dec. 24, 1997) ("PFS Ans.") (summarizing the bases of the contention).

¹⁸ Ohngo Gaudadeh Devia's Contentions Regarding the Materials License Application of Private Fuel Storage in an Independent Spent Fuel Storage Installation (Nov. 24, 1997) ("Contentions").

¹⁹ The scope of OGD O is limited by the literal terms of the contention and its bases. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 & n.11 (1988).

²⁰ Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 36 (1998). The Commission has stated that the executive order "created no new legal rights or remedies; accordingly, it imposed no legal requirements upon the Commission." Id. at 35-36 (emphasis added). The purpose of the executive order was only to underscore applicable provisions of existing law, here NEPA. Id. at 36. Thus, the only impacts cognizable within the scope of OGD O are those that are also ordinarily cognizable in NRC proceedings under NEPA.

²¹ See Second Additional Response to PFS (Renewed) Motion to Compel (May 4, 2001) at 4.

ported lease agreement,” and that PFS has conducted “improper dealings with and support of unauthorized persons in usurping illegitimate [sic] power, leading to corruption and disparate adverse impacts.” OGD Response to PFS Motion for Entry of Order to Compel (May 14, 2001) (“OGD 3rd Resp.”) at 3-4. Inquiry into these issues should be barred, in that these political concerns about Band governance are not environmental impacts subject to analysis under NEPA. Hence they are irrelevant to OGD O. OGD’s deposition questions appear calculated to burden, harass and embarrass Chairman Bear and perhaps to provide information for OGD’s counsel to use in their new federal lawsuit, hence distorting the evidentiary record in this proceeding and creating an undue burden on PFS.²² Indeed, OGD counsel focused large parts of the deposition on irrelevant matters of Band governance, Band internal budget allocations, and purported discrimination by Chairman Bear against OGD principals. He inquired into Chairman Bear’s election and opinions about OGD principals, which may be related to the allegations in the May 2 lawsuit but are not relevant to OGD O.

Further such inquiry should be prohibited as irrelevant for either of two reasons. First, political disputes and impacts on the political process are not environmental impacts within the ambit of NEPA. Second, distribution of benefits within the Band is an internal tribal political matter, unrelated to the impact on the community as a whole that is the subject of the NRC’s NEPA environmental justice analysis.

First, political disputes and abstract, intangible effects on political processes are not cognizable under NEPA. The Supreme Court has held that “NEPA does not require the agency to assess every impact or effect of its proposed action, but only the impact or

²² In response to a PFS motion to compel answers to discovery, OGD cited numerous paragraphs in the federal court complaint (Exh. 2) that are clearly outside the scope of OGD O. See OGD 3rd Resp. at 3-4 (citing Exh. 2 ¶¶ 1, 30, 33, 35, 42-45, 72, 74).

effect on the environment.” People Against Nuclear Energy v. Metropolitan Edison Co., 460 U.S. 766, 772 (1983). “[A]lthough NEPA states its goals in sweeping terms of human health and welfare, these goals are ends that Congress has chosen to pursue by means of protecting the physical environment.” Id. at 773. Thus, to be cognizable under NEPA, there must be “a reasonably close causal relationship between a change in the physical environment and the effect at issue.” Id. at 774.

Here, the asserted effects of PFS dealings with the Band on the Band’s internal political process are simply too far removed from changes in the physical environment to be cognizable under NEPA. NEPA was not “intended to give citizens a general opportunity to air their policy objections to proposed federal actions. The political process, and not NEPA, provides the appropriate forum in which to air policy disagreements.” Id. at 777 (emphasis added).²³ Therefore, inquiry into Band governance issues that OGD asserts would arise from the project are outside the scope of NEPA and should be barred.

Second, the issues into which OGD seeks to inquire are outside the scope of environmental justice. OGD O is assertedly based on Executive Order 12898, which directs that each Federal agency “shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects . . . on minority populations and low income populations in the United States.” Executive Order No. 12898, 3 C.F.R. 859 (1994), quoted in LBP-98-7, 47 NRC at 233. The NRC’s goal with respect to environmental justice “disparate impact” analysis is to assess adverse effects “on low-income and minority communities

²³ Moreover, couching policy disagreement or political disputes in terms of alleged psychological impact does not bring the impact within the ambit of NEPA. Id. at 777-78. “It would be extraordinarily difficult for agencies to differentiate between ‘genuine’ claims of psychological health damage and claims that are grounded solely in disagreement with a democratically adopted policy” and NEPA does not require them to do so. Id. at 778.

that become apparent only by considering factors peculiar to those communities.” CLI-98-13, 48 NRC at 36.

The asserted disputes within the Band regarding the PFS project, impacts on the intra-Band political process, and the potential use or distribution of money received by the Band from PFS²⁴ are not within the scope of OGD O. Environmental justice, and thus OGD O, concerns adverse impacts on “low-income and minority communities.” CLI-98-13, 48 NRC at 36 (emphasis added). Disputes over or the distribution of economic benefits within the Band do not constitute impacts on the relevant community as a whole, and thus they lie outside the scope of environmental justice concerns and OGD O. Therefore, OGD inquiry into intra-Band political disputes and the distribution of funds within the Band should be barred.

B. Alleged Witness Bias Does Not Obviate the Need for a Protective Order

This limited discovery window was authorized by the Board for focused inquiry on environmental issues. OGD has asserted a need to inquire into Chairman Bear’s compensation, bias, competence and veracity as a witness. See, e.g., Tr. at 145-146. Extensive inquiry into these collateral matters should be precluded, as Chairman Bear is listed as a PFS witness only for environmental justice matters. OGD has not justified conducting an unending, far-reaching inquiry into matters not within the scope of OGD O in an effort to probe Chairman Bear’s bias and veracity. Its logic is fatally flawed for it would allow a never ending series of questions on potentially innumerable collateral topics not concerned with the substantive dispute at hand. Justice requires that being named as a

²⁴ See, e.g., 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 (Mar. 8, 2001) at 4 (“OGD Supp. Resp.”) (asserting that “individual members of the Band . . . will be denied economic . . . benefits . . . as a result of their real and/or perceived opposition to the PFS facility”).

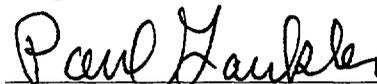
witness to an NRC proceeding for limited subjects should not expose Chairman Bear to a burdensome and lengthy inquiry into collateral matters.²⁵

Additionally, to the extent that OGD is allowed to inquire into matters relevant to OGD O on Chairman Bear's veracity or bias, it has had ample opportunity to do so and in fact, those questions were asked and answered in the May 3 deposition. For example, Chairman Bear has said he receives no payment from PFS. Tr. at 151. Chairman Bear has explained actions taken in response to an OGD rally on the Reservation and associated environmental damage. Tr. at 144-145, 153-158. Further inquiry is unnecessary, duplicative and repetitive;²⁶ Chairman Bear should be protected from this undue burden.

IV. CONCLUSION

For the foregoing reasons, the Board should grant a protective order restricting the scope of deposition questions to matters within the scope of OGD O, specifically, without limitation, barring further questioning regarding Band governance or internal Band financial matters such as the distribution of income from PFS lease payments.

Respectfully submitted,



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Counsel for Private Fuel Storage L.L.C.

Dated: May 17, 2001

²⁵ See, e.g., Miller v. Regents of the Univ. of Colorado, 1999 U.S. App. LEXIS 16712, *31-*32 (10th Cir. 1999) (upholding a protective order limiting discovery to relevant material based on the burden outweighing the likely benefit).

²⁶ Other questions asked and answered probing Chairman Bear's bias and veracity include Tr. at 18, 22, 110-119, 125-128, 135-136, 138-142, 191-200, 202-207, 209-213, 228.

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
PRIVATE FUEL STORAGE L.L.C.)	Docket No. 72-22
)	
(Private Fuel Storage Facility))	ASLBP No. 97-732-02-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Motion for Protective Order Restricting Scope of Deposition, OGD Contention O – Environmental Justice and Exhibits 1⁺ and 2 were served on the persons listed below (unless otherwise noted) by electronic mail with conforming copies by U.S. mail, first class postage prepaid, this 17th day of May 2001.

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⁺ Service of the confidential portion of the Deposition Transcript (Exhibit 1B) is limited to the three Licensing Board members, the Office of the Secretary, the NRC Staff, the Office of Commission Appellate Adjudication, and Duncan Steadman, Esq.

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Paul A. Gaukler

EXHIBIT 1A:

**Joint Deposition Transcript of
Leon Bear and John Donnell**

(Confidential Portion Redacted)

CONDENSED TRANSCRIPT

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket No. 72-22
)	
Private Fuel Storage, L.L.C.)	ASLPB No. 97-732-02-ISFSI
)	(Utah Contention DD)
)	
(Private Fuel Storage Facility))	Joint Deposition of:
)	Leon Bear and John Donnell
)	
)	

CONFIDENTIAL PORTIONS REDACTED

May 3, 2001 - 9:35 a.m.

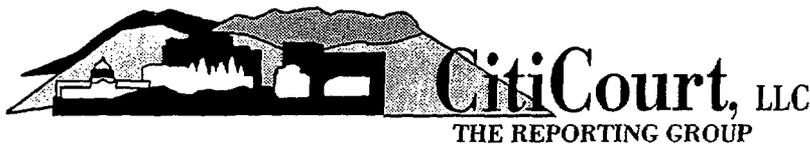
Location: Heber Wells Building

160 East 300 South, #500

Salt Lake City, Utah 84111

Reporter: Diana Kent, RPR

Notary Public in and for the State of Utah



50 South Main, Suite 920
Salt Lake City, Utah 84144

Private Fuel Storage
Joint Depositin of Leon Bear and John Donnell * May 3, 2001

<p>SHEET 1 PAGE 1</p> <p style="text-align: center;">UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION BEFORE THE ATOMIC SAFETY AND LICENSING BOARD</p> <p>In the Matter of) Private Fuel Storage, L.L.C.) (Private Fuel Storage Facility))</p> <p style="margin-left: 150px;">Docket No. 72-22 ASLFB No. 97-732-02-ISFSI (Utah Contention DD) Joint Deposition of: Leon Bear and John Donnell</p> <p style="text-align: center;">CONFIDENTIAL PORTION - PAGES 113-142 May 3, 2001 - 9:35 a.m. Location: Heber Wells Building 160 East 300 South, #500 Salt Lake City, Utah 84111 Reporter: Diana Kent, RPR Notary Public in and for the State of Utah</p>	<p style="text-align: right;">PAGE 3</p> <p style="text-align: right;">3</p> <p style="text-align: center;">E X H I B I T S</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 85%;">EXHIBIT NO.</th> <th style="width: 10%;">PAGE</th> </tr> </thead> <tbody> <tr><td>1</td><td></td><td></td></tr> <tr><td>2</td><td></td><td></td></tr> <tr><td>3</td><td>1 Environmental Impact Statement with Cover Letter</td><td>7</td></tr> <tr><td>4</td><td></td><td></td></tr> <tr><td>5</td><td>2 Resolution No. 79-08</td><td>162</td></tr> <tr><td>6</td><td></td><td></td></tr> <tr><td>7</td><td>3 Resolution No. 89-12</td><td>162</td></tr> <tr><td>8</td><td></td><td></td></tr> <tr><td>9</td><td>4 Resolution No. 90-09</td><td>162</td></tr> <tr><td>10</td><td></td><td></td></tr> <tr><td>11</td><td>5 Resolution No. 91-04 OR</td><td>162</td></tr> <tr><td>12</td><td></td><td></td></tr> <tr><td>13</td><td>6 Resolution No. 97-05B</td><td>165</td></tr> <tr><td>14</td><td></td><td></td></tr> <tr><td>15</td><td>7 Resolution Attachment No. 97-12A(1)</td><td>165</td></tr> <tr><td>16</td><td></td><td></td></tr> <tr><td>17</td><td>8 Resolution No. 97-12A</td><td>165</td></tr> <tr><td>18</td><td></td><td></td></tr> <tr><td>19</td><td></td><td></td></tr> <tr><td>20</td><td></td><td></td></tr> <tr><td>21</td><td></td><td></td></tr> <tr><td>22</td><td></td><td></td></tr> <tr><td>23</td><td></td><td></td></tr> <tr><td>24</td><td></td><td></td></tr> <tr><td>25</td><td></td><td></td></tr> </tbody> </table> <p style="text-align: center;">-oOo-</p>		EXHIBIT NO.	PAGE	1			2			3	1 Environmental Impact Statement with Cover Letter	7	4			5	2 Resolution No. 79-08	162	6			7	3 Resolution No. 89-12	162	8			9	4 Resolution No. 90-09	162	10			11	5 Resolution No. 91-04 OR	162	12			13	6 Resolution No. 97-05B	165	14			15	7 Resolution Attachment No. 97-12A(1)	165	16			17	8 Resolution No. 97-12A	165	18			19			20			21			22			23			24			25		
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<p style="text-align: right;">PAGE 2</p> <p style="text-align: right;">2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>FOR THE APPLICANT: Jay Silberg, Esq. Shaw Pittman 2300 N Street, NW Washington, D.C. 20037-1128 (202) 663-8304</p> <p>FOR THE BULLCREEKS: Duncan F. Steadman, Esq. Samuel E. Shepley, Esq. Steadman & Shepley 540 South 300 West Payson, Utah 84651 (801) 465-0703</p> <p>ALSO PRESENT: Connie S. Nakahara, Esq. Assistant Attorney General 160 East 300 South, #500 Salt Lake City, Utah 84114</p> <p>Margene Bullcreek David Bullcreek</p> <p style="text-align: center;">-oOo-</p> <p style="text-align: center;">I N D E X</p> <p>EXAMINATION Mr. Steadman</p> <p style="text-align: right;">PAGE 4</p> <p style="text-align: center;">-oOo-</p>	<p style="text-align: right;">PAGE 4</p> <p style="text-align: right;">4</p> <p>May 3, 2001 9:35 a.m.</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p style="text-align: center;">LEON BEAR and JOHN DONNELL, called as witnesses, having been duly sworn, were examined and testified as follows:</p> <p style="text-align: center;">E X A M I N A T I O N</p> <p>BY MR. STEADMAN:</p> <p>Q. I guess by way of preliminaries, I'm going to start with Leon just for a minute. Leon, can you identify yourself for the reporter so she will know who you are and your position?</p> <p>MR. BEAR: My name is Leon D. Bear. I'm the chairman of the Band of Skull Valley bank of Goshute Indians.</p> <p>Q. Preliminary matter, are you aware, Mr. Bear, that some members of the tribe don't believe that you are properly the chairman of the tribe?</p> <p>MR. BEAR: No.</p> <p>Q. So you have no knowledge of that whatsoever?</p> <p>MR. BEAR: No.</p> <p>Q. Are you aware that some members of the Band don't believe you have authority to have been negotiating with PFS and been involved in the NRC</p>																																																																														

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1 proceedings?

2 MR. BEAR: No.

3 Q. I just want to make sure that the record
4 reflects today that we aren't doing anything during this
5 deposition to acknowledge your position as chairman of
6 the Skull Valley Band or acknowledge your authority.
7 I'm not going to raise this topic on a continuing basis
8 because that would be burdensome; so in asking you
9 questions and information about the Band and whatever,
10 in doing that we are not waiving OGD's rights to contest
11 your position of authority. Is that understood?

12 MR. BEAR: Yes.

13 Q. And that is acceptable to you, Mr. Silberg?

14 MR. SILBERG: That's fine.

15 Q. Do you have an attorney representing you
16 here today?

17 MR. BEAR: No.

18 Q. Okay.

19 MR. SILBERG: The attorney who would
20 have been here is unable to get here because of family
21 issues. He is moving his parents from California by
22 plane today, so he couldn't be here.

23 Q. So what attorney would that have been?

24 MR. SILBERG: Well, I'm not going to
25 disclose who the attorneys were at this point, but there

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1 was an attorney that could have been here but was unable
2 to. But we are willing to go ahead.

3 MR. SHEPLEY: Was he representing the
4 Band or Leon?

5 MR. SILBERG: You'll have to ask Leon.
6 I don't think this is relevant for this point. Leon
7 just said that he doesn't have an attorney here. I'm
8 representing PFS.

9 Q. Do you feel comfortable proceeding without
10 having an attorney to represent you or the Band?

11 MR. BEAR: Yes.

12 Q. Have you consulted with an attorney about
13 this deposition?

14 MR. BEAR: Yes.

15 Q. And may I ask who you consulted with?

16 MR. BEAR: No.

17 Q. Please tell me who you consulted with in
18 preparing for the deposition.

19 MR. BEAR: No.

20 Q. May I ask the basis for your refusal to
21 answer that question?

22 MR. BEAR: I believe that it's the
23 attorney that said it is irrelevant.

24 Q. Okay. Accepting your right to say it is
25 irrelevant, I would still direct you to answer the

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1 question.

2 MR. SILBERG: He doesn't have to answer
3 it if he chooses not to, and it would be attorney
4 privilege as to who he is getting his advice from.

5 Q. Well, I'd like to know. Did the attorney
6 you talked to represent you or the Band?

7 MR. BEAR: I can't answer that, no.

8 Q. No?

9 MR. BEAR: No.

10 Q. You won't answer that?

11 MR. BEAR: No.

12 Q. And are you looking to Mr. Silberg to
13 protect your legal rights and give you advice today?

14 MR. BEAR: Advice, yes.

15 Q. Okay. If we can go off the record for a
16 minute.

17 (Discussion off the record and
18 EXHIBIT-1 WAS MARKED.)

19 Q. To John Donnell, can you identify yourself
20 and your position for the record?

21 MR. DONNELL: Yes, my name is John L.
22 Donnell. I'm the PFS project director.

23 Q. And who are you employed by?

24 MR. DONNELL: I am employed by Stone
25 Webster, Incorporated and I am a full-time project

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1 director for PFS from Stone and Webster.

2 Q. What projects do you direct?

3 MR. DONNELL: With regard to PFS?

4 Q. Yes.

5 MR. DONNELL: The entire project. I am
6 responsible for the technical and licensing activities
7 for Private Fuel Storage.

8 Q. So the Skull Valley facility is the project
9 that you are managing?

10 MR. DONNELL: That's right.

11 Q. Okay. I would like to show each of you a
12 copy of what has been marked as Exhibit 1.

13 MR. DONNELL: Let me add one more
14 comment to the past one. As a Stone and Webster project
15 manager I have other work that I am responsible for. I
16 do not manage other projects other than Private Fuel
17 Storage, to make that clear.

18 Q. And you said you were a full-time project
19 manager. So you are not full-time on the PFS project?

20 MR. DONNELL: I am full-time on Private
21 Fuel Storage under contract from Stone and Webster.

22 Q. Then clarify your last clarification.

23 MR. DONNELL: Within Stone and Webster
24 I am responsible for all the nuclear work executed in
25 the Denver office for Stone and Webster, but my

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1 assignment for Private Fuel Storage is full-time;
2 therefore I have delegated the management
3 responsibilities of the other projects to other people.
4 So I am full-time on Private Fuel Storage.

5 Q. So other than possible oversight on the rest
6 of the projects, your full-time job is Private Fuel
7 Storage?

8 MR. DONNELL: Yes.

9 Q. Okay. Thank you. Are you gentlemen
10 familiar with the exhibit that I just gave you?

11 MR. DONNELL: Yes.

12 Q. It's a letter from Private Fuel Storage to
13 the Office of Nuclear Material Safety, a cover letter by
14 John D. Parkyn, and attached to it is a letter signed by
15 Leon D. Bear of the Executive Committee, and attached to
16 that is an 11-page Skull Valley Band of Goshute
17 responses.

18 MR. BEAR: Yes.

19 MR. DONNELL: Yes.

20 MR. SILBERG: Are these our copies to
21 mark up?

22 (Discussion off the record.)

23 Q. Leon, can you give me a synopsis of your
24 involvement in this document?

25 MR. BEAR: Yes. The Band was asked

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1 questions to put into this to be part of -- well, to put
2 into this Environmental Impact Statement.

3 Q. Okay. So did you prepare this letter and
4 the 11-page exhibit, the letter that bears your
5 signature and --

6 MR. BEAR: The letter was prepared by
7 me and the exhibits were a combination of work.

8 Q. Are you familiar with this packet?

9 MR. BEAR: Yes.

10 MR. SILBERG: I'm sorry? With this
11 what?

12 Q. With this packet.

13 MR. SILBERG: Okay.

14 Q. Would you change the answers, anything in
15 this packet, from what you said in it today? Would the
16 answers be different today?

17 MR. BEAR: Yes.

18 Q. Would you like to tell me what answers would
19 be different?

20 MR. BEAR: The figures pertaining to
21 the enrollments and --

22 Q. If you want to go to the pages where those
23 are reflected.

24 MR. BEAR: Okay.

25 MR. SILBERG: You may just have to go

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1 through this carefully.

2 Q. Do you want to go through it?

3 MR. SILBERG: Look at each sentence,
4 each section.

5 Q. We may have to go through it page by page.

6 MR. BEAR: The changes I would make
7 would be due to the time frames, from '99 to 2001.

8 Q. And as we go through this document in a few
9 minutes, can you make sure, if I don't ask you a
10 specific question about a change, that you will identify
11 it as we go through?

12 MR. BEAR: That's not my job. I mean,
13 this is your deposition.

14 Q. Okay. Then we can do that now. What are
15 the changes that you would make?

16 MR. BEAR: Just the enrollment.

17 MR. SILBERG: Before we do that. You
18 mean the changes to make it accurate as of today as
19 opposed to the changes that would have made it accurate
20 as of the date of the document?

21 Q. My first question is was it accurate when he
22 signed it and I think he testified --

23 MR. BEAR: Yes.

24 Q. And the second one --

25 MR. BEAR: To my knowledge, yes.

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1 Q. And if he submitted it today would it still
2 be accurate?

3 MR. SILBERG: As of today.

4 Q. And his question was there would be changes.
5 And I'm saying can you identify the changes for me,
6 please.

7 MR. SILBERG: Let's go through sentence
8 by sentence.

9 MR. BEAR: May I ask a question?

10 Q. Yes.

11 MR. BEAR: In my capacity, am I being
12 disposed (sic) as a Tribal member or the chairman of the
13 tribe?

14 MR. SHEPLEY: As the author.

15 MR. BEAR: As the author of this? As
16 the chairman, then.

17 Q. I'm deposing you as the author of this
18 document.

19 MR. BEAR: As the chair.

20 Q. We agreed at the front, we are not going to
21 say you are not the chair every time we talk to you.

22 MR. BEAR: I want to make sure I
23 understand.

24 Q. If you feel your answer would be different
25 as the chair than as an individual or a Tribal member,

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1 make sure you reflect those differences. I'm not aware
2 that there would be a different answer there.

3 MR. BEAR: Okay. Just asking. Thank
4 you. The enrollment as of today is not 119.

5 Q. What page are you?

6 MR. BEAR: On Page 2. It is 112.
7 There is no longer 30 members living on the reservation.
8 There's only about 15.

9 MR. BEAR: It says here --

10 MR. SILBERG: What about the six? It
11 says six over the age of 18.

12 MR. BEAR: Yes. Two adult members from
13 the reservation are students; that's no longer true.

14 Q. Are there any students?

15 MR. BEAR: I don't think there's any
16 adult members.

17 MR. SILBERG: Is this number six; six
18 of these are over the age of 18? Is that still correct?

19 Q. If I can, since we are just getting started,
20 John, as we are going through this if you could look
21 through it, as well, and if there's something there you
22 would change, if you'll let us know as we go through.

23 MR. DONNELL: I will.

24 MR. BEAR: Six of these members are
25 over 18. There's approximately 12 that are. There's no

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1 longer six. There's a little bit more. And the
2 sentence where it says, "And the other Band members from
3 the reservation are employed at the Tekoi facility,"
4 that is no longer true.

5 Q. How many are now employed at Tekoi?

6 MR. BEAR: None.

7 Q. Okay.

8 MR. BEAR: The second paragraph,
9 "Approximately 50 percent of the enrolled membership
10 living off the reservation have expressed interest in
11 returning," there's a little bit more now. Probably
12 about 65 percent have expressed an interest.

13 Q. Okay.

14 MR. BEAR: And the third paragraph, it
15 says, "Until 1995 about 90 percent of the Band's income
16 of fund programs came from the lease," that is no
17 longer.

18 MR. SILBERG: That statement is still
19 true until 1995.

20 MR. BEAR: Okay, yeah. I see what you
21 are saying. That's fine, then.

22 MR. SILBERG: But this sentence -

23 MR. BEAR: This lease has been renewed,
24 but the scale of activities has reduced significantly.
25 We don't have a lease any longer.

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1 Q. Okay.

2 MR. BEAR: On Page 4, it says,
3 "Approximately 10 percent of the enrolled membership of
4 the Band have two or four year degrees from post-
5 secondary educations," that is a little higher now.
6 Probably about 15 percent in the past couple of years.

7 Q. Where is that on page 4?

8 MR. BEAR: On the bottom --

9 MR. SILBERG: Next-to-the-last line.

10 Q. That would be 15 percent, you said?

11 MR. BEAR: Approximately 15 percent.

12 Q. Okay.

13 MR. BEAR: On the -- where it says
14 "Response" on the first paragraph, it says, "About 17
15 individuals are noted as having incomes below the
16 poverty level."

17 Q. Yes.

18 MR. BEAR: I think that would be a
19 little lower because of the -- we don't have 17 adult
20 members out there right now. It would be less. I don't
21 know how much. I don't know the figures and what the
22 income level is right now. On (b), "50 percent of the
23 enrolled members living off the reservation have
24 expressed interest in returning," like I say, it's a
25 little higher.

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1 MR. SILBERG: That's on page 5.

2 Q. And that was the --

3 MR. BEAR: It's 65 percent.

4 Q. Okay.

5 MR. BEAR: One term here under (a) on
6 the same page, it says, "Band governance activities in
7 terms of a yearly General Council meeting, that is a
8 bi-annual General Council.

9 MR. SILBERG: By "bi-annual" do you
10 mean twice a year?

11 MR. DONNELL: Twice a year.

12 MR. SILBERG: Because I always get
13 confused whether --

14 Q. Semi-annual is twice a year and bi-annual is
15 every other year. Is that correct?

16 MR. SILBERG: Yeah.

17 MR. BEAR: Then semi-annual.

18 Q. We all get confused by the terms, so I
19 wanted to get clarification. Thank you, Jay.

20 MR. BEAR: On the sixth page, the first
21 paragraph, according to the U.S. Census Bureau, as of
22 today there's only 15 but I don't know if that's
23 relevant on this paragraph.

24 Q. That refers to what happened in 1990 so I
25 presume you wouldn't change that?

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1 MR. BEAR: We will just leave that.
2 Q. Okay. Thank you.
3 MR. BEAR: I would just leave that.
4 That's fine. The question was on the first paragraph,
5 Today, four males and one female have income producing
6 employment," I would just leave that. That would be
7 just left. I don't think there's too much of a change
8 there.
9 MR. BEAR: Under second paragraph,
10 "Three volunteer staff members operate the store," there
11 are only two. So it would be one Tribal member and one
12 nonTribal member married to a Tribal member.
13 Q. So the one nonTribal member who lives nearby
14 is not there --
15 MR. BEAR: He lives on the reservation.
16 The nonTribal member.
17 Q. But before you identified three and the
18 third one is the one you are striking?
19 MR. BEAR: Right. Of course, as of
20 today the third paragraph on the same thing is no
21 longer, since that's not in operation anymore.
22 Q. So you would strike the entire last
23 paragraph?
24 MR. BEAR: Yes.
25 Q. On Page 6?

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1 MR. BEAR: Yes.
2 Q. Okay.
3 (Discussion off the record.)
4 Q. Okay. I guess I should back up and do some
5 preliminaries. You understand that we are here today to
6 depose you, take your testimony on, among other things,
7 this document that you submitted?
8 MR. BEAR: Yes.
9 Q. Is there any reason that you can't
10 truthfully and honestly answer any questions today? Are
11 you on any medication or is there any other problem that
12 would keep you from being able to participate in the
13 deposition fully and completely?
14 MR. BEAR: Not as far as medication or
15 my physical health goes, no.
16 Q. Is there anything else we should know that
17 would interfere with your ability to participate in this
18 deposition appropriately?
19 MR. BEAR: As far as the document goes,
20 there's not. But the tribe has passed a confidentiality
21 resolution that inhibits me to talk about certain items.
22 Q. Do you have a copy of that confidentiality
23 resolution with you?
24 MR. BEAR: I don't, no. It's a Tribal
25 document. It's not public.

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1 Q. Okay. And who is it in particular that you
2 object to seeing that document? Do you mind if Mr.
3 Silberg sees that document or another Tribal document?
4 MR. BEAR: It's a Tribal document.
5 Q. Is there a basis upon which that document is
6 available to Mr. Silberg?
7 MR. BEAR: No.
8 Q. Is there any basis under which that document
9 is available to PFS?
10 MR. BEAR: Only the basis that it's a
11 Tribal document and the General Council has to approve
12 any Tribal resolutions.
13 Q. Has the General Council ever approved PFS
14 ever seeing any of these resolutions?
15 MR. BEAR: No.
16 Q. So you haven't shared some of these
17 documents with PFS?
18 MR. BEAR: No.
19 Q. Would you share them with PFS if PFS signed
20 a confidentiality agreement?
21 MR. BEAR: That would be up to the
22 General Council.
23 Q. And when will the General Council have an
24 opportunity to decide that next?
25 MR. BEAR: In August of 2001.

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1 Q. So there's no way that you are willing to
2 share any of those documents with Mr. Silberg or PFS, no
3 matter what he signs today; is that correct?
4 MR. BEAR: Yes.
5 Q. Okay. Are you free to discuss that
6 resolution at all; when it came about and where it came
7 about?
8 MR. BEAR: No.
9 MR. SILBERG: I don't think any of
10 those questions are relevant to the deposition, which is
11 supposed to be information on the OGDO contention. And
12 I'm going to object to any questions that go beyond the
13 scope of the admitted contention because that's what we
14 are here to do.
15 Q. Objection is noted.
16 Are you willing to share any of these Tribal
17 documents, including the confidentiality agreement you
18 are talking about, with Margene Bullcreek?
19 MR. BEAR: Yes.
20 Q. So she can see any of these documents she
21 needs to?
22 MR. BEAR: Yes. As long as she goes
23 through the proper form.
24 Q. What is the proper way to see the documents?
25 MR. BEAR: To go to the General Council

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1 and ask permission.
2 Q. Who has gone to the General Council and
3 asked permission to see the documents?
4 MR. SILBERG: Can I interrupt? We have
5 time constraints, as you know. I don't think this
6 questioning has anything to do with the energy NRC
7 proceeding or OGD0; and I would hope if we want to get
8 through before people turn into pumpkins, that we can
9 stay within the scope of the contention.
10 Q. For the record, I disagree that it is
11 outside of the contention but I will move on to this
12 other issue and when these documents become an issue, we
13 will deal with them at that point in time.
14 MR. SILBERG: Okay.
15 Q. Is there any other reason you can't fully
16 participate in this deposition today?
17 MR. DONNELL: No.
18 Q. In the letter signed by you that was marked
19 as Exhibit 1, the first sentence in the second paragraph
20 says, "The Band has participated in the preparation of
21 these responses to these questions with the assistance
22 of PFS." Is that true?
23 MR. BEAR: Yes.
24 Q. And when you say "with the assistance of
25 PFS", what do you mean? Who in PFS gave you that

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1 assistance and what assistance was given? Let's take it
2 one at a time. Who in PFS assisted you in preparing
3 this letter and the 11-page attachment to it?
4 MR. BEAR: Now, the letter was prepared
5 by the Band, by the Executive Committee. And the
6 assistance was by Mr. Donnell, who helped us prepare the
7 responses for the Environmental Impact Statement.
8 Q. Did anyone else help you in PFS other than
9 Mr. Donnell?
10 MR. SILBERG: You are referring
11 directly to him and not people who might have worked
12 with John?
13 Q. Right. In his letter he said that he did
14 this with the help of PFS, and I'm trying to find out
15 who inside PFS helped him do that. And if he only
16 worked with John then that's fine. If you worked with
17 somebody else -- did you discuss this 11-page document
18 with anybody in PFS other than with John?
19 MR. BEAR: No.
20 Q. So you have never talked about this
21 submission to anybody but John, as far as anybody inside
22 PFS?
23 MR. SILBERG: You are talking about at
24 the time it was prepared?
25 Q. At the time it was prepared.

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1 MR. BEAR: No.
2 Q. John is trying to catch a plane, so I'm
3 going to put you aside for a minute and ask John some
4 questions.
5 MR. BEAR: Fine.
6 Q. John, what was your involvement in -- you
7 have heard Leon Bear's testimony.
8 MR. DONNELL: Yes.
9 Q. Do you disagree with anything he said so far
10 having to do with this document?
11 MR. DONNELL: Only to the fact of the
12 cover letter. I believe I initially supplied Leon a
13 crude form of this cover letter, which Leon took and
14 finalized.
15 Q. So you gave him a rough draft of the --
16 MR. DONNELL: A crude form, yes. But I
17 believe I did that.
18 Q. Anything else that you would --
19 MR. DONNELL: No.
20 Q. What was your involvement in helping prepare
21 this 11 -- at the bottom of it it says EIS RAI Skull
22 Valley Band of Goshute Responses. I'm going to refer to
23 it as 11 pages, Exhibit 1.
24 MR. DONNELL: Okay.
25 Q. What was your involvement here?

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1 MR. DONNELL: The REI response or REI
2 query from the NRC was a large packet of questions. A
3 subset of the questions clearly needed involvement by
4 the Band, and I have always traditionally and in this
5 case also took the lead in terms of interfacing with the
6 Band. In this particular case I actually interviewed
7 Leon and Mary Allen at that time to collect Tribal
8 information that would be pertinent to the response,
9 going back to the NRC.
10 Q. Did it appear to you that Leon Bear and Mary
11 Allen both knew everything or did they both fill in
12 different spots, different blanks as they were going
13 through?
14 MR. DONNELL: The process that I used
15 was to have our licensing team construct a response,
16 which is actually what you see here but it just had the
17 questions, so we had something that I could take to Leon
18 and sit down and talk through a meeting context. The
19 licensing people had put in what information PFS had
20 from the license application. It had already been
21 submitted to the NRC to start the story, kind of a
22 skeleton of the answer. But a large amount, almost all
23 of this information was required to come from the Band.
24 So I used the skeleton as the vehicle to sit with Leon,
25 as I said, and Mary, in a meeting at the Tribal offices.

