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NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF THE SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of:	)	Docket No. 72-22-ISFSI
PRIVATE FUEL STORAGE, LLC	)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel	)	
Storage Installation)	)	March 15, 2002

**JOINT MOTION TO DISMISS  
CONTENTION UTAH DD - ECOLOGY AND SPECIES**

Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") and the State of Utah ("State") file this joint motion for dismissal with prejudice of "Contention Utah DD - Ecology and Species" ("Utah D"). PFS and the State seek dismissal on the ground that the parties have reached an acceptable resolution of the contention.

On April 22, 1998, the Atomic Safety and Licensing Board ("Board") admitted Utah DD, although it narrowed the contention at that time. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 204-206, *aff'd on other grounds*, CLI-98-13, 48 NRC 26 (1998), and LBP-98-10, 47 NRC 288, 296-297 (1998). The contention was later further narrowed in a decision on PFS's Motion for Summary Disposition, such that it now challenges only analyses of impacts on the peregrine falcons nesting in the Timpie Springs area. LBP-01-30, 54 NRC 231 (2001).

The State and PFS have successfully completed negotiations concerning the settlement of Utah DD. PFS has agreed to provide funding for, and the Utah Division of Wildlife Resources has agreed to perform a survey of peregrine falcon nesting sites in northern and central Utah. Attached as Exhibit 1 to this Motion is copy of that agreement.

Template = secy-041

SECY-02

Counsel for Applicant has discussed this motion with counsel for the NRC Staff who does not object to the Board's granting of this joint motion.

**CONCLUSION**

For the reasons stated above, the Board should dismiss Utah DD, with prejudice, because PFS and the State have agreed upon an acceptable resolution of the matter.

DATED this 15<sup>th</sup> day of March, 2002.

Respectfully submitted,



Denise Chancellor, Assistant Attorney General  
Fred G Nelson, Assistant Attorney General  
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CERTIFICATE OF SERVICE

I hereby certify that a copy of JOINT MOTION TO DISMISS CONTENTION UTAH DD - ECOLOGY AND SPECIES was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 15<sup>th</sup> day of March, 2002:

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

Denise Chancellor  
Assistant Attorney General  
State of Utah

**AGREEMENT BETWEEN  
UTAH DIVISION OF WILDLIFE RESOURCES AND  
PRIVATE FUEL STORAGE, L.L.C.**

AGREEMENT NO. \_\_\_\_\_

THIS AGREEMENT is made and entered into between the Utah Division of Wildlife Resources ("UDWR") and Private Fuel Storage, L.L.C ("PFS").

**PURPOSE STATEMENT:**

The State of Utah has intervened in a PFS licensing proceeding before the United States Nuclear Regulatory Commission ("NRC"), In the Matter of Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation), Docket No. 72-22-ISFSI, ASLBP No. 97-732-02-ISFSI. Among the contentions raised by the State of Utah in that proceeding is Contention Utah DD challenging, *inter alia*, the environmental impact analyses done by PFS and the NRC staff regarding peregrine falcons that nest in the area of the proposed facility.

UDWR has responsibility to manage, protect, and propagate species of wildlife in the State. In that capacity, UDWR has determined that collection of additional information about the peregrine falcon population in the region, in a study to be funded as described below by PFS, will be sufficiently beneficial to allow it to approve settlement of Utah Contention DD.

IN CONSIDERATION of the above premises, the parties hereto agree as follows:

**A. UDWR SHALL:**

1. Conduct a survey of historic peregrine aeries in northern and central Utah. UDWR personnel will first consult with Dr. Clayton White to determine where the historic aeries are located. UDWR personnel will next conduct an aerial survey, primarily by fixed wing aircraft, to determine whether historic aeries are in current use. Finally, if sufficient funding is available, UDWR will do an on-the-ground follow-up survey of aeries that are being used to evaluate breeding success.
2. Issue a Bill for Collection to PFS for \$4,500.00 prior to commencement of the aerial survey to cover costs described in paragraphs B.1, below.
3. Promptly provide to PFS an accounting of funds expended, and return unused funds, if any, to PFS following completion of the surveys described in paragraph A.1 above.
4. Provide PFS and Dr. Clayton White with the results of the surveys described in Paragraph A.1 above.

AGREEMENT BETWEEN  
UTAH DIVISION OF WILDLIFE RESOURCES AND  
PRIVATE FUEL STORAGE, L.L.C.

Page 2

B. PFS SHALL:

1. Upon receipt of the Bill of Collection described in paragraph A.2 above, pay UDWR \$4,500 for a) the time spent by UDWR biologists performing the surveys described in paragraph A.1 above; b) the cost of aircraft, primarily fixed-wing aircraft, to be used in performing the surveys described in paragraph A.1 above; and c) vehicle mileage costs for automobiles used in performing the surveys described in paragraph A.1 above;
2. Arrange to provide UDWR with a maximum of 8 hours of Dr. Clayton White's time for consultations in connection with the surveys described in paragraph A.1 above.

C. IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND BETWEEN THE SAID PARTIES THAT:

1. Modifications of this agreement shall be made by mutual consent of both parties, by issuance of a written modification, signed and dated by both parties.
2. This instrument is executed as of the last date shown below and expires one year after that date unless renewed.
3. The \$4,500 specified in paragraph B.1 is PFS's maximum funding obligation. If, upon completion of the work described in paragraph A.1, the costs incurred are less than \$4500, the difference will be returned to PFS as specified in paragraph A.3.
4. The principal contacts for this instrument are:

FOR UDWR

Frank P. Howe  
Avian Program Coordinator,  
Wildlife Section  
Utah Division of Wildlife Resources  
1594 W. North Temple, Suite 2110  
PO Box 146301  
SLC UT 84114-6301

FOR PFS

Mr. John D. Parkyn  
Dairyland Power Cooperative  
P.O. Box C4010  
LaCrosse, WI 54602

5. UDWR personnel costs under this Agreement will be calculated using actual costs for salary and benefits, and U.S. Department of Interior-approved overhead. Cost for aircraft shall be no greater than actual rental costs if private aircraft are used. Other costs will be calculated using standard UDWR internal billing rates.

AGREEMENT BETWEEN  
UTAH DIVISION OF WILDLIFE RESOURCES AND  
PRIVATE FUEL STORAGE, L.L.C.

Page 3

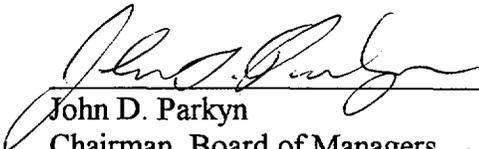
IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the last date written below.

 3-14-02  
Kevin K. Conway Date  
Director **ACTING DIRECTOR**  
Utah Division of Wildlife Resources

 3/13/02  
Greg J. Sheehan Date  
Budget Officer  
Utah Division of Wildlife Resources

AGREEMENT BETWEEN  
UTAH DIVISION OF WILDLIFE RESOURCES AND  
PRIVATE FUEL STORAGE, L.L.C.

Page 4

  
\_\_\_\_\_  
John D. Parkyn                      3/13/02  
Chairman, Board of Managers      Date  
Private Fuel Storage, L.L.C.