## UNITED STATES OF AMERICANRO

## NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY RULFMAKINGS AND ADJUDICATIONS STAFF

Title: PRIVATE FUEL STORAGE, L.L.C.

(Independent Spent Fuel

Storage Installation)

**Case No.:** 72-22-ISFSI

Location: Rockville, Maryland

Date: Monday, September 28, 1998

Pages: 949-990

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1	UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION
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3	In the Matter of: : PRIVATE FUEL STORAGE, L.L.C. : Docket No. 72-22-ISFSI (Independent Spent Fuel : ASLBP No. 97-732-02-ISFSI
4	(Independent Spent Fuel : ASLBP No. 97-732-02-ISFSI Storage Installation) :
5	U.S. Nuclear Regulatory Commission
6	Two White Flint Room 3-B-51
7	Rockville, Maryland
8	Monday, September 28, 1998
9	The above-entitled matter came on for prehearing ; conference, pursuant to notice, at 1:11 p.m.
10	BEFORE:
11	THE HONORABLE G. PAUL BOLLWERK, III Administrative Judge,
12	Atomic Safety & Licensing Board Panel
13	DR. JERRY R. KLINE, Atomic Safety & Licensing Board Panel
14	
15	DR. PETER S. LAM, Atomic Safety & Licensing Board Panel
16	APPEARANCES:
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	II.

## PROCEEDINGS

[1:11 p.m.]

JUDGE BOLLWERK: In accordance with our Memorandum and Order of September 2nd, 1998, we are conducting this pre-hearing conference today in the Private Fuel Storage proceeding to discuss the status of the parties' ongoing informal discovery efforts.

I am Administrative Judge Paul Bollwerk, the Chairman of the Licensing Board. With me in the room are two other Licensing Board members, Administrative Judge Jerry Kline and Administrative Judge Peter Lam. Also in the room with us today is Jennifer Tyree, an American University law student who is serving as an intern with the Licensing Board panel this fall.

At this point why don't we let counsel for each of the participating parties identify themselves for the record. Let's start with the Intervenors, then move on to the Applicant and, finally, the NRC staff. And for the Intervenors, why don't we start with counsel for the State of Utah.

MS. NAKAHARA: Connie Nakahara.

MS. CHANCELLOR: I am Denise Chancellor, and in the room with us is Jean Braxton, paralegal.

MS. CURRAN: And this is Diane Curran.

JUDGE BOLLWERK: All right. How about the --

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1	let's have somebody anyone from Castle Rock? Mr. Allen?
2	MS. CHANCELLOR: Oh, Bryan is here. I am just
3	he is just on another line.
4	JUDGE BOLLWERK: Okay.
5	MS. CHANCELLOR: Bryan. We need you. He'll be
6	right here.
7	JUDGE BOLLWERK: How about Mr how about
8	someone for Confederated Tribes?
9	MR. KENNEDY: This is John Kennedy for the
10	Confederated Tribes of the Goshute Reservation.
11	JUDGE BOLLWERK: Thank you, sir. Mr. Quintana?
12	MR. QUINTANA: Danny Quintana for Skull Valley
13	Band of Goshute, so
14	JUDGE BOLLWERK: And
15	MS. WALKER: Joro Walker for OGD.
16	JUDGE BOLLWERK: All right. And is anyone there
17	for Castle Rock?
18	MR. ALLEN: Yeah, Bryan Allen for Castle Rock.
19	JUDGE BOLLWERK: All right. Thank you, sir.
20	Anyone else for any of the Intervenors?
21	[No response.]
22	JUDGE BOLLWERK: All right. Then for the
23	Applicant, please?
24	MR. GAUKLER: Paul Gaukler and Ernie Blake on
25	behalf of the Applicant, PFS.
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JUDGE BOLLWERK: All right. And then the NRC 1 2 staff. 3 MR. TURK: Sherwin Turk and Catherine Marco, and with is Mark Delegadi. 4 5 JUDGE BOLLWERK: All right. And I take it Mr. 6 Blake is not with us -- I'm sorry, Mr. Silber is not with us 7 today? 8 MR. TURK: Correct. JUDGE BOLLWERK: Okay. All right. And, again, we 9 10 -- I have just reminded counsel we are having this 11 transcribed, so if you could identify yourselves before you 12 speak so that the court reporter will be able to accurately 13 attribute your remarks. 14 In our September 2nd Order we requested that one 15 of the parties be prepared at the outset to give us a brief, 16 perhaps joint synopsis of the state of discovery efforts. Is there someone who is prepared to make that presentation? 17 18 MR. BLAKE: This is Ernie Blake, I will give it a 19 try, Judge Bollwerk, --20 JUDGE BOLLWERK: All right. 21 MR. BLAKE: -- and then the other parties can chime in to add. PFS, some of this will be a repeat from 22 23 past status reports to the Board, but I will try to cover where we are by going back a little bit. 24 25 PFS started with a reading room set up in Salt