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1 And we had a rather lengthy meeting going through each
2 question and what kind of information was needed. And
3 in the areas where there was a sensitivity to the answer
4 Leon and I, and to some degree Mary - Mary was a very
5 limited role, it was basically Leon - talked about what
6 would be appropriate to put in a response that would
7 answer the question to the NRC.

8 Q. Was any part of your conversation concerned
9 with confidentiality issues? Was there information that
10 should have gone in here perhaps but you were told you
11 couldn't have because of confidentiality?

12 MR. DONNELL: No. I was careful, as we
13 were talking about the subjects, to allow Leon to tell
14 me the answers or the story behind the information
15 without delving into areas that would make the
16 conversation uncomfortable. I tried to always have a
17 respectful dialogue with any member of the Band and I'm
18 very careful about what I ask and tried to use some
19 judgment about what I'm asking and making sure I don't
20 just go off on an unofficial query for information here
21 just because of personal interest or something like
22 that. So the way this was conducted, since I had a
23 framework of the question and some semblance of what the
24 holes were that needed to be filled out, it was fairly
25 efficient to do it that way. So at no time do I recall

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1 Leon telling me that the information he was giving me
2 was confidential, proprietary, or otherwise. It was a
3 dialogue that gave me the answers necessary to complete
4 the questions.

5 Q. Okay. And to your knowledge, did Leon
6 and/or Mary refer to any documents in answering these
7 questions?

8 MR. DONNELL: None that I can recall,
9 no. It was all done verbally.

10 Q. Okay. You indicated that to respond to the
11 REI it was clear that the tribe had to have some
12 involvement.

13 MR. DONNELL: Yes.

14 Q. And then you said you went and talked to
15 Leon and Mary. Did PFS, did you or anyone else at PFS
16 that you are aware of at any time ever do anything to
17 verify Leon's position with the tribe?

18 MR. DONNELL: No, not to my knowledge.
19 I didn't. And I was the only one that interfaced with
20 Leon on the subject, so I did not.

21 Q. So the topic of whether or not he was the
22 chairman never came up in your investigating the
23 information you submitted on behalf of PFS?

24 MR. DONNELL: That's correct. I have
25 accepted Leon as chairman.

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27

1 Q. Okay. You said that Mary had some limited
2 involvement. Do you remember what areas she provided
3 information on?

4 MR. DONNELL: In the religious portion
5 of the response of how Tribal practices were conducted.

6 Q. Any other areas?

7 MR. DONNELL: No. Just that subject.

8 Q. So during the meeting, the only time Mary
9 spoke was with regard to religious issues?

10 MR. DONNELL: As I recall, that's true.

11 Q. The information that Leon and Mary provided
12 you that formed the basis for this document, did you do
13 anything to research that or verify it or corroborate it
14 whatsoever other than asking Leon and Mary?

15 MR. DONNELL: No, I did not. It was
16 the Band's position and I accepted that.

17 Q. Have you at any time witnessed anything or
18 heard anything that would give you any reason to doubt
19 the veracity of anything contained in this document?

20 MR. DONNELL: No.

21 Q. Have you ever been made aware that there was
22 any challenge to Leon Bear's status as chairman?

23 MR. DONNELL: I have heard that. I'm
24 not party to that particular dialogue, but I'm aware of
25 that.

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1 Q. Describe the situation when you heard it.

2 MR. SILBERG: Again, I think we are
3 getting into issues that bear no relationship whatsoever
4 to OGDO. It may have major relationship to other
5 concerns that OGD has. But they are really outside of
6 the scope of the contention. I think we are, you know,
7 not being efficient in continuing to probe those areas.

8 Q. Thank you for your objection. I don't know
9 that I totally agree. We are trying to make sure that
10 we know what investigation that PFS independently
11 invested into this thing. It's OGD's position that
12 there are some inaccuracies in this document and we are
13 trying to find out if PFS knew or had reason to suspect
14 that they should have looked into his veracity in
15 greater detail. So I think we are entitled to question
16 the witness on whether or not he had any reasons to
17 suspect that there was a problem here, and that's what
18 I'm doing.

19 MR. SILBERG: But it's only relevant to
20 OGDO. Whether or not it's in this document may or may
21 not be of interest. But unless it is relevant to the
22 contention, then it is not relevant to discovery in this
23 proceeding.

24 Q. And I think the veracity of submissions by
25 PFS is certainly relevant to Contention O, if they are

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1 relying on information they had reason to doubt.
2 So I'm going to instruct you to go ahead and
3 answer that.
4 Your objection is noted.
5 So can you tell us, you said that you had
6 heard that there was some questions. Describe the
7 situation.
8 MR. DONNELL: I can only remember one
9 specific instance that I can direct toward a person. It
10 was at a Tribal Council meeting, a General Council
11 meeting about a year ago that I attended, and I recall
12 Margene Bullcreek making some statement to that effect,
13 challenging Leon's role in leadership. And I can't
14 quote it, but that's the specific instance that comes to
15 mind.
16 Q. Okay. And did you ever consider that there
17 might be any validity to that, or you dismissed it out
18 of hand?
19 MR. DONNELL: I represent Private Fuel
20 Storage and they have an agreement with the Band that
21 identifies the Band as a party to this project by
22 leasing land. I have worked with the Executive
23 Committee, the elected officials, since that time. I
24 don't question Tribal governance or internal Tribal
25 affairs. So from my perspective on this project, Leon

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1 and Lori and Rex are the Executive Committee who I deal
2 with.
3 Q. Any other instance challenging Leon's
4 authority or the Executive Committee's authority to
5 enter into this lease with PFS?
6 MR. DONNELL: No. I'm not a party to
7 that and that's the only instance I can recall directly
8 from a person that would be saying that.
9 Q. You said "directly from a person". How --
10 MR. DONNELL: Well, this is a long
11 project. I'm saying in general I'm aware that there's a
12 disagreement within the Band about governance. I can
13 remember that instance I can put to a person. You asked
14 persons, so I'm answering the question.
15 Q. So in general you know that there's been
16 other similar issues but you can't tie it to a person.
17 Is that what you are saying?
18 MR. DONNELL: I don't recall specifics.
19 I have an awareness of that. That's the one specific I
20 could pull up.
21 Q. And you have never looked into it?
22 MR. DONNELL: No.
23 Q. Okay. How many general Tribal meetings have
24 you been to?
25 MR. DONNELL: One, I believe. Leon,

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1 one?
2 MR. BEAR: One.
3 Q. So that was the only --
4 MR. DONNELL: That was the only time.
5 Q. Okay. In preparing this document, I notice
6 the document is submitted, the cover letter is submitted
7 over John D. Parkyn's signature. Who is Mr. Parkyn?
8 MR. DONNELL: John D. Parkyn is the
9 chairman of the board of Private Fuel Storage, L.L.C.
10 Q. And how do you interact with Mr. Parkyn?
11 MR. DONNELL: I report directly to Mr.
12 Parkyn.
13 Q. Is he an employee or officer of PFS?
14 MR. DONNELL: He is a member of the
15 board. I'm not sure of the legal terms of officer or
16 otherwise, but he is a member of the board.
17 Q. Okay. Do you make ultimate and final
18 decisions on what to do as the project manager of PFS or
19 do you report recommendations to Mr. Parkyn or somebody
20 else and they make the decision?
21 MR. DONNELL: The larger decisions, to
22 characterize it, the financial decisions are always made
23 by PFS. Strategy decisions, I recommend largely options
24 to the board. And then in the lower levels, the
25 day-to-day execution, I largely do those on my own

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1 within the constraints that the board has identified.
2 Q. When you said you report those to PFS, you
3 mean you report those to the board?
4 MR. DONNELL: Yes. I report --
5 officially, by contract, I report to the board. John,
6 as the chairman, is the point contact.
7 Q. Do you know who else is on the board?
8 MR. DONNELL: Yes.
9 Q. Can you tell me who else is on the board?
10 MR. DONNELL: By utility?
11 Q. Any way you'd like.
12 MR. DONNELL: Well, the utilities that
13 are on the board, John Parkyn --
14 Q. Let me interrupt for a second. I'm going to
15 ask you to go through these and tell me the interactions
16 you have had with these individuals, if you'd like to do
17 that as you go through.
18 MR. DONNELL: Okay.
19 MR. SILBERG: I think we are going well
20 beyond any relevance to the OGD. I think we are
21 wasting time. I'll let him answer the questions but if
22 you run out of time, I'm not going have a lot of
23 sympathy when you are wasting time on this stuff.
24 Q. I'm trying to find out who he discussed or
25 who the decision makers are, to the extent that he

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1 isn't.
2 MR. SILBERG: Why don't you ask who the
3 decision makers were on this letter. It's a lot quicker
4 than going through every board member.
5 Q. How many board members are there?
6 MR. DONNELL: Eight utilities, and
7 there's a representative from all eight. I did not
8 discuss the letter with the eight board members.
9 Q. Who did you discuss it with?
10 MR. DONNELL: John Parkyn.
11 Q. Okay. Was John Parkyn familiar with your
12 submission?
13 MR. DONNELL: Yes.
14 Q. Did you discuss it with him?
15 MR. DONNELL: I did not discuss it with
16 him in detail. He was aware of the strategy of how we
17 would answer the REIs. The subset of that is this
18 particular letter.
19 Q. Okay. Did he review this before it was
20 finalized?
21 MR. DONNELL: I don't know if he did or
22 not. John Parkyn has an opportunity to review
23 everything. I don't know in this case if he did review
24 this or not.
25 Q. You gave him the opportunity to review it

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1 but you don't know --
2 MR. DONNELL: He has the opportunity.
3 He participated in other REI answers so what he did, you
4 will have to ask John Parkyn.
5 Q. Do you know whether or not John Parkyn has
6 ever conducted an independent evaluation of the factual
7 situation of the tribe and their leadership and who is
8 the chairman and whether or not the tribe has valid
9 authorization to contract with PFS?
10 A. I do not know what John Parkyn has done in
11 that regard.
12 Q. Okay. Scott Northup; do you know him?
13 MR. DONNELL: Northard?
14 Q. Yes. I'm sorry.
15 MR. DONNELL: Yes, I know Scott
16 Northard.
17 Q. What is his position in this?
18 MR. DONNELL: He is a board manager
19 representing XO.
20 Q. Was he involved in this submission
21 whatsoever?
22 MR. DONNELL: No, not to my knowledge,
23 no.
24 Q. Okay. Do you and he routinely meet to
25 discuss your job as project manager or you only report

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1 to John Parkyn?
2 MR. DONNELL: I report to John Parkyn,
3 talk to Scott as a situation arises. No more than that.
4 He has other responsibilities.
5 Q. Okay. I don't know about anybody else but I
6 need to take a quick break.
7 (A break was taken.)
8 MR. DONNELL: Can I add something to my
9 statement I just made before we quit for the break?
10 Q. Certainly.
11 MR. DONNELL: You asked whether Scott
12 Northard participated in the answers to this letter. My
13 answer is no, and I believe that is still true. But one
14 of the questions, specifically 13-1(b), talks about the
15 site selection process. And I'm generalizing here.
16 Scott Northard could have participated with Stone and
17 Webster on that answer. I don't know that. But if
18 there was an answer he would have been involved with,
19 that would be it. But I don't know that for sure.
20 Q. Okay. Are you familiar with the scope of
21 Contention 0 that is before the NRC?
22 MR. DONNELL: In general. I haven't
23 read it in a long time.
24 Q. Tell me in general what your opinion of that
25 scope is.

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1 MR. DONNELL: Well, again, in general
2 that is the issue of environmental justice, of whether
3 the opportunity from PFS to the Band is what I would
4 call a tainted opportunity; that something has been done
5 that takes advantage of the Band and its specific
6 circumstances in Skull Valley. So, generalizing. I
7 don't remember the legal terms and statements.
8 Q. Okay.
9 MR. SHEPLEY: OGD has an issue under
10 discussion and that we are dealing with discovery
11 concerning. In that issue, there's a discussion that
12 includes an event could have no impact in isolation
13 while it could have a cumulative or surgonistic (sic)
14 impact when combined with other events.
15 MR. SILBERG: Where are you reading
16 from?
17 Q. From his notes.
18 MR. SILBERG: Okay.
19 MR. SHEPLEY: I'm reading from my notes
20 but it is from your -- I might have that with me. In
21 your response to -- when you said that OGD's second
22 responses to your Interrogatories and Requests for
23 Production of Documents was inadequate, you noted, I
24 believe, that this issue was under discussion. And in
25 clarification on that, OGD had made a statement about

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1 cumulative impacts. And OGD, as money allows, is in the
2 process of doing their own cumulative impact analysis,
3 as you are aware. And the question was brought up as a
4 clarification point on what did they mean with the term
5 they used - and I don't have that term in my notes -
6 having to do with no impact; an event having an impact,
7 or without an impact in isolation, but nonetheless
8 having an impact when taken into account with other
9 events.

10 MR. SILBERG: As I remember, just maybe
11 to help the question, the argument was, of course, one
12 of the contentions is cumulative impacts.

13 MR. SHEPLEY: Right.

14 MR. SILBERG: And we had asked whether
15 any of the individual impacts were significant. And I
16 think the thought was or the statement was that none of
17 them were significant or none of them had any impact,
18 but cumulatively they could have an impact. And we were
19 trying to understand that.

20 MR. SHEPLEY: I think it was assuming
21 none of them would have an impact. I don't think it was
22 admitting none of them would have an impact.

23 MR. SILBERG: Okay.

24 MR. SHEPLEY: They could have an impact
25 cumulatively with other impacts from this facility or

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1 from other facilities. I think the point was made that
2 there's potential impact.

3 MR. SILBERG: Cumulative impact with
4 several designated other facilities.

5 MR. SHEPLEY: Right. And that doesn't
6 acknowledge part of our contention. I know you are in
7 opposition to some parts of it and so forth. But it is
8 still within the scope of --

9 MR. SILBERG: The scope of the
10 contention is the cumulative impacts of PFS, plus
11 Dugway, plus Envirocare.

12 MR. SHEPLEY: Right. Those are things
13 that are currently being --

14 MR. SILBERG: And I think the question
15 we were talking about is assuming that none of the
16 impacts from the other facilities were significant,
17 could there still be a cumulative impact.

18 MR. SHEPLEY: Right. And I was going
19 to address to him the question: An event could have no
20 impact in isolation, while it could have a cumulative or
21 synergistic (sic) impact when combined with other
22 events.

23 MR. SILBERG: Synergistic? I think you
24 said "synergistic".

25 MR. SHEPLEY: I meant "synergistic",

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1 whatever I might have said. My tongue sometimes doesn't
2 say what my mind wants it to.

3 Q. At least he has a mind. I wish I could
4 suffer that disability.

5 MR. DONNELL: So what is the question?

6 MR. SHEPLEY: I will repeat it. As the
7 project manager responsible for supplying information
8 with respect to this contention, how do you respond to
9 the notion that an event could have no impact in
10 isolation, while it could have a cumulative or
11 synergistic impact when combined with other events? And
12 you are a professional engineer as, I assume, an expert
13 witness on this type of topic.

14 MR. DONNELL: No. I'm not an
15 environmental scientist so you don't have the right
16 person. I don't see the connection between what you
17 just said and this document we are talking about.

18 MR. SHEPLEY: No. I'm out of the
19 document right now.

20 MR. DONNELL: Okay.

21 MR. SHEPLEY: This deposition is not
22 just solely for this document.

23 MR. DONNELL: My answer stands. I'm
24 not an environmental scientist so I don't think I can
25 answer that.

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1 MR. SHEPLEY: Okay. Who within PFS
2 would be competent to answer that question?

3 MR. DONNELL: On our staff that
4 participated, is Barb Mohrman is the one who answers
5 that.

6 MR. SHEPLEY: How do you spell that?

7 MR. DONNELL: B-A-R-B M-O-H-R-M-A-N, I
8 believe.

9 MR. SHEPLEY: Is there an R between the
10 H and the M?

11 MR. DONNELL: Yes. M-O-H-R-M-A-N.

12 MR. SHEPLEY: And his first name is
13 Barb?

14 MR. DONNELL: Barbara.

15 MR. SHEPLEY: Oh, a woman, Barbara.

16 Q. I'm going back to Leon Bear for a few
17 minutes. Are you done?

18 MR. SHEPLEY: That's it for right now.
19 I will do a little research here first.

20 Q. Okay. Leon, on Page 1 of your submission,
21 Page 1 of eleven pages, you indicate that the Skull
22 Valley Band of Goshute Indians are pursuing further
23 economic development of the Band.

24 MR. SILBERG: "Future", I believe, is
25 the word.

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1 Q. Thank you. Thank goodness you are here. We
2 are getting the words tongue-tied.
3 MR. SILBERG: Just want the record to
4 be correct.
5 Q. Thank you. Is that still the case? Is the
6 Band still pursuing, are you still pursuing, is somebody
7 out there still pursuing future economic development?
8 MR. BEAR: What we are doing is
9 investigating proposals for future economic development.
10 Q. Okay. What proposals are you investigating?
11 (Off the record between Mr. Bear
12 and Mr. Silberg.)
13 MR. BEAR: I cannot talk about that.
14 Q. And why can you not talk about that?
15 MR. BEAR: Because that is part of the
16 business of the Band, strategic business of the Band,
17 and I can't talk about that.
18 Q. Okay. Who in the room can you not talk
19 about it in front of?
20 MR. BEAR: Everybody.
21 Q. Could you talk about it in front of Margene?
22 MR. BEAR: No.
23 Q. And why is that?
24 MR. BEAR: Because they are just
25 proposals right now.

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1 Q. Is Margene a member of the Tribal General
2 Council?
3 MR. BEAR: Yes.
4 (Discussion off the record between
5 Mr. Bear and Mr. Silberg).
6 Q. Tell me about the Skull Valley Band Tribal
7 government. How does the government out there function
8 as far as you are concerned? Do you have a
9 constitution?
10 MR. BEAR: No. The function of the
11 Tribal government is to work towards bringing the
12 standard of living up, or bring it up to what it should
13 be.
14 Q. What governmental bodies exist in Skull
15 Valley?
16 MR. BEAR: One. The General Council is
17 actually the government and the Executive Committee is
18 the authorized governing body of the Band.
19 Q. So when you answer there's one governing
20 body, that's the --
21 MR. BEAR: The General Council.
22 Q. And who serves on the General Council?
23 MR. BEAR: All adult Tribal members
24 that are 18 and over.
25 Q. And how many are those today?

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1 MR. BEAR: There are 71, I believe,
2 approximately.
3 Q. Okay. And who, in this room, serves on that
4 Tribal General Council?
5 MR. BEAR: Margene Bullcreek, myself.
6 Q. And how does someone become a member of the
7 Tribal General Council? Is it automatic or is there an
8 election?
9 MR. BEAR: We have resolutions
10 pertaining to enrollments that meet federal guidelines.
11 Q. Okay. So who signs the resolutions about
12 enrollments? Is that something that the governing body
13 of the Tribal General Council --
14 MR. BEAR: The General Council has
15 authorized the Executive Committee to act accordingly to
16 the resolutions that they pass.
17 Q. So they are passed by the General Council?
18 MR. BEAR: The resolutions that give
19 the authorization to the Executive Committee, yes.
20 Q. Okay.
21 (Discussion off the record between
22 Mr. Bear and Mr. Silberg.)
23 Q. Jay, just for the record, I'm going to ask
24 the reporter to indicate on the record when you confer
25 with Mr. Bear because he is not your client and I want

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1 to make sure that the record reflects that he is talking
2 to somebody.
3 MR. SILBERG: I think we can all talk
4 to somebody.
5 Q. I'm not objecting to that.
6 MR. SILBERG: If we are going to do
7 that, I will ask to go off the record because I don't
8 think it is appropriate to show that on the record.
9 Q. My only concern is that you don't represent
10 him, so it's a different nature.
11 MR. SILBERG: I can consult and he can
12 consult with anyone he chooses, as can you.
13 Q. And I don't disagree with that at all. I'm
14 sensitive to the fact that he doesn't have an attorney
15 here, so that's what I want to make sure that we cover.
16 So Leon, once somebody is enrolled in the
17 tribe, according to a Tribal General Council resolution,
18 if they are over the age of 18 they are automatically on
19 the Tribal General Council?
20 MR. BEAR: Yes.
21 Q. There's no other independent action for that
22 to happen?
23 MR. BEAR: No.
24 Q. How often does the Tribal General Council
25 have meetings?

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1 MR. BEAR: Two times a year.
2 Q. And when are those times?
3 MR. BEAR: In April and in August.
4 Q. And is there or are those just General
5 Council meetings or is there a specific purpose for
6 different meetings? Are they all equal?
7 MR. BEAR: They are General Council
8 meetings.
9 Q. So there's not or there's no special
10 designation. Like some people have an election meeting
11 or budget meeting or something else?
12 MR. BEAR: No. There is an agenda, a
13 notice that we send out with an agenda.
14 Q. But this is where all Tribal government is
15 conducted, at the April and August meetings?
16 MR. BEAR: Yes. Right.
17 Q. And is there any written governing documents
18 that cover how those meetings are conducted, who
19 convenes these meetings?
20 MR. BEAR: Yes, there is a resolution
21 dictating how the General Council will be conducted, and
22 they have authorized the chairman to call the meetings
23 and to send out the notices two weeks prior to a General
24 Council meeting.
25 Q. Is there a -- how do you identify

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1 resolutions? Are they numbered or dated? If I want to
2 talk about a particular resolution, how do you identify
3 that? Is there a number you call it?
4 MR. BEAR: By a number, yes.
5 Q. What is the resolution number that you are
6 talking about right now?
7 MR. BEAR: I can't remember the number
8 right now. I don't know what it is.
9 Q. Okay. Did you bring a copy of that
10 resolution with you today?
11 MR. BEAR: No.
12 Q. Are you willing to provide us, as an exhibit
13 to your deposition, a copy of that resolution?
14 MR. BEAR: No.
15 Q. Why?
16 MR. BEAR: Under the Band's
17 confidentiality, I cannot provide that.
18 MR. SILBERG: Which resolution are we
19 talking about?
20 Q. The one that governs Band governance.
21 MR. SILBERG: Can you tell me what
22 relevance that has to the contention?
23 Q. Well, in the interest of time, I'd rather
24 not get into these discussions. I'd be happy to tell
25 you what relevance it has, but there's no reason to go

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1 into this every time.
2 MR. SILBERG: I haven't heard anything
3 that relates to contention in any of those questions,
4 frankly, since we got off the letter.
5 Q. I'm still on the letter.
6 MR. SHEPLEY: I asked the question of
7 Mr. Donnell of cumulative impacts and you admitted that
8 was within the scope of --
9 MR. SILBERG: I said once we got off
10 the letter.
11 MR. SHEPLEY: That was off the letter.
12 Q. And I'm on the letter now.
13 MR. SILBERG: You are?
14 Q. Yes. On Page 1, talking about Band
15 governance. And Mr. Bear is suggesting there's some
16 problems and I'm trying to get to the threshold of
17 exploring where we can go with --
18 MR. SILBERG: What does that have to do
19 with the contention?
20 Q. Give me a few minutes and we will get right
21 squarely where I think even you will agree it is in the
22 contention.
23 How much can you tell me about the Band's
24 privacy resolution that is keeping you from providing
25 these documents?

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1 MR. BEAR: All I know is that the Band
2 had passed a confidentiality resolution and the only way
3 to -- there's a process you have to go back to the
4 General Council to get authorization to release any of
5 those documents.
6 Q. And what documents?
7 MR. BEAR: The resolutions, or whatever
8 we are talking about here.
9 Q. So it encompasses all Tribal documents?
10 MR. BEAR: Right.
11 Q. And has anybody ever gone and got
12 authorization under that resolution to --
13 MR. BEAR: Not at this time.
14 Q. All of the documents that you are disclosing
15 in this proceeding, have you got authorization to
16 release those?
17 MR. BEAR: I have not disclosed any
18 documents.
19 Q. So if we have some Tribal resolutions in
20 these proceedings, they didn't come from you?
21 MR. BEAR: Those are out of order, yes.
22 Q. Okay.
23 (Discussion off the record.)
24 Q. When you have general meetings, how are
25 resolutions passed?

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1 MR. BEAR: They are introduced by the
2 Executive Committee which, at that time, the General
3 Council goes into discussion over the resolution, the
4 resolution is read, and by the end of the meeting the
5 General Council has a time there to sign the resolution.
6 Q. So the resolutions are all read to the whole
7 General Council?
8 MR. BEAR: Well, to the General Council
9 present at the meeting.
10 Q. Okay. And do they vote on it before it is
11 signed?
12 MR. BEAR: There is a discussion on it.
13 Q. And how do they vote?
14 MR. BEAR: They don't vote. They sign
15 the resolution and approve it.
16 Q. And if somebody other than the Executive
17 Committee wants to propose a resolution, how is that
18 done?
19 MR. BEAR: Well, we really don't have a
20 function for that. Because usually we never -- this
21 is -- there's been one time that I know of that any
22 resolution has been introduced. And so we are looking
23 at that. The Executive Committee is investigating that.
24 Q. How many members of the Tribal General
25 Council need to be present in order to have a quorum to

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1 conduct business?
2 MR. BEAR: The General Council does not
3 need a quorum to conduct business.
4 Q. So if two people show up, that's sufficient
5 to conduct business?
6 MR. BEAR: If that's all that show up,
7 yes. If they have been sufficiently notified of the
8 meeting and if two people are the only ones interested
9 in showing up at the General Council, yes, business will
10 be conducted.
11 Q. And how many of the -- if a resolution is
12 going to be passed, what percentage of the General
13 Council has to sign the resolution?
14 MR. BEAR: The majority of the members
15 present at the General Council meeting will pass the
16 resolution, if there's a majority on the resolution
17 present at the meeting.
18 Q. So do you keep attendance rolls of the
19 meetings so you know how many were there?
20 MR. BEAR: We do, yes.
21 Q. And you were asked to bring those with you.
22 Did you bring any attendance rolls from meetings with
23 you?
24 MR. BEAR: No.
25 Q. And would you be able to get those at lunch

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1 and bring them back this afternoon?
2 MR. BEAR: No.
3 Q. Why?
4 MR. BEAR: Under the confidentiality of
5 the Band, I cannot produce documents.
6 Q. Okay.
7 MR. SILBERG: We have a very specific
8 process set up in this proceeding for document discovery
9 that we have had for going on four years. And we have
10 had lots of opportunities for requests for documents.
11 The deposition is a separate process under the NRC rules
12 and under the process set up by this board. And the
13 depositions are not intended to be a substitute for
14 document discovery. We do not treat it as such and the
15 board has not treated it as such.
16 Q. Well, you gave us, before this deposition
17 started, a confidentiality agreement and asked us to
18 sign that confidentiality agreement on behalf of OGD
19 with the understanding that if we signed that we would
20 have access to Tribal records. Mr. Bear is testifying,
21 I believe, and Mr. Bear correct me if I'm wrong, that if
22 we sign that today, there is absolutely no way we are
23 going to look at any Tribal records whatsoever because
24 it's never been properly approved by the board. So the
25 earliest date we could see the records would be in

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1 August after the next Tribal meeting. Is that your
2 testimony, Mr. Bear?
3 MR. SILBERG: Just a minute. You have
4 filed discovery requests in this proceeding and we have
5 made available documents for discovery. And those are
6 documents that we have reviewed that we believe are
7 relevant to the contention and responsive to your
8 document discovery request. The deposition is not a
9 forum for seeking additional document discovery. You
10 can ask in depositions for documents, but that is not
11 the purpose of depositions under the NRC rules.
12 Q. And I'm not suspending the deposition. I'm
13 simply making sure we have a record that Mr. Bear has
14 stated that under no circumstances whatsoever will we
15 get any documents until August at the earliest, and that
16 any Tribal documents that may be in the NRC record at
17 this point in time were in error; there's no
18 authorization for those documents to be there. Is that
19 your testimony?
20 MR. SILBERG: That is not what he said.
21 Q. Is that your testimony?
22 MR. SILBERG: He did not say "any
23 Tribal documents". You asked a question about certain
24 Tribal resolutions. You did not ask a question about
25 all Tribal documents. This is a Tribal document,

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1 something signed by Leon. I don't think he is saying
2 that that is an illegal document because it was
3 disclosed to the NRC.
4 Q. The documents I have asked him about thus
5 far are resolutions. Did you testify that no
6 resolutions should be in the NRC record?
7 MR. BEAR: No.
8 Q. No, you didn't testify that?
9 MR. BEAR: No.
10 Q. What did you --
11 MR. BEAR: I said that the documents
12 that you are asking for, we cannot release those
13 documents.
14 Q. And I asked you are any Tribal resolutions
15 authorized to have been submitted to the NRC?
16 MR. BEAR: Yes.
17 Q. What Tribal resolutions have been
18 authorized?
19 MR. BEAR: The resolution that gives or
20 that is contingent with the lease.
21 Q. What resolutions are those? Can you
22 identify them?
23 MR. BEAR: I think that's 97-02 or 012.
24 Something like that. I'm not exactly sure of the
25 resolution at this time.

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1 Q. Are there any other resolutions that should
2 be in the NRC record?
3 MR. BEAR: No. Oh, excuse me. There's
4 one more. That first resolution was passed by the
5 General Council. The second resolution was an
6 attachment to that resolution. Those are the two
7 resolutions that should be with the lease.
8 Q. And nothing else?
9 MR. BEAR: And nothing else.
10 Q. And is there any way you can provide us with
11 any other Tribal resolutions between now and August?
12 MR. BEAR: No.
13 Q. Is there any way you can provide us with any
14 attendance rolls of any meetings between now and August?
15 MR. BEAR: No.
16 MR. SILBERG: These questions go
17 totally beyond the contention that we are talking about.
18 I'm going to suggest that getting into internal Tribal
19 business is not within the scope of this contention, and
20 I'm going to suggest that we just move on to something
21 else. I think we are wasting time.
22 Q. Sam has a couple more questions he wants to
23 ask John about.
24 MR. SHEPLEY: There's not many, but
25 let's get them out of the way in case he needs to catch

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1 a plane.
2 Have you been named as a witness to oppose
3 Contention 0 in the NRC licensing proceedings?
4 MR. SILBERG: Objection. You are not
5 entitled to ask discovery on Contention 0, unless you
6 mean OGDO.
7 MR. SHEPLEY: OGDO.
8 MR. SILBERG: Okay. Because there's a
9 Utah 0.
10 MR. SHEPLEY: No. Obviously we are
11 dealing with the contention that we are taking the
12 depositions for.
13 MR. SILBERG: Okay. I'm sorry.
14 Q. Not so obvious to Jay, but more obvious to
15 us.
16 MR. SILBERG: I'm just listening closer
17 than I should.
18 MR. DONNELL: The answer is I don't
19 think so. Jay, am I on the list?
20 MR. SILBERG: I don't know.
21 MR. DONNELL: I don't think so.
22 Q. Off the record for a minute while they look
23 and see.
24 (Discussion off the record.)
25 MR. DONNELL: I stand corrected. I am

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1 on the list.
2 MR. SHEPLEY: In what areas do you
3 expect to testify?
4 MR. DONNELL: Well, I'm not an
5 environmental scientist so I can't talk to specifics. I
6 assume I would be testifying to the work that was
7 conducted. I was responsible for the work that was
8 ongoing to generate the license and the support of the
9 license.
10 MR. SHEPLEY: And you would expect to
11 be able to testify as to what sorts of investigations or
12 research had been done as part of the basis for the
13 various whatever comes up.
14 MR. DONNELL: From a manager's point of
15 view, yes.
16 MR. SHEPLEY: Right.
17 MR. DONNELL: Yes.
18 MR. SHEPLEY: Are you familiar with the
19 Executive Order 12898?
20 MR. DONNELL: No. I'm sure it must be
21 the Bible.
22 MR. SILBERG: It's the executive order
23 on environmental justice.
24 MR. SHEPLEY: It's the executive order
25 for this contention, basically.

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1 MR. DONNELL: Okay. I won't argue with
2 it.
3 MR. SILBERG: You said it's the
4 executive order --
5 MR. SHEPLEY: 12898.
6 Q. We have a copy that we can make an exhibit,
7 if it is appropriate.
8 MR. SILBERG: Do you need it?
9 Q. It might be helpful.
10 MR. SHEPLEY: I was going to ask him
11 questions if he were familiar. I don't know what I will
12 do if he is not. Skip to something else, I guess.
13 MR. SILBERG: My guess is he is
14 generally familiar with environmental justice, but may
15 not be familiar with the specifics of the executive
16 order.
17 MR. SHEPLEY: Would you like to have a
18 copy of it?
19 MR. DONNELL: Okay.
20 You may continue. What was the question?
21 MR. SHEPLEY: Describe your experience
22 or that of your staff from a manager's viewpoint in
23 investigating, analyzing, and preparing information to
24 prevent environmental racism as defined in that
25 document.

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1 MR. DONNELL: I have no experience --
2 MR. SILBERG: I don't think this
3 document defines environmental racism. I don't even
4 know if that phrase appears in this document.
5 MR. SHEPLEY: The term doesn't. The
6 concept does. I'm perfectly capable and willing to
7 rephrase the question. I didn't use the term for any
8 specific purpose other than to focus the mind.
9 MR. DONNELL: Okay. Would you rephrase
10 the question, then, for the record?
11 MR. SHEPLEY: All right. Are you or
12 would you describe your experience from a manager's
13 standpoint concerning investigating, analyzing, and
14 preparing information to be used with environmental
15 justice issues.
16 MR. DONNELL: I have no personal
17 experience or resume concerning the topic of
18 environmental justice. I have staff that have worked on
19 the project and Barbara Mohrman, that I mentioned a
20 little while ago that is currently working on the
21 project, has that type of experience.
22 MR. SHEPLEY: Would you guess that she
23 could answer this sort of question for us?
24 MR. DONNELL: I would guess she could
25 answer those types of questions, yes.

