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RULEMAKINGS AND  
ADJUDICATIONS STAFF

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter Of:	)	Docket No. 72-22-ISFSI
	)	
PRIVATE FUEL STORAGE, LLC	)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel	)	
Storage Installation)	)	JULY 8, 2002

**RESPONSE OF SOUTHERN UTAH WILDERNESS ALLIANCE (SUWA)  
TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW  
FILED BY THE NRC STAFF AND THE APPLICANT  
RELATIVE TO CONTENTION SUWA B.**

Pursuant to the Order of the Atomic Safety and Licensing Board (Board) dated September 17, 2001, intervenor Southern Utah Wilderness Alliance (SUWA) hereby responds to the proposed findings of fact and conclusions of law filed by the Nuclear Regulatory Commission Staff (Staff) and the applicant, Private Fuel Storage, L.L.C. (PFS) on June 7, 2002 relative to Contention SUWA B.

**I. Introduction**

The proposed findings and conclusions of law filed by the Staff and PFS confirm what SUWA has maintained since the Staff's release of the Final Environmental Impact Statement (EIS) relevant to this matter – the Staff fails to study in detail all reasonable alternatives to the Low rail spur that will preserve the wilderness character of the North Cedar Mountains roadless area. The Staff fails its duty under the National Environmental

Policy Act (NEPA) to consider fully even one rail alternative to the proposed Low route. While the Staff suggests that it has filled its NEPA obligations, what it has actually done is: 1) prematurely reject the West Valley alternative on the basis of its own, uninformed value judgments rather than presenting the environmental pros and cons of the West Valley route to the public and the Board; 2) fail to acknowledge the wilderness character of the North Cedar Mountains roadless area, thereby invalidating its "assessment" of the environmental impacts on these wilderness values; and 3) decline to formulate a true, viable alternative to the Low rail spur that would preserve or minimize impacts to the roadless area.

## **II. Argument**

In its findings and conclusions, PFS demonstrates the inadequacy of the Staff's alternatives analysis when it states that "serious consideration was given to a reasonable range of alternatives and no obviously superior alternative to the proposed alignment was found." PFS Findings and Conclusions at 28. As PFS also points out, it was the Staff, not the decision maker, that found the West Valley and other alternatives less "superior." Id. As a result, the Staff did not present the decision maker with a fully developed analysis of the environmental pros and cons of the West Valley alternative. In turn, the Board is prevented from weighing the environmental impacts of the Low rail alternative, including those on the roadlessness and other wilderness characteristics of the North Cedar Mountains area, against the environmental costs and benefits of the prematurely dismissed rail alternatives, particularly the West Valley route.

Indeed, as PFS admits, the Staff does the weighing for the Board and takes the decision making authority from the public arena. After all, the Staff determines that “[c]hanging the rail alignment to avoid the small affected part of NCMA, however, would result in additional adverse physical environmental impacts and costs that outweigh the value, if any, of preserving that small area for potential wilderness designation.” PFS Findings and Conclusions at 28. Relying on environmental analysis that it admits is **not detailed**, EIS at 2-47, the Staff makes a judgment call that should be preserved for the decision maker.<sup>1</sup> Because the whole point of providing alternatives to allow the decision maker to evaluate a range of alternatives with a range of environmental impacts that have been studied in detail, the Staff thwarts the NEPA process.

Moreover, the Staff’s judgment call is necessarily ill-informed. This is because the Staff determines, erroneously, that the North Cedar Mountains roadless area has no wilderness character. Therefore, the Staff did not take into consideration, when it “adequately described the environmental impacts of each alternative considered,” Staff Findings and Conclusions at 40, the impacts of the Low rail spur on the wilderness character of the roadless area. The Staff cannot then properly present the pros and cons

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<sup>1</sup> Because the Board has not been presented with a full and objective analysis of the environmental impacts of the West Valley alternative to compare with the impacts of the Low route, it is not in a position to choose among the alternatives currently before it. For example, for the Board to make a well-informed decision, it would need to know the environmental impacts of the West Valley alternative on the whole host of resources and values the Staff addresses with regard to the Low rail spur. The Board cannot currently make a well informed decision because the Staff refused to acknowledge the wilderness character of the North Cedar Mountains and the extent to which the Low spur and its alternatives would preserve and impact this natural quality. Finally, as this Board has made clear, the Staff must first evaluate information in an EIS. *Memorandum and Order Denying Reconsideration Regarding LBP-01-34, LBP-01-38* at 5-7. Because the Staff has not fulfilled this obligation here, the EIS is flawed.

of the Low rail spur and its alternatives “in comparative form” 40 C.F.R. § 1502.14, so that “reviewers may evaluate their comparative merits.” 40 C.F.R. § 1502.14(b).

Rather than consider the wilderness character of the North Cedar Mountains roadless area, the Staff relies exclusively on BLM’s determination that the North Cedar Mountains did not qualify for designation as wilderness to conclude that the area had no wilderness character. Clearly, as the Board determined, the two cannot be equated.

