

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of:

) Docket No. 72-22-ISFSI

) PRIVATE FUEL STORAGE, LLC  
) (Independent Spent Fuel  
) Storage Installation)

) ASLBP No. 97-732-02-ISFSI

) May 31, 2001

**STATE OF UTAH'S REQUEST FOR CLARIFICATION OF THE EFFECT OF  
A RULING ON GROUND AND SURFACE WATER IN CONTENTION OGD-O  
ON CONTENTION UTAH O**

Part of one of the State of Utah's admitted contentions, Utah O, addresses potential impacts to groundwater and surface water quality at the proposed facility. PFS has not yet filed for summary disposition of Utah O but the State expects PFS to file such a motion this June or July. A limited portion of the Applicant's Motion For Summary Disposition of OGD Contention O - Environmental Justice ("Motion"), filed on May 25, 2001, has some issues in common with Utah O.<sup>1</sup> See e.g., LBP-98-7, 47 NRC 142, 192-193 (1998). The State, concerned that any ruling on OGD O may have a res judicata or issue preclusion effect on Utah O, files this request for clarification. Specifically, in response to the Applicant's Motion, the State moves the Board for a ruling that it will not be bound by any decision of the Board regarding matters in the Motion which overlap those raised and

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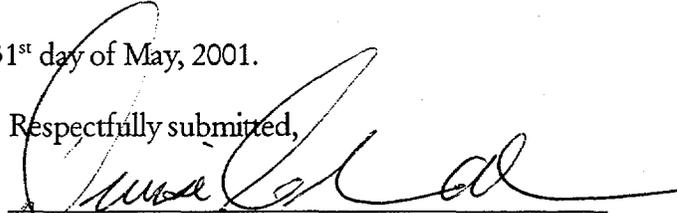
<sup>1</sup>For example, in its Motion PFS argues: "Moreover, the PFSF will have no significant impacts on groundwater or surface water quality in the first place and hence will create no groundwater or surface water impacts cumulative with those of the enumerated facilities." Motion at 14 - 15. Potential impacts to groundwater and surface water quality at the proposed facility are significant issues raised by the State in Utah O.

argued by the State in Utah O.

The State believes it would be more expedient for the Board and the parties to fully develop and address the issues separately in Utah O rather than attempt to create a record in OGD O where the major focus of the OGD contention is not on hydrological issues. However, because Utah Contention O and OGD Contention O have some issues in common, the State requests the Board expressly state that its rulings regarding OGD Contention O will not in any way preclude the State from arguing the same or similar issues encompassed in Utah O. If the Board intends its ruling on PFS's Motion for Summary Disposition of OGD O to also bind the State on the same or similar issues raised as part of Utah O, the State is willing to brief those issues in a response to PFS's Motion.

DATED this 31<sup>st</sup> day of May, 2001.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S REQUEST FOR CLARIFICATION OF THE EFFECT OF A RULING ON GROUND AND SURFACE WATER IN CONTENTION OGD-O ON CONTENTION UTAH O was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 31<sup>st</sup> day of May, 2001:

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

Denise Chancellor  
Assistant Attorney General  
State of Utah