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1 MR. SHEPLEY: All right. I will skip
2 to another topic, then. I have a number that I would
3 have followed up on in that area.
4 MR. DONNELL: That's fine.
5 MR. SHEPLEY: Speaking again as the
6 manager's viewpoint, do you know of independent
7 investigations for the potential for desperate (sic)
8 economic impacts?
9 You look like you want to object to the
10 question.
11 MR. SILBERG: I'm just trying to
12 understand the question.
13 MR. SHEPLEY: I asked about
14 environmental justice.
15 MR. SILBERG: Right.
16 MR. SHEPLEY: I'm now asking about
17 economic impacts.
18 MR. SILBERG: Right.
19 MR. SHEPLEY: And asking what sorts of
20 investigation might have been conducted under his
21 leadership on the topic of desperate (sic) and economic
22 impact.
23 MR. SILBERG: Desperate?
24 MR. SHEPLEY: D-I-S-P-A-R-A-T-E.
25 MR. SILBERG: Disparate.

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1 Q. We probably should define the term.
2 MR. SILBERG: With respect to PFS?
3 MR. SHEPLEY: Yes. I would have
4 continued, "With respect to PFS's project at the Skull
5 Valley."
6 MR. SILBERG: Okay.
7 Q. Do you understand what the term means?
8 MR. DONNELL: Not clearly. I will
9 allow you to give me a definition.
10 MR. SHEPLEY: The effect or effects
11 would cause a different impact --
12 Q. On some more than others.
13 MR. DONNELL: So disproportionate
14 impact?
15 MR. SHEPLEY: That's a good way of
16 saying it.
17 Q. Or unequal. Disproportionate.
18 MR. DONNELL: And your question is?
19 MR. SHEPLEY: I'm questioning you
20 concerning any investigations or research that might
21 have been done by your organization in that area.
22 MR. DONNELL: Well, I believe that
23 would be encompassed by the work done to prepare the
24 license application and what went into the environmental
25 report. There would have been follow-up work to answer

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1 the REIs. I don't have any specific recollection of
2 distinct studies or analyses done on that topic.
3 MR. SHEPLEY: I haven't found that
4 topic in these particular studies, to the extent I have
5 been able to look at them. So my question was if
6 something was done that had not already been addressed
7 there.
8 MR. DONNELL: I have no knowledge of
9 something that would not be part of the record you have
10 seen.
11 MR. SHEPLEY: As a manager, would you
12 have been aware if a study or investigation was done?
13 MR. DONNELL: If it was a distinct
14 study or analysis or topic, yes. If it was part of the
15 overall concept of environmental requirements, meeting
16 environmental requirements, I may not have been part of
17 it.
18 MR. SHEPLEY: Are you familiar with any
19 plan to minimize or mitigate any adverse economic
20 impacts?
21 MR. DONNELL: I'm not aware of any
22 necessity for a plan like that, so there is no plan.
23 MR. SHEPLEY: All right.
24 MR. SILBERG: I'm sorry. I wasn't
25 listening. You said to mitigate economic impacts?

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1 MR. SHEPLEY: Right. I asked about
2 desperate (sic) economic impact and I'm assuming if
3 there's not one for economic impacts, there's not one
4 for desperate (sic) impacts, either.
5 MR. SILBERG: I thought I heard the
6 word "environmental" in there.
7 MR. SHEPLEY: No. That's not involved.
8 I'm not asking the environmental justice questions I
9 had.
10 MR. SILBERG: Must have been two
11 sentences previous.
12 Q. We are depending on you to keep us straight,
13 Jay.
14 MR. SILBERG: Can't write and talk at
15 the same time.
16 MR. SHEPLEY: Has your organization
17 done investigations or research in terms of those
18 members of the Band who might raise or hunt food on the
19 reservation for personal consumption, or have you come
20 across that topic in your investigations?
21 MR. DONNELL: The topic as it is
22 applied to specific Band members would have been dealt
23 with in my direct dialogue to Leon. There were no other
24 formalized PFS studies that would not have gone to the
25 Band for that kind of an answer.

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1 MR. SHEPLEY: Then may I address the
2 question to Mr. Bear, then, on that? Do Band members
3 hunt or fish on the reservation?
4 MR. BEAR: Yes.
5 MR. SHEPLEY: What type of game and
6 where would that be appropriate?
7 MR. BEAR: We have deer, mule deer on
8 the reservation and we have trout, brown trout.
9 MR. SILBERG: Excuse me. Where are
10 brown trout on the reservation?
11 MR. BEAR: We have a creek called
12 Indian Hickman Creek, and a reservoir.
13 Q. Don't you have any buffalo for hunting,
14 too?
15 MR. BEAR: No. Not yet.
16 MR. SHEPLEY: Have you evaluated the
17 impact that this project might have, or the proposed
18 spur, on the ability of Band members or their actions or
19 desirability, perceived problems, maybe not even real
20 problems, associated with Band members coming to hunt on
21 the reservation?
22 MR. BEAR: These impacts that you are
23 talking about was thought about back in '75. And that's
24 why the facility is sited where it is, in the middle of
25 the valley; so the hunting and the recreation for the

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1 Tribal members would not be impacted by that.
2 MR. SHEPLEY: Or at least impacted
3 less.
4 MR. BEAR: Would not be impacted by
5 that at all.
6 MR. SHEPLEY: Mr. Donnell, do you agree
7 there would be no impact from your knowledge of what
8 investigations have been done by your organization?
9 MR. DONNELL: Yes. From the
10 investigation we have done, I would agree with that, to
11 the limit of my expertise.
12 MR. SILBERG: Talking about hunting and
13 fishing?
14 MR. SHEPLEY: Yes. Game. And even
15 from a perception point of view. Have you had any
16 experience with perception issues?
17 MR. SILBERG: I will object to that.
18 The commission and the board have explicitly rejected
19 perception issues from this contention. The Supreme
20 Court decision in Metropolitan Edison Company versus
21 Payne excludes perception issues from the scope of the
22 National Environmental Policy Act and this issue is
23 solely within the scope of the National Environmental
24 Policy Act.
25 MR. SHEPLEY: Except as it applies to

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1 property value.
2 MR. SILBERG: Wrong.
3 MR. SHEPLEY: Wrong?
4 MR. SILBERG: That's incorrect.
5 MR. SHEPLEY: The Commission's response
6 to your appeal was that property values were an issue in
7 this contention.
8 MR. SILBERG: But not perception.
9 Because the Payne case excludes perception from the
10 scope. But in any event, you are not asking about
11 property values now.
12 MR. SHEPLEY: Well, I am. I believe
13 that hunting and fishing is a real reason why people
14 value property and for living in a certain place.
15 Q. We are also looking at the desirability of
16 the reservation. Is this a magnet that will attract
17 people or is it a facility that is going to repel
18 people? Mr. Bear has testified he believes 65 percent
19 of the people living off the reservation would come
20 back. We want to know if impact on hunting will change
21 that perception. If people won't come back because
22 their perception is there's no hunting, then that's a
23 real impact of whether they come in or go out.
24 MR. SILBERG: I think you heard the
25 substantive answers. I'm raising the legal point that

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1 perceptions are outside the scope of NEPA.
2 Q. But he can't answer the question whether or
3 not he considered perception, just as long as we are
4 here?
5 MR. SILBERG: He answered the fact that
6 there aren't any impacts.
7 MR. SHEPLEY: I will go on to the next
8 question, then.
9 Has your organization investigated potential
10 for disproportionate, I will use that word instead,
11 impacts with respect to water quality and use?
12 MR. DONNELL: To the extent that it was
13 part of the generation of the application and the
14 support thereof, again I don't remember any specific
15 studies that were commissioned because there was an
16 issue there. We don't have effluence, so ground waters
17 and things like that, the impacts were benign. So there
18 would not, to my recollection, have been other studies
19 or other definitive analyses done because of the nature
20 of what the facility is.
21 MR. SHEPLEY: But there were some
22 potential risks evaluated, as I remember, when I read
23 some of those --
24 MR. DONNELL: As I said, to the extent
25 that the license applications covered it.

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1 MR. SHEPLEY: But since those risks are
2 real issues, the risks are real issues --
3 MR. DONNELL: Yes.
4 MR. SHEPLEY: And there's a potential
5 risk involved with the consideration for this license.
6 Was there any investigation with respect to those risks
7 to see if there's disproportionate risk as part of the
8 risk?
9 MR. DONNELL: I don't have any
10 knowledge of that.
11 MR. SHEPLEY: Okay. The risks were
12 considered but you don't know if the issue of
13 disproportionate risk was part of the risk --
14 MR. DONNELL: I know the risk was
15 looked at in generation and support of the license.
16 That's as far as I go.
17 Q. When you get this deposition to read, can I
18 ask you, in reading it, if you find that your answers
19 here were incorrect, if you would supplement that
20 with --
21 MR. DONNELL: Absolutely.
22 Q. Thank you.
23 MR. SHEPLEY: Just sitting here, you
24 have one thing on your mind or another. But later on
25 with, you know, a more settled approach you can

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1 reconsider these questions.
2 MR. DONNELL: Yes.
3 MR. SILBERG: The application clearly
4 talked about impacts on water use.
5 MR. SHEPLEY: Right. But my question
6 is whether or not disparate impacts were considered as
7 part of the risk analysis, which is a little bit
8 different than risk per se.
9 MR. SILBERG: Okay. We will talk about
10 that later on.
11 MR. SHEPLEY: Any risk can have a
12 disproportionate impact but isn't always analyzed for.
13 And that was my question.
14 MR. SILBERG: We can talk about that
15 afterwards, because I'm not sure I understand the
16 concept. But go ahead.
17 MR. SHEPLEY: With the risks of a
18 nuclear incident, which I know also were analyzed, do
19 you know of any investigation or analysis of a
20 disproportionate risk in that context?
21 MR. DONNELL: No. I'm not aware of
22 anything.
23 MR. SHEPLEY: Okay. Could we just ask
24 the question, I have half a dozen different kind of
25 risks that were analyzed for, and my question is

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1 basically the same: Do you know of any analysis done by
2 your organization concerning disproportionate risks as
3 part of any of the risk analyses that were performed by
4 your organization?

5 MR. DONNELL: I'm not aware of any.

6 MR. SHEPLEY: Okay. And again we would
7 like you to take a closer look at that when you get the
8 transcript. So I will skip many of the other questions
9 then.

10 MR. DONNELL: Okay.

11 MR. SHEPLEY: For time reasons. With
12 the understanding that he is going to take a closer look
13 later.

14 Q. Are there other topics?

15 MR. SHEPLEY: There is one more.

16 Mr. Bear, as a result of the PFS facility,
17 do you identify any additional safety concerns from
18 wildfires from Band members --

19 MR. BEAR: No.

20 MR. SHEPLEY: -- and the scope of
21 magnitude of these considerations?

22 MR. BEAR: No.

23 MR. SHEPLEY: They were looked at at
24 some point?

25 MR. BEAR: Yes.

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1 MR. SHEPLEY: Who conducted that
2 evaluation?

3 MR. BEAR: It was a combined effort
4 with PFS and Skull Valley.

5 MR. SHEPLEY: Do you know the scope and
6 magnitude or the basis of the assumptions within it?

7 MR. BEAR: No, I don't.

8 MR. SHEPLEY: Would you or should that
9 be something for him to --

10 MR. SILBERG: There's a specific
11 contention that was litigated and resolved on wildfires
12 that was an issue raised by the state. It's been
13 resolved.

14 MR. SHEPLEY: And that particular issue
15 would address these issues?

16 MR. SILBERG: Addresses the risks of
17 wildfires and the steps we have taken to assure that
18 that risk is minimal. In fact, if you go back and read
19 the record you will find out that the wildfire risk will
20 probably be reduced as a result of the steps that have
21 been taken.

22 Q. Off the record for a minute.

23 (Discussion off the record.)

24 MR. SHEPLEY: As far as you are aware,
25 the environmental justice side of that issue has not

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1 been addressed by your organization.

2 MR. DONNELL: I do not remember any
3 activities being conducted focusing on environmental
4 justice. I can't see the connection, I guess, myself.
5 So I'm at a loss.

6 MR. SHEPLEY: It applies to any risk --

7 MR. DONNELL: I understand, but I can't
8 make the connection between environmental justice and
9 wildfires here.

10 MR. SHEPLEY: Okay. And then property
11 values, has your organization analyzed disproportionate
12 impacts on potential reduction of property values in the
13 area of the --

14 MR. DONNELL: I'm not aware of that.
15 Same answer.

16 MR. SHEPLEY: Okay. You notice I
17 didn't use the word "perception".

18 MR. SILBERG: When you say "his
19 organization", you mean Stone Webster?

20 MR. DONNELL: PFS.

21 MR. SHEPLEY: Well, he is the project
22 manager for the PFS project for PFS. So it would be all
23 of PFS, from our understanding of his position.

24 MR. DONNELL: That's right.

25 MR. SHEPLEY: If that's different,

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1 please let us know.

2 MR. DONNELL: Again, I will restate
3 what I have been saying. Studies were conducted to
4 support the generation of our license application and
5 the support of that application. Those are a matter of
6 record. I do not know of any other studies beyond what
7 it took to do those two things. Using your word of
8 "disproportionate", I'm not aware of any, specific other
9 studies that aren't already a part of the record.

10 MR. SHEPLEY: And that's a perfectly
11 well understood answer. And again, we ask that you take
12 another look at this when you --

13 MR. SILBERG: I will note for the
14 record that we have identified for you a witness on
15 property values not at Stone Webster. So Stone Webster
16 hasn't done that. But we have identified a person who
17 would be a witness.

18 MR. SHEPLEY: But as a project manager
19 for the project, he would have been aware of this.

20 Q. Would he not?

21 MR. SILBERG: This is done as part of
22 the legal efforts in connection with the hearing.

23 MR. SHEPLEY: So it may well be, then,
24 that when he says that his organization didn't do
25 certain things, they may well have been done by someone

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1 else and he might not know about them as well?
2 MR. SILBERG: We have identified
3 witnesses. I don't think I have heard anything on any
4 of the other issues, but we have identified a property
5 value witness.
6 Q. When you say we have identified a property
7 value witness, I presume you are referring to we,
8 meaning PFS?
9 MR. SILBERG: Yes. In responding to
10 your Discovery requests.
11 Q. So that was done independent of the project
12 manager's involvement. Is that what you are saying?
13 MR. SILBERG: Yes. This is the lawyers
14 running the case. It's hearing preparation.
15 Q. And who at PFS was involved in that
16 designation? Only the lawyers or was anybody --
17 MR. SILBERG: I think we cleared the
18 hiring of people from a financial standpoint with the
19 project.
20 Q. And when you say "the project" --
21 MR. SILBERG: In that case I think it
22 would have been Mr. Parkyn.
23 Q. So are there parts of the PFS project that
24 Mr. Parkyn would authorize that he may not know about?
25 MR. SHEPLEY: That John may not know

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1 about. You can't say "he".
2 Q. I meant John, for the record.
3 MR. SILBERG: I want the record to
4 reflect that we have identified a witness who will be
5 our expert witness on that.
6 Q. And we appreciate that input.
7 MR. DONNELL: And my answer, to be
8 clear here, has been to say that we have not conducted
9 or I have not commissioned other studies or analyses
10 beyond what was done to prepare the license application
11 or to support the application before the NRC. So if
12 there is something else going on in a legal realm for
13 other purposes, I would not have necessarily known about
14 that.
15 MR. SHEPLEY: Would you advise that if
16 we wanted to be sure, that we should ask John Parkyn on
17 these other issues, as well, that you are not aware of
18 any --
19 MR. DONNELL: It is correct that John
20 Parkyn would have approved the hiring of other parties,
21 if they were.
22 MR. SILBERG: But we have identified
23 that for you.
24 MR. SHEPLEY: You did, and we
25 appreciate that.

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1 MR. SILBERG: I just want to make sure
2 that we give you all the information.
3 MR. SHEPLEY: You are not aware of any
4 just like he is not aware of any, is what you are
5 saying?
6 MR. SILBERG: I'm telling you I am
7 aware, because it's here.
8 MR. SHEPLEY: You are aware of that
9 one, but you are not aware of any others in the other
10 area.
11 MR. SILBERG: Other than what is in
12 here, "here" being the Discovery responses.
13 (Discussion off the record.)
14 MR. SHEPLEY: Are you familiar with the
15 term "cultural imperialism".
16 MR. DONNELL: No.
17 Q. You can't hold us to that being our last
18 question.
19 MR. SHEPLEY: It has to do with unfair
20 and disproportionately impacted cultural experiences
21 from a minority culture as a result of a dominant
22 culture.
23 MR. DONNELL: Okay.
24 MR. SHEPLEY: It is a defined part of
25 environmental justice.

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1 MR. SILBERG: Can you read that?
2 Unfair and what was that?
3 MR. SHEPLEY: Unequal, unfair and --
4 Let's go off the record.
5 (Discussion off the record.)
6 MR. SHEPLEY: Cultural imperialism
7 addresses disproportionate cultural impacts from a
8 dominant culture's effects to captive minority cultures.
9 And in the environmental justice literature it is a
10 topic.
11 MR. DONNELL: Okay.
12 MR. SHEPLEY: As far as you know, your
13 organization has not done any investigations or analyses
14 of impacts in this area?
15 MR. DONNELL: I have never commissioned
16 any work in that area.
17 MR. SHEPLEY: And you are not aware of
18 any?
19 MR. DONNELL: I'm not aware of any.
20 MR. SHEPLEY: Thank you.
21 Q. Has PFS, on an overall basis, done anything
22 to evaluate the disparate - and that's a term of art and
23 I would leave it to your attorney to explain what that
24 means - disparity impact on the Indians living on the
25 reservation as opposed to other people in the community

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1 and Indians living off the reservation?
2 MR. DONNELL: I would go back to the
3 same answer I gave you before: To the extent that the
4 environmental report and follow-up support work has
5 dealt with these issues, I have not seen any other work
6 in addition to that.
7 Q. And when you go back to your office, will
8 you look and see if you are mistaken?
9 MR. DONNELL: Yes, I will do that.
10 Q. Okay. And do you need any help with the
11 definition of disparate impact? If you do, ask your
12 attorney.
13 MR. DONNELL: I understand that, too.
14 Q. Okay. So realizing it's a term of art,
15 would any of your answers here change?
16 MR. DONNELL: No.
17 Q. Okay. If you were us asking you questions,
18 what would you have us ask you that we didn't ask you so
19 far?
20 MR. SILBERG: You don't have to answer
21 that.
22 MR. DONNELL: I have no questions to
23 ask me.
24 Q. Okay. I think we are done with you.
25 MR. SILBERG: Let me ask a follow-up

1 what has been done that she participated in. She would
2 have the understanding of that kind of work and would
3 know what had been done on the project.
4 Q. And it is possible that one of these, or on
5 one of these other topics, some work might have been
6 done on some of these as a peripheral area that you
7 won't know about?
8 MR. DONNELL: Well, Barb Mohrman is a
9 witness for some work within the legal realm. She might
10 be doing something in there I wouldn't necessarily know
11 about.
12 Q. Okay. And for some of your questions you
13 have already directed us to her.
14 MR. DONNELL: Yes. She is the
15 environmental scientist active in the project.
16 Q. And she might have been involved in others?
17 MR. DONNELL: Yes, she is the
18 environmental scientist active in the project.
19 Q. Would it be appropriate to ask John, when he
20 goes to the office, to ask Barb if there is information
21 that would be helpful and if there's not, to let us
22 know; and if there is, figure out a way to fill in the
23 blanks?
24 MR. SILBERG: When you say "information
25 that would be helpful" --

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1 question. When you said nothing besides what's in the
2 environmental report --
3 MR. DONNELL: I should have been
4 broader.
5 MR. SILBERG: And what would that
6 include?
7 MR. DONNELL: The license application
8 and follow-up support.
9 MR. SILBERG: Because there's been a
10 subsequent submittal.
11 Q. That touch on it peripherally, in my
12 opinion.
13 MR. SILBERG: Well, they touch on
14 impacts.
15 MR. DONNELL: If that is another
16 document that would be part of this discussion, I should
17 broaden my answer out --
18 Q. One last question. Do you think that Barb
19 Mohrman might have more detailed information about
20 whether or not something that you did might have touched
21 on these topics, even though it might not have been
22 commissioned for these topics, that you might not be
23 aware of?
24 MR. DONNELL: Barb Mohrman would be
25 able to talk to these topics that you have asked me of

1 Q. In the questions that he deferred us to her.
2 MR. SILBERG: Like if we had done a
3 spec study addressed to disparate impact.
4 Q. Or if it was covered peripherally in one of
5 the other studies that she is aware of?
6 MR. SILBERG: We can check. I'm not
7 committing that we will make any. But if it is relevant
8 information, then, you know --
9 Q. It is my understanding that John's testimony
10 is that he thinks he is going to talk to her and she is
11 going to say there's nothing else to report. If that's
12 the case, if you will let us know, we know we don't have
13 to go any further. That's all I'll asking.
14 MS. NAKAHARA: For the record, I don't
15 see her named as a witness.
16 MR. SILBERG: We have identified her as
17 a contributor --
18 MS. NAKAHARA: Not as a witness.
19 MR. DONNELL: Might have mistaken in
20 the legal realm again. She is part of the process. Can
21 I generalize that wide?
22 Q. Can she be available if there's some
23 questions that would be worthwhile to --
24 MR. SILBERG: You will have to propose
25 questions. We are well beyond the Discovery.

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1 Q. Okay.
2 MR. DONNELL: I'd like to make one
3 correction to an earlier number that I gave you. I said
4 that I had only attended one General Council meeting and
5 I believe there were two; one a long time ago and I have
6 no recollection why I was there but I'm pretty sure very
7 early in the project I was actually at two General
8 Council meetings.
9 Q. Do you recall the approximate time period
10 for the latest one?
11 MR. DONNELL: It was the last time you
12 and I were both out there the last time together. Was
13 it six months ago, roughly then? And then the time
14 before that was years ago. I don't remember.
15 Q. So that was not technically a Tribal
16 meeting. It was the PFS informational meeting?
17 MR. DONNELL: It was a council meeting
18 that day, too, wasn't it?
19 MR. BEAR: No.
20 MR. DONNELL: Then I'm probably wrong.
21 It is just still one.
22 Q. You were wrong when you thought you were
23 wrong. You were right all along.
24 MR. DONNELL: I have attended two
25 meetings with the Band. Apparently one was a council

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1 meeting and one was not.
2 Q. And how many meetings have you attended,
3 formal meetings with Leon? I don't mean both in the
4 same meeting but the two of you together. I know that
5 you had the one.
6 MR. DONNELL: Over the life of this
7 project?
8 Q. Yes.
9 MR. DONNELL: Oh, many, many meetings.
10 Q. Many, many?
11 MR. DONNELL: Yes.
12 Q. Okay. Thank you. You are free to leave or
13 you can stay.
14 MR. DONNELL: I will stay for 15
15 minutes or so.
16 MR. SILBERG: Do you have a sense of
17 how much longer with Leon?
18 Q. What I'm going to do at this point in time
19 is go through this document essentially line by line.
20 It is my feeling at this point in time that his position
21 is, I have submitted a document, PFS is relying on that
22 document in opposing OGD Contention 0, and he is
23 unwilling to support that document so I'm going to make
24 a record that he is absolutely unwilling to support what
25 he said here and then we are going to file a motion to

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1 strike the document. So that's what I'm going to do at
2 this point in time. And if you want to talk to him
3 about that before we move on, I'll be happy to let you
4 do that. But --
5 MR. SILBERG: Do whatever you want.
6 Q. But he can't make statements and then, when
7 we cross-examine on them, say, "I'm not going to respond
8 on cross-examination," and that's what it looks like is
9 happening.
10 MR. SILBERG: Ask your questions.
11 Q. Okay. I'm on Page 1, the first paragraph of
12 the Response. You indicate in here that, "Tooele County
13 (including Skull Valley) cannot support increased
14 population or development." What do you mean by that?
15 MR. SILBERG: Where are we?
16 Q. About four lines down. Right here
17 (indicating).
18 MR. BEAR: It says here that, "The
19 remote desert environment of much of Tooele County."
20 Q. "Including Skull Valley cannot support
21 increased population or development."
22 MR. BEAR: You can't put development
23 out on the flats, the Salt Lake flats, because there's
24 nothing there.
25 Q. Are you referring to any part of the

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1 reservation when you say it cannot support increased
2 population or development?
3 MR. DONNELL: On where the site is
4 right now --
5 Q. Off the record.
6 (Discussion off the record and
7 Mr. Donnell left the proceedings.)
8 MR. BEAR: On the site, where the site
9 is located, we were proposing that it would support that
10 kind of facility because it doesn't need much water.
11 Q. Would the reservation as a whole support
12 increased population?
13 MR. BEAR: Not as a whole, no.
14 Q. So what would be the breaking point? I mean
15 if ten more people moved onto the reservation, is that
16 too many? Is a hundred too many?
17 MR. BEAR: I think the breaking point
18 is at the enrollment.
19 Q. So is there room on the reservation for
20 everybody that is a Tribal member?
21 MR. BEAR: Yes.
22 Q. And all of their families?
23 MR. BEAR: Yes.
24 Q. And there are facilities that would support
25 that?

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1 MR. BEAR: No. You asked if there was
2 room and I said yes.
3 Q. Would the Skull Valley reservation support
4 the increased population of the entire enrolled tribe
5 and their families moving back to the reservation?
6 MR. BEAR: Yes.
7 Q. Is water a problem?
8 MR. BEAR: Yes.
9 Q. How would you propose to solve the water
10 problem?
11 MR. BEAR: Putting in wells, putting in
12 support infrastructure for the water systems.
13 Q. And you believe that there's sufficient
14 water in the wells and that there would be enough water
15 for the tribe?
16 MR. BEAR: Yes.
17 Q. Would there be enough water if twice as many
18 people were to live there?
19 MR. BEAR: Yes.
20 Q. Ten times as many people?
21 MR. BEAR: No.
22 Q. What do you base this on?
23 MR. BEAR: The actual past history of
24 the wells that are located on the reservation at this
25 point.

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1 Q. And have you talked about that with any
2 experts?
3 MR. BEAR: No.
4 Q. So it is your own informed opinion that you
5 are basing your testimony on?
6 MR. BEAR: That's why I'm here.
7 Q. Okay. Since this document was prepared,
8 have any development plans been formalized for other
9 industrial or agricultural development on the
10 reservation?
11 MR. BEAR: Yes.
12 Q. What else has been formalized?
13 MR. BEAR: We have had a plan to
14 develop agriculture. An agricultural project has been
15 formalized. And of course this facility, this storage
16 facility has been formalized. Past history, the Tekoi
17 Test Range, the rocket testing facility has been
18 formalized. We have a small Tribal store, the Pony
19 Express Station, that has been formalized by the Band.
20 Q. Tell me about your agricultural project
21 that's been formalized.
22 MR. BEAR: Right now the agricultural
23 project, the strategy right now is to produce hay or
24 grow alfalfa in a small lot of 160 acres, and the Band
25 to support that development.

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1 Q. Is it ever proposed to get bigger than 160
2 acres, or always 160 acres?
3 MR. BEAR: It is not -- right now the
4 proposal is 160 acres.
5 Q. And is that hay going to be sold?
6 MR. BEAR: Primarily the hay was to
7 help other development as far as the cattle operations
8 and a bison operation in Skull Valley. And those would
9 be the main issues to utilize the alfalfa.
10 Q. So you are proposing a cattle operation?
11 MR. BEAR: That was proposed in the
12 agricultural program.
13 Q. And how many cattle are you looking at
14 running?
15 MR. BEAR: There was no amount. It was
16 just proposed as part --
17 Q. So no one has evaluated that?
18 MR. BEAR: No. Well, we have. The
19 Bureau of Indian Affairs has evaluated that the annual
20 cattle allowed on our reservation would be about 350.
21 It would support 350 head of cattle.
22 Q. And would those cattle be dairy cattle or
23 beef cattle?
24 MR. BEAR: They would be beef cattle.
25 Q. And where would you sell the beef?

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1 MR. BEAR: There's different places to
2 sell the beef. Auction houses down in Delta. Auctions
3 up in Ogden.
4 Q. And has anybody considered the possible
5 impact of selling the beef by having a facility like
6 this on the reservation?
7 MR. BEAR: I would say this is just a
8 proposal.
9 Q. Is anybody considering the possibility of
10 the beef being less marketable?
11 MR. BEAR: Not at this time. It's a
12 proposal.
13 Q. Okay. The buffalo operation; what is that?
14 MR. BEAR: The buffalo operation is an
15 operation where we have received, as gifts, three head
16 of buffalo and we had to purchase five other head. We
17 received three bulls as gifts and we purchased five
18 cows. And that makes up the operation of eight head of
19 buffalo.
20 Q. And what are you proposing to do with them?
21 MR. BEAR: We are not quite sure right
22 now. We don't have any future plans because we don't
23 know exactly what the buffalo are going to do. We are
24 still learning about them, and learning about the
25 spirituality of the buffalo.

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1 Q. How many head of buffalo and/or cattle would
2 160 acres of alfalfa support?

3 MR. BEAR: It would support the eight
4 that we got on it. We got also crested wheat in 160
5 acres out there where the buffalo are pasturing.

6 Q. Is that to feed the buffalo?

7 MR. BEAR: Well, the intent at the time
8 this was put in, back in I think it was the early '60s,
9 and the intent at that time was not to pasture buffalo.

10 Q. Okay. But the 160-acre agricultural project
11 that you have currently approved and are moving forward
12 on, it will only produce enough hay for eight buffalo?

13 MR. BEAR: No. It will produce hay for
14 more than that.

15 Q. How many?

16 MR. BEAR: I'm not quite sure. It
17 depends. It is going -- all these things are going to
18 depend on how much water we are going to be able to
19 accumulate for the watering and how long the seasons are
20 out there for the hay, how many cuttings we are going to
21 be able to get, and also how the equipment is going to
22 work. All these things are going to be taken into
23 consideration. It's not out there yet. Let me put it
24 that way.

25 Q. Has any thought ever been given to the fact

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1 that the PFS facility will need water so if you create
2 an agricultural project then you close it down, you can
3 abandon that water to PFS? Has that ever been discussed
4 or thought about?

5 MR. BEAR: No. Because there's two
6 types of water out in Skull Valley that we utilize.

7 Q. The last sentence of this page says, "The
8 Band selectively considers business opportunities for
9 the reservation that are consistent with other business
10 ventures in Tooele County." What did you mean by
11 "consistent with other business ventures in Tooele
12 County"? Are you planning to open a McDonald's there,
13 because I checked Tooele County and they do have
14 McDonald's.

15 MR. BEAR: That's right. Consistent
16 with Tooele County, the county has zoned the area as an
17 industrial waste zone in the state of Utah and that was
18 the consistency that I was talking about.

19 Q. So there's been a formal zoning process and
20 that area has been formally zoned as an industrial waste
21 zone?

22 MR. BEAR: Yes. Industrial hazardous
23 waste zone.

24 Q. Who zoned it that way?

25 MR. BEAR: Tooele County and the state

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1 of Utah.

2 Q. Could you direct me to the documents where
3 that happened? Have you seen those documents?

4 MR. BEAR: I have not seen the
5 documents. I have talked to Tooele County, the
6 officials there, which have indicated that this is or
7 that this is a zoned area.

8 Q. Okay.

9 MR. BEAR: And I was going to say, of
10 course, the indication that that is the zone here
11 because of what is already out in the west desert.
12 There's hazardous and toxic waste dumps out there.

13 Q. So does that mean that the Band, and when I
14 say "the Band" of course I'm talking about you and those
15 that you work with, only considers business
16 opportunities that are consistent with industrial and
17 toxic waste?

18 MR. BEAR: Industrial, yes. That's
19 part of the consideration that we have or make out
20 there; whether it be toxic waste or hazardous waste or
21 low level radioactive waste or municipal waste or any
22 other type of waste, those are being looked at right
23 now.

24 MR. SILBERG: Could we go off the
25 record? I need to take a break.

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1 Q. Yes.

2 (Discussion off the record.)

3 Q. So you're only considering businesses that
4 are in that toxic --

5 MR. BEAR: No. I was saying that
6 because of the zoning out there that considers those
7 kind of businesses, the Band has to look at that and
8 consider those kinds of businesses. But as far as
9 industrial, we have to put together -- the Band is
10 selective in putting together businesses that are
11 related in those industries. We could not put a
12 business out there that has to do with a greenhouse or
13 hydroponics or something like that.

14 Q. Why?

15 MR. BEAR: Because of the -- it would
16 be because of the effect it would have on the open
17 market, where these products came from.

18 Q. What do you mean?

19 MR. BEAR: In that area, because of the
20 zoning of the area. So you could not do that, something
21 to eat out there.

22 Q. So you think that current facilities there
23 would have a negative impact on marketability of the
24 greenhouse and such?

