

RAS 3636

2001 DEC 10 AM 9:43

OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

October 24, 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)

INTERVENOR SKULL VALLEY BAND'S REPORT TO THE BOARD
ON STATUS OF COUNSEL AND PENDING MOTION

By Memorandum and Order, dated October 11, 2001, the Board directed counsel for the Skull Valley Band of Goshute Indians to submit a report on his current status as counsel for the Band in this proceeding, and whether there has been any change regarding the previously expressed positions of the Band relative to a pending Motion for Protective Order and a recent status report on federal court litigation in Utah. This Order was precipitated by a letter to the Board, dated October 3, 2001, from three individuals identifying themselves as recently elected tribal officers of the Skull Valley Band. This letter was not served on counsel for the Skull Valley Band in this proceeding, and no effort was made by these individuals to contact counsel. As discussed below, counsel herein continues to represent the Band in this proceeding and has received no instructions to withdraw from representation. This report also updates the Board on the status of the Band's Motion for Protective Order and certain litigation in the U.S. District Court for the District of Utah, Skull Valley Band of Goshute Indians v.

Leavitt, Case No. 2:01CV00270C.

STATUS OF COUNSEL

As the Board observed in its Memorandum and Order, counsel for the Skull Valley Band entered his appearance in this proceeding on August 8, 2001. Any party challenging an attorney's authority in litigation bears the burden of proving by affirmative evidence that the attorney lacks authority. In re Artha Management, Inc., 91 F.3d 326 (2d. Cir. 1996). The October 3rd letter to the Board advises that the three correspondents are the newly elected officers of the Skull Valley Band, and offers in lone support of this proposition a "Certification of Tribal Election" signed by the same three individuals. These individuals have not attempted to exercise their purported authority to discharge current counsel for the Band (or even to contact me.)

The "Certification" does not mention that tribal officers were elected by the Skull Valley Band in November 2000, namely Chairman Leon D. Bear, who was reelected to another 4-year term, and Vice-Chair Lori B. Skiby. They continue to serve in their elective positions. See attached Declaration of Leon D. Bear, and corroborating Declaration of Bureau of Indian Affairs Superintendent David L. Allison. No recall election has been held. One of the three correspondents of October 3rd, Sammy Blackbear, Sr., who signed as "Vice-Chairman", is the same person who submitted a 75-page Declaration with the June 28, 2001 Response of Intervenor Ohngo Gaudadeh Devia (OGD) in opposition to Applicant's Motion for Summary Disposition of OGD Contention "O" (hereinafter "OGD Response".) His Declaration states that he is (or was) the true Chairman of the Skull Valley Band. See ¶¶ 6 and 179 of Mr. Blackbear's

Declaration. Mr. Blackbear has also raised this issue in a lawsuit against the BIA in which he is one of approximately a dozen plaintiffs. Blackbear v. Norton, Case No. 2:01CV00317C, Complaint, ¶¶ 28-33 (D.Utah, filed May 2, 2001). He has now evidently abandoned his claim to be Chairman of the Band, and is now claiming to be the Band's Vice-Chairman as a result of a September 22, 2001 election.

It is of interest that the "Certification" is notarized by Duncan F. Steadman; Mr. Steadman is counsel for plaintiffs in Blackbear v Norton, and he formerly appeared before this Board as counsel to OGD, and filed the above-mentioned OGD Response and Declaration of Sammy Blackbear on OGD's behalf. (A Notice of Appearance and Substitution of Counsel for OGD was filed in these proceedings on August 1, 2001, replacing Mr. Steadman.) The OGD Response filed by Mr. Steadman sought to persuade the Board that Chairman Leon Bear lacked authority to act on behalf of the Band in connection with the Private Fuel Storage project which is the subject of this proceeding. See OGD Response at pp. 8-9. It has been the Band's position that the NRC lacks jurisdiction to address issues of tribal governance raised in the OGD Response. See Santa Clara Pueblo v. Martinez, 436 U.S. 49, 59-61 (1978). Apparently, the October 3rd letter to the Board is but another attempt on the part of Messrs. Blackbear and Steadman to persuade the Board to act well outside of its authority by recognizing alternative leadership of the Band.