Lake City for each of the Intervenors to participate in.

And that reading room -- we first gathered all of the documents from the project, which we got from Stone & Webster's offices in Denver, Colorado. And that was the bulk of the project's documents. Those were shipped to Salt Lake and made available in the law firm's offices there.

Subsequently, we added to that as additional documents have been generated within the project, and we have also gone to each of the owning utilities, the eight participating utilities and gotten from each of those utilities all documents that they have that were related to any of the contentions, and we have been sending those out to Salt Lake as we got them, received from the utilities, and put them in the same format and sent them out.

I think we are about there. There may be some cats and dogs, some catch-up from some of the utilities. Obviously, there will be additional documents generated within the project which will add, but the bulk of our documents, we think, from many of these participants, related to any of the contentions, are now out there. So that is in terms of PFS's provision of documents.

That has led to a round to questions, for example, from Castle Rock, once they looked at the documents, and we are looking at Castle Rock's request of us, and it would be our expectation to provide those within the next couple of

weeks.

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We also have contacted Danny and the tribe as to lead on our side of the fence to make available in the same room any additional documents that the tribe has related to any of the contentions. And Danny and the tribe are working on that. We are hopeful of hearing from them by the end of this week.

MR. QUINTANA: If I may address that. This is
Danny Quintana. We are trying to gather up all of those
documents over the last nine years that we have been
investigating the project. That is going to be quite a
considerable effort. A lot of those have already been
turned over. But, anyway, we will supplement those and make
those available to the reading room and to Ernie Blake and
all of the parties. Most of those are addressed in the web
site, so the tribe put together a web site to specifically
address this project.

JUDGE BOLLWERK: All right.

MR. BLAKE: I am expecting, as Danny said, that we will have those here shortly. We will put them in the same format in which we have put all the other documents so that they are more readily available to the Intervenors, and get them out to the same reading room there in Salt Lake.

We, in terms of our discovery of the others, we initially got a pile of documents from the state. We went

through those documents, generated some additional questions of our own. Asked them about different kinds of documents. This past week, in response to that, we have had two lawyers go, Paul Gaukler and a younger associate from our firm, go, out to Salt Lake and work directly with Connie and people within the state that Connie put Paul in touch with, to look through additional documents related to the contentions.

It has been a very cooperative effort and a lot more documents have been identified. The state is making up copies of some. Some that we identified with the individual managers, they are still locating and putting together.

But, all in all, a cooperative and I think a worthwhile effort.

On Castle Rock, we are anticipating some documents from -- over the next several weeks. And with Ms. Walker, we had earlier sent a specific request to Ms. Walker. She has answered with a set '-- a copy of documents which has sent to us in Washington. We are reviewing with the prospect of some additional questions of her on documents.

Confederated Tribes doesn't have the lead on any of the contentions, so there hadn't been any direct, although we have talked with Mr. Kennedy about coming to an agreement on confidentiality. We already have a confidentiality agreement signed with the state and don't expect a problem with that with Castle Rock as well.

We do expect that, since we haven't seen among any of the state's documents, any Confederated Tribes' documents, that the state is probably doing the same thing with them that we are doing with Danny, and that is taking the lead of the lead Intervenor to bring in documents from the other parties on any of the contentions where they are the lead. We just haven't seen the results of that yet, but I suspect they are working on as we are.