25 MR. BEAR: On a green project, yes.

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1 Q. And would the PFS facility further that
2 negative impact or have no additional impact, or have
3 you considered that?
4 MR. BEAR: Yes. The PFS facility would
5 have no negative impact as far as contaminants.
6 Q. But you were talking about a negative
7 marketing impact, whether people would buy greenhouse --
8 MR. BEAR: So that's why a greenhouse
9 would not be considered out there.
10 Q. What else would you consider?
11 MR. BEAR: Well, as I said, past
12 history shows us that if we did -- the rocket testing
13 facility was okay. Those types of industries.
14 Manufacturing would be okay.
15 Q. So you are talking about less desirable
16 types of facilities?
17 MR. BEAR: Well, I would beg to differ
18 because a lot of people would argue that those are
19 desirable industries. And they are needed on the open
20 market.
21 Q. But industries that most people don't want
22 to have in their backyard like a rocket test facility, a
23 nuclear waste dump, a toxic chemical disposal facility.
24 MR. BEAR: Well, Salt Lake City had the
25 rocket testing facility over here, in Magna, for the

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1 longest time until encroachment happened. And they had
2 to move the facility because of the encroachment.
3 Q. Because neighbors didn't want to be near to
4 it?
5 MR. BEAR: Right. Yeah.
6 Q. Okay. I'm on Page 2 now. Can you identify
7 the Band members who live on the reservation?
8 MR. SILBERG: Are you talking about
9 identify by name?
10 Q. Yes. It's a list of 15 people.
11 MR. SILBERG: I would object to that,
12 A, as being irrelevant, and B, involving privacy issues.
13 I certainly don't know that people want to have their
14 names potentially public.
15 Q. The issue that I have here is he is making
16 some statements about how many and what they do and how
17 much money they make and where they are, and we aren't
18 sure that these are accurate statements. So before we
19 can judge their accuracy, we have to know who they are.
20 If you'd like to go off the record and negotiate some
21 way to do this without disclosing private information, I
22 would be happy to do that.
23 MR. SILBERG: I had offered to have you
24 sign an agreement.
25 MR. BEAR: I think an agreement, a

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1 confidentiality agreement would be in order.
2 MR. SILBERG: Off the record.
3 (Discussion off the record.)
4 Q. You are saying you don't see how this is
5 relevant to OGDO?
6 MR. SILBERG: Yes.
7 Q. We are cross-examining Leon Bear on a
8 statement that he filed that PFS thought was relevant
9 enough to contest OGDO to file it.
10 MR. SILBERG: No. That is incorrect.
11 We answered a question from the NRC staff.
12 Q. Somebody thought it was relevant enough to
13 ask the question.
14 MR. SILBERG: The NRC has their own
15 independent obligation to gather the information. They
16 chose to ask questions. We answered them. Whether it's
17 relevant to OGDO is a totally different issue.
18 Q. The question that they asked was, "Assess
19 the effects the lease payments would have on the
20 community of Skull Valley Band members living on the
21 reservation on potential social, educational, and
22 economic development of the reservation, and on the
23 welfare of the Band members who live in other
24 communities."
25 MR. SILBERG: And you are saying that

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1 the identification of which.
2 Q. Yes.
3 MR. SILBERG: -- members live on the
4 reservation is relevant?
5 Q. And I'm saying this is the answer you gave.
6 If you'd like me to focus on the question, I will be
7 happy at this point in time to focus on the question.
8 Leon, how much money has PFS paid you and/or
9 the Band in total from the beginning of your
10 relationship through today?
11 MR. SILBERG: And I will object to that
12 on the grounds that that is confidential information to
13 PFS, let alone confidential to the Band. Until you sign
14 the confidentiality agreement, I will not allow that
15 information to be disclosed.
16 Q. Well, unfortunately your confidentiality is
17 waived because at a public meeting attended by John and
18 myself, Leon Bear has already addressed this issue. I
19 would like it on the record.
20 MR. SILBERG: I don't know. I wasn't
21 there, and I don't know if it is waived or not.
22 Q. And I'm instructing Leon to answer the
23 question.
24 MR. SILBERG: I'm suggesting that Leon
25 not answer the question.

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1 Q. Suggesting. That's fine. He has already
2 made statements about the money.
3 MR. BEAR: If statements have been made
4 about the money, then you do know about them. At this
5 hearing here, in order for me to disclose anything I
6 would need to have this disclosure agreed upon through
7 the confidentiality agreement.

8 (Discussion off the record.)

9 Q. It's my understanding Jay, that you are
10 imposing an objection to Leon answering how much money
11 PFS has paid Leon Bear and/or the Band.

12 MR. SILBERG: Absent a confidentiality
13 agreement.

14 Q. Okay. Absent the confidentiality agreement.
15 Leon, how many Band members have signed a
16 confidentiality agreement with PFS to receive the amount
17 of -- Well, answer the question I just asked you.

18 MR. SILBERG: I'm sorry?

19 Q. Let me rephrase the question. How many
20 people in the Tribe know how much money PFS has paid you
21 and/or the Band for the life of this relationship?

22 MR. BEAR: I don't know.

23 Q. Who do you know that knows? Do you know?

24 MR. BEAR: I don't know.

25 Q. You don't know the answer to that question?

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1 MR. BEAR: No.

2 Q. Can you get the answer to that question?

3 MR. BEAR: No.

4 Q. So it would be impossible for you, alleging
5 that you are the Band chairman, to find out how much
6 money PFS has paid the Band over the --

7 MR. BEAR: Oh, you said the life of the
8 agreement?

9 Q. From the time that it started through today.
10 I'm not asking you to guess what will go on tomorrow,
11 but what has been paid?

12 MR. BEAR: And I answered that
13 previously.

14 Q. Answer it again.

15 MR. BEAR: That you need to sign a
16 confidentiality agreement before I answer.

17 Q. But do you know the answer to the question?

18 MR. SILBERG: Does he know how much has
19 been paid to date?

20 Q. Yes.

21 MR. BEAR: Yes.

22 Q. Who else knows how much has been paid to
23 date?

24 MR. BEAR: My assumption is the Band
25 knows.

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1 Q. Everyone in the Band?

2 MR. BEAR: Whoever come to the meeting.

3 Q. What meetings?

4 MR. BEAR: The General Council
5 meetings.

6 Q. Have you signed a confidentiality agreement
7 with PFS?

8 MR. BEAR: Yes.

9 Q. And who else in the Band has signed a
10 confidentiality agreement with PFS?

11 MR. BEAR: As representing the Band,
12 the Band has.

13 Q. I'm asking the Band members, the members of
14 the Tribal General Council.

15 MR. BEAR: And I'm telling you they
16 authorized me, as part of the governing body, to sign a
17 confidentiality, yes.

18 Q. So you signed that on behalf of all the
19 Band?

20 MR. BEAR: Right.

21 Q. Including Margene Bullcreek?

22 MR. BEAR: Right. She is part of the
23 General Council.

24 Q. Are you the only one on the Band that signed
25 that agreement?

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1 MR. BEAR: No.

2 Q. Who else signed it?

3 MR. BEAR: The Executive Committee.
4 It's part of the lease.

5 Q. Did anybody else to your knowledge sign a
6 separate confidentiality agreement with PFS?

7 MR. BEAR: Not to my knowledge.

8 Q. Okay. And anybody who came to those
9 meetings was entitled to the answer of the question I
10 asked you, how much money has been paid so far?

11 MR. BEAR: Right.

12 Q. Including Margene?

13 MR. BEAR: Yes.

14 Q. I will reask you the question. How much has
15 been paid to date, since Margene is bound by the
16 identical confidentiality agreement as every other
17 Tribal member who you say already knows this
18 information?

19 MR. SILBERG: But you are not, and this
20 transcript is not. And I will instruct him not to
21 answer because this involves PFS confidential
22 information as well as Band confidential information.
23 And at this point we are just playing games.

24 Q. What is happening is he is singling out
25 Margene for information, for treatment that is different

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1 than everybody else.
2 MR. SILBERG: No. When she was at the
3 council meeting, she received exactly the same
4 treatment. She is here today in a different capacity
5 and you are here today in a different capacity. And you
6 are not subject to the Board resolutions.
7 Q. And so the confidential agreement says that
8 if we got this information from some other source, it's
9 not confidential. So if Margene told it to me
10 independently, it is not confidential.
11 MR. SILBERG: But she would also
12 presumably be violating the Tribal resolutions if she
13 tells you.
14 Q. So there's a Tribal resolution, to your
15 knowledge, that says clients can't talk to their
16 attorneys?
17 MR. SILBERG: I only know what I heard
18 today. I'm not an expert on that.
19 Q. Does the resolution forbid Tribal members
20 from discussing Tribal matters with their attorneys?
21 MR. BEAR: Not specifically.
22 MR. SILBERG: You are not her personal
23 attorney. Just for the organization.
24 MR. BEAR: But it does prohibit her
25 from talking about Tribal matters outside the General

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1 Council.
2 Q. And who enforces that agreement?
3 MR. BEAR: The General Council.
4 Q. And if Tribal members discussed that outside
5 the General Council with their attorneys, would you
6 think that was a violation of the privacy agreement?
7 MR. BEAR: Yes.
8 Q. And what would happen if somebody did that?
9 MR. BEAR: I don't know. Nobody has
10 ever done it up to now.
11 Q. Of the money that PFS has paid you, and I'm
12 going to use a hypothetical number of X, how is X
13 handled by you and those that handle -- I presume you
14 handle Tribal funds?
15 MR. BEAR: Yes.
16 Q. Are there Tribal checking accounts?
17 MR. BEAR: Yes.
18 Q. Are there nonchecking bank accounts?
19 Savings?
20 MR. BEAR: Yes.
21 Q. Are you a signer on all Tribal bank
22 accounts?
23 MR. BEAR: Yes.
24 Q. Okay. So you are confident to testify as to
25 how Tribal money is handled?

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1 MR. BEAR: Yes.
2 Q. How is the money derived from this agreement
3 with PFS and/or you handled?
4 MR. SILBERG: I'm going to object to
5 that. Matters of internal operations of the Tribe are
6 not relevant to this contention, and I don't think it
7 has any bearing on OGD0.
8 Q. NRC staff believes that assessing the
9 effects the lease payments would have on the community
10 of Skull Valley members living on the reservation is a
11 part of this.
12 MR. SILBERG: On the community. Not on
13 individual members.
14 Q. I never said individual members. I asked
15 how the money is spent in his control. I'm going to get
16 to individual members, but right now I'm asking how the
17 money is spent. How lease payments from PFS --
18 MR. SILBERG: If you want to talk about
19 generally, okay. As far as I'm concerned, I don't care.
20 I don't know whether Leon wants to talk about it. I
21 thought you were --
22 MR. BEAR: Can you restate the
23 question?
24 Q. Yes. How has this amount of money coming
25 from PFS, some X amount, how has that been spent? Who

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1 decides how it is spent?
2 MR. BEAR: The General Council.
3 Q. The General Council decides?
4 MR. BEAR: Right.
5 Q. And how do they decide?
6 MR. BEAR: Through a Tribal budget.
7 Q. And when are Tribal budgets put forth?
8 MR. BEAR: Every fiscal.
9 Q. When this is done? At the April or August
10 meeting?
11 MR. BEAR: The August meeting.
12 Q. The August meeting. And tell me how that
13 budget process works.
14 MR. BEAR: You'll have to ask a
15 specific question.
16 Q. As part of that budget process, do you have
17 a proposed budget that you offer to the general Tribal
18 Council?
19 MR. BEAR: Yes.
20 Q. Is that in your head or reduced to writing?
21 MR. BEAR: Reduced to writing.
22 Q. And does every member of the Tribal General
23 Council get a copy of this proposed budget to weigh and
24 discuss during the meeting?
25 MR. BEAR: No.

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1 Q. How?
2 MR. BEAR: It is done through overheads
3 and explained to them at the Tribal meeting.
4 Q. And is that a detailed budget?
5 MR. BEAR: Yes.
6 Q. Referring to the most recent budget, when
7 was the most recent budget meeting?
8 MR. BEAR: August of 2000.
9 Q. How many pages, approximately, did the
10 budget that was presented to the Tribal General Council
11 consist of?
12 MR. BEAR: About ten.
13 Q. About ten. And did that disclose how much
14 money came into the tribe from a variety of sources?
15 MR. BEAR: No.
16 Q. How did it list the income? How does the
17 tribe know how much money it has to spend?
18 MR. BEAR: It doesn't. The Executive
19 Committee makes up the budget and presents it to the
20 General Council.
21 Q. And is this discussed, debated, changed, or
22 just approved or disapproved?
23 MR. BEAR: That would be up to the
24 General Council.
25 Q. And that's what I'm trying to find out. Do

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1 they have the authority to edit that budget?
2 MR. BEAR: Oh, yes.
3 Q. Okay. On this budget --
4 MR. SILBERG: Just to clarify, you said
5 in answer to the question how does the tribe know how
6 much money they have to spend and you said it doesn't,
7 doesn't the budget show what the income is and what is
8 being --
9 MR. BEAR: No. It just shows what the
10 expenditures of the budget are and how much is allocated
11 to the budget.
12 Q. Okay. How does the Tribal General Council
13 know if they are in the black or red?
14 MR. BEAR: We talk about those issues.
15 Those are different issues than the Tribal budget.
16 Q. So they are told how much income is coming
17 in?
18 MR. BEAR: Yes.
19 Q. And from what sources?
20 MR. BEAR: Yes.
21 Q. In that last Tribal budget, income was
22 indicated from PFS. Is that correct?
23 MR. BEAR: No.
24 Q. There was no income from PFS at all?
25 MR. BEAR: No.

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1 Q. That last budget was for what time period?
2 MR. BEAR: Fiscal year 2001. That's
3 this year.
4 Q. And no income from PFS was on that budget
5 whatsoever?
6 MR. BEAR: There was no income
7 indicated on it.
8 Q. Did the Band or you or anyone else get any
9 income from PFS?
10 MR. BEAR: Yes, we did.
11 Q. Why was that not reflected on the budget?
12 MR. BEAR: Because that's a different
13 issue than the budget. The way the tribe, the General
14 Council, in the past have worked our budgets, that's a
15 different issue.
16 Q. That's extra budget money? It has nothing
17 to do with the budget?
18 MR. BEAR: No.
19 Q. No that's the wrong statement, or no it
20 doesn't have anything to do with the budget?
21 MR. BEAR: No. You have to understand.
22 The revenue is not identified when it comes in. It is
23 put into the general coffers and then the budget is
24 taken out of that general coffer.
25 Q. So PFS money is put in the general coffer

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1 and is treated exactly the same way as all other Tribal
2 money?
3 MR. BEAR: Right.
4 Q. No difference?
5 MR. BEAR: No difference.
6 Q. Okay.
7 MR. BEAR: But as of this year, we
8 passed a resolution identifying the different revenue
9 streams that are coming into the Band due to the fact
10 that, as far as the lease is concerned, that all Tribal
11 members have to participate and general income that
12 comes in, that would be up to the General Council at the
13 General Council's discretion.
14 Q. What do you mean as far as lease payments
15 all Tribal members must participate?
16 MR. BEAR: According to BIA, the lease
17 payments that are made are derived from land
18 authorization, and of course every single Tribal member
19 has to participate in that.
20 Q. Do they participate equally or unequally?
21 MR. BEAR: As far as that amount of
22 money goes, yes, equally.
23 Q. The money that you receive from PFS, is that
24 all treated as one category, money from the lease?
25 MR. BEAR: Yes. Right.

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1 Q. Or is that treated as multiple categories?
2 MR. BEAR: Like I say, it is still put
3 into the general coffers but now it is identified.

4 Q. Did you sign checks last year for every Band
5 member for I believe \$7.61 apiece, and were those checks
6 identified as their share of the PFS lease payment?

7 MR. BEAR: I think that that would fall
8 under this confidentiality issue.

9 Q. Did you sign a check for Margene Bullcreek
10 for \$7.61?

11 MR. BEAR: I also think that falls
12 under the confidentiality agreement.

13 Q. If we were to sign a confidentiality
14 agreement, then we would have access to all the Tribal
15 resolutions and minutes and the other records that we
16 have requested?

17 MR. BEAR: No.

18 Q. What would we have access to?

19 MR. BEAR: To what goes on in this
20 statement here that we are asking or the questions are
21 being asked about. I would still need to have authority
22 and authorization from the General Council to release
23 documents.

24 MR. SILBERG: And it would also have to
25 be relevant to this contention.

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1 Q. So if we signed a confidentiality agreement
2 dealing solely with this deposition, then you could
3 answer all these questions freely?

4 MR. BEAR: Yes, I can answer them.

5 Q. Do you have any questions you want to ask
6 anybody on the topic?

7 MR. SHEPLEY: On this particular topic?

8 Q. Yes. And while you are thinking about that,
9 Jay, if we signed a confidentiality agreement solely for
10 the purposes of this deposition with PFS, would that
11 solve your concerns?

12 MR. SILBERG: With PFS?

13 Q. Yes.

14 MR. SILBERG: Yes. And from Leon's
15 standpoint you have to sign it with the Band, as well.

16 Q. I understand. Two agreements?

17 MR. SILBERG: The same deal we have
18 with the state. It has worked well so far.

19 (Discussion off the record.)

20 Q. Leon, we are talking about you individually
21 in your personal capacity. Do you now or have you ever
22 had any contracts with PFS?

23 MR. BEAR: No.

24 MR. SILBERG: You mean as an individual
25 as opposed to --

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1 Q. As an individual.

2 MR. BEAR: No.

3 Q. Has any organization that you have been
4 involved with represent, speak to, et cetera, other than
5 the Skull Valley Band of Goshute Indians, the federal
6 recognized Indian tribe, ever had any personal contracts
7 with PFS?

8 MR. BEAR: No. Not personally.

9 MR. SILBERG: Any?

10 Q. Any organization that he has been involved
11 with.

12 MR. SHEPLEY: Other than the Band.

13 MR. SILBERG: Oh, that he's been
14 involved in. I didn't hear the "that he's been involved
15 with" part.

16 Q. Have you or any such entity had any such
17 contracts or dealings with any contractor related to
18 PFS?

19 MR. BEAR: Can you specify what
20 entities you are talking about?

21 MR. SHEPLEY: Well, like Stone and
22 Webster.

23 Q. Entities are any private company, any Tribal
24 corporation, any organization, any company, any investor
25 group, anything that you have been involved with, any

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1 group you have been involved in other than the tribe.
2 I'm trying to find out if any money from PFS has come to
3 you personally, to your family, to your organization, a
4 group other than the Tribe.

5 MR. BEAR: No.

6 Q. So to your knowledge, all money involved
7 with PFS directly or indirectly in this case has gone to
8 the Tribe?

9 MR. BEAR: Yes.

10 Q. Okay. And the same goes for any contractor
11 like -- who does John work for?

12 MR. SILBERG: Stone and Webster.

13 Q. Stone and Webster or any other contractor at
14 PFS.

15 MR. SHEPLEY: When we say PFS we mean
16 all of those.

17 Q. There's no side deal where you have ever
18 gotten any money from anybody other than through the
19 Tribe having to do with this facility; is that correct?

20 MR. BEAR: Personally?

21 Q. Yes.

22 MR. BEAR: Yes.

23 Q. Family? Business?

24 MR. BEAR: No.

25 Q. What do you mean "no"?

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REDACTED

1 herself as chair.

2 Q. Okay. And is OGD a good or bad thing, in
3 your opinion?

4 MR. BEAR: Well, it isn't sanctioned by
5 the Skull Valley Band of Goshute indians.

6 Q. What do you mean it isn't sanctioned?

7 MR. BEAR: There's no resolution
8 authorizing OGD to act in any capacity for the Skull
9 Valley Band.

10 Q. Do they need a resolution, does OGD need a
11 resolution to act other than for the Band?

12 MR. BEAR: I don't know. If it is
13 incorporated outside of the scope of Skull Valley, I
14 would assume they would need some kind of business
15 license or some kind of charter.

16 Q. I'm just looking, is there any Tribal
17 authorization needed for OGD to function and exist, in
18 your opinion?

19 MR. BEAR: It can't represent the Band.

20 Q. In your opinion is its representation in the
21 NRC appropriate? Should it be involved in the NRC
22 proceedings as representing the interest of the Skull
23 Valley Band of Goshute Indians?

24 MR. BEAR: That's not for me to say.

25 Q. I'm asking if you have an opinion.

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1 MR. BEAR: I would say no.

2 Q. No you don't have an opinion or --

3 MR. BEAR: I would say no, this is not
4 the appropriate . . .

5 Q. Okay. To your knowledge, has OGD ever
6 sponsored any information, brochures, handouts,
7 meetings, or anything else concerning the PFS project?

8 MR. BEAR: Yes. I recollect a time.

9 Q. Have they ever sponsored a meeting, to your
10 knowledge?

11 MR. BEAR: Not for the Skull Valley
12 Band, no.

13 Q. Have they ever had an informational meeting
14 for anybody having to do with the PFS project, to your
15 knowledge?

16 MR. BEAR: Yes.

17 Q. And how many of those meetings are you aware
18 of?

19 MR. BEAR: Just one.

20 Q. And do you remember approximately when that
21 was?

22 MR. BEAR: It must have been about a
23 couple years ago.

24 Q. And where was that meeting held?

25 MR. BEAR: On the Skull Valley Indian

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1 reservation.
2 Q. Did Margene ask you or anybody else
3 permission to have that meeting there?
4 MR. BEAR: No.
5 Q. Did OGD ask you or anybody else for
6 permission to have that meeting there?
7 MR. BEAR: No.
8 MR. SILBERG: Can I ask where this is
9 going?
10 Q. We are exploring, among other things, his
11 feelings of OGD, his prejudices, his competency as a
12 witness. He is on the PFS expert witness list so we are
13 trying to go down and check and see where he is and if
14 he has any feelings about that or not.
15 MR. SILBERG: About what?
16 Q. About OGD, about allowing the opposition to
17 have a voice.
18 MR. SILBERG: What does that have to do
19 with OGDO?
20 Q. Because a community where the opposition is
21 stifled, as opposed to the majority community where the
22 opposition has full rein to voice their views, would
23 certainly be a disparate impact.
24 MR. SILBERG: It's one community.
25 MR. BEAR: I'm getting confused here

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1 because I'm answering these questions as me.
2 Q. Yes.
3 MR. BEAR: And I'm assuming that's how
4 you are asking the question. Not as the chair, but as
5 me personally.
6 Q. That's correct.
7 MR. BEAR: Okay. Thank you. Just
8 wanted to clarify that because I was getting confused.
9 MR. SHEPLEY: To show prejudice of
10 witness. And we are all subject to the questions.
11 MR. BEAR: As chairman or as my
12 individual --
13 Q. And one of the things that we discussed at
14 the beginning, and I will refresh your memory, if your
15 testimony as an individual is different than testimony
16 as a chair person, say, "I'm speaking for --" or
17 whatever. Let us know that you are not speaking for
18 both.
19 MR. BEAR: I'm here with the --
20 Q. As author of the document and expert witness
21 for PFS.
22 MR. BEAR: The subpoenas or whatever
23 you have for the deposition. The letter that was sent
24 to us.
25 Q. Right.

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1 MR. BEAR: In that capacity. And I
2 didn't know I was supposed to be here as an individual.
3 I thought I was here representing the Tribe and as a
4 chairman.
5 Q. I think we carry our individuality with us
6 at all times.
7 MR. BEAR: I understand that.
8 MR. SHEPLEY: The questions are
9 generally personal, even for expert witnesses.
10 MR. BEAR: My personal differences has
11 nothing to do with the chairmanship, because the Tribal
12 government, the General Council is the one that directs
13 me to do, as the chairman, to do different things.
14 That's why I'm saying that.
15 On an individual basis, yes, I have personal
16 objections and objects and ideas. But as a chairman,
17 that's something totally different now of what those
18 objections and ideas are.
19 Q. Have you been named as a witness in the PFS
20 case?
21 MR. BEAR: I don't have any knowledge
22 of that.
23 MR. SILBERG: I think the answer is
24 yes.
25 MR. BEAR: If the book says I have,

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1 then I am. Okay, yes.
2 Q. We probably should go off the record long
3 enough for him to look at that so he can see what he has
4 been designated as an expert on.
5 (Discussion off the record.)
6 MR. BEAR: Okay. Environmental justice
7 issues, yes.
8 Q. What is environmental justice?
9 MR. BEAR: Now, that is a term that has
10 been used on the outside. And to my understanding, in
11 my personal knowledge of environmental justice, it
12 differs from every or different reservations to
13 different -- you know, reservation to reservation it
14 differs, what the definition is.
15 Q. And what is the definition that you
16 understand is applicable to this matter?
17 MR. BEAR: That the state of Utah has
18 committed environmental justice when they surrounded us
19 by all the hazardous and toxic waste dumps. That's my
20 interpretation in this matter of what the environmental
21 justice is, with the Army and the Air Force.
22 MR. SHEPLEY: They would certainly fall
23 under that classification, I would imagine.
24 MR. BEAR: Right.
25 Q. And what else is your understanding of the

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1 application of the term "environmental justice" in the
2 NRC proceedings? Do you have any other additional
3 expertise other than what you just said?
4 MR. BEAR: No. That's it.
5 Q. Okay. And in testifying before the NRC, are
6 you testifying on behalf of Skull Valley or as an
7 individual? As the Band or individually?
8 MR. BEAR: Well, apparently it says the
9 chairman, on the list.
10 Q. Have you discussed this with anybody or is
11 it a surprise that you --
12 MR. BEAR: I'm surprised that I was on
13 this, yes.
14 Q. So you are expecting to testify on behalf of
15 the Band?
16 MR. BEAR: That's what it says.
17 MR. SILBERG: That was a list submitted
18 by PFS, not by the Band.
19 MR. BEAR: Okay. Sorry.
20 Q. And I'm asking him in his testimony -- let's
21 go off the record for a minute.
22 (Discussion off the record.)
23 Q. You're designated as an expert for PFS.
24 MR. BEAR: (Witness nods head up and
25 down.)

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1 Q. Are you, JOHN DONNELL, individually so
2 designated or are you prepared to testify for the Band?
3 MR. BEAR: I'm designated as chairman
4 of the Skull Valley Indians.
5 Q. So you anticipate testifying on behalf of
6 the Band?
7 MR. BEAR: As chairman, yes.
8 Q. Who authorized you to testify?
9 MR. BEAR: The General Council.
10 Q. And did they do that by specific resolution?
11 MR. BEAR: No.
12 Q. How or when and where did they authorize?
13 MR. BEAR: The way the Executive
14 Committee interprets that is it is done through
15 resolution, through the lease agreement.
16 Q. So you are saying that the resolution that
17 authorized the lease agreement authorized you to testify
18 before the NRC on these issues?
19 MR. BEAR: Not specifically. It
20 authorizes me to put the project in Skull Valley.
21 Q. Do you have specific authorization from the
22 Tribal General Council to testify here?
23 MR. BEAR: No.
24 Q. Are you being compensated for your testimony
25 here today or your testimony before the NRC in the

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1 future?
2 MR. BEAR: Not on a personal basis, no.
3 Q. What do you mean "not on a personal basis"?
4 MR. BEAR: I'm personally here at your
5 request as a person and I'm not being compensated.
6 Q. Are you being compensated as the chairperson
7 of the Skull Valley Band of Goshute Indians to testify?
8 MR. SILBERG: For this deposition?
9 Q. And for the subsequent testimony before the
10 NRC.
11 MR. BEAR: Because the chairman has
12 stipends and is paid on a monthly basis, all this is
13 included in that.
14 MR. SILBERG: I think his question is
15 are you specifically being paid for this deposition for
16 your testimony in addition to what you normally receive.
17 MR. BEAR: No.
18 MR. SILBERG: I think that's what he
19 asked.
20 Q. Are you familiar with Contention O?
21 MR. BEAR: Yes.
22 Q. Tell me what you think Contention O is.
23 MR. BEAR: It's to talk about
24 environmental justice and the impacts that are going to
25 be related to the reservation when the facility comes.

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1 Q. And have you had any training to help you
2 understand environmental justice and help you understand
3 Contention O?
4 MR. BEAR: A little bit. I have
5 attended conferences on environmental justice. I have
6 attended a round table discussion in Albuquerque at the
7 Indian college about environmental justice and what it
8 means to Indian country. That's why I say each issue of
9 environmental justice is different from each reservation
10 to each reservation.
11 Q. Are you familiar with President Clinton's
12 Executive Order 12898 dated February 11, 1994, on
13 environmental justice?
14 MR. SHEPLEY: That was asked already.
15 Q. Do you have a copy of that?
16 MR. SHEPLEY: I gave you a copy. I
17 asked that question.
18 MR. BEAR: Yeah. I'm not familiar with
19 this one.
20 Q. Was that covered in any of the classes or
21 anything else that you took --
22 MR. BEAR: It probably was, yes. I see
23 some things in there that were covered. And when was
24 this done?
25 MR. SILBERG: 1992. Or '94.

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1 MR. BEAR: This was done prior to my
2 training.
3 Q. Okay. And so you are not competent to talk
4 about this at all?
5 MR. BEAR: No.
6 Q. How many people, how many enrolled members
7 of the Tribe are opposed to the PFS facility, in your
8 opinion?
9 MR. BEAR: Probably about 15 percent.
10 Q. About 15 percent. And Margene Bullcreek is
11 one of those?
12 MR. BEAR: Yes.
13 Q. And did she, in connection with OGD, sponsor
14 an anti-PFS information meeting at her home a couple
15 years ago?
16 MR. BEAR: No.
17 Q. You indicated that there was one OGD meeting
18 that you are aware of.
19 MR. BEAR: Right.
20 Q. What was that meeting?
21 MR. BEAR: That was the informational
22 meeting that Margene sponsored on the reservation.
23 Q. Okay.
24 MR. BEAR: Not at her home, but on the
25 reservation.

1 MR. BEAR: The Tribal code.
2 Q. Was there a violation going on?
3 MR. BEAR: No.
4 Q. So the police weren't called for any
5 particular purpose other than just to keep an eye on
6 them?
7 MR. BEAR: Uh-huh (affirmative).
8 Q. Okay. Were the police asked remove anybody
9 as trespassers?
10 MR. BEAR: If they trespassed, yes.
11 Q. Did anybody trespass?
12 MR. BEAR: Yes.
13 Q. Who trespassed?
14 MR. BEAR: Some people went up and cut
15 down green trees, green timber to facilitate a shade
16 house, or shade.
17 Q. Who did that?
18 MR. BEAR: I'm not sure.
19 Q. Where were those trees cut down?
20 MR. BEAR: Up in the Indian Hickman
21 area.
22 Q. Is that on the reservation or off the
23 reservation?
24 MR. BEAR: It's off.
25 Q. And is that a violation of the Tribal code?

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1 Q. Okay. And did you support that activity?
2 MR. BEAR: No, I didn't go over and
3 attend.
4 Q. Did you oppose the activity?
5 MR. BEAR: I didn't go over and attend.
6 Q. Did you personally, or as a Tribal leader,
7 take any action that would be viewed as supporting or
8 opposing that meeting?
9 MR. BEAR: It was -- a notice was sent
10 to the Executive Committee about the meeting.
11 Q. Okay. But you individually or as a member
12 of the Executive Committee took no action whatsoever
13 that could be viewed as supporting that meeting?
14 MR. BEAR: No.
15 Q. You didn't call the police?
16 MR. BEAR: We had to have law
17 enforcement there.
18 Q. Who called the police?
19 MR. BEAR: We arranged that.
20 Q. Who was "we"?
21 MR. BEAR: The Executive Committee.
22 Q. What were the police called to do?
23 MR. BEAR: To enforce the law and the
24 Tribal code, and keep peace.
25 Q. What law were they asked to enforce?

1 MR. BEAR: Trespassing, yes. And the
2 Tribal member allowing it to happen or authorizing that
3 to happen, yes.
4 Q. You said there was a violation of
5 trespassing.
6 MR. BEAR: Right.
7 Q. And then you said cutting down trees.
8 MR. SILBERG: We are getting awfully
9 far afield of anything having to do -- I have let this
10 go on for a long time. And we are just getting totally
11 far afield from anything having to do with this
12 contention.
13 Q. Objection noted.
14 MR. SILBERG: I will keep repeating
15 that. And I don't think this witness is obligated to
16 continue if he chooses not to do so.
17 Q. Okay.
18 MR. SILBERG: It's his choice.
19 Q. Who trespassed?
20 MR. BEAR: On advice, I won't answer
21 that question.
22 MR. SILBERG: Also, if we are getting
23 into names, I think that is not appropriate on a public
24 record.
25 Q. He can identify them as a participant in the

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1 rally, as a resident of the reservaiton, as an enrolled
2 member. He doesn't have to mention names.
3 Mr. SILBERG: He already said.
4 Q. It is our position and the position we are
5 trying to examine him on is that he harassed the
6 opposition for no valid purpose. And we are entitled to
7 examine him on that to establish bias of the witness.
8 MR. SILBERG: I don't think you are
9 entitled.
10 Q. And we are going to his bias.
11 MR. SILBERG: I don't think you are
12 entitled to examine him on that.
13 Q. Okay. Thank you.
14 You said somebody trespassed and when I
15 asked you to explain you said somebody cut down a tree
16 off the reservation.
17 MR. BEAR: No. I said somebody cut a
18 tree in Indian Hickman.
19 Q. Was cutting down a tree --
20 MR. BEAR: Not one tree. A dozen trees
21 or whatever.
22 Q. Was cutting down a dozen trees, where they
23 were cut down, a violation of the Tribal code?
24 MR. BEAR: Yes, it was.
25 Q. Were those trees cut on the reservation?

