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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'98 JUL 13 P3:08

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECURITY
REGULATORY
ADJUDICATION 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))	July 10, 1998

**STATE OF UTAH'S MOTION FOR RECONSIDERATION
OF THE BOARD'S RULING ON STATE OF UTAH
PHYSICAL SECURITY PLAN CONTENTIONS**

The State of Utah files its Motion for Reconsideration pursuant to the Board's June 29, 1998, Memorandum and Order (Ruling on State of Utah Physical Security Plan Contentions). The June 29 Order was issued with the notation "Handle as safeguards information pending review." Then on July 7, 1998, the Board ruled that the decision on the admissibility of physical security plan contentions be made publicly available. In light of the Board's July 7 Order, and the fact that no safeguards-protected information will be discussed in this motion, the State of Utah files its Motion for Reconsideration as a non-safeguards protected pleading.

DISCUSSION

During oral argument at the Safeguard pre-hearing conference held on June 17, 1998, counsel for the Applicant presented a document titled "COOPERATIVE LAW ENFORCEMENT AGREEMENT BETWEEN TOOELE COUNTY THE

Template = SECY-041

SECY-02

BUREAU OF INDIAN AFFAIRS AND THE SKULL VALLEY BAND OF GOSHUTE INDIANS." For the Board's convenience the cooperative agreement is attached hereto as Exhibit 1. This was the first time the State had seen the cooperative agreement. At the prehearing conference, the Board gave the State time to review the agreement with the expectation that the State could address arguments raised by the Applicant during the safeguards prehearing conference based on the agreement.

The "Now, Therefore" clause on page 1 of the Cooperative Agreement states that Tooele County is entering into the agreement pursuant to Utah Code Ann. § 11-13-5.¹ Section 11-13-5 (Agreement for joint or cooperative action – Resolutions by governing bodies required), which is attached hereto as Exhibit 2, states:

Any two or more public agencies may enter into agreements with one another for joint or co-operative action pursuant to this act. Adoption of appropriate resolutions by the governing bodies of the participating public agencies are necessary before any such agreement may enter into force.

After ascertaining from the Tooele County Clerk's Office that the Tooele County Commission has not passed a resolution with respect to the Cooperative Agreement, Tooele County Corporation Contract #97-06-02, the State asserts that Tooele County Commission has not adopted the appropriate resolution for the cooperative agreement to be in force. *See* Affidavit of Jean Braxton, attached as Exhibit 3.

¹ The Agreement actually cites Section II-13-5, Utah Code Annotated 1953. However, counsel for the Applicant advised the Board during the course of the June 17 prehearing conference that the correction citation is Section 11-13-5.

In the Board's ruling on Utah Contention Security-C, the Board stated that a cooperative law enforcement agreement has been shown to exist and that the State has not adequately supported a legal or factual challenge to the agreement. Order at 16. The Board also stated "nothing on the face of the cooperative agreement gives us cause to question its validity...." Order at 16, n. 9.

Given that the cooperative agreement was thrust upon the State during the prehearing conference without any prior review, it was unreasonable to expect the State to "adequately support a legal or factual challenge" to the agreement. However, given the fact that the Tooele County Commission has not complied with the statutory requirement of Utah Code Ann. § 11-13-5, which authority the County relies on to enter into the cooperative agreement, the State now shows that the cooperative agreement is not valid. Therefore, the State requests the Board reconsider and find admissible that portion of Security-C rejected by the Board, specifically, bases (3) which alleges "[l]ack of jurisdiction and law enforcement authority by the LLEA on the Skull Valley Band's reservation." Order at 16. The State has shown that the cooperative agreement among the Band, the Bureau of Indian Affairs (BIA) and Tooele County is not in force and thus Tooele County is not authorized under the cooperative agreement presented to the Board to conduct law enforcement activities on the Skull Valley Goshute reservation. Therefore, the arguments presented to the Board in Security-C contention and reply show that basis 3 of Security-C is admissible.

The State also requests the Board find Security-A and Security-B admissible to the extent that the Board rejected any and all of the bases for those two contentions based on the perceived existence of a valid law enforcement agreement among the Band, the BIA and the County.

DATED this 10th day of July, 1998.