*Memorandum and Order Denying Motion for Summary Disposition Regarding Contention SUWA B, LBP-01-34 at 11.* (“in the context of NEPA, even absent the FLPMA statutory scheme, there would be a need to consider the natural state of the land and alternatives, if any, that would preserve that status). To determine that an area does not qualify as wilderness is **not** to determine that the area lacks wilderness character.

Similarly, PFS is off the mark when it states “[c]hanging the rail alignment to avoid the small affected part of NCMA, however, would result in additional adverse physical environmental impacts and costs that outweigh the value, if any, of preserving that small area for potential wilderness designation.” PFS Findings and Conclusions at 28. Again, the applicant’s focus is misplaced. As the Board made clear, the Staff is charged with formulating and analyzing rail alternatives that would preserve the wilderness character – not necessarily the potential for wilderness designation – of the North Cedar Mountains. Again, the Staff’s analysis and reasoning is proven to be ill-considered.

As SUWA established at hearing and in its findings and conclusions, there is no denying that the North Cedar Mountains, including the area to be traversed by the Low

rail spur, has wilderness character, including roadlessness, naturalness, and value as a boundary against the imprint of humans. SUWA Findings and Conclusions at 7-11 & 14. Thus, because it ignores these attributes, and fails to consider the impact of the Low rail spur on these values, the Staff is necessarily ill-informed when it states that “[b]ecause the [North Cedar Mountains roadless] area lacks such [wilderness] values or characteristics, no alternatives need to be developed to avoid or minimize the potential for adverse impacts to such asserted values or characteristics.” Staff Findings and Conclusions at 40.

In addition, with this statement and others like it, the Staff reveals its inability to objectively consider alternatives to the Low rail spur that would preserve the wilderness character of the North Cedar Mountains roadless area. With such concrete, but incorrect notions, the Staff is not in a position to conclude that “a rail alternative that avoids [the North Cedar Mountains roadless] area would not be environmentally preferable to the Low Corridor rail line.” Staff Findings and Conclusions at 40. Again, the agency establishes that its rejection of the West Valley alternative for detailed analysis is unfounded.

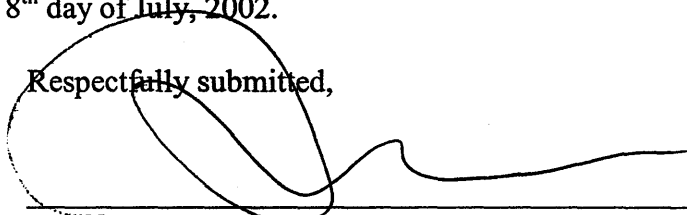
Finally, the Staff violates NEPA’s alternative requirement by failing to formulate a real alternative to the West Valley alternative. Apparently wedded to the applicant’s proposal, the Staff merely formulates an appendage to the Low route to avoid the North Cedar Mountains rather than creating an independent alternative designed to protect the wilderness character of this roadless area. Again, as is evidenced by the Staff’s failure to find a rail alternative worthy of detailed analysis, the Staff is biased. In addition to

refusing to acknowledge the wilderness character of the North Cedar Mountains and thereby limiting its alternatives analysis, the Staff also fails to consider a stand-alone alternative to the Low rail route.

As PFS points out, the result of the Staff's attempt to consider an alternative rail alignment, is no rail alignment alternative at all – rather, the Staff still presents to the public and the decision maker only one rail option – that proposed by the applicant. The Staff still refuses to give full environmental consideration to any other rail alignment. The Staff's failure is symptomatic of its refusal to recognize the wilderness character of the North Cedar Mountains and to develop a true alternative to the Low route. As a result, the agency's decision to reject any alternative to the Low route for detailed consideration is necessarily suspect and cannot stand in the stead of valid NEPA alternatives analysis.

DATED this 8<sup>th</sup> day of July, 2002.

Respectfully submitted,



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UNITED STATES OF AMERICA  
BEFORE THE  
NUCLEAR REGULATORY COMMISSION

Private Fuel Storage, a Limited Liability  
Company;

(Independent Spent Fuel Storage  
Installation).

Docket No. 72-22  
ASLBP No. 97-732-02-  
ISFSI

July 8, 2002

**CERTIFICATE OF SERVICE**

I hereby certify that I emailed copies of **Response of SUWA to Proposed Findings of Fact and Conclusions of Law Filed by the NRC Staff and Applicant Relative to Contention SUWA B** on the persons listed below (unless otherwise noted) on **July 8, 2002** and, where indicated served conforming copies by U.S. mail, first class, postage prepaid, on **July 8, 2002**.

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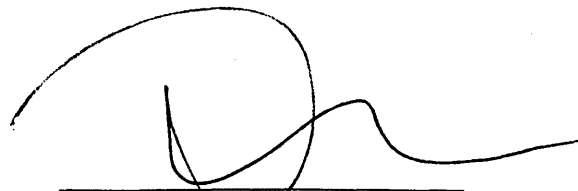
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