We are anticipating for PFS's side to be in touch with the other parties about setting actual dates for informal interviews, which I would expect to begin the last week of this month. That is my report, Judge.

JUDGE BOLLWERK: When you say -- all right. Just let me interrupt you one second. When you say this month, you mean October or September?

MR. BLAKE: I meant October.

JUDGE BOLLWERK: Okay. We have got a couple of days left, not much, but a little. Okay.

MR. BLAKE: Sure.

JUDGE BOLLWERK: No problem. All right. Let me then go through -- I take it that fairly reflects sort of the general status. Let me go through first, I guess the Intervenors and hear from each of them, if they have anything they want to add to what Mr. Blake has reported. Why don't we start with the State of Utah?

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MS. NAKAHARA: This is Connie Nakahara.

Basically, I agree with Mr. Blake's assessment of discovery.

The only other things that I would add are we looked at -the state looked at the bulk of the information that was
provided through discovery at the Salt Lake reading room for
PFS, and we do need to go back and look at some additional
information that they have supplemented.

We will be following up with requests for production of additional documents, and we are -- we plan to offer to do informal interviews. We haven't finalized that yet. But we will be sending notice to PFS shortly.

JUDGE BOLLWERK: Mr. Blake had sort of indicated by the last week in October. Is that what you are aiming for as well? Or sometime in October in terms of starting this process?

MS. NAKAHARA: We haven't pinned down an exact time frame. As soon as we finalize that, we will let -- we will let PFS know.

JUDGE BOLLWERK: Has there at this point been any kind of exchange of sort of witness lists at all, or is that something you are looking toward in terms of the interviews, when you do that?

MR. BLAKE: This is for PFS. We have not had any specific exchanges. We have not even identified all of our witnesses, Jude Bollwerk, at this point.

JUDGE BOLLWERK: All right. 1 MR. BLAKE: But we clearly, in terms of looking 2 through documents, are identifying those people who we will 3 be talking with, Connie and others, about having informal 4 interviews. 5 MS. NAKAHARA: And I probably -- this is Connie 6 We would probably agree, we have not identified all 7 our witnesses and those individuals that we would like to 8 interview are principally Stone & Webster and possibly some 9 of the subcontractors who we have identified through 10 11 discovery of the documents. JUDGE BOLLWERK: All right. Anything else you 12 13 want to say on the subject, Ms. Nakahara, at least at this 14 point? MS. NAKAHARA: Only that we also need to work out 15 a location of doing the interviews with the Stone & Webster 16 17 people. JUDGE BO'LWERK: My recollection -- do they have 18 an office in Utah or is their office in Denver? 19 20 MR. BLAKE: The office that is working on this 21 project is in a suburb just south of Denver. JUDGE BOLLWERK: Is that where you would generally 22 make them available or is that something you need to work 23 on? 24

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MR. BLAKE: I don't know, I don't think we have

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1	talked about it at all.
2	JUDGE BOLLWERK: All right.
3	MR. BLAKE: But I don't think this will be a
4	problem. I figure we will find a way to work our way
5	through it.
6	JUDGE BOLLWERK: All right. All right. Ms.
7	Nakahara, anything else you want to say at this point?
8	MS. NAKAHARA: No.
9	JUDGE BOLLWERK: All right. Let's see, Mr. Allen?
10	MR. ALLEN: Yes.
11	JUDGE BOLLWERK: Anything you want to say on the
12	subject of discovery?
13	MR. ALLEN: No, I think what Ernie said was
14	accurate, that we have both requested additional documents
15	and expect to be producing them within the next couple of
16	weeks.
17	JUDGE BOLLWERK: All right. Mr. Kennedy?
18	MR. KENNEDY: Not on this point.
19	JUDGE BOLLWERK: All right. Have you and Ms.
20	Chancellor, and Ms. Nakahara been working together in terms
21	of producing anything you might have that has been talked
22	about?
23	MR. KENNEDY: We have discussed it very briefly
24	and, frankly, I don't know that there will be a lot that the
25	tribe have. I am not aware of any specific request that PFS