In short, I continue to serve as counsel to the Skull Valley Band in these proceedings. I was retained by the Band's Executive Committee in April 2001 to represent the Skull Valley Band in these matters, and I intend to do so until instructed

otherwise by my clients.

STATUS OF MOTION FOR PROTECTIVE ORDER

The Skull Valley Band continues to pursue its September 26, 2001, Motion for Protective Order as to Certain Exhibits. A draft Confidentiality and Disclosure Agreement with respect to the subject documents was shared with counsel for PFS and OGD, and comments on that draft have been received from those two parties. Counsel for the Band transmitted a revised draft to counsel for PFS and OGD on October 20, 2001, in response to those comments, and counsel continue to discuss minor changes to the draft. On October 4, 2001, NRC staff filed its response to the Motion, noting that the staff does not object to the entry of the requested Protective Order, and that counsel for the Band has no objection to designation of NRC staff as a party to whom the subject documents may be disclosed.

Respectfully submitted this 24th day of October, 2001.

Tim Vollmann
3301-R Coors Road N.W. # 302
Albuquerque, NM 87120
Telephone: (505) 792-9168

**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))

**DECLARATION of LEON D. BEAR
Pursuant to 10 C.F.R. § 2.790**

Leon D. Bear, being duly sworn, states as follows under penalty of perjury:

I have served as Chairman of the Executive Committee of the Skull Valley Band of Goshute Indians (the Band) since 1996. At a duly called meeting of the General Council of the Skull Valley Band on November 25, 2000, I was reelected to a four-year term as Chairman.

At the same General Council meeting on November 25, 2000, Lori B. Skiby was elected to the position of Vice-Chair of the Skull Valley Band.

The Bureau of Indian Affairs and other federal agencies have consistently communicated with me as Tribal Chairman on federal programs for the benefit of the Skull Valley Band of Goshutes. See, for example, the attached copy of a recent fax message from the Bureau of Indian Affairs concerning Public Law 93-638 funding.

In April 2001 all three members of the Executive Committee of the Skull Valley Band retained attorney Tim Vollmann of Albuquerque, New Mexico, to represent the Band in matters, including litigation, pertaining to the proposed Private Fuel Storage project on the Skull Valley Reservation.

Mr. Vollmann is authorized to represent the Skull Valley Band in the Private Fuel Storage licensing proceedings in the Nuclear Regulatory Commission.

At a duly called meeting of the General Council meeting on August 25, 2001, the Secretary of the Executive Committee of the Skull Valley Band introduced a petition for the recall of Lori Skiby and myself from the positions to which we were elected the previous November. I was not given a copy of this petition, which evidently contained allegations of malfeasance.

More than a week later, after I was given a copy of the recall petition, I counted the signatures on it—not all of which were clearly valid signatures of members of the Skull Valley Band—and ascertained that the number was far short of a majority of the adult members of the Band.

At meetings called on September 4, 11, and 12, 2001, by the local Superintendent of the Bureau of Indian Affairs, David Allison, and attended by all three members of the Executive Committee of the Band, Mr. Allison made an attempt to mediate issues involving the procedures which would be used for any recall of elected

officers, but these meetings did not result in any agreement among all three members of the Executive Committee.

On September 13, 2001, I called another meeting of the General Council for October 13, 2001, to address issues raised by the recall petition, including questions of the appropriate procedure to be followed in the case of a recall. Written notices of this Special General Council meeting were sent to all adult members of the Skull Valley Band.

I understand that members of the Skull Valley Band attended a meeting on September 22, 2001, and that a purported election was held at this meeting for the three positions on the Executive Committee. I was given no written notice of this meeting, was not invited to this meeting, and did not attend this meeting. It is my understanding that many other members of the Skull Valley Band did not receive notice of this meeting.

Because of the confusion created by reports of this September 22, 2001, meeting, on October 2, 2001, I sent another written notice of the October 13, 2001, General Council meeting to all adult members of the Skull Valley Band. I also invited the BIA Superintendent, David Allison, to attend this meeting.