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1 MR. BEAR: No, it wasn't.
2 Q. Why is cutting down trees off the
3 reservation a violation of the Tribal code?
4 MR. BEAR: Because it was a violation
5 of cutting trees down in our aboriginal territory.
6 Q. So you have a Tribal regulation that nobody
7 can cut down trees in your aboriginal territory?
8 MR. BEAR: Yes.
9 Q. Okay. Did the Tribe, did you and/or the
10 Tribe and/or the Executive Committee take any action on
11 this violation?
12 MR. SILBERG: I'm going to suggest
13 again we are going very far afield from anything
14 relevant to OGDO.
15 Q. Noted.
16 MR. SILBERG: And I will suggest that
17 we not proceed any further.
18 Q. Did you or anybody take any action?
19 MR. BEAR: I won't answer that
20 question, based on advice.
21 Q. Did you notify any individual that they were
22 fined in the amount of \$5,000 or any other amount
23 because those trees were cut down?
24 MR. SILBERG: Same suggestion.
25 MR. BEAR: I won't answer, due to the

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1 advice.
2 Q. Isn't it true that the only reason you
3 called the police, the only reason that you fined
4 anybody was to silence the opposition to PFS?
5 MR. SILBERG: Same objection.
6 MR. BEAR: I won't answer.
7 MR. SILBERG: Can we just stipulate --
8 I don't know how many more of these you have, if there's
9 another line, and I don't know whether Leon will
10 continue to accept my suggestions but if there are other
11 lines of questions, can we get on to those and you can
12 ask is he going to give the same answers. I'd really
13 like to allow you to ask all your questions if you are
14 going to get answers to them. Otherwise we are wasting
15 time.
16 Q. Well, having him refuse to answer questions
17 as to his bias, questions as to his actions, is as valid
18 as an answer. So if the answer is can we have one
19 stipulation that we aren't going to answer anything and
20 then go home, if you want to propose such a stipulation,
21 you can. But I think --
22 MR. SILBERG: I just think that further
23 questions on the same topic of some meeting and what the
24 Tribe did internally with respect to that meeting or
25 other people who may have been on the reservation, you

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1 could ask an endless series of questions and I'm just
2 trying to simplify the process.
3 Q. And maybe the problem is that we need to
4 continue the deposition to a time when JOHN DONNELL has
5 independent representation because I realize that you
6 have a conflict. You work for PFS. You don't work for
7 him. You are trying to help everybody out here but at
8 the same point in time, if he wants to have counsel
9 advise him how to answer and what to answer and what not
10 to answer, then I think he should have his own counsel.
11 MR. SILBERG: He can make that choice.
12 That's his choice. Or he can decide he can answer them
13 or not answer them without advice of counsel.
14 Q. Are there any unemployed people living on
15 the reservation?
16 MR. BEAR: Yes.
17 Q. How many?
18 MR. BEAR: The majority.
19 Q. What do you mean, "the majority"?
20 MR. BEAR: A lot of people are
21 unemployed. The majority of people on the reservation
22 are unemployed.
23 MR. SILBERG: Employed or unemployed?
24 MR. BEAR: Unemployed.
25 Q. And were a majority of them unemployed at

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1 the time that you signed this 11-page document?
2 MR. BEAR: In 1999? There was probably
3 like half and half. Fifty percent.
4 Q. Are there any able-bodied people on the
5 reservation that are unemployed?
6 MR. BEAR: Yes.
7 Q. Were there any able-bodied people on the
8 reservation that were unemployed back in '99 when you
9 signed this?
10 MR. BEAR: Yes.
11 Q. How many?
12 MR. BEAR: Like I said, about 50
13 percent.
14 Q. Okay. Jay, you indicated that we would have
15 some access to Band documents if we signed an
16 appropriate release.
17 MR. SILBERG: No. I think --
18 Q. When you were on the phone.
19 MR. SILBERG: No. What I think I said
20 was have access to OGD documents. There are two
21 categories of them. There were ones that are
22 proprietary and ones that were nonproprietary. And I
23 told you we have access to the nonproprietary ones
24 without any confidentiality agreement, and access to the
25 ones that were considered proprietary once the

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1 confidentiality agreement was signed.
2 Q. Okay.
3 MR. SILBERG: I think that's what I
4 said. I didn't keep detailed notes.
5 Q. When we discussed that, were you aware that
6 Leon's position was that no Tribal resolutions or
7 anything else would be made available without a specific
8 vote of the Tribe?
9 MR. SILBERG: No. But I don't know if
10 there are any Tribal resolutions that are relevant.
11 Q. Okay.
12 (Discussion off the record and
13 EXHIBITS-2 THROUGH 5 WERE MARKED.)
14 Q. I'm referring now to Exhibit 2, which is
15 identified as resolution 79-08, I believe. Is that an
16 08 up there? It sure looks like it.
17 Leon, I'm going to ask you about four
18 resolutions here that the BIA provided to the State of
19 Utah under a Freedom of Information Act request.
20 Because they did come from that route, we are not
21 marking them as confidential documents, as they came
22 through a different route than we had them already. Do
23 you know what resolution 79-08, Exhibit 2, covers?
24 MR. BEAR: Now, I'm not bound by the
25 BIA or the state laws. I'm bound by Tribal laws not to

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1 answer anything about confidential records or documents
2 that are Tribal related.
3 Q. Do you believe that resolution 79-08, dated
4 November 24, 1979, is a confidential Tribal document?
5 MR. BEAR: If it is a Tribal resolution
6 from the Skull Valley Band of Indians it is.
7 Q. So you are refusing to answer any questions
8 about it at this point in time?
9 MR. BEAR: Yes.
10 Q. Okay. Exhibit 3 is identified as a
11 resolution 89-12 dated November 18, 1989. Exhibit 4 is
12 only dated 4-21-90; I don't see a resolution number on
13 it. It may have been eclipsed at the top. It looks
14 like that's a possibility. And Exhibit 5 is identified
15 as ordinance number 91-40 OR, dated April 20, 1991. So
16 that is an ordinance as opposed to a resolution. Are
17 you willing to confirm the authenticity of these
18 documents whatsoever, Leon?
19 MR. BEAR: No.
20 Q. And what is the basis for that?
21 MR. BEAR: Because of Tribal
22 confidentiality I cannot talk about these documents.
23 Q. And if OGD or somebody else wanted to get a
24 release of these or certain Tribal records to support
25 their contention, to support OGD Contention 0, what

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1 process would we need to go through to get those records
2 released for the NRC process? What would be needed?
3 MR. BEAR: Authorization from the
4 General Council.
5 Q. And how would someone do that?
6 MR. BEAR: When they are having their
7 meeting, set up an appointment to discuss this issue
8 with them.
9 Q. And how would someone set up an appointment?
10 MR. BEAR: Probably by calling the
11 Executive Committee and asking them to put them on the
12 agenda.
13 Q. So what phone number would you recommend and
14 who should they ask for when the phone is answered?
15 MR. BEAR: You could ask for me.
16 Q. Okay.
17 MR. BEAR: And make a request.
18 Q. And your phone number?
19 MR. BEAR: Is 474-0535.
20 Q. And that rings at the office you identified?
21 MR. BEAR: The project office, yes.
22 Q. And where is the project office?
23 MR. BEAR: Located here in Salt Lake.
24 Q. And who pays for that office?
25 MR. BEAR: The M and A.

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1 Q. PFS pays for that office? When you say the
2 M and A --
3 MR. BEAR: The money comes from the
4 lease.
5 Q. Okay.
6 (Discussion off the record and
7 EXHIBITS-6 THROUGH 8 WERE MARKED.)
8 Q. Leon, I'm holding three more documents,
9 apparently. The first one, Exhibit 6, is Executive
10 Committee resolution 97-05B dated May 20, 1997. Can you
11 discuss that resolution, that Executive Committee
12 resolution?
13 MR. BEAR: Is that resolution relevant
14 to the lease?
15 Q. I'm asking you to tell me that. You have
16 the resolution.
17 Can the record reflect that I gave Jay
18 Silberg two copies of all these resolutions; one for
19 himself and one to give to the witness.
20 MS. NAKAHARA: I don't believe he has
21 it in front of him.
22 MR. BEAR: I don't want to see a copy
23 of it because of Tribal confidentiality.
24 Q. Are you suggesting that the Tribal
25 confidentiality doesn't allow you to see those?

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1 MR. BEAR: As a Tribal member, yes.
2 Q. You are not allowed to see these?
3 MR. BEAR: Not as a Tribal member.
4 Q. In what capacity are you testifying in?
5 MR. BEAR: You said in a personal and
6 individual capacity.
7 Q. And you said you were also acting in an
8 official capacity, although we didn't --
9 MR. BEAR: That's not the way I
10 understood it.
11 Q. So you are refusing to look at these
12 resolutions?
13 MR. BEAR: In what capacity?
14 Q. In any capacity you'd like. We are not
15 going to acknowledge that you are the duly elected
16 chairman of the Skull Valley Band of Goshute Indians.
17 MR. BEAR: Then on a personal capacity,
18 no.
19 Q. Will you look at them in any other capacity
20 that you allege that you have?
21 MR. BEAR: No. Not alleged.
22 Q. Okay. So Exhibit 6 I think we have talked
23 about. Exhibit 7 is Resolution Attachment No. 97-12A
24 (1) dated December 12, 1996. And are you willing to
25 look at that resolution?

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1 MR. BEAR: Not on an individual basis,
2 no.
3 Q. And Exhibit 8 is a copy of General Council
4 resolution 97-12A dated December 7, 1996 and are you
5 willing to look at or discuss that resolution?
6 MR. BEAR: No.
7 Q. So it is accurate to have the record reflect
8 that you have refused to look at, let alone discuss, any
9 of the resolutions?
10 MR. SILBERG: I think he said in his
11 individual capacity. I think.
12 MR. BEAR: Yes.
13 Q. And I have asked him if there's any other
14 capacity he is willing to look at them in and he said
15 no.
16 MR. SILBERG: I think he said as chair.
17 MR. BEAR: Not alleged chairman, no, I
18 won't. My title is the chairman.
19 MR. SILBERG: I think he said he would
20 look at it as chair, I think.
21 MR. BEAR: Yes.
22 Q. You can look at it in any way you want. But
23 if you want me to acknowledge that you are chair as the
24 price of looking at it, we are not going to do that.
25 MR. SILBERG: Can we go off the record?

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1 Q. Yes.
2 (Discussion off the record.)
3 MR. SILBERG: Just for the record, I
4 think we have solved the terminology dispute of who is
5 willing to concede who has what title. And I think, as
6 I understand it, which is not as attorney for the Band
7 and not as an expert on Indian law, Leon can look at
8 these resolutions as chairman of the Band, whether or
9 not the folks on the other side of the table are willing
10 to recognize his chairmanship.
11 Q. Okay.
12 MR. SILBERG: And with that, I think we
13 will go ahead now.
14 Q. Okay. And before we start back on these
15 exhibits, I do have a question I need to ask. I have
16 heard that Danny Quintana is seriously ill. Does he
17 still represent you?
18 MR. BEAR: At this time, yes. He is
19 semi-retired.
20 Q. Okay. So he is still the attorney of
21 record?
22 MR. BEAR: At this point, yes.
23 MR. SILBERG: In the NRC proceedings.
24 Q. And do you have personal counsel or is that
25 your only counsel?

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1 MR. BEAR: I don't have personal
2 counsel, no.
3 Q. Okay. And I guess Jay indicated that we can
4 talk here without your attorney, so that's fine.
5 Exhibit 2, resolution number 79-08. What is that?
6 MR. BEAR: That is General Council
7 giving authorization to the Executive Committee.
8 Q. And this is an accurate copy of a document
9 with the exception of you can't necessarily read all of
10 the signatures.
11 MR. BEAR: Yes.
12 Q. Okay. And is the Executive Committee's
13 authorization limited to that which is expressed here or
14 does the Executive Committee have additional
15 authorization to do other things that aren't here?
16 MR. BEAR: They have other
17 authorizations.
18 Q. Okay. Why was this resolution put in place?
19 Was it just something you do or was there a specific
20 project they were looking at?
21 MR. BEAR: In '79, I was only 28 years
22 old, so I don't know.
23 Q. So you don't know what is going on --
24 MR. BEAR: I signed it according to
25 what it says here.

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1 Q. But you have no independent recollection of
2 what that was all about?
3 MR. BEAR: No. At that time, no.
4 Q. Is this a resolution that you are relying on
5 in the NRC proceedings for any --
6 MR. BEAR: This and others, yes.
7 Q. So this is one you are relying on in the
8 NRC?
9 MR. BEAR: Yes. This gives the
10 authorization to the Executive Committee.
11 Q. Okay. Are you willing or have you provided
12 the NRC with other resolutions that explain the rest of
13 the Executive Committee authorization?
14 MR. BEAR: No.
15 MR. SILBERG: That assumes he has
16 provided them with this resolution, and I don't know
17 whether that's the case or not.
18 Q. Have you provided this resolution to the
19 NRC?
20 MR. BEAR: No.
21 Q. Okay. Exhibit 3 is resolution 89-12.
22 What's going on here? Are you familiar with this?
23 MR. BEAR: Yes, I am. This resolution
24 authorizes the Executive Committee to call meetings, set
25 the date and time and the agenda up, and keep roll call

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1 and minutes. And also to -- it tells about what time
2 the notices should go out.
3 MR. SILBERG: Off the record.
4 (Discussion off the record.)
5 Q. Is this the current procedure for how these
6 meetings are to be noticed and conducted?
7 MR. BEAR: Yes.
8 Q. So this is accurate. Okay. And is there a
9 roll call and minutes of meetings?
10 MR. BEAR: Yes.
11 Q. And are they kept for all meetings?
12 MR. BEAR: Yes. Most.
13 Q. Where are those kept? Who is in charge of
14 those and who keeps them?
15 MR. BEAR: The Tribal secretary.
16 Q. Okay.
17 MR. BEAR: Well, just the Executive
18 Committee in general.
19 Q. And are there any tape recordings or
20 videotapes, audio tapes, or tape recordings made of the
21 meetings as a practice, as well?
22 MR. BEAR: Yes.
23 Q. Who has those?
24 MR. BEAR: The Executive Committee.
25 Q. The Executive Committee also has those. And

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1 would you be able to provide those to us if we request
2 them?
3 MR. BEAR: Not without authorization.
4 Q. Exhibit No. 4. I'm sorry, it's been cut
5 off. I don't know what the resolution number is but
6 it's a Skull Valley Band of Goshute's document dated
7 4-21-90.
8 MS. NAKAHARA: On the back it has it.
9 Q. 90-09. Thank you. Are you familiar with
10 this document?
11 MR. BEAR: Yes, I am.
12 Q. What is the purpose here?
13 MR. BEAR: The purpose of this
14 resolution is due to the fact that a lot of our Tribal
15 members weren't attending our General Council meetings,
16 and the decision was made to -- we needed to move on
17 with the business of the Band and they wanted to put
18 together something that would tell us that we do not
19 need a full quorum to conduct Tribal business at each
20 General Council.
21 Q. So it's your position since this date you no
22 longer need a full quorum?
23 MR. BEAR: Right.
24 Q. Did you need a full quorum before that?
25 MR. BEAR: Prior, we did.

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1 Q. How many people attended this meeting?
2 MR. BEAR: 27.
3 Q. Okay. And was that a full quorum?
4 MR. BEAR: At this time in '90, I don't
5 think it was. That's why we signed this resolution;
6 because we didn't have a quorum.
7 Q. Okay. I notice the second paragraph, and
8 it's the same with all of these, says that, "Whereas,
9 until a constitution is adopted and approved, the Band
10 conducts its Tribal business by means of a General
11 Council." Is a constitution in the process of being
12 adopted and/or approved?
13 MR. BEAR: It was at one time. And
14 they are still looking at it.
15 Q. Okay. So until that is done, the Tribal
16 business is controlled by resolutions?
17 MR. BEAR: Right.
18 Q. So if there's no resolution, it can't be
19 done?
20 MR. BEAR: Right.
21 Q. Looking at document Exhibit 5, and ordinance
22 number 91-04 OR dated April 20 of 1991, what is this?
23 MR. BEAR: This is the formula that we
24 use on the annual revenue, giving the Executive
25 Committee the rights to negotiate the contracts and

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1 to -- primarily it was to invest the money.
2 Q. Okay. Now, if I wanted to ask you any
3 questions about investing the money, would that be a
4 question that would be a confidential answer or can we
5 carefully proceed here and see if we get into
6 confidential territory?
7 MR. BEAR: I would not be able to talk
8 about the investments unless they pertained to PFS
9 monies.
10 Q. Okay. Number 5 says that an annual report
11 will be presented to the General Council. Is that still
12 being done according to the provisions there?
13 MR. BEAR: Financial report? For the
14 Tribal budget, yes.
15 Q. And are copies of that provided to all
16 Tribal members?
17 MR. BEAR: No. It's done by overhead.
18 Q. Is that the way it's always been done?
19 MR. BEAR: Well, when you say "always",
20 this is up until '91. And there was no financial
21 reports beyond or before that.
22 Q. Okay. And back in '91 you are saying that
23 proposed budget copies were not provided to the General
24 Council members?
25 MR. BEAR: I don't know. I was not the

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1 chair at that time.
2 Q. Were you involved in the Tribal government
3 at that point in time?
4 MR. BEAR: In '91?
5 Q. Yes.
6 MR. BEAR: Yes.
7 Q. What was your position?
8 MR. BEAR: I was Tribal secretary.
9 Q. So you would be in a position to know if
10 copies of a proposed budget were provided to all members
11 of the Tribal General Council at the beginning of these
12 meetings.
13 MR. BEAR: A copy? No. No, there was
14 no copies made for the --
15 Q. No copies were ever made for --
16 MR. BEAR: I don't say "ever". I just
17 said --
18 Q. As a general practice.
19 MR. BEAR: There was no copies made.
20 Q. So if somebody testified that the general
21 practice of the Tribe was that until 1995, you would
22 disagree with that?
23 MR. SILBERG: Until 1995?
24 Q. Yes.
25 MR. BEAR: What general practice?

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1 Q. To make copies of the proposed budget and
2 distribute them to all Tribal General Council members in
3 attendance at these meetings for discussion. You would
4 say that was incorrect testimony?
5 MR. BEAR: Yes.
6 Q. Okay. And confidentially or otherwise you
7 would be unwilling to discuss what the Skull Valley
8 reserve fund is all about; is that correct?
9 MR. BEAR: Yes.
10 Q. Now, all of the signatures on these
11 resolutions, not just this one but the others as well,
12 are these all signatures that were put on here at the
13 date of the meeting or were any of them added later?
14 MR. BEAR: When we get to certain
15 resolutions that are beyond '86, --
16 Q. You mean before or after '86?
17 MR. BEAR: Before. Like 1986 through
18 1980. Some of those were actually, people went out and
19 got those signatures.
20 Q. But since 1986, that never happens?
21 MR. BEAR: Pretty much, yeah. We
22 started not doing that.
23 Q. I don't mean to be rude, but "pretty much"
24 is an indefinite term so I'm trying to narrow it down
25 what that means. Does that mean maybe in '87 and not

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1 after?
2 MR. BEAR: It flagged off from '86 on
3 up until the '90s.
4 Q. So did that ever happen in 1990 or
5 thereafter or was that all phased out by the end of
6 1989?
7 MR. BEAR: It was pretty much phased
8 out.
9 Q. That's still indefinite.
10 MR. BEAR: It was phased out during
11 that time.
12 MR. SILBERG: He can answer to the
13 extent that he knows if it is.
14 MR. SHEPLEY: He was the secretary.
15 Q. When his signature is there, that's what I'm
16 trying to find out.
17 MR. BEAR: As the secretary, I did not
18 handle the majority of the resolutions. It was the
19 chairman's duty. I just drafted them.
20 Q. And I notice that on this resolution in the
21 certification, it specifically says the date of the
22 meeting, how many were present, and how many voted for
23 and against.
24 MR. BEAR: Right.
25 Q. Is that how resolutions are normally

1 state, local, private companies.
2 Q. So 79-08, part of its purpose was to cover
3 the PFS?
4 MR. BEAR: Well, I don't know if it was
5 at that time. But that's how we -- or when you read it
6 that's what it says.
7 Q. That's how you interpret that?
8 MR. SILBERG: That was which?
9 Q. I think that's Exhibit 2.
10 MR. BEAR: 79-08. And then the
11 resolutions, there are other resolutions that also
12 authorize the Executive Committee to do different things
13 in the Band.
14 Q. Okay. Now, there's a certification on the
15 back of this. Is that the required quorum for
16 certifying an Executive Committee resolution?
17 MR. BEAR: Yes.
18 Q. Okay. And again, is there a specific
19 requirement that it be done that way or just that's how
20 the person decides to do it?
21 MR. BEAR: That's how it is put on all
22 resolutions.
23 Q. So that's required?
24 MR. SHEPLEY: They are on a traditional
25 form of government.

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1 certified?
2 MR. BEAR: Yes.
3 Q. Okay. And is there any particular
4 requirement that you do that, or that is just how it has
5 always been done?
6 MR. BEAR: I was the Tribal secretary
7 so I was required to do that.
8 Q. That's what a Tribal secretary is required
9 to do?
10 MR. BEAR: Right.
11 Q. Moving to Exhibit 6, Executive Committee
12 resolution number 97-05 B dated May 20, 1997. What is
13 this all about?
14 MR. SILBERG: If you need time to
15 review it, take it.
16 Q. Yes.
17 MR. BEAR: Well, this resolution tells
18 the Executive Committee to enter into negotiations with
19 the corporation of PFS.
20 Q. Now, you say this resolution tells the
21 Executive Committee. Do you mean authorizes the
22 Executive Committee to enter into negotiations or what
23 do you mean?
24 MR. BEAR: No. The authorization is
25 back in 79-08 to negotiate contracts with the federal,

1 MR. SILBERG: You said it is required
2 and he says that's the way it is always done and I just
3 want to --
4 Q. Does it need to be that way?
5 MR. BEAR: No.
6 Q. How else does it need to be done?
7 MR. BEAR: Don't need a certification
8 for executive resolution.
9 Q. Not at all?
10 MR. BEAR: No.
11 MR. SHEPLEY: But you do for the
12 others?
13 MR. BEAR: For General Council
14 resolutions we do.
15 Q. Exhibit 7, resolution attachment number --
16 I'm going to pull that back and let's talk about Exhibit
17 8 first because Exhibit 8 is apparently resolution 97-12
18 A dated December 7, 1996 and the next one seems to be
19 part of that, so let's focus on this one first. I
20 apologize for the out of order record marking. What is
21 the purpose here?
22 MR. BEAR: This is a General Council
23 resolution that actually gives us or pretty much
24 confirms what we have done up to this point. And at
25 this resolution moment we are discussing the lease with

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1 the General Council.
2 Q. Okay. And at this meeting, what
3 documentation was provided for the Tribal General
4 Council members to review?
5 MR. BEAR: The lease.
6 Q. So they all had a copy of the lease to look
7 at?
8 MR. BEAR: We try not to make copies of
9 things.
10 Q. Okay.
11 MR. BEAR: Because we don't have the
12 resources to do all that stuff.
13 Q. Okay.
14 (Discussion off the record.)
15 Q. Now, there was a draft of the lease
16 agreement presented to the Tribe at this meeting, is
17 your testimony, on December 7, 1996.
18 MR. BEAR: It wasn't a draft.
19 Q. What was it?
20 MR. BEAR: It was a lease.
21 Q. The final document?
22 MR. BEAR: Yes.
23 Q. And anybody who wanted to read it had an
24 opportunity to read it?
25 MR. BEAR: We went through it step by

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1 step.
2 Q. If somebody wanted to read it, could they
3 have picked up a copy and sat down and read it?
4 MR. BEAR: Not a copy. They could have
5 read the original.
6 Q. Who was in charge of the original this day?
7 MR. BEAR: I was the chairman.
8 Q. You were the chairman?
9 MR. BEAR: Yes.
10 Q. To your recollection, how many people asked
11 to look at it and sat down and read the entire thing or
12 at least took it to look at it individually?
13 MR. BEAR: None of them asked.
14 Q. None of them. So you had it in your
15 possession the entire time?
16 MR. BEAR: Yeah. When we went through
17 it, yes.
18 Q. Okay. So none of the members, Tribal
19 members, looked at it before voting on this, other than
20 the discussion you had?
21 MR. BEAR: Well, the overheads, yes.
22 Q. So the whole document was put on overheads?
23 MR. BEAR: Yes.
24 MR. SILBERG: No. The whole document?
25 Q. That's what I'm asking.

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1 MR. SILBERG: Word by word?
2 MR. BEAR: Yeah. The whole document.
3 I guess it wouldn't be. It would be the meat of the
4 document that they would be interested in, like the
5 payments and the --
6 MR. SILBERG: And I assume you are
7 saying -- are you saying that the exact text of the
8 lease as it existed was put on overheads?
9 Q. That's what I'm asking him. I don't know.
10 MR. BEAR: I'm sorry.
11 Q. On the record, our position is that I can't
12 find anybody that recollects this happened. So I'm
13 trying to find out what your testimony is of what
14 happened. So what was put on overheads; the whole
15 document, the summary, the numbers?
16 MR. BEAR: The numbers and part of the
17 issues of sovereignty. I think that was primarily it.
18 And how the operations are going to be conducted at
19 Skull Valley.
20 MR. SHEPLEY: This one said it was
21 attached to the earlier resolution.
22 Q. Okay. Thank you. Do you recollect that
23 Margene Bullcreek was at that meeting?
24 MR. BEAR: I don't.
25 MR. SILBERG: Does her signature

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1 appear?
2 Q. No. Her signature does not appear.
3 MR. SILBERG: I can't read the
4 signatures.
5 Q. Do you recollect that Sammy Black Bear was
6 at that meeting?
7 MR. BEAR: No.
8 MR. SILBERG: He was not or you don't
9 remember?
10 MR. BEAR: He was not.
11 MR. SHEPLEY: Which meeting are we
12 talking about?
13 Q. The one on December 7, 1996. Was there a
14 meeting on that date?
15 MR. BEAR: Yes. When this was passed.
16 MR. SHEPLEY: 97-12 A, not 97-12 A (1).
17 Q. Right.
18 MR. SILBERG: Let me just ask, when did
19 you receive these documents?
20 Q. She gave them to me this morning.
21 MR. SILBERG: You just got them this
22 morning?
23 Q. Yes. She made the copies and had them here.
24 Why do you ask? This is certainly something you should
25 have a copy of.

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1 MR. SILBERG: But we had Discovery to
2 you and we didn't get copies of these. I was just
3 curious when you had them.

4 (Discussion off the record.)

5 Q. Now, why was there a meeting on December 7
6 if the normal meetings are April and August?

7 MR. BEAR: Because to discuss this
8 issue.

9 Q. Okay.

10 MR. BEAR: The proposed facility.

11 Q. Now, this says that a copy of the lease is
12 attached hereto.

13 MR. BEAR: Right.

14 MR. SILBERG: Where does it say that?

15 Q. The bottom of the first page. I will read
16 that paragraph. "Whereas the General Council has
17 determined that it is feasible and in the best interest
18 of the Band to enter into agreements with the L.L.C. to
19 have the facility developed, constructed, financed,
20 owned and operated."

21 MR. SILBERG: You don't have to finish.

22 Q. I need to finish it. "It is in the best
23 interests of the Band to execute the attached business
24 lease and other relevant contracts, agreements, leases,
25 consents, or other documents." When this went to the

1 copy of the notices and all of that?

2 MR. BEAR: Yes. Probably.

3 Q. Okay. Now, moving on to Exhibit 7,
4 resolution attachment number 97-12 A (1) dated December
5 12, 1996, what is going on here?

6 MR. BEAR: Well, this resolution was
7 incorporated because we felt that there wasn't, you
8 know, sufficient enough people who had come to the
9 meeting and did not sign the resolution. So we felt
10 that if we put another attachment on this one to support
11 the earlier one, to let people know more about what is
12 going on.

13 Q. So you had another Tribal meeting on
14 December 12, 1996?

15 MR. BEAR: No. This is an attachment.
16 Actually, we went to people who were calling in from out
17 of state and wanted to know what the deal was on this.
18 And some of those people we had to go to, to get their
19 signatures on this attachment.

20 Q. Okay.

21 MR. BEAR: And all this attachment does
22 is support this resolution.

23 Q. Okay. Resolution 97-12-A, Exhibit 8, says
24 in the certification signed I believe by you, that all
25 21 members present voted for it and zero members voted

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1 BIA, was that document attached to the resolution, to
2 your knowledge?

3 MR. BEAR: No, I don't think it was.
4 It wasn't attached because it would be here with this if
5 it was.

6 Q. Okay. So if this authorization is limited
7 to the document attached hereto and flowing therefrom,
8 it wasn't attached.

9 MR. BEAR: No. Not to the BIA, no.

10 MR. SHEPLEY: But your original was?

11 MR. BEAR: It's attached to the
12 original.

13 Q. And you have, I presume, in your Tribal
14 records, the appropriate notice of this meeting and
15 everything we were talking about; why there was a
16 meeting in December and you said it was solely for this.

17 MR. BEAR: Yes.

18 Q. So that was a special meeting. Was that
19 duly noticed?

20 MR. BEAR: You could call it a special
21 meeting.

22 Q. Was it noticed by mail?

23 MR. BEAR: Yes. According to our
24 resolutions it had to be noticed.

25 Q. And in your Tribal records you would have a

1 against.

2 MR. BEAR: Right.

3 Q. So everybody that was at that meeting
4 supported --

5 MR. BEAR: Right. The ones who signed
6 this.

7 Q. So when you circulated Exhibit 7, 97-12-A
8 (1), did you go out and talk to everybody who was not in
9 attendance at that other meeting?

10 MR. BEAR: We gave them a chance, yes,
11 to sign.

12 Q. So you talked to every single person that
13 wasn't at that original meeting?

14 MR. BEAR: Right. Or during the
15 General Council meeting in April this attachment was
16 brought up, and everybody got a chance to sign.

17 Q. Some people signed as late as April of '97?

18 MR. BEAR: Yes.

19 MR. SILBERG: That's what it says.

20 Q. So are all of the signatures from December
21 12 or were they gathered on different dates?

22 MR. BEAR: They were gathered on
23 different dates.

24 Q. And so the first two pages were different
25 dates and then there's an addendum on the last page for

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1 the 12th. So we don't know when these people signed it
2 other than that they all signed it after December 12 and
3 before April 13? Did anybody sign this after April 13
4 of 1997?
5 MR. BEAR: No. That's when it was
6 closed.
7 Q. That's when it was closed?
8 MR. BEAR: Yes.
9 MR. BEAR: That date is the date of the
10 resolution for this page.
11 MR. SHEPLEY: This page belongs to a
12 different resolution?
13 MR. BEAR: No. It belongs to this one
14 but it's --
15 Q. Let's clear the record here. Exhibit 7 is
16 comprised of two double-sided pages. And the top of the
17 first page is dated December 12, 1996. And that was the
18 resolution attachment 97-12 A (1). The back of that
19 page says the same thing and same date. Then there's
20 the third page that says resolution attachment 97-12 A
21 (1) dated 4-12-97 and it has six signatures. And then
22 the fourth page is a certification certifying it on
23 December 12, 1996. And it says, "I hereby certify that
24 this resolution attachment number was adopted by the
25 Skull Valley Band of Goshute Indians on this 12th day of

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1 December, 1996 according to the customs practiced by the
2 Band. All adult members signing this resolution are
3 enrolled members of the Band." You had a question?
4 MR. BEAR: I was going to say when you
5 look at it like this, this is not the way the resolution
6 is set up because the copy is in the wrong order. This
7 part here is not behind this.
8 MR. SILBERG: When you say "this part
9 here", you mean the certification?
10 MR. BEAR: The certification is not
11 behind the date of 4-12-97. It was attached with this
12 date on December 12.
13 MR. SHEPLEY: So the BIA might have,
14 when they copied theirs --
15 Q. It doesn't matter who. But if we unstaple
16 this and turn the page over, then the certification
17 would be the third page?
18 MR. BEAR: Right.
19 Q. And then the April 12, 1997 would be the
20 fourth page.
21 MR. BEAR: Right.
22 Q. And does anybody have an objection to
23 instructing the reporter to do that when she makes the
24 exhibits?
25 MR. SILBERG: Is that the way it was

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1 set up?
2 MR. BEAR: Yeah.
3 (Discussion off the record.)
4 Q. Are any of the signatures on this attachment
5 the same as the signatures that were on other than the
6 certification signatures?
7 MR. BEAR: There is one or two because
8 they wanted to make sure they signed the resolution.
9 Q. So some people signed both?
10 MR. BEAR: Yes. Some did, at the
11 General Council meeting.
12 Q. Now, were all of the signatures on the three
13 page certified portion gathered on or about December 12,
14 1996 or just gathered over a period of weeks or months?
15 MR. BEAR: Over a period.
16 Q. Of weeks or months?
17 MR. BEAR: Yes.
18 Q. And they were gathered in places other than
19 Tribal meetings?
20 MR. BEAR: Right.
21 Q. Were these people all -- and you said you
22 went to see everybody who wasn't at the original
23 meeting. Were all of those people given an opportunity
24 to read the lease agreement that they were approving?
25 MR. BEAR: If they wanted to, yeah.

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1 They had to see it.
2 Q. Okay. Now, I would presume that since
3 Margene was not in attendance at the December 7, 1996
4 meeting, that you took this document, Exhibit 7, to
5 Margene, let her read the lease, and gave her an
6 opportunity to approve it; is that correct?
7 MR. BEAR: I did not take this paper to
8 Margene because in April we had the General Council
9 where some of the people signed at this point.
10 Q. So you took this to people who lived all
11 over the West but you didn't go across the street to
12 Margene Bullcreek's house?
13 MR. BEAR: No. But we were having the
14 actual General Council meeting in April.
15 MR. SILBERG: I don't think he
16 testified that he took it all over the West.
17 Q. He said they lived in different states.
18 MR. SILBERG: But he didn't say he took
19 it all over the West.
20 Q. Did you mail it to people to sign?
21 MR. BEAR: No.
22 Q. Did they sign it in Utah?
23 MR. BEAR: Well, in their residence.
24 Q. Are there any of these people that live out
25 of the state of Utah?

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1 MR. SHEPLEY: Some in Wendover.
2 MR. BEAR: Diane Ottogary lived up in
3 Idaho. Mr. Tom lived in Wyoming. Eagles live in
4 Nevada. Browns and Dick lives in Nevada. So yeah, I
5 went to some of the states.
6 Q. Okay. But you didn't go to Margene
7 Bullcreek across the street?
8 MR. BEAR: No, because we were having a
9 General Council meeting for this.
10 Q. Okay. So you only went to people out of
11 state?
12 MR. BEAR: A majority of the signatures
13 were out of state signatures.
14 Q. I'm trying to understand why you went to
15 some people and not others.
16 MR. BEAR: Because they were out of
17 state and too far away to come to the meetings.
18 Q. So Stephen Bear was out of state and too far
19 to come?
20 MR. BEAR: No. He come down and
21 contacted me and wanted to sign it. Said, "I heard you
22 have a resolution."
23 Q. And Lori Bear Sippi?
24 MR. BEAR: Those were done at the
25 meeting. A lot were gathered at the General Council

1 MR. BEAR: No.
2 Q. Was everybody allowed the opportunity to sit
3 down and read it?
4 MR. BEAR: I had it.
5 Q. And you showed it to them?
6 MR. BEAR: Said, "This is what it is
7 about."
8 Q. But did you show it to them?
9 MR. BEAR: Yes. I said, "This is what
10 it is about."
11 Q. You said -- okay. Now, the rest of the
12 signatures you got April 12, 1997 at a meeting.
13 Correct? That's the six signatures on the last page?
14 MR. BEAR: Well, I don't know if it was
15 during the April -- I'm not sure on the specific date on
16 that. So I couldn't tell you whether we had that
17 meeting April 12 or April 15 or 16 or whatever. That's
18 just the date that is on this signature page.
19 Q. So the date has nothing to do with the date
20 the signatures were obtained?
21 MR. BEAR: It might. I'm not sure.
22 Q. So did the people who signed this page have
23 an opportunity - you had an overhead presentation - did
24 any of the people on this document receive that overhead
25 presentation?