has made, but we are anxious to cooperate. 1 JUDGE BOLLWERK: All right. And, Ms. Joro. 2 MS. WALKER: Walker, you mean? 3 JUDGE BOLLWERK: I'm sorry, Ms. Walker. It's my 4 fault, I am looking at the wrong list here, the one that has 5 got names in reverse order. Ms. Walker. 6 7 MS. WALKER: Yeah, I agree with the assessment, from our point of view. We have requests going out to the 8 state and to PFS, it should be out within a week. 9 JUDGE BOLLWERK: So you are going to be asking the 10 state some questions as well? Or asking for documents, I 11 take it? 12 13 MS. WALKER: Yes. JUDGE BOLLWERK: All right. All right. 14 15 ask you, do you plan on conducting informal interviews as well? Ms. Walker? 16 I am thinking. It is certainly not 17 MS. WALKER: out of the question, and I am sure that others might want to 18 interview our client. 19 JUDGE BOLLWERK: All right. And, Mr. Allen, let 20 me ask you the same question. Are you thinking about 21 22 interviews? MR. ALLEN: Yeah, we would anticipate one or two 23 informal interviews and we would try to be prepared for them 24 by the end of the month. 25

JUDGE BOLLWERK: All right. Is that something you could look toward as well, Ms. Allen -- I'm sorry, Ms. Walker, maybe getting together and looking toward interviews at the end of the month?

MS. WALKER: Yes, that is reasonable.

JUDGE BOLLWERK: All right. At this point is there anything that any of the Intervenors want to say on the subject of discovery?

[No response.]

JUDGE BOLLWERK: All right. Let me then ask the staff if they have any comments?

MR. TURK: Very briefly, Your Honor. As you may recall, the Applicant in the past has acceded to our request that we be permitted to look at the documents that PFS is producing, as well as the documents which PFS has copied in their document searches of other parties. And PFS has told us that they would allow us to come into their attorneys' offices in Washington for that purpose.

Now that PFS has done the traditional document review last week in Salt Lake City, I expect that as soon as they tell me that those documents are available for review, we will go down to the Shaw Pittman offices in Washington to look at the documents that have been produced by PFS and collected by PFS. And although we have not planned any informal interviews as yet, after looking at those

documents, it is possible that we will be interested in conducting informal interviews of the other parties. And I would imagine we could do that at the end of the month as well. But at this point I am not sure that we will have a need to do that. We will wait to see the documents.

JUDGE BOLLWERK: All right. Anything else?
[No response.]

JUDGE BOLLWERK: Let me ask a couple of specific questions. By the way, just as an overall, I appreciate the report, Mr. Blake, and the statements from everyone else. I am glad you can characterize it as cooperative, that is a good word, that is a word I like, obviously, a word the Board likes. It sounds like you have been able to make a large group -- if I want to use a colloquial term, your document dump up front without having to go through all the exchanging papers in terms of at least production requests, and some interrogatories, hopefully. So I hope it has been useful in that respect, it sounds like it may have been.

Let me ask you, has anyone started thinking about documents that are going to be considered privileged or protected in some way in terms of at least identifying those internally? Given that there has been some exchange of questions back and forth or identifying certain areas that people are interested in?

MR. BLAKE: Let me speak for PFS. In a number of

instances, we have provided even documents which have been treated for the proprietary nature or confidentiality nature, and have deleted portions of documents among those that we are providing. So to that extent, we have.

Obviously, we have also identified a number of documents from our clients that we regarded as privileged and have no provided.

JUDGE BOLLWERK: All right. So you have told them there are some documents that are privileged that you are withholding then, I take it?

MR. BLAKE: Yeah. And I think even the documents that they have gotten already, at least the state has looked through, they would see portions of the documents that's alluded.

JUDGE BOLLWERK: All right.

MS. NAKAHARA: If I could interject, this is

Connie Nakahara. I had difficulty in identifying all the

documents in which statements were redacted, and that is one

of the requests that we will be making is whether certain

documents in fact had redactions and what the redactions

were related to.