At the October 13, 2001, meeting of the General Council there were 42 adult members of the Skull Valley Band present, a clear majority of the voting membership of the Band. Also present was BIA Superintendent David Allison. There was a discussion

of the recall petition presented at the August 25, 2001, meeting, and a number of resolutions were passed by a majority of those present. One such resolution was a reaffirmation of the election of Lori Skiby and myself at the November 2000 meeting of the General Council.

I declare under penalties of perjury that the foregoing is true and correct.

Executed on October 23, 2001.

Leon D. Bear, Chairman
Executive Committee, Skull Valley Band

**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))

**DECLARATION of DAVID I. ALLISON
Pursuant to 10 C.F.R. § 2.790**

David L. Allison, being duly sworn, states as follows under penalty of perjury:

1. I am the Superintendent of the Uintah & Ouray Agency of the Bureau of Indian Affairs in Fort Duchesne, Utah. I have served in this position since April 1995. Among my responsibilities as Superintendent is the government-to-government relationship between the U.S. Department of the Interior and the Skull Valley Band of Goshute Indians. I am responsible for federal programs administered by the Bureau of Indian Affairs for the benefit of the Skull Valley Band, and federal funds to support these federal programs.

2. The governing body of the Skull Valley Band is the General Council, which is made up of all adult members of the Band. In my position as Superintendent I am often requested to attend General Council meetings of the Skull Valley Band on the Skull Valley Reservation in Utah. I attended General Council meetings held on August

25, 2001, and October 13, 2001.

3. At the General Council meeting held on August 25, 2001, there was a recall petition circulated by Band Secretary Rex A. Allen among adult tribal members in an effort to remove Chairman Leon D. Bear and Vice-Chair Lori B. Skiby from their positions on the Skull Valley Band Executive Committee. The only copy of the recall petition, ostensibly circulated before, during, and after that meeting, which I have seen does not contain the signatures of a majority of the adult members of the Skull Valley Band.

4. At meetings, facilitated by an attorney in the Office of the Salt Lake City Field Solicitor's Office, held on September 4, 11, 12, and 13, 2001, attended by Chairman Bear, Vice-Chair Skiby, and Secretary Allen, and others representing those officers of the Band, the need to call another meeting of the General Council to address leadership, recall, and election issues was discussed.

At the meeting on September 13, 2001, it was agreed that a General Council meeting, previously scheduled by Rex Allen for September 22, 2001, be postponed until October 13, 2001. Upon presentation of the final Notice, to be sent to all adult members of the Tribe, typed on Tribal stationery, Mr. Allen refused to sign it, stating that he would wait until the following Monday (September 17, 2001) to sign or not sign. He wanted the weekend to discuss the matter with his associates. Chairman Bear stated that if Mr. Allen did not sign the agreed Notice of General Council Meeting scheduled for October 13,

2001, that he and the Vice-Chair would sign the Notice and mail it.

When Mr. Allen did not make contact with me on the following Monday, as he had agreed to do, the Chairman, Leon Bear, and the Vice-Chair signed the Notice and mailed it to all members of the General Council.

5. I understand that Rex Allen sent a Notice to some, but not all, General Council members calling a meeting for September 22, 2001. However, I was not invited to that meeting, and consequently was not present. I understand that the September 22, 2001, meeting was held, but I have not seen satisfactory evidence that the September 22, 2001 meeting was a duly-called meeting of the General Council.

6. I understand that an election of officers on the Executive Committee was conducted at the September 22nd meeting, but I have seen no satisfactory evidence that there were any vacancies to be filled for those positions, which are elective offices of the Band, and which had previously been filled in the course of regularly-scheduled elections of the Band.

7. After the meeting of September 22, 2001, and in response to much of the confusion generated by reports of an election held at that meeting, Chairman Bear and Vice-Chair Skiby mailed an additional Notice, dated October 2, 2001, again notifying all members of the General Council of the Special General Council meeting to be held on October 13, 2001.

8. I was invited to, and did attend, the October 13, 2001, General Council meeting. I counted 42 adults present, most of whom, I believe, were members of the Band. I believe that a majority of the adult members of the Band were present.