Respectfully submitted,



Denise Chancellor, Assistant Attorney General
Fred G Nelson, Assistant Attorney General
Diane Curran, Special Assistant Attorney General
Connie Nakahara, Special Assistant Attorney General
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CERTIFICATE OF SERVICE

I hereby certify that copies of STATE OF UTAH'S MOTION FOR RECONSIDERATION OF THE BOARD'S RULING ON STATE OF UTAH PHYSICAL SECURITY PLAN CONTENTIONS were served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class (unless otherwise noted), this 10th day of July, 1998:

Attn: Docketing & Services Branch
Secretary of the Commission
U. S. Nuclear Regulatory Commission
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11555 Rockville Pike, One White Flint
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Rockville, MD 20852-2738
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(*electronic copy only*)

Office of the Commission Appellate
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U. S. Nuclear Regulatory Commission
Washington, DC 20555
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Denise Chancellor
Assistant Attorney General
State of Utah

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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Respectfully submitted,



Denise Chancellor, Assistant Attorney General
Fred G Nelson, Assistant Attorney General
Diane Curran, Special Assistant Attorney General
Connie Nakahara, Special Assistant Attorney General
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CERTIFICATE OF SERVICE

I hereby certify that copies of STATE OF UTAH'S MOTION FOR '98 JUL 13 P3:08

RECONSIDERATION OF THE BOARD'S RULING ON STATE OF UTAH OFFICE OF SECY
PHYSICAL SECURITY PLAN CONTENTIONS were served on the persons listed RULEMAKING
ADJUDICATORY STAFF

below by electronic mail (unless otherwise noted) with conforming copies by United

States mail first class (unless otherwise noted), this 10th day of July, 1998:

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U. S. Nuclear Regulatory Commission
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Administrative Judge
Atomic Safety and Licensing Board
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Adjudication
Mail Stop: 16-G-15 OWFN
U. S. Nuclear Regulatory Commission
Washington, DC 20555
(*United States mail, first class only*)



Denise Chancellor
Assistant Attorney General
State of Utah

**COOPERATIVE LAW ENFORCEMENT AGREEMENT
BETWEEN TOOELE COUNTY
THE BUREAU OF INDIAN AFFAIRS
AND THE SKULL VALLEY
BAND OF GOSHUTE INDIANS**

RECEIVED JUN 13 1997

THIS AGREEMENT made and executed the 3rd day of June 1997, to be effective on the 1st day of April, 1997, by and between TOOELE COUNTY, (hereinafter called the "County"), the BUREAU OF INDIAN AFFAIRS, (hereinafter called the "Bureau"), and the SKULL VALLEY BAND OF GOSHUTE INDIANS, (hereinafter called the "Skull Valley Band").

WITNESSETH:

WHEREAS, the Skull Valley Band does not have all of the required resources and facilities to provide adequate law enforcement for the protection of the residents of the Skull Valley Reservation, Utah and its resources, and

WHEREAS, The Bureau and the Skull Valley Band desire to utilize the Tooele County Sheriff's department to provide law enforcement and detention for the Skull Valley Reservation, Utah pursuant to Title 25, Code of Federal Regulations, Part II; and

WHEREAS, the County is willing to provide the necessary services under certain terms and conditions.

NOW, THEREFORE, pursuant to Section II-13-5, Utah Code Annotated 1953, and in consideration of mutual promises contained herein, and for other good and valuable consideration, the County, the Skull Valley Band and the Bureau, pursuant to its authority to provide for the maintenance of law enforcement services in Indian Country, hereby agree as follows:

1. The County will provide all necessary qualified personnel for law enforcement and detention services covered in this agreement. The County recognizes that many non-Indians work or travel through the Skull Valley Indian Reservation requiring law enforcement patrols.
2. The County is designated as the party to administer this agreement by and through the Tooele County Sheriff.
3. The County will provide all equipment, materials and facilities required for conducting

the enforcement and detention services set forth in this agreement, and in the event of the termination of this agreement for any cause, all equipment, materials and facilities shall remain in the possession and ownership of the County.

4. The County will be responsible to investigate, charge and incarcerate persons charged with or alleged to be in violation of all offenses, whether enumerated under 18 U.S.C. or the Skull Valley Band of Goshute Indians Tribal Code, committed within the boundaries of the Skull Valley Indian Reservation, Utah, as established by Executive Order 1465, dated January 17, 1912; Executive Order 2699, dated September 7, 1917, and Executive Order 2809 dated February 15, 1918, and such other lands without such Reservation boundaries as may hereafter be added thereto under any law of the United States, except as otherwise provided by law.