JUDGE BOLLWERK: All right. Is that -- I take it you are going to be making some kind of a written presentation or calling someone? I don't know what your plan is.

MS. NAKAHARA: Probably make a written request identifying the documents that we are interested in. In some cases, the redactions were obviously and in other cases, they weren't. I don't know if it was just how the document was spaced or whether there were actual redactions, and that was one of our difficulties.

MR. BLAKE: That should be fairly for us to react to, because if we have done our job, we will have copies in our offices of both the complete and the redacted versions. So I think we will be able to react to that pretty easily, Connie.

MS. NAKAHARA: Okay. Thank you.

you, as you come across things which -- and, again, as you are exchanging requests back and forth, documents that appear to be privileged are protected, go ahead and identify those, at least for yourselves. And I would urge you maybe to make the other party aware that you have them and you intend to treat them as privileged. The more things that we know about that up front, I think the better off we are. And, hopefully, when we move to the formal stage, we can get those kinds of matters taken care of up front in some way perhaps with some kind of an omnibus motion or something, you know, of that nature, to get these documents taken care of quickly, to the degree they have been already identified

as privileged or protected in some way. 1 All right. Anyone else want to say anything on 2 3 the subject of privileged or protected documents? MS. NAKAHARA: This is Connie Nakahara again. 4 5 Gaukler and I discussed last week, and I will make this notice for all parties, that the state is claiming a number 6 7 of documents, relatively few documents, with attorney work product or attorney-client privilege and we are beginning to 8 make a log to justify the claims. 9 10 JUDGE BOLLWERK: Okay. That is a good -- that sounds like the kind of thing we want to -- we would 11 encourage you to do. 12 13

MR. BLAKE: I think also, Judge Bollwerk, what came out of part of Mr. Gaukler's review out there was that there was a much larger number of documents which the state initially had believed might be subject to attorney-client or, more properly, work product, which they had now decided, more properly, maybe shouldn't be, and have made them available, to their credit, without us ever really challenging or needing to.

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So I think that each of the parties are focused on this and moving ahead.

JUDGE BOLLWERK: I appreciate that. And one of the things I am hoping is if you look, have a chance to look at these up front a little bit and think about them, as

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opposed to simply reacting quickly in a formal setting, that you will be able to perhaps reflect on them a little bit, and maybe see, as the state apparently has in this instance, that maybe these aren't -- don't necessarily need to be protected. So, again, I hope this process, in giving you a little more time to think about some of these things, may work to everyone's benefit in terms of -- I guess, for want of better terms, let's fight over the things that are really important and not over the things that aren't. All right.

Just let me -- someone had mentioned the question of protective orders. Do you all see any need for additional protective orders for anyone, in terms of any particular set of documents or anything coming up that the board ought to be aware of?

MS. NAKAHARA: This is Connie Nakahara. The only thing, FFS has requested documents that state agencies may have relating to terrorist plans or sabotage. And right now I have got agencies trying to identify any documents within the state. There may be documents that are protected for security reasons and, depending upon the purpose of protection of the documents, we may or may not be able to enter into agreement to give PFS access. But in that case, we may need some protective orders.

JUDGE BOLLWERK: All right. Anyone else on the subject of protective orders?

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24 25 [No response.]

JUDGE BOLLWERK: Well, again, if that is something we can identify up front, that's something let's take care of now and not wait until we get into formal discovery, so that we, again, don't have to spend time on something that needs to be taken care of but can be, you know, kind of -hopefully, a pro forma thing, depending on what it says, and we get it taken care of up front.

All right. Anything else on protective orders from anybody?

[No response.]

JUDGE BOLLWERK: All right. I had mentioned witness lists and it sounds like you all are thinking about I, again, encourage you to think about getting witness lists together or however you want to exchange names of individuals that you would like to -- that you plan on perhaps using as your witnesses or people that you might want to talk with in terms of especially the informal interviews that sound like they are going to be looking toward the end of the month and into the beginning of November.

Anyone want to say anything about witness lists or about informal interviews?

[No response.]