9. At the October 13, 2001, meeting there were discussions among members of the General Council on the appropriate procedures to be followed for recall of Band officers, on the events since the General Council meeting of August 25, 2001, and of the need to clarify the leadership of the Skull Valley Band. A resolution was introduced at that meeting to reaffirm the validity of the results of the election of Chairman Bear and Vice-Chair Skiby at the regularly scheduled election of November 2000. A majority of those present at the meeting were in favor of that resolution.

10. Based on my experience as a BIA Superintendent responsible for matters involving the government of the Skull Valley Band, and my observation of the relevant events since August 25, 2001, and for purposes of the provision of federal programs and federal funds, I see no basis at this time for dealing with anyone other than Chairman Leon Bear and Vice-Chair Lori Skiby as continuing as duly elected officers of the Executive

Committee of the Skull Valley Band.

11. My understanding is that Secretary Rex Allen resigned his position as Secretary on September 22, 2001, but I have no documentation of that reported resignation.

I declare under penalties of perjury that the foregoing is true and correct.

Executed on October 24, 2001.

David L. Allison
Superintendent
Uintah & Ouray Agency
Bureau of Indian Affairs

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 the Skull Valley Band's Report to the Board on Status of Counsel and Pending Motion have been served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 24th day of October, 2001.

G. Paul Bollwerk III, Esq., Chairman
 Administrative Judge
 Atomic Safety and Licensing Board Panel
 U.S. Nuclear Regulatory Commission
 Washington, D.C. 20555-0001
 e-mail: GPB@nrc.gov

Dr. Jerry R. Kline
 Administrative Judge
 Atomic Safety and Licensing Board Panel
 U.S. Nuclear Regulatory Commission
 Washington, D.C. 20555-0001
 e-mail: JRK2@nrc.gov; kjerry@erols.com

Dr. Peter S. Lam
 Administrative Judge
 Atomic Safety and Licensing Board Panel
 U.S. Nuclear Regulatory Commission
 Washington, D.C. 20555-0001
 e-mail: PSL@nrc.gov

*Office of Commission Appellate
 Adjudication
 U.S. Nuclear Regulatory Commission
 Washington, D.C. 20555-0001

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Rulemakings and Adjudications
Staff
e-mail: hearingdocket@nrc.gov
(Original and two copies)

Catherine L. Marco, Esq.
Sherwin E. Turk, Esq.
Office of the General Counsel
Mail Stop O-15 B18
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
e-mail: pfscase@nrc.gov

John Paul Kennedy, Sr., Esq.
David W. Tufts, Esq.
Confederated Tribes of the Goshute
Reservation and David Pete
Durham Jones & Pinegar
111 East Broadway, Suite 900
Salt Lake City, Utah 84105
e-mail: dtufts@djplaw.com

Diane Curran, Esq.
Harmon, Curran, Spielberg &
Eisenberg, L.L.P.
1726 M Street, N.W., Suite 600
Washington, DC 20036
e-mail: dcurran@harmoncurran.com

*Richard E. Condit, Esq.
Land and Water Fund of the Rockies
2260 Baseline Road, Suite 200
Boulder, CO 80302

* By U.S. Mail

* Adjudicatory File
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Denise Chancellor, Esq.
Assistant Attorney General
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, Utah 84114-0873
e-mail: cnakahar@att.state.ut.us
e-mail: llockhar@att.state.ut.us
e-mail: fnelson@att.state.ut.us
e-mail: dchancel@att.state.ut.us

Joro Walker, Esq.
Land and Water Fund of the Rockies
1473 South 1100 East
Suite F
Salt Lake City, UT 84105
e-mail: utah@lawfund.org

Jay E. Silberg, Esq.
Paul A. Gaukler, Esq.
Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037
e-mail: jay.silberg@shawpittman.com
e-mail: paul.gaukler@shawpittman.com

Paul C. EchoHawk, Esq.
EchoHawk PLLC
P.O. Box 6119
Pocatello, ID 83205-6119
e-mail: paul@echohawk.com

Tim Vollmann
3301-R Coors Road, N.W. #302
Albuquerque, NM 87120
Telephone: (505) 792-9168
E-Mail: tvollmann@hotmail.com