5. The County will provide a minimum of three (3) regular patrols per week on the highway passing through the Skull Valley Indian Reservation and into the Village on the Reservation as part of regular patrols. The County will also include areas of patrol as requested by the Skull Valley Tribal Government.

6. The County will immediately notify the Criminal Investigator of the Uintah and Ouray Agency, Fort Duchesne, Utah, and the Federal Bureau of Investigations of all Federal offenses that occur within the boundaries of the Skull Valley Indian Reservation as set forth in paragraph 4 above. The County shall assist Federal law enforcement officials in the investigation of Federal offenses.

7. The County will provide the following reports and records to assist the Bureau and Skull Valley Band in preparing the Bureau's quarterly and annual statistical report:

a. full investigation reports of all misdemeanors and felonies occurring on the Reservation involving Indians;

b. a booking log of all arrests made on the Reservation indicating (1) date of birth (2) age, (3) charges, and (4) disposition for each Indian offender; and

c. a report on each incident responded to by the County on the Reservation.

8. The County shall be notified by telephone on all law enforcement matters, including emergencies.

9. The Bureau will pay five thousand five hundred dollars (\$5,500) for the County's services to be rendered April 1, 1997, through March 31, 1998. Should this agreement extend to additional years, the Bureau shall pay in April of each year the base sum of five thousand five hundred dollars (\$5,500), plus an amount equal to any percentage increase over the previous year in the Wasatch Front Cost of Living Index as published by First Security Bank, but not to exceed five percent (5%) in any given year. The Bureau will also pay the County thirty-five dollars

(\$35.00) per day, or any portion thereof, per person for the incarceration of persons at the County detention facility pursuant to this agreement. The Bureau will also pay such prisoner's medical costs. The County shall bill the Bureau for such costs with an itemized invoice listing of the prisoners and days they spend at the County detention facility, and any medical costs incurred.

10. The Bureau agrees to commission the Tooele County Sheriff and designated deputy sheriffs as Bureau of Indian Affairs Federal Law Enforcement Officers for the purpose of providing the services contained herein. The Skull Valley Band and the County agree to allow the County to call onto the Reservation such backup personnel from other law enforcement agencies as is necessary to carry out the terms of this agreement.

11. The Bureau and/or Tribal Attorney will provide technical assistance to the County in matters dealing with Tribal Government, Reservation jurisdiction, Federal jurisdiction and related matters.

12. The County, the Bureau and the Skull Valley Band will review this agreement annually on or before April 1st of each year for purposes of evaluating the services and effectiveness of the agreement.

13. Any party to this agreement may cancel or terminate this agreement upon thirty (30) days written notice to the other parties.

14. The term of this agreement shall be for one (1) year commencing April 1, 1997. It shall renew automatically thereafter for one year increments until such time as it is terminated pursuant to paragraph 13.


15. The County recognizes that the Skull Valley Indian Reservation is a separate sovereign political entity independent of the State of Utah.

16. This contract is contingent upon the appropriation of funds by Congress.

BUREAU OF INDIAN AFFAIRS:

COUNTY OF TOOELE, UTAH


Acting Superintendent


TERYL HUNSAKER, Chairman
Tooele County Commission

**SKULL VALLEY BAND OF
GOSHUTE INDIANS**

[Signature]
Tribal Chairman
[Signature]
Tribal Vice-Chairman
[Signature]
Tribal Secretary

ATTEST:

[Signature]
DENNIS D. EWING, Clerk



APPROVED AS TO FORM:

[Signature]
DANNY SUINTANA
Tribal Attorney

APPROVED AS TO FORM:

[Signature]
DOUGLAS J. AHLSTROM
Tooele County Attorney

Approved as to form this 3rd day of June, 1997.

[Signature]
FRANK SCHARMANN
Tooele County Sheriff

**COOPERATIVE LAW ENFORCEMENT AGREEMENT
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COUNTY OF TOOELE, UTAH



Acting Superintendent


TERYL HUNSAKER, Chairman
Tooele County Commission

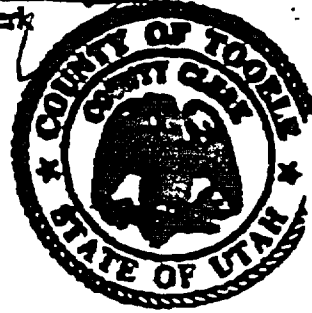
**SKULL VALLEY BAND OF
GOSHUTE INDIANS**

ATTEST:


Tribal Chairman


DENNIS D. EWING, Clerk

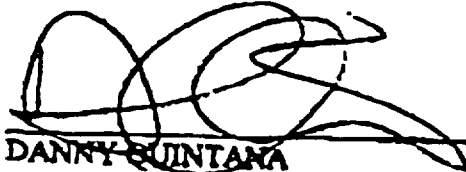

Tribal Vice-Chairman





Tribal Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:


DANNY QUINTANA
Tribal Attorney


DOUGLAS J. AHLSTROM
Tooele County Attorney

Approved as to form this 3rd day of June, 1997.