JUDGE BOLLWERK: One thing to make you aware of, I

think we probably, as informal -- or as formal discovery gets closer, we will looking at some kind of a Board Order that sets out certain disclosures for expert witnesses along the lines of Rule 26(a)(2) of the Federal Rules. We will probably wait a little while on that, just give you all a chance to work through the informal interview process, but, again, I think probably some disclosure of expert witnesses. In this context particularly, that can be -- it may well be everyone you have, depending on how you are going to put them forth, along the lines of Rule 26(a)(2), so that is something to be aware of.

Anyone want to say anything on that subject?
[No response.]

JUDGE BOLLWERK: All right. Let me raise a couple of things that are sort of related, although not directly, to discovery. I had come across some information that there was apparently an FOIA suit relating to the Goshute agreement with PFS and some kind of -- in federal Court. Is that correct?

MR. QUINTANA: That is, Your Honor. This is Danny Quintana. My office is working with Paul Estol and a motion to dismiss will be filed on that within the end of the week.

MS. CHANCELLOR: Judge Bollwerk, this is Denise Chancellor. There is another attorney in our office who does Indian law and he is responsible for the lawsuit that

was filed in Federal District Court.

JUDGE BOLLWERK: All right.

MS. CHANCELLOR: It deals with both a FOIA request and the state tried to intervene in administrative procedures before the Bureau of Indian Affairs, and we went through the administrative process through -- before the BIA and were denied status at all levels and we appealed that final agency action by filing a complaint in District Court, and we combined with that complaint the denial of our FOIA request to receive a full copy of the lease between the tribe and PFS. So that is what that lawsuit in Federal District Court is about.

JUDGE BOLLWERK: All right. Does that lawsuit have any kind of a time -- I understand Mr. Quintana has just indicated he is filing a motion to dismiss. Does it have any kind of time schedules the Board ought to be aware of?

MS. CHANCELLOR: My understanding is that the state has filed a motion for summary disposition. I don't -- summary judgment, and I don't know whether PFS and the federal government have responded to that. I think their time to respond to that is up fairly shortly.

MR. QUINTANA: It is. The case is considered by the tribe and by my co-counsel to be completely frivolous and we expect it to be dismissed.

1	JUDGE BOLLWERK: All right. Mr. Blake, is PFS
2	part I take it, I just heard they are. They are part of
3	that case, I take it? Are you an Intervenor?
4	MR. BLAKE: I don't know beans about it, Judge?
5	JUDGE BOLLWERK: Okay.
6	MR. BLAKE: Do you know anything?
7	JUDGE BOLLWERK: Mr. Gaukler?
8	MR. GAUKLER: I don't know anything.
9	JUDGE BOLLWERK: All right. Well, then
10	MR. BLAKE: Other than its existence. Okay.
11	JUDGE BOLLWERK: Okay.
12	MS. CHANCELLOR: Your Honor, PFS is a party to the
13	lawsuit. They did request intervention status in that
14	lawsuit and the state didn't oppose that. And there is
15	another law firm representing PFS, I understand.
16	JUDGE BOLLWERK: Okay. If Mr. Blake and Mr.
17	Gaukler don't know anything about it, I am obviously not
18	going to press them for information they haven't got. So,
19	all right. Well, it sounds like that is proceeding along.
20	To the degree that that will have any impact on
21	this case, in terms of any of the documents that might be
22	involved, I would appreciate someone letting us know, you
23	know, if there something, some disposition that is recent we
24	ought to be aware of on any of that.
25	MR. QUINTANA: I will send the court copies of all