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1 meetings.
2 Q. So even though they are on the December 12
3 page, they were really signed in April of '97?
4 MR. BEAR: No. The December 12, they
5 were signed or some were signed at the general, at that
6 meeting. And then some of the signatures like --
7 Q. You said there was no meeting on December
8 12. That's what I am confused with.
9 MR. BEAR: No. I said we had to sign
10 it on December 7.
11 Q. Yes.
12 MR. BEAR: And we had to put this
13 together December 12, and that's when we got signatures,
14 started gathering signatures.
15 Q. So everybody that signed this, the December
16 12 one, did every one of those people have an
17 opportunity to read and understand the lease agreement?
18 MR. BEAR: Yes.
19 Q. No exceptions?
20 MR. BEAR: The ones that wanted to know
21 what it was about.
22 Q. Okay.
23 MR. BEAR: I mean, you want to know if
24 they sat down and read it? No.
25 Q. Did anybody sit down and read it in?

1 MR. BEAR: On the latest one?
2 Q. No. On any of Exhibit 7. The four pages of
3 Exhibit 7.
4 MR. BEAR: Oh, yes.
5 Q. Did any of the people have the --
6 MR. BEAR: The ones that are duplicate
7 signatures?
8 MR. BEAR: No. The ones that attended
9 the April meeting, yes.
10 Q. So the April meeting you had an overhead
11 slide presentation and everybody had a chance to look at
12 it?
13 MR. BEAR: Yes.
14 Q. And you went through the whole document
15 again?
16 MR. BEAR: Yes.
17 Q. Okay. And was Margene Bullcreek at that
18 meeting, to your recollection?
19 MR. BEAR: I think she was. I'm not
20 sure.
21 Q. But the Tribal records would reflect whether
22 she was or not?
23 MR. BEAR: Right. She comes in late
24 sometimes and she don't sign in on the Tribal records,
25 either. So I don't think that would reflect that, the

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1 Tribal roll call.
2 Q. Okay. What about Sammy Black Bear?
3 MR. BEAR: He is the same way. He
4 don't want to sign the roll call, either.
5 Q. Why do you think that -- have they never
6 signed the roll call?
7 MR. BEAR: Not to my knowledge.
8 Q. So if we went over the last 10, 15, 20 years
9 of Tribal rolls, you don't know if they would have
10 signed the records?
11 MR. BEAR: I don't know about the
12 latter years, but when I was Tribal secretary there was
13 always an objection. They didn't want to sign it. They
14 always objected to signing it.
15 Q. Does that have any impact on their ability
16 to function at the meeting?
17 MR. BEAR: It does.
18 Q. How?
19 MR. BEAR: They are not recognized.
20 You don't sign in to put it on the record that you are
21 there, how can you be recognized.
22 Q. So they aren't allowed to speak?
23 MR. BEAR: Oh, we let them speak.
24 Q. Are they allowed to vote?
25 MR. BEAR: We don't vote.

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1 Q. There are no votes?
2 MR. BEAR: No. Resolutions.
3 MR. SILBERG: Can we go off the record?
4 Q. Yes.
5 (Discussion off the record.)
6 Q. Is the roll call simply a roll call? Does
7 it simply have people's signatures or is there anything
8 else on it that would make people have apprehensions
9 about signing it?
10 MR. BEAR: During the time of these
11 resolutions, it was just a roll call. But since then,
12 that has changed. It has a confidentiality notice on
13 it.
14 Q. What does the confidentiality notice say?
15 MR. BEAR: That all Tribal members will
16 keep information pertaining to Tribal business
17 confidential.
18 Q. So is that in the form of a contract, so if
19 they sign that --
20 MR. BEAR: It's a resolution.
21 Q. But I'm saying the Tribal roll call. When
22 they sign it are they promising to keep the --
23 MR. BEAR: Yes. They are promising to
24 follow the resolution that was signed.
25 Q. So when did that change come about?

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1 MR. BEAR: When the resolution came
2 about.
3 Q. And when was that?
4 MR. BEAR: I'm not sure.
5 Q. So the roll call, did they sign the rolls
6 before that?
7 MR. BEAR: No.
8 Q. They never signed the rolls before that, as
9 a general practice?
10 MR. BEAR: No.
11 Q. So if I obtain copies of rolls over the
12 years with their signature, that would be inaccurate in
13 your memory or inaccurate that they forged them later?
14 MR. BEAR: No. That would be
15 inaccurate that they didn't show up at the meeting or
16 they were there but didn't want to sign the roll.
17 MR. SILBERG: Are you saying if the
18 roll calls showed their signature, that would be
19 inaccurate?
20 Q. Right. My clients' position is one of the
21 things that JOHN DONNELL has instituted recently is he
22 has turned the roll call into a contract that if you
23 don't sign it promising not to discuss these issues,
24 that you can't sign the roll; and if you can't sign the
25 roll you can't vote, can't discuss or participate in the

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1 meeting, you can't be nominated as a Tribal officer. Is
2 that a correct statement?
3 MR. BEAR: No, I don't think so.
4 Q. Well, we will step you through it one at a
5 time. So we are trying to explore the fact here that,
6 again, it is an attempt to silence the opposition.
7 Because it's the people who are opposed to PFS that all
8 this is being aimed at.
9 MR. SILBERG: Can I again --
10 Q. Absolutely. Anything you'd like.
11 MR. SILBERG: I'd like to be able to
12 finish everything that is relevant to the contexts and
13 make my plane. Do you have questions that relate to the
14 specifics of OGDO aside from the Tribal governance
15 issues which I have let go on without objecting or
16 suggesting, which I really think are outside the scope.
17 I want to give you the opportunity to finish stuff which
18 is clearly right. If you want to argue anything else to
19 the board, fine with me. You can argue until the cows
20 come home.
21 Q. Let me table this for a minute and focus
22 some questions in here and see if that makes you a
23 happier camper.
24 MR. SILBERG: Okay.
25 Q. Do you think that the location of this

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1 facility in the middle of the reservation increases the
2 likelihood that the Band's economic development
3 processes are limited to the waste processing
4 facilities?

5 MR. BEAR: No.

6 Q. Why not?

7 MR. BEAR: Because it's not in the
8 middle of the reservation. It's towards the outer
9 boundary on the east side of the reservation.

10 Q. I'm sorry. I thought your earlier testimony
11 was that this facility was deliberately put in the
12 center of the reservation so as not to interfere with
13 the hunting that was in the perimeter?

14 MR. BEAR: I said the center of the
15 valley. That's not the center of the reservation.

16 Q. Okay. Does the reservation span the width
17 of the valley?

18 MR. BEAR: No.

19 Q. It does not?

20 MR. BEAR: No.

21 Q. So you don't think that the location of the
22 facility has any impact on possible future economic
23 development options?

24 MR. BEAR: No.

25 Q. Margene from time to time has held herself

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1 traditionalist?

2 MR. BEAR: To a certain extent, yes.
3 Because I follow some of the traditional, the church
4 traditions. The Native American church. And the way I
5 raise my children are traditional, and the way they used
6 to raise them. Some of the culture that me and my wife
7 and family enjoy, we do some of the traditional things,
8 yeah.

9 Q. Now, you said, "Yes, to a certain extent."
10 To what extent don't you consider yourself a
11 traditionalist?

12 MR. BEAR: That's hard to say because I
13 don't know what that extent is.

14 Q. So you don't know exactly what a
15 traditionalist is?

16 MR. BEAR: No, I know what a
17 traditionalist is but I don't know what the extent of
18 the traditions that are out there that we don't follow,
19 because those traditions have been lost to us.

20 Q. So you don't hold yourself out as an expert
21 on traditions?

22 MR. BEAR: No.

23 Q. And do you highly value these traditions?
24 Would you like to recapture them or do you think it is
25 time to move on?

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1 out as a traditionalist. And I understand that you have
2 publicly suggested she is not a traditionalist. Is that
3 correct?

4 MR. BEAR: Yes.

5 Q. What is a traditionalist? What are the
6 characteristics of a traditionalist?

7 MR. BEAR: That's someone who practices
8 traditional ceremonies and traditional values and whose
9 spirituality is traditional. That's what I assume or
10 that's what my thoughts of a traditionalist is.

11 Q. Okay. Have you or anybody associated with
12 you evaluated the impact of the PFS facility on Band
13 members or the Band as a whole and their traditional
14 ways? Have you looked at that issue?

15 MR. BEAR: Yes. There's -- the Band,
16 due to the fact of how they used to traditionally do
17 things, would not -- it was not a group effort. The
18 Band doesn't do things as a group effort traditionally.
19 They were family oriented and had nomadic tendencies
20 through families. So the families would be actually the
21 ones that were or had the traditional values. And
22 because the Band, they were so small and they did that
23 in their families, so their traditional would be
24 individual ideas of what tradition was for them.

25 Q. Okay. Would you classify yourself as a

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1 MR. BEAR: I would like to learn about
2 them and they are part of our culture and the values of
3 the Tribe. And that was one of the reasons why the
4 buffalo were brought, because of the spirituality of the
5 Band, to reintroduce the buffalo at Skull Valley.

6 Q. If you were going to go to find an expert on
7 traditionalism, where would you go? Traditionalism,
8 traditionalists. Who would be the expert in that topic?
9 You are saying you are not. But who would be the
10 expert?

11 MR. BEAR: I don't know who would be
12 the expert on Goshute traditions because of the way the
13 families were divided.

14 MR. SHEPLEY: Are there some elders in
15 the confederated tribes that you might --

16 MR. BEAR: They have their own
17 traditions over there. Because they lived in a
18 different area they have their own tradition.

19 Q. So you think that tribe's conditions are
20 different than --

21 MR. BEAR: Right.

22 MR. SHEPLEY: Could you get help with
23 the Shoshone traditions on that?

24 MR. BEAR: They are different. A lot
25 of the Shoshones roamed in groups, so they have

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1 different traditions that they follow. Like I say,
2 these traditions are based on individuals and family
3 units; not on groups.
4 Q. So if you wanted to evaluate the traditional
5 way, then you would have to evaluate it family by family
6 as opposed to the Tribe as a whole?
7 MR. BEAR: Right.
8 Q. Why do you believe -- well, you indicated
9 that you publicly said that Margene is not a
10 traditionalist. Is that your position?
11 MR. BEAR: She is a nontraditionalist,
12 yes.
13 Q. Why do you say that?
14 MR. BEAR: Because she doesn't follow
15 along the traditional ways. She utilizes a car. Uses
16 electricity. She lives in a house. Those are the types
17 of traditions I'm talking about where we didn't live
18 that way. When you are traditional you don't live that
19 way.
20 Q. Would you want to live that way?
21 MR. BEAR: Not me.
22 Q. Not you.
23 MR. BEAR: Not you.
24 Q. No. You want you creature comforts, huh?
25 MR. BEAR: Yes.

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1 Q. Have you and Margene ever sat down and
2 explored your different perspectives of traditionalism
3 or is that something that is not going to happen?
4 MR. BEAR: No. I have tried to talk to
5 Margene and she -- all she has a tendency to do is argue
6 and yell at me so I don't talk to her anymore.
7 Q. So the two of you don't have a dialogue?
8 MR. BEAR: Yeah.
9 Q. Who else on the reservation would you
10 consider a traditionalist in any form of the word beyond
11 what you are saying, family is important to you?
12 MR. BEAR: I think that a majority of
13 our people have traditions, traditional values like
14 that. And we do follow them and practice out there in
15 Skull Valley. But, like I say, it is to a certain
16 extent because of what had -- I guess the idea was
17 trying or they tried to take it away from us and being
18 traditional on what we did.
19 Q. And what, in the NRC record, reflects an
20 attempt on your part or anybody else's part to analyze
21 the impact of this facility on traditionalist attitudes,
22 realizing that you are not the expert there. Has
23 anybody looked at that in depth?
24 MR. BEAR: Well, we try to balance and
25 be objective on the decisions that we make. I hope

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1 everybody that is in our tribe tries to do that when
2 they make a decision that impacts the reservation.
3 Q. But I'm talking about PFS and your support
4 of the PFS facility in that context. Has anybody
5 thoroughly looked at the traditionalist position?
6 MR. BEAR: Not in the concept I talked
7 about.
8 Q. Do you have a garden at home?
9 MR. BEAR: Define what a garden is. I
10 got a patch of strawberries, if that's a garden.
11 Q. Okay.
12 MR. BEAR: Flower beds.
13 Q. So you at least consume home grown produce,
14 et cetera?
15 MR. BEAR: Yes.
16 Q. Do you hunt on the reservation?
17 MR. BEAR: I do.
18 Q. Do you eat any meat or anything else that is
19 produced other than hunting?
20 MR. BEAR: Yeah. Rabbits.
21 Q. Do you raise any chickens or calves or
22 anything?
23 MR. BEAR: I used to, until I became
24 chairman and then my time got limited.
25 Q. And does anybody else on the reservation

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1 similarly use home produced food, whether it be live-
2 stock or strawberries or carrots or radishes?
3 MR. BEAR: I don't think so.
4 Q. Okay. What have you or the Band done to
5 look at the potential impact on home production of food
6 that this facility might have?
7 MR. BEAR: We believe that this
8 facility will not have an impact on us.
9 Q. Okay. And what is the basis of that belief?
10 MR. BEAR: Because of where the
11 location is of the facility.
12 Q. So you believe that the location is
13 sufficiently isolated that you haven't had to look into
14 evaluating that?
15 MR. BEAR: Right.
16 Q. So there's been no evaluation of an impact
17 of a facility on home grown food other than the fact of
18 its approximation --
19 MR. BEAR: I believe there would be an
20 impact due to the fact of the revenue stream that is
21 going to come in from the facility. A lot of Tribal
22 people won't grow their own products. They will have a
23 chance to go to the store and pick them up and buy them.
24 Q. Would you classify growing your own stuff as
25 perhaps being more traditional than modern?

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1 MR. BEAR: I think it is getting more
2 obsolete out there in Skull Valley.
3 Q. So you think this facility will allow people
4 to be modernized and go to the store and buy groceries
5 like anybody else?
6 MR. BEAR: Right.
7 Q. Is there any prohibition against people in
8 the Tribe raising their own food in any way, shape, and
9 form on the reservation? Can they have their own live-
10 stock and gardens and water them and everything?
11 MR. BEAR: I don't think there's a
12 prohibition against that.
13 Q. Who would know?
14 MR. BEAR: I would. And there's not.
15 I will just say no, there's not.
16 Q. Do any members of your tribe or other native
17 Americans or nonnative Americans have any traditional
18 foods or medicinal herbs or plants or anything, for
19 example dandelion tea is something that our culture has
20 found benefit in. Are there any similar things out
21 there in the Skull Valley reservation?
22 MR. BEAR: Yes.
23 Q. What?
24 MR. BEAR: Well, we utilize part of the
25 cedar tree to smudge ourselves. The sage is used for

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1 various issues of medicinal purposes which I don't know
2 if those items are located down at the PFS site.
3 Q. Okay.
4 MR. BEAR: They are all located up on I
5 guess that would be the eastern portion of the
6 reservation.
7 Q. So are you an expert in traditional herbal
8 medicines and herbal foods and foliage and such, or
9 would you not consider yourself to be an expert in that
10 topic?
11 MR. BEAR: I'm not an expert but this
12 is what I know that has been passed down to me.
13 Q. How do you know this?
14 MR. BEAR: Because of what people, my
15 people, priorly (sic) done to use these items.
16 Q. So people have told you; your father,
17 mother, your elders?
18 MR. BEAR: We have used them.
19 Q. And has anybody specifically evaluated what
20 impact this facility might have on the ability to grow
21 and harvest and benefit from the broad variety of
22 traditional herbs and other things that are used on the
23 reservation?
24 MR. BEAR: The Executive Committee
25 looked at that, and because of the site where it is

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1 located at, we felt there was no impact on us. We could
2 collect those items readily.
3 Q. Okay. Who in the Executive Committee do you
4 think would be an expert on this topic? Because you
5 said you weren't. Who might be?
6 MR. SILBERG: Excuse me. Just to
7 clarify the record, I think he said he was not an expert
8 on medicinal stuff in general but he said that he did
9 know and did use these items.
10 Q. Some of the ones. The ones he identified.
11 MR. BEAR: The ones that are used on
12 the reservation.
13 Q. Are there other traditional and medicinal
14 herbs and food herbs and plants on the reservation that
15 you might not be aware have a traditional use, perhaps
16 that your parents didn't use?
17 MR. BEAR: That's possible, yes.
18 Q. Okay. Who in the Executive Committee that
19 evaluated this would have expertise on those herbs that
20 you weren't aware of; those potential for herbs that you
21 weren't aware of?
22 MR. BEAR: I think that the majority of
23 the Tribal members, by just being Indian, has the
24 expertise to utilize those herbs and know what they are.
25 Q. But you told me that it was the Executive

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1 Committee, three people that made this determination as
2 opposed to the Tribe as a whole.
3 MR. BEAR: Due to the fact of where the
4 location was on the site, yes.
5 Q. So other than the three of you, there has
6 been no outside expert to look at this issue?
7 MR. BEAR: Not on medicinal herbs, no.
8 Q. What about on food plants; are there any
9 plants on the reservation that have been traditionally
10 used as food?
11 MR. BEAR: Traditionally yes, there is.
12 But we don't use them any longer because of our
13 reservation; some of the reservation being contaminated
14 with nerve agents.
15 Q. Okay. And did anybody look at the impact
16 that the PFS facility might have on that type of food or
17 fruits that are in a noncontaminated area?
18 MR. BEAR: Not on the PFS facility, no.
19 Q. Not on the PFS?
20 MR. BEAR: No.
21 Q. So that impact hasn't been evaluated, to
22 your knowledge?
23 MR. BEAR: Where at?
24 Q. On the reservation.
25 MR. BEAR: Yes, it has. But not on the

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1 PFS facility it hasn't. But on the reservation overall
2 as a whole, yes, it has.
3 Q. Has the possibility that the PFS facility
4 might have an impact on the overall use of plants for
5 food ever been evaluated by anybody? Not just where PFS
6 is but throughout the reservation.
7 MR. BEAR: No.
8 Q. You have indicated today that 65 percent of
9 the Band members who don't live on the reservation would
10 like to return to live on the reservation. Have you
11 developed a housing plan to accommodate these people?
12 MR. BEAR: No.
13 Q. Do you believe that the PFS facility alone
14 will facilitate these people coming back to the
15 reservation?
16 MR. SILBERG: When you say facilitate,
17 are you talking about jobs? What are you talking about?
18 Q. He is saying 65 percent would like to come
19 back and I'm trying to find out if PFS will solve that
20 problem. He knows the reasons they won't come back, if
21 it's jobs, housing, proximity. One of the things we are
22 looking at is the PFS facility going to make the
23 reservation more populous or less populous?
24 MR. BEAR: Well, to a degree
25 it is on an individual basis. It is going to vary of

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1 what they think that they want out of Skull Valley.
2 Q. In your opinion will the PFS facility be
3 likely to bring more people to the reservation or fewer?
4 MR. BEAR: I think people, because of
5 the jobs, they will come back.
6 Q. How many jobs are available?
7 MR. BEAR: About 40 permanent jobs.
8 Q. And how many of those permanent jobs are
9 Skull Valley Band members currently qualified to fill?
10 MR. BEAR: I'm not sure of that, what
11 that number is because we have not filled out any
12 applications for the job and we don't know what the
13 qualifications are that they are required to have or we
14 don't know the education of all of our Tribal members.
15 Q. So you have no real feeling for the impact
16 that the PFS facility will have on the reservation and
17 people moving in; you can't say that you think 10 more
18 will come or 20 more or 50 more or 100 more? You just
19 think some will come?
20 MR. BEAR: I can only stipulate what I
21 have been told.
22 Q. What have you been told?
23 MR. BEAR: That they would like to come
24 back.
25 Q. Has anybody told you that if PFS comes, they

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1 will come back?
2 MR. BEAR: No. I think this was pretty
3 much an ongoing thing ever since 1980.
4 Q. So they have always wanted to come back?
5 MR. BEAR: Yes.
6 Q. So but there's no housing plan. No infra-
7 structure plan?
8 MR. BEAR: When you say there's no
9 housing plan, you are making it in reference to the 65
10 percent that I'm talking about. And no, there is no
11 housing plan for that. But for the plan that we have
12 today, that we are utilizing today for the structures
13 out there and the water system and the infrastructure
14 for that, we have a plan for that that we are utilizing
15 today.
16 Q. And how many people would that plan
17 accommodate?
18 MR. BEAR: Probably about 15 homes.
19 Q. I believe you told me that nobody has
20 specifically said, "If PFS goes in we will be back," and
21 there are jobs available but nobody has applied for thus
22 far?
23 MR. BEAR: Right.
24 Q. And how long has someone been able to apply
25 for them?

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1 MR. BEAR: They haven't yet.
2 Q. So no one can apply for them?
3 MR. BEAR: Not at this time, no.
4 Q. I knew we shouldn't let John go home.
5 MR. SILBERG: What's your question? I
6 can probably answer.
7 Q. At the meeting on the reservation a few
8 months ago, John and his team indicated that people that
9 wanted or some of the jobs would never be available in
10 the foreseeable future to Indians because of the mass of
11 education required; it would take years to get
12 qualified. Some would take months or a couple years to
13 get qualified so they were taking applications
14 immediately for people who wanted to get involved in the
15 qualifications so when the jobs became available they
16 could be ready to go. He said we wanted to help you get
17 the qualifications so you have first crack at the job.
18 MR. SILBERG: Let's go off the record
19 because now the lawyers are testifying.
20 (Discussion off the record.)
21 Q. We are back on the record.
22 PFS has announced that some of the jobs that
23 will be available on the reservation will require some
24 pre-qualification. How many people on the reservation
25 are involved in the pre-qualification activities

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1 identified by PFS?
2 MR. BEAR: The first thing I'd like to
3 say is that this information was gathered at an
4 information meeting, not a General Council meeting.
5 Q. Correct.
6 MR. BEAR: And the second thing is that
7 the court has, in their lease, a preference on all jobs;
8 whether we are qualified or not to take them we still
9 have a preference on those jobs.
10 Q. Do you interpret that to mean that even if
11 you are not qualified for the position, if one of your
12 members wants to have it, they can be employed?
13 MR. BEAR: No. They have to meet the
14 requirements. But they do have first opportunity to
15 apply for the job.
16 Q. I understand that. And some of the jobs
17 require pre-training to become qualified. Is that
18 correct?
19 MR. BEAR: Extensive, yeah.
20 Q. How many members of the Band are involved in
21 that extensive pre-qualification?
22 MR. BEAR: Up to this point -- the
23 other issue you are talking about is the internship that
24 we have agreed with Private Fuel Storage. They have
25 taken, up to this point, I think about five or six of

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1 our Tribal members to do an internship. And we
2 pronounced these at the General Council meeting, that
3 any Tribal member who would like to learn more about
4 what nuclear is and the radiation and all of this other
5 stuff, that they should want an internship and it would
6 be paid by PFS to do that.
7 Q. And who decides who goes on those
8 internships?
9 MR. BEAR: It's not a matter of
10 decision. It's a matter of who wants to go.
11 Q. So everybody who wants to apply can go?
12 MR. BEAR: Yes.
13 Q. And you said four or five so far have been?
14 MR. BEAR: Yes.
15 Q. How many are presently involved with the
16 internship?
17 MR. BEAR: One right now this year.
18 Q. You said some of the jobs required extensive
19 preparation.
20 MR. BEAR: Education, yes.
21 Q. Other than going on internships, what else
22 is involved to get ready for some of the jobs?
23 MR. BEAR: As you said, on the
24 information that some of those jobs are high tech jobs,
25 you need some degrees behind you to get into those jobs.

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1 The Tribe itself is actually looking at more of the
2 security type or the monitoring jobs that are going to
3 be available.
4 Q. How many of those are available?
5 MR. BEAR: I'm not sure. Probably
6 about --
7 MR. SILBERG: We can't get into
8 security. I don't know if Leon knows, but the number of
9 security positions, as Connie well knows, is not
10 something that we --
11 Q. Well, I'm not looking at security. Of the
12 types of jobs that you think the Band members will
13 primarily be looking at, are we talking - and if I'm out
14 of school here, tell me - are we talking about dozens of
15 jobs, hundreds of jobs, or five jobs?
16 MR. BEAR: The Band members are looking
17 at all of the jobs.
18 Q. But you said some are unrealistic and you
19 are focusing primarily on monitoring and security and
20 other things.
21 MR. BEAR: Right.
22 Q. In that arena, is it a dozen jobs or more or
23 less? And if that's a problem --
24 MR. SILBERG: No. I think that general
25 question is okay.

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1 MR. BEAR: Approximately a dozen jobs.
2 Real jobs.
3 Q. Real jobs.
4 MR. BEAR: That they could do.
5 Q. Realistically people could, if they started
6 right now, get ready for?
7 MR. BEAR: Right.
8 Q. And none of the Band members are currently
9 in college?
10 MR. BEAR: No. Hold on. Yeah, there
11 is a couple of them in college right now. I'm sorry.
12 MR. SILBERG: I don't think he said
13 that.
14 Q. I guess what he said --
15 MR. SHEPLEY: Students.
16 MR. BEAR: There is no students on the
17 reservation.
18 Q. How many Band members are currently involved
19 in the aggressive program of preparing to take some of
20 the jobs that are available? Because you said it was a
21 rigorous training program.
22 MR. BEAR: They are not going to be
23 able to do that because they will have to have years and
24 years of college.
25 Q. So how many Band members are currently

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1 involved in vigorous --
2 MR. BEAR: Getting prepared?
3 Q. Yes.
4 MR. BEAR: From '97 to 2001, I would
5 say there have been about seven or eight Band members
6 who have went to school to get various educations. Some
7 in management, some in HAZWOP training, HAZMAT training.
8 Q. And these are people hired by PFS?
9 MR. BEAR: I would assume so. That's
10 what their training is directed towards.
11 Q. How many of those currently live on the
12 reservation?
13 MR. BEAR: None.
14 Q. And how many of those people that live off
15 the reservation would continue to live where they live
16 now if they had a job with PFS?
17 MR. BEAR: I don't think any, because
18 of the drive.
19 Q. Okay. Have you or the Band done anything to
20 evaluate any health related conditions to Band members
21 living on the reservation which may be escalated due to
22 the operation of the PFS facility?
23 MR. BEAR: No. We haven't done any
24 studies for that specific PFS facility.
25 Q. Okay. I believe in this report that we were

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1 looking at, Exhibit 1, on Page 5 you indicated that,
2 generally speaking, the on-reservation occupants' health
3 is indistinguishable from the minority community at
4 large. Is that correct? We could find it if that would
5 help you. You still have this, don't you? It's your
6 letter that we need another hour or two to get through.
7 MR. BEAR: And what page was that on?
8 Page 5?
9 Q. Page 5.
10 MR. BEAR: Okay. What item or number
11 or letter?
12 Q. I'm looking through that now. You go
13 through the thing and make notes and then have to figure
14 out where you made the note. Is anybody else up to
15 speed on this?
16 MR. SILBERG: What is the question?
17 Q. Health related. At the very top. "The
18 general health of the Band is not any different --"
19 MR. SILBERG: Five 5?
20 Q. Very top. The first full sentence. Is that
21 something that you put in there or is that something
22 that John and his team put in the boiler plate to begin
23 with?
24 MR. BEAR: I think we talked about
25 that.

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1 Q. Who is "we"?
2 MR. BEAR: John and I.
3 Q. Okay.
4 MR. BEAR: And the general health of
5 the Band would not be any different than the outside.
6 Q. Okay. I know that Native Americans, as a
7 whole, have a higher incidence of heart disease, asthma,
8 diabetes, stroke, and other conditions. Is it your
9 position that your tribe doesn't have the higher levels
10 of those diseases?
11 MR. BEAR: No. My position is that
12 because of the amount of people that we have living out
13 there, those diseases, we maybe have a higher count of
14 those diseases because we are so small. But when you
15 put them in the general population, that would disappear
16 because of the general health of the general population.
17 Q. So in your evaluations, did you evaluate the
18 impact of the PFS facility on the current number of
19 people living on the reservation, or did you look at
20 what would happen if all the Tribe came home?
21 MR. BEAR: Now, when we are talking
22 about distinguished from the general population, I'm
23 talking about outside.
24 Q. I'm backing up.
25 MR. BEAR: I know you are focusing on

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1 the Tribe.
2 Q. I'm backing up. And all of your
3 evaluations, not just health but everything because you
4 are saying numbers, you indicated that because the
5 numbers are so small it is hard to isolate it. So I'm
6 saying in all the evaluations that you have been
7 involved in at this facility, looking at different
8 factors and the impact those factors would have on the
9 reservation population, did you look at the reservation
10 population as it exists today or did you look at what
11 would happen if the population swelled to 200 or 300
12 people if all the reservation came home?
13 MR. BEAR: I think it was as it exists
14 today.
15 Q. Who would you need to or what would you need
16 to do to find out whether you're sure? Because you
17 "think", and I'm a lawyer; I don't like thinking.
18 MR. BEAR: The general health. Who was
19 located there.
20 Q. So you are basing this on the current?
21 MR. BEAR: Right.
22 Q. So the health of the people that have been
23 on the reservation for this time period, there's no
24 elevation in diabetes or other issues. It's just the
25 general population as a whole? Is that your testimony?

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1 MR. BEAR: Not in relationship to PFS,
2 no. But due to alcoholism, drug abuse, other issues,
3 yes.
4 Q. Is there more of that in the Tribe than
5 there would be in Salt Lake City as a whole on a
6 percentage basis, the issues you just raised?
7 MR. BEAR: I would say yes.
8 Q. And has anybody looked at the impact that
9 this facility might have -- I mean alcoholism; are more
10 people going to become alcoholic because they are
11 paranoid because of this facility? Has anybody
12 evaluated the impact of this facility on the reservation
13 population?
14 MR. BEAR: I think, yeah. The impact
15 that this facility will have on us would be better due
16 to the fact that we would be able to build a clinic and
17 have law enforcement out there and insurance for the
18 general population out there.
19 Q. When are you going to build this clinic
20 and --
21 MR. BEAR: As soon as we -- we are
22 starting to prepare and talk to people about plans and
23 of course the infrastructure has to go in for those
24 issues and we don't have that right now.
25 Q. And the money for all of this would be

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1 coming from PFS?
2 MR. BEAR: It would be the benefits,
3 yes, part of the benefit package.
4 Q. What do you perceive as being the benefit
5 package?
6 MR. BEAR: The lease monies, probably.
7 The lease amounts.
8 Q. And do you have a general picture of how
9 much money you would anticipate? I'm not asking for a
10 number. I'm asking whether you have a vision of the
11 range of how much money the Band will have over the few
12 years. Not a number. Just do you have --
13 MR. BEAR: I don't have that. I have a
14 vision of what a clinic is going to look like and law
15 enforcement out there and a fire station, yes.
16 Q. So you don't have a clue how much money this
17 facility is going to generate for the Band; no idea
18 whatsoever?
19 MR. BEAR: You said a vision and I
20 don't have a vision of that.
21 Q. And do you have a range of money, some
22 understanding of how much money the Tribe is going to
23 receive as a result of the PFS facility?
24 MR. BEAR: Over a period of --
25 Q. Over the period it will be there.

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1 MR. BEAR: Forty years? Yes, I do.
2 Q. And is that a question that you would feel
3 would be appropriate to answer subject to the
4 confidentiality agreement? Or do you feel at liberty to
5 discuss it here?
6 MR. BEAR: If I did give an answer it
7 would be an estimate answer.
8 MR. SILBERG: The question, I think, is
9 would you want to give that estimate under the
10 confidentiality part of this transcript?
11 MR. BEAR: I probably don't have a
12 problem with giving it under the confidentiality.
13 Q. Okay. Then we will hold that off for a
14 minute. Who in the Band has evaluated the potential
15 catastrophic impact that a facility like this could have
16 and how much it would take the Band to clean up a worst
17 case scenario accident? Has anybody in the Band looked
18 at that?
19 MR. BEAR: Nobody in the Band has
20 produced a study on it. But we have looked at it
21 through the EIS that was produced for the NRC.
22 Q. Okay. But no one in the Band has looked at
23 that?
24 MR. BEAR: No one has produced or
25 investigated or produced a study on that.

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1 Q. Do any of the Band members or reservation
2 residents have any expertise to be involved in such a
3 study?
4 MR. BEAR: No.
5 Q. Have you asked for input from the Tribal
6 General Council as a whole on the topic?
7 MR. BEAR: The topic of disasters?
8 Q. Right.
9 MR. BEAR: Yeah, we have talked about
10 it, yes.
11 Q. And has anybody given you any input? Has
12 anybody suggested that the EIS or the DEIS might be less
13 than adequate?
14 MR. BEAR: No.
15 Q. Has Margene ever talked to you and suggested
16 that there might be a problem; talked to you personally
17 or at a meeting where you were present?
18 MR. BEAR: At a meeting she has talked
19 and said a lot of things at the meeting. That might be
20 one of the things she talked about.
21 Q. But nobody in your group has evaluated that
22 or looked at that or considered that? You just accepted
23 the EIS?
24 MR. BEAR: Yeah. Pretty much.
25 Q. Okay. What type of facilities? You talk

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1 about a clinic. What is a clinic going to cost?
2 MR. BEAR: That's something that we are
3 investigating and looking at.
4 Q. Have any ideas?
5 MR. BEAR: I don't. It will depend on
6 how big the clinic will be and what will be in the
7 clinic.
8 Q. What is the time frame for schools, clinics,
9 other types of facilities, if any, that you are looking
10 at?
11 MR. BEAR: Probably 2010.
12 Q. And who is going to be deciding how big and
13 what should be done? Who is making the decisions and
14 advising?
15 MR. BEAR: Probably the Executive
16 Committee will make the decision.
17 Q. And has anybody thus far looked at the
18 impact on those future facilities that the PFS facility
19 might have?
20 MR. BEAR: Pertaining to --
21 Q. Would it be more difficult to hire doctors
22 or nurses to work in a medical facility next to the
23 world's largest high level nuclear waste dump?
24 MR. BEAR: No. We have talked to a
25 nurse and doctors already located here in Salt Lake

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1 about coming out there part-time. The nurse probably
2 would be full-time, but the doctor probably would be a
3 part-time physician.
4 Q. And has anybody done an overall evaluation
5 of all of the things in light of what impact the PFS
6 facility might have on such a future development?
7 MR. BEAR: Not a study, no.
8 Q. Okay.
9 MR. SILBERG: Off the record.
10 (Discussion off the record.)
11 Q. Leon, when were you elected chairman of the
12 Skull Valley Band of Goshute Indians?
13 MR. BEAR: My first term or the second
14 term?
15 MR. SILBERG: First term.
16 Q. How many terms have you been reelected?
17 MR. BEAR: This is my second term.
18 Q. When were you first elected?
19 MR. BEAR: As the chair, right?
20 Q. Yes.
21 MR. BEAR: In 1996.
22 Q. 1996. What month of 1996?
23 MR. BEAR: It was during November.
24 Q. Okay. And --
25 MR. BEAR: Excuse me. This is

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1 something that is complicated because the actual month
2 of November of 1995 was when I was elected but in the
3 fiscal year of 1996.
4 Q. So you were elected in November of 1995?
5 MR. BEAR: Right.
6 Q. When did you start serving?
7 MR. BEAR: Probably immediately. Well,
8 not really immediately because the previous chairman had
9 to send a notice to the BIA to tell them that I was the
10 new elected official. And the bank account, we had to
11 have a letter for the banks to change over from the
12 previous chairman to me.
13 Q. Who was the chairman before you?
14 MR. BEAR: Mr. Lawrence Bear.
15 Q. And is he related to you?
16 MR. BEAR: Yes, he is my uncle.
17 Q. When was he elected to the term immediately
18 before yours?
19 MR. BEAR: In 1992.
20 Q. In 1992?
21 MR. BEAR: Yes. That's the fiscal year
22 of 1992.
23 Q. Okay. And were you an officer in that
24 regime for any period of time?
25 MR. BEAR: During his term?