FRANK SCHARMANN
Tooele County Sheriff

SKULL VALLEY BAND OF
GOSHUTE INDIANS

[Signature]
Tribal Chairman
[Signature]
Tribal Vice-Chairman
[Signature]
Tribal Secretary

ATTEST:

[Signature]
DENNIS D. EWING, CLERK



APPROVED AS TO FORM:

[Signature]
DANNY QUINTANA
Tribal Attorney

APPROVED AS TO FORM:

[Signature]
DOUGLAS J. MELSTROM
Tooele County Attorney

Approved as to form this 3RD day of June, 1997.

[Signature]
FRANK SCHARMANN
Tooele County Sheriff

Copr. (C) West 1998 No Claim to Orig. U.S. Govt. Works

UT ST s 11-13-5

U.C.A. 1953 s 11-13-5

TEXT

UTAH CODE, 1953

TITLE 11. CITIES, COUNTIES, AND LOCAL TAXING UNITS

CHAPTER 13. INTERLOCAL COOPERATION ACT

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Current through End of 1997 1st Sp. Sess.

11-13-5 Agreements for joint or cooperative action -- Resolutions by governing bodies required.

Any two or more public agencies may enter into agreements with one another for joint or co-operative action pursuant to this act. Adoption of appropriate resolutions by the governing bodies of the participating public agencies are necessary before any such agreement may enter into force.

CREDIT

History: L. 1965, ch. 14, s 2; 1977, ch. 47, s 2.

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

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Meaning of 'this act'. -- See note under s 11-13-1.

U.C.A. 1953 s 11-13-5

UT ST s 11-13-5

END OF DOCUMENT

EXHIBIT 3

1

1964 4-22

1

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 10, 1998

AFFIDAVIT OF JEAN BRAXTON

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

JEAN BRAXTON deposes on oath and says:

1. I have a Legal Assistant Certificate.
2. I am a legal assistant for the Utah Attorney General's Office, Environmental Division, and have worked for the Attorney General's Office since October of 1991.
3. On July 8, 1998, I spoke to Marilyn Gillette with the Tooele County Clerk's Office. Marilyn told me that her office is responsible for keeping track of all resolutions adopted by the Tooele County Commission. I asked her to locate the resolution adopted by the Tooele County Commission which authorizes the County to enter into the Cooperative Law Enforcement Agreement with the Bureau of Indian Affairs and the Skull Valley Band of Goshute Indians, dated June 3, 1997, contract


number 97-06-02.

4. On July 9, 1998, Marilyn Gillette told me that she conducted a computer search of the Clerk's Office's records and could not locate any resolution adopted by the Tooele County Commission authorizing the Cooperative Law Enforcement Agreement referred to in ¶ 3 above.

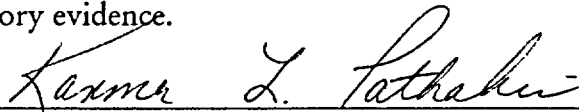
5. I attest to the truth and accuracy of these reports of my conversations with Ms. Gillette to the best of my ability.

FURTHER AFFIANT SAYETH NOT.

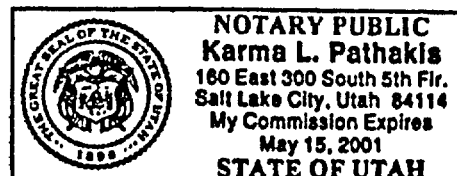
DATED this 10th day of July, 1998.


JEAN BRAXTON

The foregoing Affidavit was voluntarily signed and sworn to before me this 10th day of July, 1998, by the signer, whose identity is personally known to me or was proven to me on satisfactory evidence.


NOTARY PUBLIC

Residing at: SCC Utah
My commission expires: 5/15/01



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DATED this 10th day of July, 1998.

Jean Braxton
JEAN BRAXTON

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Karma L. Pathakis
NOTARY PUBLIC

Residing at: SLC Utah
My commission expires: 5/15/01

