

**RAS 3325**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

LBP-01-24

**DOCKETED 08/21/01**

**SERVED 08/21/01**

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman  
Dr. Jerry R. Kline  
Dr. Peter S. Lam

In the Matter of

PRIVATE FUEL STORAGE, L.L.C.

(Independent Spent Fuel Storage Installation)

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

August 21, 2001

MEMORANDUM AND ORDER  
(Dismissing Contention Utah T)

In this proceeding regarding the August 1997 application of Private Fuel Storage, L.L.C., (PFS) for authorization to construct and operate a 10 C.F.R. Part 72 independent spent fuel storage installation (ISFSI) in Skull Valley, Utah, by motion dated August 10, 2001, PFS and intervenor State of Utah (State) have requested that the Licensing Board dismiss contention Utah T, Inadequate Assessment of Required Permits and Other Entitlements, with prejudice, on the ground that the parties have reached an acceptable resolution of the contention.

According to the joint motion, these parties have successfully completed negotiations regarding this contention, in which the State asserts that the PFS "Environmental Report does not list" all permits, licenses, approvals and other entitlements that must be obtained in connection with the PFS license application, as required by 10 C.F.R. § 51.45(d). Joint Motion to Dismiss Utah Contention T (Aug. 10, 2001) at 1 (quoting LBP-98-7, 47 NRC 142, 255, reconsideration granted in part and denied in part on other grounds, LBP-98-10, 47 NRC 288, aff'd on other

grounds, CLI-98-13, 48 NRC 26 (1998)).<sup>1</sup> The joint motion also indicates that PFS counsel has discussed this motion with NRC staff counsel, who does not object to the Board granting this request. See id. at 2. No other party has objected to, or otherwise commented on, the PFS/State motion.

According to the joint motion, under the terms of their settlement accord, the parties have agreed to record in the PFS Environmental Report (ER) their disagreement concerning the permits, licenses, approvals, and other entitlements that must be obtained in connection with the PFS ISFSI license application. The State and PFS have agreed that, if a listing and description of the permitting requirements asserted by the State to be applicable to the PFS facility is included as part of the PFS ER, contention Utah T can be dismissed with prejudice. See id. at 1. Further, attached as exhibit 1 to the joint motion is a listing of the various permits, licenses, approvals, and other entitlements that the State claims must be obtained by PFS in connection with the PFS facility. According to the motion, PFS believes that the exhibit makes clear that many of the permits identified by the State in exhibit 1 are not required, and that the ER as currently constituted identifies the appropriate environmental permitting needs for the project. The motion also indicates, however, that both PFS and the State have agreed to the addition of exhibit 1 to the PFS ER, upon which basis they further agree that Utah T may be

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<sup>1</sup> Subsequent to the admission of what initially was consolidated contention Utah T/Castle Rock 10, 12, 22, see LBP-98-7, 47 NRC at 198, sponsoring intervenors Castle Rock Land and Livestock, L.C., and Skull Valley Company, Ltd., filed a notice of withdrawal, with prejudice, regarding their admitted contentions, to which the State responded with a request that, among other things, asked that all portions of this consolidated contention be retained for further litigation. In LBP-99-6, 49 NRC 114, 122 (1999), ruling on this State request, the Board limited the scope of the contention by excising that portion regarding the Clean Water Act permitting authority of intervenor Skull Valley Band of Goshute Indians (Skull Valley Band) on whose Skull Valley, Utah reservation the PFS facility is to be constructed and operated.

dismissed with prejudice. Finally, the motion declares that PFS will add the new language to the ER as a part of the first ER revision following dismissal of the contention. See id. at 2.

After reviewing the joint motion and the accompanying exhibit, and finding nothing therein that is inconsistent with the public interest, we thus grant the August 10, 2001 joint motion to dismiss. Further, as requested by PFS and the State, contention Utah T is dismissed with prejudice.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>2</sup>

*/RA/*

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G. Paul Bollwerk, III  
ADMINISTRATIVE JUDGE

*/RA/*

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Jerry R. Kline  
ADMINISTRATIVE JUDGE

*/RA/*

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Peter S. Lam  
ADMINISTRATIVE JUDGE

Rockville, Maryland

August 21, 2001

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<sup>2</sup> Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant PFS; (2) intervenors Skull Valley Band, Ohngo Gaudadeh Devia, Confederated Tribes of the Goshute Reservation, Southern Utah Wilderness Alliance, and the State; and (3) the staff.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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(Independent Spent Fuel Storage	)	
Installation)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (DISMISSING CONTENTION UTAH T) (LBP-01-24) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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Docket No. 72-22-ISFSI  
LB MEMORANDUM AND ORDER (DISMISSING  
CONTENTION UTAH T) (LBP-01-24)

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[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 21<sup>st</sup> day of August 2001