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1 Q. During his final term.
2 MR. BEAR: Yes.
3 Q. What office did you hold for what period of
4 time?
5 MR. BEAR: Tribal secretary.
6 Q. And did you hold or were you removed from
7 that position prior to being elected to the position of
8 the chair?
9 MR. BEAR: Yes.
10 Q. When?
11 MR. BEAR: There was a gap in there
12 between 1994 and '96.
13 Q. Okay. And when were you the second time
14 elected as a chairman?
15 MR. BEAR: That was, I'm in a year
16 to -- November of 2000.
17 Q. The November most recent?
18 MR. BEAR: Right.
19 Q. Okay. And how are Tribal elections
20 conducted?
21 MR. BEAR: They are special General
22 Council meetings so the chair has to call and send out
23 the notices. And when the meeting comes, the chair
24 actually steps down out of the chairmanship and the
25 Tribal secretary then is the acting -- well, he is the

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1 elected official that's putting or conducting the
2 meeting at the time.
3 Q. Okay. And how many members of the Band need
4 to be present in order to conduct elections? You said
5 that the quorum has been abolished?
6 MR. BEAR: Right. For the General
7 Council meetings, yes. But under the special General
8 Council meetings, we have to have full quorum.
9 Q. For all special General Council meetings?
10 MR. BEAR: Right.
11 Q. So for all special General Council meetings
12 you have to have a full quorum?
13 MR. BEAR: Right.
14 Q. But for normal General Council meetings, no
15 quorum is required?
16 MR. BEAR: Right.
17 Q. At this most recent election, last November,
18 was there a full quorum present?
19 MR. BEAR: Yes. Over 50 percent of our
20 people were there.
21 Q. How many over 50 percent?
22 MR. BEAR: I think there was about 45.
23 Q. And how many did you need to have a quorum?
24 MR. BEAR: 35.
25 Q. You needed 35 and you think it was 45?

PAGE 234 234

1 MR. BEAR: Yeah.
2 Q. How do you know that?
3 MR. BEAR: Because of the roll call.
4 Q. Did Margene sign that roll?
5 MR. BEAR: No.
6 Q. So would she have been counted in the
7 quorum?
8 MR. BEAR: No.
9 Q. So she wasn't present for that meeting as
10 far as counting of the quorum?
11 MR. BEAR: As far as documentation
12 goes, yes.
13 Q. What about Sammy Black Bear?
14 MR. BEAR: No.
15 Q. So all of the people who attended the
16 meeting who were not on the roll weren't counted as
17 being present, but were they counted as the total number
18 of which you had to have half of to get a quorum?
19 MR. BEAR: No.
20 Q. How many Tribal General Council members were
21 there last November?
22 MR. BEAR: In whole?
23 Q. In whole.
24 MR. BEAR: 70.
25 Q. There were 70?

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1 MR. BEAR: Right. Approximately.
2 Q. For the purposes of discussion, we will
3 accept 70 as being accurate. And if 70 were there and
4 Margene and Sammy were there and didn't sign the roll,
5 are they subtracted from the 70 for calculating the
6 quorum or are they still there?
7 MR. BEAR: Yes.
8 Q. So you needed to have at least --
9 MR. BEAR: Thirty-five.
10 Q. That would be fifty percent. You have to
11 have plus one.
12 MR. BEAR: We had over fifty percent of
13 the people.
14 Q. So 36. And all of the people who didn't
15 sign the role, none of them were counted towards a
16 quorum?
17 MR. BEAR: For a quorum on the
18 resolution, yes, I'm sure. Or anything that was
19 conducted there.
20 MR. SILBERG: I'm going to have to end
21 it. These questions I think are tangential, at best.
22 If there are specifics we can arrange for an answer but
23 I'm not going to make my plane and I need to do that.
24 Q. I would like to say for if the record - and
25 I know you have a plane to catch - but throughout the

PAGE 236 236

1 day you have been most aggressive on objecting and
2 cutting off questions in areas that are most sensitive
3 to proving our contention of bias against opponents of
4 the PFS project.
5 MR. SILBERG: I have been most
6 aggressive in terms of objections that have nothing to
7 do with this contention, and that's the only basis for
8 my objections have been the relevancy. And that's why I
9 objected. And I think if we can close the record I'd
10 appreciate it.
11 Q. Let me ask another quick question.
12 You indicated that the lease that was
13 attached to the resolution, which I believe is Exhibit
14 8, was the lease as signed. The lease as signed was
15 dated May of 1997, was it not?
16 MR. BEAR: I don't have a copy of the
17 lease in front of me so I'm not sure what the date is on
18 the lease.
19 Q. What changes were made to the lease between
20 the date --
21 MR. SILBERG: This has nothing to do
22 with this contention and I think you are trying to make
23 make me miss my plane.
24 Q. I have no intention of trying to make you
25 miss the plane.

Private Fuel Storage
Joint Depositin of Leon Bear and John Donnell * May 3, 2001

PAGE 237 237

1 MR. BEAR: I will have to excuse
2 myself. Thank you.
3
4 (Deposition was concluded.)
5
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PAGE 238 238

1 Reporter's Certificate
2
3 STATE OF UTAH)
4) ss.
5 COUNTY OF SALT LAKE)
6
7 I, DIANA KENT, Registered Professional
8 Reporter and Notary Public in and for the State of Utah,
9 do hereby certify:
10
11 That prior to being examined, the witnesses,
12 JOHN DONNELL and John Donnell, had previously been duly
13 sworn to tell the truth, the whole truth, and nothing
14 but the truth;
15 That said deposition was taken down by me in
16 stenotype on May 3, 2001, at the place therein named and
17 thereafter pages 4 through 237 were reduced to
18 transcription under my direction.
19
20 I further certify that after the said
21 deposition was transcribed, a reading copy was sent to
22 the witnesses for reading and signing before a notary
23 public, and return to me for filing with clerk of the
24 said court.
25
I further certify that I am not of kin or
otherwise associated with any of the parties to said
cause of action and that I am not interested in the
outcome thereof.
WITNESS MY HAND AND SEAL this 9th day of
May, 2001.

DIANA KENT, RPR/CSR
Notary Public
Residing in Salt Lake County

My Commission Expires:
June 22, 2004

PAGE 239 239

1 DATE TAKEN: May 3, 2001
2 CASE: Private Fuel Storage
3
4 WITNESS CERTIFICATE PAGE
5
6 I, JOHN DONNELL, HEREBY DECLARE:
7 That I am the witness referred to in the
8 foregoing testimony; that I have read the transcript
9 and know the contents thereof; that with these
10 corrections I have noted, this transcript truly and
11 accurately reflects my testimony:
12
13 PAGE-LINE CHANGE/CORRECTION REASON
14 -
15 -
16 -
17 -
18 -
19 -
20 -
21 -
22 -
23 -
24
25 I, JOHN DONNELL, HEREBY DECLARE UNDER THE
PENALTIES OF PERJURY OF THE LAWS OF THE UNITED STATES
OF AMERICA AND THE LAWS OF THE STATE OF UTAH THAT THE
FOREGOING IS TRUE AND CORRECT.

JOHN DONNELL

DATED
THIS SUBSCRIBED AND SWORN TO AT
DAY OF

Notary Public.

PAGE 240 240

1 DATE TAKEN: May 3, 2001
2 CASE: Private Fuel Storage
3
4 WITNESS CERTIFICATE PAGE
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23 PENALTIES OF PERJURY OF THE LAWS OF THE UNITED STATES
24 OF AMERICA AND THE LAWS OF THE STATE OF UTAH THAT THE
25 FOREGOING IS TRUE AND CORRECT.

JOHN DONNELL

DATED
THIS SUBSCRIBED AND SWORN TO AT
DAY OF

Notary Public.

EXHIBIT 2:

May 2, 2001 Complaint

including 552 (a)(6)(c); and for declaratory relief and damages, pursuant to 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988; and the United States Constitution; and for declaratory judgment under the federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.* and 2202.

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WHEREFORE: Plaintiffs Pray for Judgment as Follows 40

DEMAND FOR JURY TRIAL 41

COMPLAINT

Plaintiffs, based on the information and belief held by Plaintiffs, and on the evidence as described herein, allege as follows:

BRIEF OVERVIEW

1. Defendants engaged, and are continuing to engage, in flagrant instances of wrongful Agency inaction and action constituting a longstanding and widespread pattern of discrimination against Plaintiffs and in support of an overall discriminatory plan to target Indian reservations for the effectively permanent storage of the nations high level nuclear waste.

a. Inaction:

- i. Defendants ignored numerous requests for information
- ii. Defendants ignored numerous requests for investigation of allegations
- iii. Defendants ignored numerous requests for protection against unlawful actions
- iv. Defendants ignored a major appeal of BIA's wrongful and improper approval of a purported lease agreement placing high level nuclear waste on an Indian reservation, without the authorization of the tribe.

v. Defendants ignored a major request to the Secretary of the Interior to address these flagrant instances of wrongful Agency inaction and associated discrimination.

b. Action:

i. Defendants, as zoning agent and trustee, improperly targeted Indian reservations in general and Skull Valley in particular without complying with applicable statutes and regulations.

ii. Defendants unlawfully removed a tribal government opposed to placement of high level nuclear waste on their reservation and unlawfully replaced the legitimate government with a previous and admittedly recalled, corrupt and illegitimate regime, which regime was properly recalled for failing to account for funds and for bypassing Tribal General Council in bringing unauthorized high level nuclear waste onto the Reservation.

iii. Defendants improperly and unlawfully ignore the legitimate government and recognize and support the corrupt and illegitimate regime in power, despite the use of bribery and intimidation by the corrupt regime to retain its illegitimate power.

iv. Defendants improperly and unlawfully ignore and resist all efforts of supporters of the legitimate government to use proper and legitimate channels within the BIA and Department of the Interior to end the discrimination, have the Agency cease its unlawful actions and inactions and cease its unlawful support of the corrupt and illegitimate regime.

2. Requested Relief:

a. A declaratory judgment that Defendants' policy of inaction toward Plaintiffs is improper and must cease forthwith and Plaintiffs must henceforth be treated with a policy consistent with Department and BIA fiduciary responsibilities, and in accordance with applicable statutes and regulations;

b. A declaratory judgment that Defendants' agency action and inaction is discriminatory and that Defendants must take immediate steps to mitigate or repair stated damages, including investigating civil and criminal allegations and recognizing the legitimate Tribal government;

c. A declaratory judgment that Defendants' agency action and inaction violates FOIA and that Defendants must either provide the requested documents or statements of valid exemption;

d. A declaratory judgment that Defendants' agency action and inaction violates the Privacy

Act and that Defendants must either provide the requested documents or statements of valid exemption;

e. A declaratory judgment that Defendants' discriminatory and otherwise wrongful agency action, especially any purported approval of Purported Lease Agreement, is void and of no effect;

f. An award of damages as proven at trial;

g. An award of costs, fees, and other expenses, including reasonable attorney's fees, as provided for in 28 C.F.R. § 2412, 42 U.S.C. 1988, and other applicable statutes and regulations; and

h. Such other and further relief the Court deems just and proper.

PARTIES

Plaintiffs

3. Plaintiffs Colleen Blackbear, Margaret Blackbear, Mariea Blackbear, Sammy Blackbear Sr., Abby Bullcreek, Lisa Bullcreek, Margene Bullcreek, Edwin Clover, Leslie Dawn Eagle, Edith Knight, Lena Knight, Adrian Moon, Delford Moon, Edgar Moon, Marlinda Moon, Linda Clover Rivera, Stephanie E. Vigil and Denise Wash are each a voting Member of the Skull Valley Band of Goshute Indians' Tribal General Council ("Tribal General Council" herein), which is the sole Tribal governing body.

4. In addition to acting individually, as Tribal members and as affected Native Americans, Plaintiffs are hereby additionally acting in their official capacity as members of said Tribal General Council.

Defendants

5. Defendant Gail A. Norton, as Secretary of the United States Department of Interior ("Secretary" herein), has fiduciary responsibilities to act in the best interests of Indian Tribes, of

each Tribes' individual members and of other Native Americans, in accordance with statutes and regulations.

6. Defendant United States Department of Interior ("Department" herein) is a department of the United States Government having fiduciary responsibilities to act in the best interests of Indian Tribes, of each Tribe's individual members and other Native Americans, in accordance with statutes and regulations.

7. Defendant Bureau of Indian Affairs ("BIA" herein) is an agency of the United States Government, within the Department, having fiduciary responsibilities to act in the best interests of Indian Tribes, the Tribe, each of Tribe's individual members and other Native Americans, in accordance with statutes and regulations.

8. Defendant Wayne Nordwall as the Phoenix Area Director, Bureau of Indian Affairs ("Phoenix Area Director" herein) is responsible, within the BIA, for implementing and complying with the provisions and requirements of the statutes and regulations, as applicable to activities and issues involving Indian trust lands located on the Skull Valley Goshute Indian Reservation and has fiduciary responsibilities to act in the best interests of the Tribe, each of the Tribe's individual members and other Native Americans, in accordance with statutes and regulations.

9. Defendant David L. Allison, as the Superintendent of the Uintah and Ouray Agency ("Superintendent" herein) is responsible, within the BIA, for implementing and complying with the provisions and requirements of the statutes and regulations, as applicable to activities and issues involving Indian trust lands located on the Skull Valley Goshute Indian Reservation and has fiduciary responsibilities to act in the best interests of the Tribe, each of the Tribe's individual members and other Native Americans, in accordance with statutes and regulations.

10. Doe Defendants are unnamed Defendants. Plaintiffs have brought this action against the

Doe Defendants in such fictitious names because the true identities and capacities of such Defendants are at present unknown to Plaintiffs.

11. At such future time as these Defendants' true names and capacities become known to Plaintiffs, those true names and capacities will be substituted into this Complaint.

12. Plaintiffs are informed, believe and thereon allege, that each of the fictitiously named defendants is responsible in some manner for the occurrences alleged in this complaint, and that Plaintiffs' damages as alleged in this complaint were proximately caused by those Defendants.

13. Every allegation or claim that Plaintiffs have made or will make in this action against every named party is also alleged and claimed against every associated Doe Defendant, whether or not any reference is made to any Doe Defendant in the allegation or claim.

JURISDICTION AND VENUE

14. This Complaint concerns actions of Defendants taken primarily within the exterior boundaries of the state of Utah, with respect to Native Americans residing on Indian reservations located wholly within the exterior boundaries of the state of Utah or residing in the state of Utah off of any Indian Reservation and with respect to Indian trust land located wholly within the exterior boundaries of the state of Utah, and having a major impact upon and within the state of Utah.

15. The United States District Court for Utah has jurisdiction over the causes and claims herein, pursuant to 5 U.S.C. §§ 551 *et seq.*, 554(c), 555(b); 701 *et seq.*; 28 U.S.C. § 1331, 28 U.S.C. §§ 2201-02 ; 28 U.S.C. § 1343, 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988; and 5 U.S.C. §§ 552 & 552a *et seq.* (including 552(a)(6)(C)).

16. Venue for this action in the Federal Court District of Utah, is conferred on this court pursuant to 28 U.S.C. § 1391(b), § 1391(e)(2) and § 1391(e)(3).

GENERAL ALLEGATIONS

The Skull Valley Band of Goshute Indians

17. The Skull Valley Band of Goshute Indians ("Band" or "Tribe" herein) is a federally recognized BIA supervised Native American Indian tribe with a general council system of government that operates pursuant to its Tribal traditions.

18. The Band is supervised by the BIA's Uintah and Ouray Agency in Fort Duchesne, Utah within the BIA's Phoenix Area.

19. The Band has no written constitution or other written governmental foundation documents.

20. The Tribal General Council, comprised of all adult members of the Band, is the sole governing body of the Band.

21. The Band also has three elected officials, a Chairman, Vice Chairman and Secretary, that form an Executive Committee and function as explicitly directed by the Tribal General Council.

22. Neither the Executive Committee as a whole nor any of the elected Tribal officers individually have any authority to act other than as expressly authorized and instructed by the Tribal General Council.

23. The Skull Valley Band has approximately 120 enrolled members.

24. Just over one-half of the Band are adults and thus members of the Tribal General Council.

Conspiracy, Deprivation and Discrimination

25. Defendants and other individuals including unnamed persons (Doe defendants, herein) have conspired to prevent and have prevented officials within the BIA/Department of Interior from properly discharging their duties, and conspired to induce, and have induced such officials, and others, in aiding in depriving Plaintiffs of equal benefits, protections, rights, privileges and

immunities.

26. This has resulted in an invidiously discriminatory pattern of flagrant official inaction, in support of an overall discriminatory plan of inactions and actions against Plaintiffs and their Tribe by Defendants and others acting in concert with Defendants.

Partial History of Events

27. The following partial history of events shows pertinent interactions between and among:

- a. the Tribe and its members;
- b. Leon D. Bear, purported Tribal leader;
- c. Danny Quintana, purported Tribal attorney;
- d. Private Fuel Storage, L.L.C. ("PFS" herein), a Delaware limited liability company, registered to do business in Utah;
- e. Plaintiffs; and
- f. Defendants.

January 8, 1994: Leon Bear Recalled and Sammy Blackbear Elected

28. Leon Bear and the administration in which he claimed to be a Tribal officer were recalled by the Tribal General Council. Bert Wash and Plaintiff Sammy Blackbear were subsequently duly elected as Tribal Chairman and Vice-Chairman.

January 19, 1994: Recall of Bear Regime Acknowledged as Valid by BIA

29. BIA acknowledged that the recall of the Bear regime was valid (see Exhibit "A" to Exhibit "One" hereto).

January 31, 1994: BIA Unlawfully Restores Bear Regime

30. The BIA, through its actions (claimed by Plaintiffs to be unlawful and therefore void), effectively removed from power the duly elected Bert Wash and Sammy Blackbear administration,

which was duly elected to replace the recalled Bear administration and instead returned the ousted, corrupt Bear regime to power by allowing the admittedly recalled Tribal officers to decide whether or not to call a new election (see Exhibit "B" to Exhibit "One" hereto).

31. Protests by the legitimate Tribal government were effectively ignored and all requests made to the BIA and/or Department of the Interior since then, by the legitimate and proper Tribal officers and the members of the Tribal General Council, have been without an effective official response.

32. In most cases, not even a written acknowledgment has been received from the BIA and/or Department of the Interior.

33. Plaintiffs allege there has not been a legitimate election since January 8, 1994, and the illegitimate Bear regime remains in power through bribery and corruption, which continues because of the perceived support for the corrupt Bear regime by the BIA and the BIA/Department of the Interior's inaction in failing to perform requested investigations of Plaintiffs' allegations.

February 9, 1994: BIA Supported Bear Regime Fosters Unauthorized Waste Facility

34. As soon as it was unlawfully reinstated by the BIA, the improperly restored, corrupt Bear regime immediately advanced its high-level nuclear waste project that was the basis for its recall less than one month before.

35. A major issue behind the recall, according to the recall documents, was the proposed high-level nuclear waste facility sponsored by Danny Quintana, Leon Bear and the rest of the Bear regime, especially the failure of the regime to disclose to the Tribal General Council full and complete information about that proposal and the hundreds of thousands of dollars in federal grants associated with the proposal, which had disappeared, and the attempt by the Bear regime to bypass the Tribal General Council in pursuing the project.

36. Once the Bear regime was unlawfully restored to power by the BIA, the missing money and the fact that the nuclear waste project was bypassing the Tribal General Council were no longer issues of concern to the BIA.

June 28, 1995: PFS Reveals Ongoing Discriminatory Plan

37. PFS publicly acknowledged its already implemented plan to target small Indian tribes in low population western states for siting of private high-level nuclear waste storage facilities, as a means of avoiding the political resistance associated with siting high-level nuclear waste storage facilities anywhere else.

38. Plaintiffs allege PFS has violated and is violating their civil rights, which continues because of BIA/Department of the Interior's inaction in failing to perform requested investigations of Plaintiffs' allegations as set forth herein below.

1996: PFS Begins Paying Leon Bear

39. PFS commences paying Leon Bear to deliver the Skull Valley Reservation into PFS control for the storage of high-level nuclear waste.

40. At a PFS meeting on the Reservation on February 3, 2001, it was disclosed that payments to Leon Bear from PFS started in 1996.

41. Plaintiffs allege this is part of an overall scheme of bribery and corruption.

May 20, 1997: Purported Lease Agreement Signed Without Authorization

42. PFS and members of the Leon Bear regime signed what is purported to be an agreement or ("Purported Lease Agreement" herein) (cover, first and signature pages attached as Exhibit "C" to Exhibit "One" hereto) for locating a high-level nuclear waste facility on the Skull Valley Indian Reservation.

43. The Bear regime lacked authority to sign the Purported Lease Agreement for or on behalf

of the Band.

44. Most members of the Tribal General Council have never seen the Purported Lease Agreement and the Tribal General Council has never approved it.

45. Any apparent support for the Purported Lease Agreement and PFS facility is maintained through bribery and corruption, which continues because of BIA/Department of the Interior's inaction in failing to perform requested investigations of Plaintiffs' allegations as set forth herein.

May 23, 1997: Purported Lease Agreement Receives Wrongful BIA Approval

46. The Purported Lease Agreement received a BIA/Department of the Interior approval signature three days later on May 23, 1997 (see Exhibit "D" to Exhibit "One" hereto), without any contemporaneous administrative record to support the approval.

47. The Interior approval was improper, unlawful and violated applicable statutes and regulations, and additionally violated Plaintiffs' civil rights.

48. This wrongful agency action caused and continues to cause damages because of BIA's inaction in responding to Plaintiffs' *Notice of Appeal* discussed starting on page 17 herein below.

March 10, 1999: Plaintiffs File First Suit in Federal Court

49. Plaintiffs filed a lawsuit in federal court claiming the Purported Lease Agreement was void at its inception and is without legal effect because it is legally deficient on its face, was signed without authorization, lacks a valid BIA/Secretary of the Interior approval and violates civil rights statutes.

50. Plaintiffs claimed the BIA/Department of the Interior approval was invalid, improper and unlawful, violated applicable statutes and regulations, and additionally violated Plaintiffs' civil rights.

April 20, 1999: BIA Wrongful Action Regarding Request for Investigation

51. Plaintiffs submitted a request for BIA protection and investigation, with accompanying allegations of criminal wrongdoings (see Exhibit "E" to Exhibit "One" hereto).

52. This request was submitted in writing to the BIA and Department of the Interior's attorney of record and was hand delivered to the local Solicitor's office.

53. Not only did the BIA fail to provide any effective response to this request, but the local BIA office immediately forwarded this letter containing allegations of criminal wrongdoings to Leon Bear, the person alleged in the request to be engaged in the criminal activities, to the detriment of those Indians requesting the BIA protection.

April 22, 1999: Agency Wrongful Inaction Regarding Request for Investigation

54. Upon receipt of this letter, the Department of the Interior Regional Field Solicitor verbally commented that the request contained allegations of serious felonious behavior and stated the letter would immediately be referred to the Department of the Interior's Inspector General for a thorough investigation.

55. No official response, acknowledgment or other indication of any such investigation has ever been received from the Inspector General or other Department of the Interior official or staff.

February 14, 2000: Dismissal of First Court Action Without Prejudice and with Favorable Rulings

56. The court dismissed the federal court case without prejudice, without reaching the merits, on ripeness grounds based on the BIA/Department of the Interior representations to the court that there were ongoing processes within the BIA wherein the concerns of Tribal member clients raised in the litigation could and would be resolved.

57. On this basis, over Plaintiffs' objections that such processes were futile or did not exist and that the BIA and Department of the Interior had exhibited a long standing pattern of ignoring

Tribal General Council members' claims, the action was dismissed without prejudice but with favorable ground rules to apply when returning to federal court, if satisfaction was not received using these purported ongoing BIA processes.

58. The court ruled:

- a. That the members of the Tribal General Council have standing to bring their causes of action;
- b. That these causes of action are justiciable; and
- c. That they can not be dismissed on sovereignty grounds.

59. All of these issues were raised by Defendants in the first case, and therefore Defendants are bound by the court's rulings in the present case.

April 27, 2000: Agency Wrongful Inaction on Request for Information

60. Plaintiffs submitted a Request For Information (see Exhibit "F" to Exhibit "One" hereto) to the BIA and Department of the Interior via their attorney of record to: (a) identify the "ongoing processes within the BIA wherein the concerns of Tribal member clients could be resolved"; (b) provide the necessary records and updated information concerning the processes; and (c) further provide under FOIA certain documents in the BIA's possession needed for Plaintiffs to fulfill their obligations and duties as Tribal General Council members.

61. The BIA/Department of the Interior through its inaction has provided no official reply to this request, not even a written acknowledgment, and is in violation of FOIA.

May 19, 2000: Agency Wrongful Inaction on Second Request for Information

62. Plaintiffs submitted a second Request for Information (see Exhibit "G" to Exhibit "One" hereto), referencing the April 27th Request for Information, stating that there had been no response and that the inaction was causing irreparable harm.

63. Again, neither the BIA nor Department of the Interior provided any official reply to said request, not even a written acknowledgment of the Request for Information.

June 20, 2000: Plaintiffs Submitted a Third Request for Information

64. Plaintiffs submitted a third Request for Information (see Exhibit "H" to Exhibit "One" hereto), referencing both the April 27th and the May 19th Requests for Information, again stating there had been no response and that the inaction was still causing irreparable harm.

65. Yet again, neither the BIA nor Department of the Interior provided any official reply to said request, not even a written acknowledgment of the Request for Information.

June 30, 2000: Plaintiffs Submitted a Request to Congressman Hansen

66. June 30, 2000: Plaintiffs submitted a request to Congressman Hansen, in the House of Representatives (see Exhibit "I" to Exhibit "One" hereto) asking for his assistance in obtaining an investigation by the Department of the Interior Inspector General.

67. Congressman Hansen promptly forwarded that request to the Inspector General but has received no satisfactory response.

August 24, 2000: Plaintiffs Submitted Two Additional Requests for Information

68. August 24, 2000: Plaintiffs submitted two additional Requests for Information under FOIA and the Privacy Act for further documents and other information in the BIA's possession needed for Plaintiffs to fulfill their obligations and duties as Tribal General Council members and to regulate their personal affairs. (Sammy Blackbear's August 24, 2000 *Request for Information Pursuant to FOIA (5 U.S.C. 552) and The Privacy Act of 1974 (5 U.S.C. 552a)* (see Exhibit "J" to Exhibit "One" hereto) and Margaret Blackbear's August 24, 2000 *Request for Information Pursuant to FOIA (5 U.S.C. 552) and The Privacy Act of 1974 (5 U.S.C. 552a)* (see Exhibit "K" to Exhibit "One" hereto).

69. The BIA through its inaction has again provided no effective official reply to either of these requests and is in further violation of FOIA and the Privacy Act.

September 22, 2000: Plaintiffs Submitted a *Notice of Appeal*

70. September 22, 2000: Plaintiffs submitted a *Notice of Appeal* (see Exhibit "L" to Exhibit "One" hereto) and associated *Statement of Reasons* (see Exhibit "M" to Exhibit "One" hereto) to the BIA (jointly referred to as "BIA Appeal" herein), appealing the BIA/Department of the Interior's approval of the Purported Lease Agreement and requesting that this BIA/Department of the Interior agency action be declared void, set aside, overturned and/or rescinded because it was unlawful, invalid, improper, arbitrary and capricious; included abuses of discretion; and was not in accordance with BIA procedures, as set forth in the *Statement of Reasons*.

71. The *Statement of Reasons* described a number of problems, including violations of statutes and requirements, which rendered the purported BIA/Department of the Interior approval void and unlawful.

72. Additionally, the *Statement of Reasons* showed reasons why PFS and the BIA (therefore also the NRC) were not dealing with the legitimate Tribal government, were dealing with so called "Tribal Resolutions" that were bogus and false, and were violating the civil rights of Plaintiffs.

73. There has been no response or acknowledgment of this BIA Appeal by the BIA or any of the herein Defendants.

74. The *Statement of Reasons* and all other exhibits hereto are hereby incorporated by reference and made a part of these general allegations as if fully set forth herein.

September 29, 2000: Plaintiffs Were Joined in Their BIA Appeal

75. September 29, 2000: Plaintiffs were joined in their BIA Appeal by (a) the Confederated Tribes of the Goshute Reservation (see Exhibit "N" to Exhibit "One" hereto), (b) the State of

Utah, (c) NATO Indian Nation and (d) Ohngo Gaudedah Devia Awareness (“OGDA” herein, collectively “Filing Parties” herein).

76. There has been no response or acknowledgment by the BIA of these filings by Filing Parties.

October 25, 2000: Leon Bear and PFS Filed Nearly Identical “Answers”

77. October 25, 2000: Leon Bear and PFS filed nearly identical “Answers” to the BIA Appeal on October 25, 2000.

78. In these “Answers” Leon Bear and PFS did not properly address or refute Filing Parties’ claims on their merits, but put forth general denials and attacked Filing Parties’ standing and raised other administrative issues.

October 30, 2000: Confederated Tribes of the Goshute Reservation Filed a Reply

79. October 30, 2000: In response to the Leon Bear and PFS “Answers” in the BIA Appeal, the Confederated Tribes of the Goshute Reservation filed a reply (see Exhibit “O” to Exhibit “One” hereto).

80. There has been no response or even an acknowledgment by the BIA of this or any other filing in the BIA Appeal.

November 13, 2000: Plaintiffs Sent Request for Intervention and Investigation to the Local BIA

81. November 13, 2000: Plaintiffs sent a request for intervention and an investigation to the local BIA Superintendent and the local Field Solicitor (see Exhibit “P” to Exhibit “One” hereto).

82. That formal request sought an investigation of serious criminal allegations enumerated therein, including allegations of a pattern of intimidation and abuse that made it impossible to hold a fair, honest or traditional election at that time.

83. Plaintiffs stated that they expected Leon Bear and others to deprive them of their sacred,

sovereign, inherent and traditional right to participate in any Tribal election and described precisely how the deprivation would be accomplished by the illegitimate Bear regime, in violation of their official Tribal governmental requirements.

84. Plaintiffs were in fact so deprived of their right to participate in the Tribal election purportedly conducted by Leon Bear and his co-conspirators, precisely in the manner anticipated.

November 15, 2000: Plaintiffs Delivered a *Notice of Request for Information and Actions*

85. November 15, 2000: Plaintiffs delivered a *Notice of Request for Information and Actions Regarding the Welfare of the Tribal General Council of the Skull Valley Band of Goshute Indians* to BIA Superintendent Allison specifically requesting information, an investigation and that he take action so the best interests of the Tribe were protected (see Exhibit "Q" to Exhibit "One" hereto).

86. The BIA/Department of the Interior, through its inaction, has provided no official reply, not even a written acknowledgment of this document, and is in violation of FOIA.

November 19, 2000: Plaintiffs Filed a Reply

87. November 19, 2000: In response to the Leon Bear and PFS "Answers" in the internal BIA Appeal, Plaintiffs filed a reply (see Exhibit "R" to Exhibit "One" hereto).

November 19, 2000: All Normal Pleadings in the BIA Appeal Were Completed

88. All normal pleadings in the BIA Appeal were completed by November 19, 2000.

December 22, 2000: PFS Then Filed an Extra Reply with the BIA

89. PFS then filed an extra reply with the BIA on December 22, 2000, which contained no relevant issues not previously addressed.

December 22, 2000: this Completed All Pleadings in the BIA Appeal

90. December 22, 2000: This completed all pleadings in the BIA Appeal.

91. After over sixty days since the completion of pleadings in the BIA Appeal, the

BIA/Department of the Interior has still not responded with any written response, in violation of 25 C.F.R. § 2.19.

92. Not only has no decision been rendered, as required, but there has been no response or even a written acknowledgment by the BIA of any of these filings or even that any action is in process.

November 22, 2000: Superintendent Allison Sent a Responsive Letter

93. November 22, 2000: In response to Plaintiffs' November 13, 2000 request for intervention and an investigation, Superintendent Allison sent a responsive letter dated November 21, 2000 (see Exhibit "S" to Exhibit "One" hereto) by facsimile refusing any intervention other than to state that he would forward the November 13, 2000 allegations of wrongdoing to the Inspector General and Federal Bureau of Investigation, just as he had sent previous such allegations.

94. No official response or written acknowledgment of any such investigation has ever been received from the Inspector General or other Department of the Interior official or personnel, either for the current allegations or for any previous allegations Superintendent Allison said he so referred for investigation.

November 24, 2000: Plaintiffs Delivered Additional Request for Postponement of Tribal Election

95. November 24, 2000: Plaintiffs delivered an additional *Request for Postponement of Tribal Election for the Skull Valley Band of Goshute Indians and Request for Contact Information for Investigative Offices* to local BIA Superintendent David Allison (see Exhibit "T" to Exhibit "One" hereto).

96. The BIA/Department of the Interior, through its inaction, has provided no official reply, not even a written acknowledgment of this document and is in violation of FOIA.

November 25, 2000: Plaintiffs Hand Delivered an Additional Request for Intervention

97. November 25, 2000: Plaintiffs hand delivered an additional request for intervention to local BIA Superintendent David Allison (see Exhibit "U" to Exhibit "One" hereto).

98. The BIA has provided no official reply to that request, not even a written acknowledgment.

December 14, 2000: Plaintiffs Submitted a Written Request to the BIA for Investigations

99. December 14, 2000: Plaintiffs submitted a written request to the BIA for investigations into allegations of criminal wrongdoing.

100. The BIA has provided no official response, not even a written acknowledgment of having received such written request.

December 28, 2000: Plaintiffs Submitted Another Written Request to the BIA

101. December 28, 2000: Plaintiffs submitted another written request to the BIA for investigations into allegations of criminal wrongdoing.

102. The BIA has provided no official response, not even a written acknowledgment of that written request either.

January and February 2001: Documents Formally Served

103. January and February 2001: In addition to the copies of the herein above discussed documents formally served on appropriate BIA and Department of the Interior officials as indicated therein, copies have been delivered to the Inspector General, BIA Superintendent Allison, local Regional Field Solicitor William R. McConkie, Esq., the local U.S. Attorney and others, within the first two months of this year.

104. No official response or written acknowledgment of those copies has been received from the Inspector General or other Department of the Interior official or personnel and no indication of any Inspector General investigation has been observed.

March 16, 2001: Plaintiffs Submitted a *Request for Action or Decision* to the Secretary

105. March 16, 2001: Plaintiffs submitted a *Request for Action or Decision* to the Secretary of the Interior in accordance with 25 C.F.R. § 2.8 which requires a response within ten (10) days or requestor has perfected a right to appeal Agency inaction (the *Request for Action or Decision*, including the cover letter addressed to the Secretary of the Interior and all exhibits and attachments thereto (with the exception of Exhibit V thereto) is attached hereto as Exhibit "One").

106. In this *Request for Action or Decision* Plaintiffs document numerous critical incidents of flagrant official inaction, in violation of federal statutes and Department regulations, constituting a longstanding and widespread pattern of invidious discrimination against Plaintiffs.

107. In the cover letter to the *Request for Action or Decision* addressed to the Secretary of the Interior, Plaintiffs state: "We believe earlier and current efforts to resolve these issues [incidents of flagrant official inaction, constitute invidious discrimination] have been and are being resisted because of pressures exerted from high up within the BIA and/or Department of the Interior. Therefore . . . request is properly made at your level, so that you may take action yourself, or delegate the matter to officials that you can assure yourself are not part of the problem." (at p. 4).

108. In the *Request for Action or Decision*, Plaintiffs document that because action on this alleged widespread and long standing pattern of flagrant official inaction constituting invidious discrimination is properly taken at the level of the Secretary, appeal may properly be taken in federal court, unless otherwise timely designated by the Secretary (at p.16).

109. Neither the Secretary of the Interior, Department of Interior, BIA, any designated official, nor anyone else has provided any response whatsoever, not even an acknowledgment that the Request had been received and was being considered.

110. There has been no designation by the Secretary, timely or otherwise.

Discriminatory Pattern of Inaction Furthers Discriminatory Plan of Action

111. The BIA/Department of the Interior has misused and is misusing its agency authority, contrary to specific fiduciary obligations, in furthering an overall discriminatory plan of action against Native Americans, in improperly targeting Indian Reservations for high level nuclear waste facilities, causing financial and economic harm and a disproportionate risk of health and environmental harm.

IA has Fiduciary Obligations

BIA Has Fiduciary Obligations

112. BIA has Fiduciary Obligations: The BIA has specific fiduciary obligations, as zoning agent and trustee, to protect Native Americans and trust land from discriminatory practices and subsequent damage or harm.

BIA is Zoning Agent and Trustee:

113. The BIA is specifically tasked with special responsibilities, as zoning agent and trustee, with designated obligations to ensure environmental justice with regard to Native Americans and the authorized use of trust land.

114. For example, in reviewing and approving the Purported Lease Agreement, the BIA is acting both as a protector of the United State's indigenous populations and as a zoning agency in determining what sort of facilities are appropriate for siting on Indian reservations (*Brown v. U.S.*, 86 F.3d 1554, 1562 (Fed. Cir. 1996)).

115. With respect to these issues, the BIA approval of the Purported Lease Agreement is a major agency action, unique, unconditional and complete.

116. It may be said to be conditional only in the sense that the agreement itself is conditioned

on a few specified future occurrences, including successful NRC licensing, which involves associated NEPA processes.

117. The approval is complete and unconditional for all transactions and issues not within the scope of transactions or issues to be considered or modified by the specified future occurrences.

118. The BIA approval approves the siting, construction and operation of a high level nuclear waste facility on a small Indian reservation, which can come to pass without any further action, review or approval by the BIA.

119. The NRC licensing and NEPA processes need not reconsider, are not reconsidering, and will not consider the issue of permission to do these sorts of things on an Indian reservation.

120. The subject Purported Lease Agreement effectively strips the Indian Tribe of virtually all of its primary and derivative sovereign rights.

121. It will set a precedence for locating all of the world's high level nuclear waste on small Indian reservations.

122. In approving such siting for such facilities, this major and significant BIA action raises profound questions concerning the permitted treatment of indigenous populations by conquering populations (see *Congressional Report*, No. 104-24, pp. 127-129 and esp. p. 309 (One Hundred Fourth Congress, 1995)).

123. Such action should have been, but was not, subject to the most careful scrutiny, not only by the BIA but by affected states, Indian tribes and members of affected populations (Executive Order 12898, 59 F.R. 7629, Feb. 11, 1994, see below).

BIA Has Special Obligations to Prevent Discrimination:

124. The BIA, as zoning agent and trustee, has special obligations when approving the siting of waste facilities on Indian reservations.

125. The BIA must ensure that the civil rights of Native Americans are not violated as a result of the siting or zoning actions, separate from any downstream licensing by the NRC (*Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 265-267 (1977)).

126. Such agency action cannot be discriminatory on its face (*Plyler v. Doe*, 457 U.S. 202, 216-218 (1982); *Navajo Nation v. State of N.M.*, 975 F.2d 741, 743 (10th Cir. 1992)), nor can it be discriminatory in its impact (*Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 265-267 (1977); *Navajo Nation v. State of N.M.*, 975 F.2d 741, 743-744 (10th Cir. 1992); *Personnel Administrator of Mass. V. Feeney*, 442 U.S. 256, 278-279 & n. 24 & 25 (1979)).

127. Additionally, the Secretary of the Interior must satisfy the requirements of Executive Order 12898, of February 11, 1994 (59 F.R. 7629), titled: "*Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations.*"

128. Executive Order 12898 states that the Department of Interior has special and designated obligations with respect to Environmental Justice, specifically with regard to Federally-recognized Indian Tribes (§§ 1-101, 1-102, & 6-606).

129. This includes agency actions associated with siting facilities which have the potential for such health or environmental risks to surrounding peoples. (§§ 3-302(b)&(c)).

130. The BIA is required to cooperate with and share information with state agencies, Indian tribes and affected peoples. (§§ 3-302(c)&(d)).

131. More than this, the BIA must conduct their agency actions and activities such that any potentially affected persons have an effective opportunity to participate in the actions or activities. (§§ 2-2, 3-301(c), 3-302(c), & 5-5).

132. This Executive Order implements Constitutional and statutory requirements which are legally enforceable (see below).

BIA Action Furthers a Discriminatory Government Plan

133. BIA Action Furthers a Discriminatory Government Plan: The United States Congress publicly acknowledged support for an overall discriminatory plan, that included the siting of waste facilities on Indian reservations, as a means of avoiding the political resistance associated with siting the facilities anywhere else, at the High Level Nuclear Waste Policy Hearings, beginning on June 28, 1995, and lasting through July of 1995, before subcommittees of the One Hundred Fourth Congress.

134. The plan was suggested and encouraged by representatives of Northern States Power Co. (now Xcel Energy), the lead member of PFS, (*Congressional Report No. 104-24*, pp. 128-129).

135. Congress accepted the validity of such a plan even though experts questioned the “equity” of the “volunteer” part as “it plays out among poor Native American communities in the West.” (At 127 and especially 309).

136. This plan results in the probable siting of the major portion of the United States’ (and possibly even the world’s) high level radioactive nuclear waste, which no one else wants, on Indian reservations, taking advantage of the poverty and political powerlessness of Native Americans, and is a violation of civil and Constitutional rights (see below).

BIA Agency Actions Violate the Constitution

137. BIA Agency Actions Violate the Constitution: Governmental actions constitute disparate treatment and disparate impact violations of the Constitution (Amendments XIV and V), if the actions are facially discriminatory or if the actions are discriminatory in their impact.

138. BIA’s agency actions are both facially discriminatory and discriminatory in their impact.

BIA Agency Actions Are Facially Discriminatory

139. : Government actions are facially discriminatory when they clearly and impermissibly

“disadvantage a ‘suspect class’” or “impinge upon the exercise of a ‘fundamental right’” or fall under certain patterns that “give rise to recurring Constitutional difficulties” because the governmental actions are “inconsistent with elemental Constitutional premises.”

140. Such actions are “presumptively invidious” (*Plyler v. Doe*, 457 U.S. 202, 216-218 (1982)) and “invalid” if not “narrowly tailored to serve a compelling government interest” when no “less burdensome alternatives were available.”

141. Governmental actions which have “an immediate, direct and predictable consequence affecting [Indians] alone . . . [resulting] in adverse consequences exclusively effecting [an Indian] community” are facially discriminatory (*Navajo Nation v. State of N.M.*, 975 F.2d 741, 743 (10th Cir. 1992)).

BIA Action Disadvantages a Suspect Class:

142. BIA action disadvantages a suspect class: The BIA’s decision to approve the siting of a significant portion of the United States’ high level radioactive nuclear waste on an Indian reservation is facially discriminatory because Native Americans constitute a suspect class (*Navajo Nation v. State of N.M.*, 975 F.2d 741, 743 (10th Cir. 1992)).

BIA Action Subjects Indians to Disparate Treatment:

143. BIA action subjects Indians to disparate treatment: Such action, siting such a facility on a small Indian reservation, clearly: (a) subjects a defined group of people to a disproportionate risk of adverse health and environmental effects; (b) causes immediate, direct and predictable consequences affecting Indians alone, resulting in adverse consequences exclusively targeting an Indian community; and (c) impermissibly disadvantages a suspect class.

Less Constitutionally Burdensome Alternatives Were Available:

144. The BIA’s actions are not narrowly tailored to serve a compelling government interest

when no less burdensome alternatives are available.

145. Even assuming the government's interest in siting such waste is sufficiently compelling to justify such discrimination (which is not admitted by Plaintiffs), continuing to store the waste where it is currently located, as recently proposed by the Clinton Administration, is a viable alternative which is clearly much less burdensome Constitutionally.

No Voluntary Host Community:

146. The argument that the proposed Skull Valley Reservation siting is permissible because the Skull Valley Band of Goshute Indians constitute a "voluntary" host community is without merit.

147. Even assuming, given this country's past history of taking advantage of its indigenous populations, the avowed purpose of reservations and the Secretary's and BIA's fiduciary responsibility with regard to Indians, that such siting on Indian reservations can be appropriate under so called "voluntary" circumstances (which possible appropriateness is not admitted), the BIA did not first establish that these Indians constituted such a so called "voluntary" host community.

148. In fact, these Indians do not meet any such criteria.

BIA Agency Actions Are Discriminatory in Impact

149. BIA Agency Actions Are Discriminatory in Impact: Even if BIA's actions were facially neutral, they would still be void on Constitutional grounds, because they are discriminatory in impact.

150. Governmental action which appears to be facially neutral still "violates the Equal Protection Clause guarantee against invidious discrimination" if the action was motivated even in part by a "discriminatory purpose."

151. This purpose or intent need not have been overtly or deliberately discriminatory but merely institutional in context (such as resulting from illegitimate “policies” or a “clear pattern” unexplainable on other grounds), or such that its “adverse effects on an identifiable group” were reasonably predictable (*Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 265-267 (1977); *Navajo Nation*, at 743-744; *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 278 & 279 & n. 24 & 25 (1979)).

152. The Supreme Court (in *Arlington Heights*, at 266-268) identified the following fact intensive factors to be considered for the determination of whether official action was void because it was in part motivated by a discriminatory purpose or intent: “(1) the effect of the official action; (2) the historical background of the decision; (3) the specific sequence of events leading up to the challenged decision; (4) departures from normal procedures; (5) departures from normal substantive criteria; and (6) the administrative history of the decision.” (*R.I.S.E., Inc. v. Kay*, 768 F.Supp. 1144, 1149 (E.D. Va. 1991) citing *Arlington Heights*; See also *Navaho Nation*, at 473-475).

153. Because motivations behind official actions are hard for a plaintiff to show, a plaintiff need only make a *prima facie* showing of discrimination, at which time the burden of proof shifts to the defendant to prove that no impermissible purpose or intent tainted the challenged action.

154. In this case, Plaintiffs have made a *prima facie* showing of discrimination and BIA Agency actions are void.

BIA Agency Actions Here Do Not Meet the *Arlington Heights* Standard

155. BIA Agency Actions Here Do Not Meet the *Arlington Heights* Standard: BIA’s actions here (a) have a disparate effect, (b) suffer from a suspect historic context, (c) contain irregular series of events, (d) exhibit departures from normal procedures, (e) involve departures from

substantive criteria and (f) provide no contemporaneous administrative record.

Disparate Effect:

156. The results of BIA's actions are obviously disparate in effect, the siting of the nuclear waste facility is on an extremely small, inhabited, Indian reservation.

Suspect Historic Context:

157. This official BIA act, in facilitation of a publically acknowledged plan to site waste dumps on Indian reservations, is an additional example of a well documented historic pattern.

158. The United States has historically taken advantage of its indigenous populations.

159. This is especially so when Indians were constrained by circumstances to "volunteer."

160. Any evidence of conflict between the federal government's actions or interests and its avowed fiduciary responsibilities to Indians is grounds for considering such conflicting actions or interests suspect.

Irregular Series of Events:

161. The Purported Lease Agreement indicates, on its face, that the BIA approved it just three days after submittal.

162. This is in stark contrast to normal approval cycles, and with no objective evidence (not even an administrative record) of the required BIA involvement, which is usual in the negotiation and execution of long term leases, to protect the interests of the Indians, without a prior NEPA review or EIS, and without any environmental justice or NEPA hearings whatsoever. (See *Brown v. U.S.*, 86 F.3d 1554, 1562 (Fed Cir. 1996)).

Departure from Normal Procedures:

163. The BIA admits, in the approval statement itself, that the BIA departed from normal approval procedures.

164. No required explanation or justification has been documented. (See *Cotton Petro. v. U.S. Dept. of Interior Etc.*, 870 F2d 1515, 1525-1527 (10th Cir. 1989)).

165. For example, the BIA did not follow the requirements of 25 CFR § 162.

166. Additionally, and in particular, the BIA did not follow the requirements of Executive Order 12898, of February 11, 1994 (59 F.R. 7629), titled: "*Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations.*"

167. Executive Order 12898 states that the Department of Interior has obligations with respect to Environmental Justice, specifically with regard to Federally-recognized Indian Tribes (§§ 1-101, 1-102, & 6-606).

168. The BIA failed to collect, maintain or analyze information assessing and comparing environmental and human health risks borne by persons affected by agency actions and activities, and determine whether such actions or activities will result in a disproportionately high and adverse risk of health or environmental effects on minority or low-income persons. (§ 3-302(a)).

169. Yet the BIA was siting a facility which has the potential for such health or environmental risks to surrounding peoples. (§§ 3-302(b)&(c)).

170. The BIA failed to share such information with State agencies, Indian tribes or affected peoples. (§ 3-302(d)).

171. The BIA failed to conduct their agency actions and activities such that any potentially affected persons would have an effective opportunity to participate in the actions or activities. (§ 2-2).

172. Numerous affected peoples, including Plaintiffs here, were excluded from the actions and activities.

173. Despite these procedural obligations applicable to the BIA, no such information has been

gathered and maintained or shared; no such analysis has been done; no opportunity to participate has been provided; and no review of conditions to guard against environmental injustice has been completed by the Secretary, Department or BIA, consistent with Executive Order 12898 procedures, or otherwise.

174. Any departure from normal procedures, including those established by Executive Order 12898, is an indication of possible discrimination. (*Arlington Heights*, at 267; *R.I.S.E.*, at 1149).

175. Complete failure to comply with any of these normal procedures designed to prevent environmental justice related discrimination is a strong indication of environmental justice related discrimination.

Departure from Normal Substantive Criteria:

176. The BIA failed to ensure compliance with any of the normal substantive criteria associated with leases of Indian trust land.

177. This includes failure to verify proper authorization to enter into the Purported Lease Agreement by the Tribal General Council, failure to establish the market value and marketability of the Purported Lease Agreement, failure to ensure profit margin and maximization of Purported Lease Agreement revenues, failure to analyze the economics and minimize the risks of the underlying proposed type of business venture, failure to require adequate surety bonds to ensure timely restoration and termination, and failure to consider the community's opposition to the venture. (See *Pueblo of Santa Rose v. Fall*, 273 U.S. 315, 318, 320, 321 (1926); *Indian Contract*, 18 Op. Atty Gen. 497 (1886); *Brown v. U.S.*, 86 F.3d 1554, 1562 (Fed Cir. 1996); *United States Ex Rel. Shakopee v. Pan American*, 616 F.Supp. 1200, 1208, 1212, 1213, 1216 (D.C. Minn. 1985); and *Ho-Chunk Management Corp. v. Fritz*, 618 F.Supp. 616, 620 (D.C. Wis. 1985)).

178. Such widespread failure in BIA's fiduciary duties constitutes a departure from normal

substantive criteria and is evidence of discrimination.

No Contemporaneous Administrative Record:

179. A contemporaneous administrative record of the BIA's actions does not exist.

180. This circumstance alone is strong evidence "that improper purposes are playing a role."

(*Arlington Heights*, at 267).

BIA Agency Actions Violate Civil Rights Statutes

181. BIA Agency actions violate Civil Rights statutes: Civil Rights statutes prohibit discriminatory actions by state and federal agencies.

182. 42 U.S.C. § 1981 prohibits state and federal agencies, as well as private entities, from using contracts to perpetrate discrimination against "identifiable classes of persons" because of their "ancestry or ethnic characteristics." (*Olgun v. Lucero*, 87 F.3d 401, 404-405 (10th Cir. 1996), citing and quoting *Saint Francis College v. Al-Khazaji*, 481 U.S. 604, 613 (1987); *Monroe v. Pape*, 365 U.S. 167, 174-180 (1961); *Craska v. New York Telephone Company*, 239 F.Supp. 932, 935 (D.C. N.Y., 1965)).

BIA Agency Actions Aid in Perpetrating a Discriminatory Contract

183. BIA Agency actions aid in perpetrating a discriminatory contract: The BIA approved a contract which disproportionately disadvantages Native Americans, a suspect class of persons, because of their ancestry or ethnic characteristics.

BIA Responsible for the Discriminatory Contract's Effect on Native Americans

184. BIA is responsible for the discriminatory contract's effect on Native Americans: The BIA, acting as trustee, exerts sufficient control over the lease of trust land during its statutorily mandated approval process as to create liability for the effects of the lease on Native Americans (*Brown v. U.S.*, 86 F.3d 1554, 1562 (Fed. Cir. 1996)).

CLAIM FOR RELIEF 1: Defendant's Improper Inaction Must Cease.

185. Plaintiffs incorporate herein the allegations of paragraphs 1 - 184 above as if fully set forth herein.

186. Because of the BIA/Department of the Interior's ongoing pattern of inaction, Plaintiffs are unable to fully function in their duties in their Tribal government, conduct personal business or regulate their private affairs as Tribal members and Native American citizens.

187. Plaintiffs bring this cause of action pursuant to the federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.* and 2202 and 42 U.S.C. § 1988 *et seq.*, for a judgment declaring that such policy of inaction toward Plaintiffs is improper and must cease forthwith and Plaintiffs must henceforth be treated with a policy consistent with Agency's fiduciary responsibilities, and in accordance with applicable statutes and regulations.

CLAIM FOR RELIEF 2: Defendant's Inaction is Discriminatory.

188. Plaintiffs incorporate herein the allegations of paragraphs 1 - 187 above as if fully set forth herein.

189. The BIA/Department of the Interior, through its pattern of inaction, has caused and is causing irreparable damages to Plaintiffs and each of them.

190. In the aggregate, this pattern of Agency inaction has resulted in:

a. Significant disparate treatment, in violation of Fifth and Fourteenth Amendments and 42 U.S.C. § 1981.

b. An effective suppression and deprivation of rights, and an improper aiding in such suppression and deprivation, in violation of Fifth and Fourteenth Amendments and 42 U.S.C. §§ 1981, 1985, 1986.

c. A debilitating perception of futility in resisting the criminal activities, depredations and

abuses of Leon Bear's illegitimate and corrupt regime.

i. The prevalent feeling among members of the Tribal General Council is that it is futile to try to resist Leon Bear's criminal activities and abuses or "his" nuclear waste project because of the obvious (to them) overwhelming intervention and support of the BIA.

ii. Any resistance will (they perceive) only lead to further abuses.

d. The ongoing unauthorized placement of a high-level nuclear waste storage facility on the Skull Valley Reservation which subjects destitute members of the Tribe living on the reservation to disproportionate risks of health, environmental and economic harm, without any compensating advantages whatsoever.

i. Leon Bear has provided that those who have opposed the nuclear waste project (which includes most of the people living on the reservation adjacent to the proposed facility site) will never get any money from that project.

191. Additionally and in the particular, this continuing, longstanding, widespread and discriminatory pattern of agency inaction has:

a. Aided in the usurpation of power from the Tribe's legitimate government by effectively ignoring it and unlawfully returning to power a recalled, corrupt regime, disenfranchising and rendering ineffectual the Tribal General Council, resulting in immediate suppression of Tribal members' rights, effective loss of control of their Tribe, the Reservation and other Tribal assets, and significant monetary damages.

b. Aided in maintaining the usurping regime in illegitimate power and abetting the regime's criminal acts and abuses by failing to investigate the numerous allegations of criminal wrongdoing submitted by members of the Tribal General Council, despite repeated promises to do so, resulting in ongoing suppression of Tribal members' rights, continued loss of control of their Tribe, the

Reservation and other Tribal assets, subjection to intimidation and abuse and significant monetary damages.

c. Exacerbated the effects of the BIA/Department of the Interior's violations of applicable statutes and regulations in improperly and unlawfully approving the Purported Lease Agreement, by not seeking and ignoring any input from members of the Tribal General Council.

i. This subjects Tribal members to the extreme effort and cost of protracted legal actions before the BIA, the NRC and in federal court in order to avoid an unauthorized, unfair, one sided, undervalued, unconscionable and discriminatory Purported Lease Agreement from which the BIA/Department of the Interior has a fiduciary obligation to protect them.

ii. Tribal members are subjected to the very real possibility of being saddled with an unauthorized nuclear waste facility, the effectively permanent loss of Tribal sovereign authority, the loss of any other meaningful use of their Reservation and the attendant disproportionate risks of serious health, environmental and economic harm.

d. Interfered with and restricted the effectiveness of Tribal General Council Members by refusing to timely provide documents and other information in the possession of the BIA, in violation of FOIA and the BIA's fiduciary obligations, which the members needed to perform their duties, and results in additional effort and cost in regaining lawful control of their Tribe, in addition to the other ongoing damages.

e. Restricted Tribal members from effectively regulating their private affairs by refusing to timely provide personal information in the possession of the BIA, in violation of the Privacy Act, which Act provides for recovery of their damages.

f. Perpetuated the exacerbated effects of the BIA/Department of the Interior's violations of applicable statutes and regulations in improperly and unlawfully approving the Purported Lease

Agreement, by failing to either provide information on an available BIA forum for resolution of the issues raised in federal court challenging the BIA/Department of the Interior's approval, or admit that none exists, and by failing to properly respond to the appeal of that approval, in further violation of regulations.

i. Thus by these inactions, improperly delaying the return of Appellants/Requesters to federal court and/or delaying resolution of the issues, expending significant additional effort and cost on the part of Appellants/Requesters in addition to the ongoing damages described elsewhere herein.

g. Perpetrated invidious discrimination, causing stigma, humiliation, emotional distress and other forms of damages associated with such discrimination, in addition to the other ongoing damages described elsewhere herein.

192. Plaintiffs bring this cause of action pursuant to the federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.* and 2202, and 42 U.S.C. § 1988 *et seq.*, for a judgment declaring that Defendants agency action and inaction is discriminatory and that Defendants must take immediate steps to mitigate or repair stated damages, including investigating civil and criminal allegations and recognizing the legitimate Tribal government.

CLAIM FOR RELIEF 3: Defendant's Agency Action Violates FOIA.

193. Plaintiffs incorporate herein the allegations of paragraphs 1 - 192 above as if fully set forth herein.

194. BIA's discriminatory Agency action in providing no response of any kind to multiple FOIA requests violates FOIA.

195. These FOIA violations interfere with and restricted the effectiveness of Tribal General Council Members by refusing to timely provide documents and other information in the possession

of the BIA, in violation of the BIA's fiduciary obligations, which the members needed to perform their duties, which results in additional effort and cost in regaining lawful control of their Tribe, in addition to the other ongoing damages described elsewhere herein.

196. Plaintiffs bring this cause of action pursuant to the federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.* and 2202, and FOIA, 5 U.S.C. § 552 *et seq.*, for a judgment declaring that Defendants agency action and inaction violates FOIA and that Defendants must either provide the requested documents or statements of valid exemption.

CLAIM FOR RELIEF 4: Defendant's Agency Action Violates the Privacy Act.

197. Plaintiffs incorporate herein the allegations of paragraphs 1 - 196 above as if fully set forth herein.

198. BIA's discriminatory Agency action in providing no response of any kind to multiple Privacy Act requests violates the Privacy Act.

199. These violations interfere with and restrict Plaintiffs from effectively regulating their private affairs by refusing to timely provide personal information in the possession of the BIA.

200. Plaintiffs bring this cause of action pursuant to the federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.* and 2202, and the Privacy Act, 5 U.S.C. § 552a *et seq.*, for a judgment declaring that Defendants agency action and inaction violates the Privacy Act and that Defendants must either provide the requested documents or statements of valid exemption.

CLAIM FOR RELIEF 5: Defendant's Discriminatory Agency Action is Void.

201. Plaintiffs incorporate herein the allegations of paragraphs 1 - 200 above as if fully set forth herein.

202. Defendants' discriminatory Agency action including any purported approval of Purported Lease Agreement is void.

203. Defendants' purported approval of Purported Lease Agreement is void on Civil rights and environmental justice grounds because of disparate treatment or disparate impact violations under equal protection clauses (Fifth or Fourteenth Amendments) of the Constitution, and civil rights statutory violations, including 42 U.S.C. § 1981.

204. Such grounds render violative Agency action void. (*Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 265-267 (1977); *Navajo Nation*, at 743-744; *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 278 & 279 & n. 24 & 25 (1979); *Olgun v. Lucero*, 87 F.3d 401, 404-405 (10th Cir. 1996), citing and quoting *Saint Francis College v. Al-Khazaji*, 481 U.S. 604, 613 (1987); *Monroe v. Pape*, 365 U.S. 167, 174-180 (1961); *Craska v. New York Telephone Company*, 239 F.Supp. 932, 935 (D.C. N.Y., 1965)).

205. Defendants' purported approval of Purported Lease Agreement is additionally void because of the reasons documented in Plaintiffs' *Statement of Reasons* and associated documents.

206. The Purported Lease Agreement is additionally void and invalid therefor because the BIA failed to account for the facts showing that it is legally deficient on its face, signed without authorization, unconscionable, and violative of applicable federal statutes and Agency regulations, and further that the BIA failed to be sufficiently involved in the negotiation process, failed to address the lack of required structural protections, failed to properly consider market value, and other relevant factors, and failed to meet fiduciary duties to protect Indian interests including those of the Defendants.

207. Such failures show clear errors of judgment, actions contrary to applicable laws, rules and procedures, arbitrary and capricious actions, and abuses of discretion.

208. Plaintiffs bring this cause of action pursuant to the federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.* and 2202; the Constitution of the United States, civil rights statutes, 42

U.S.C. §§ 1981, 1983, 1985, 1986, and 1988; and Administrative Procedures Act, 5 U.S.C. §§ 551 *et seq.*, 554(c), 555(b); 701 *et seq.*; 28 U.S.C. § 1331, for a judgment declaring that Defendants' discriminatory and otherwise wrongful agency action, especially any purported approval of Purported Lease Agreement, is void and of no effect.

CLAIM FOR RELIEF 6: Defendants' Liability for Civil Rights Damages.

209. Plaintiffs incorporate herein the allegations of paragraphs 1 - 208 above as if fully set forth herein.

210. Defendants, especially and including Does, have violated Plaintiffs' civil rights and are liable for damages, as may be proved at trial, in accordance with 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988.

WHEREFORE: Plaintiffs Pray for Judgment as Follows:

1. As to the 1st Claim for Relief: A declaration that Defendants' policy of inaction toward Plaintiffs is improper and must cease forthwith and Plaintiffs must henceforth be treated with a policy consistent with Department and BIA fiduciary responsibilities, and in accordance with applicable statutes and regulations;
2. As to the 2nd Claim for Relief: A declaration that Defendants' agency action and inaction is discriminatory and that Defendants must take immediate steps to mitigate or repair stated damages, including investigating civil and criminal allegations and recognizing the legitimate Tribal government;
3. As to the 3rd Claim for Relief: A declaration that Defendants' agency action and inaction violates FOIA and that Defendants must either provide the requested documents or statements of valid exemption;
4. As to the 4th Claim for Relief: A declaration that Defendants' agency action and inaction

violates the Privacy Act and that Defendants must either provide the requested documents or statements of valid exemption;

5. As to the 5th Claim for Relief: A declaration that Defendants' discriminatory and otherwise wrongful agency action, especially any purported approval of Purported Lease Agreement, is void and of no effect;

6. As to the 6th Claim for Relief: An award of damages as proven at trial;

7. An award of costs, fees, and other expenses, including reasonable attorney's fees, as provided for in 28 C.F.R. § 2412, 42 U.S.C. 1988, and other applicable statutes and regulations;
and

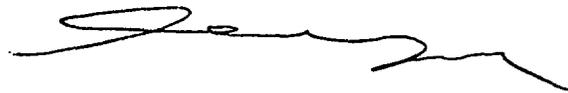
8. Such other and further relief the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury of all issues in this action triable by a jury.

DATED this 2nd day of May 2001.

STEADMAN & SHEPLEY, LC



Samuel E. Shepley, Esq.
Attorneys for Plaintiffs

Table of Exhibits

Exhibit One: March 16, 2001 *Request for Action or Decision*, including the cover letter addressed to the Secretary of the Interior and all exhibits and attachments thereto (with the exception of Exhibit V thereto):

Request for Action or Decision Exhibit A: January 19, 1994 BIA letter acknowledging valid recall in paragraph numbered "1."

Request for Action or Decision Exhibit B: January 31, 1994 BIA letter to recalled Chairman Lawrence Bear

Request for Action or Decision Exhibit C: Cover, first and signature pages of Purported Lease Agreement

Request for Action or Decision Exhibit D: May 23, 1997 BIA/Secretary of the Interior Purported Approval of Purported Lease Agreement

Request for Action or Decision Exhibit E: April 20, 1999 letter to Stephen L. Roth, Esq., Assistant U.S. Attorney Re: April 24, 1999 Skull Valley Tribal General Council Meeting

Request for Action or Decision Exhibit F: April 27, 2000 Request for Information Regarding Ongoing BIA Lease Approval Process(es) in Order to Participate in Such Process(es)

Request for Action or Decision Exhibit G: May 19, 2000 Request for Information Regarding Ongoing BIA Lease Approval Process(es) in Order to Participate in Such Process(es)

Request for Action or Decision Exhibit H: June 20, 2000 Request Information Regarding Ongoing BIA Lease Approval Process(es) in Order to Participate in Such Process(es)

Request for Action or Decision Exhibit I: June 30, 2000 letter to Congressman Hansen (w/o exhibits)

Request for Action or Decision Exhibit J: Sammy Blackbear's August 24, 2000 *Request for Information Pursuant to FOIA (5 U.S.C. 552) and The Privacy Act of 1974 (5 U.S.C. 552a)*

Request for Action or Decision Exhibit K: Margaret Blackbear's August 24, 2000 *Request for Information Pursuant to FOIA (5 U.S.C. 552) and The Privacy Act of 1974 (5 U.S.C. 552a)*

Request for Action or Decision Exhibit L: September 22, 2000 *Notice of Appeal Regarding Appeal from BIA Lease Approval Actions*

Request for Action or Decision Exhibit M: September 22, 2000 *Statement of Reasons Regarding Appeal from BIA Lease Approval Actions*

Request for Action or Decision Exhibit N: September 29, 2000 Confederated Tribes of the Goshute Reservation's initial intervening pleading in the BIA's internal appeal

Request for Action or Decision Exhibit O: October 30, 2000 Confederated Tribes of the Goshute Reservation's reply and final pleading in the BIA appeal

Request for Action or Decision Exhibit P: November 13, 2000 Request for Postponement of Tribal Election For the Skull Valley Band of Goshute Indians

Request for Action or Decision Exhibit Q: November 15, 2000 Notice of Request for Information and Actions Regarding the Welfare of the Tribal General Council of the Skull Valley Band of Goshute Indians

Request for Action or Decision Exhibit R: November 19, 2000 *Blackbear et al Appellants' Reply to Leon Bear and Private Fuel Storage Responses Regarding Appeal from BIA Lease Approval Actions*

Request for Action or Decision Exhibit S: November 21, 2000 letter from BIA Superintendent David Allison

Request for Action or Decision Exhibit T: November 24, 2000 supplemental Request for Postponement of Tribal Election for the Skull Valley Band of Goshute Indians and Request for Contact Information for Investigative Offices

Request for Action or Decision Exhibit U: November 25, 2000 Request for Postponement of Tribal Elections for the Skull Valley Band of Indians