the final pleadings on this. 1 2 JUDGE BOLLWERK: Okay. MR. QUINTANA: Should I do that to all of the 3 4 parties? JUDGE BOLLWERK: I don't know that it is necessary 5 6 for everyone. If someone wants it and you are willing to send it out, I certainly don't have an objection to that, 7 but I don't think you necessarily have to. My request is 8 9 simply to sort of be -- if someone grants, for instance, if 10 the District Court were to grant its motion for summary judgment, or make some kind of a dispositive ruling, I would 11 like to know about that. 12 MS. WALKER: This is Joro Walker. I would 13 appreciate copies of the pleadings. 14 MR. TURK: So would the staff, and I think under 15 16 ex parte rule you really have to serve everyone including 17 secretaries. JUDGE BOLLWERK: Well, obviously, he is going to 18 19 provide -- anything he is going to provide to the Board, that is true. If it is simply a document exchange among the 20 21 parties, that is up to you all. MR. QUINTANA: 'Yeah, these are just pleadings of 22 23 an existing case. 24 JUDGE BOLLWERK: Okay. From the Board's 25 perspective, the only thing I would like to see, if there is

some kind of a ruling on the dispositive motion, for instance, a motion for summary judgment, or motion to It isn't necessary to send us all the pleadings for the case. And in terms of the other parties, you all can exchange those, work out whatever you would like in terms of everybody seeing the documents. It sounds like Mr. Quintana is willing to make them available to whoever wants to see them, so. 

Any questions about that, Mr. Turk? Is that -- MR. TURK: No, that's fine, Your Honor.

JUDGE BOLLWERK: All right. Since we raised the question of summary judgment, just let me ask you a question. We're still early on in this in terms of at least the formal -- obviously we haven't started formal discovery. Any thoughts yet in terms of summary disposition at least with respect to the Group 1 issues? Anybody thinking of filing motions?

I'll take that as a no.

All right. Well, again, from the schedule we set, which we modified somewhat given I guess some of the suggestions from PFS and the staff, obviously the earlier you get your summary disposition motions in, the better, in terms of the number of pages that you have to address the issues.

Let me just raise one related question with the

staff. Have there been any changes in the staff schedule 1 2 that the Board ought to be aware of or the other parties? MR. TURK: No, Your Honor. 3 JUDGE BOLLWERK: So basically what you've 4 5 represented to us in the past still seems to be on track. MR. TURK: Yes, Your Honor. 6 7 JUDGE BOLLWERK: All right. All right, anything that anyone else then wants to 8 raise with the Board at this point in terms of discovery or 9 10 anything else in the proceeding? MR. KENNEDY: Your Honor, this is John Kennedy. 11 In speaking with the State today, I was informed that some 12 kind of an amended application was submitted. Is that true? 13 14 JUDGE BOLLWERK: I can -- what I can -- well, what 15 I can tell you is that I received a copy of an amendment to the application -- I believe it was dated approximately 16 17 August 28; don't hold me to that date exactly -- in which there were some changes of various types made. It seemed to 18 me the main one was an alternate rail route down the west 19 20 side of the Skull Valley. And if Mr. Blake wants to say anything about that, I'll let him at this point. 21 22 MR. BLAKE: No, that's a fair characterization, and I don't know, we've had -- we've not been perfect before 23 in the distribution of things to everybody. 24 I will have to

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double-check to find out what distribution was made.

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1	think some of the parties at least must have received did
2	you get one, Denise?
3	MS. CHANCELLOR: Yes. We received a copy of the
4	application on the 31st of August, and I have a question and
5	we're waiting for that after we get through with this issue.
6	MR. BLAKE: I don't really know, Judge, but I'll
7	double-check.
8	JUDGE BOLLWERK: All right. I know it had a
9	distribution list on it. I must admit I did not check it
10	carefully in terms of who I think I saw Ms. Chancellor's
11	name on there. I don't know if I saw Mr. Kennedy's name or
12	not. But
13	MR. KENNEDY: I'm wondering if any of the other
14	intervenors have received or not received copies of this
15	amended application.
16	MS. WALKER: This is Joro Walker for OGDE. I did
17	not receive a copy of the amended application.
18	MR. ALLEN: Bryan Allen for Castle Rock. We did
19	not receive one either.
20	MR. BLAKE: Well, it's pretty well narrowed down.
21	JUDGE BOLLWERK: I'm sorry, who was that?
22	MR. BLAKE: I'll follow up, Judge.
23	JUDGE BOLLWERK: All right.
24	MS. WALKER: This is Joro Walker again. I was
25	wondering, is there going to be a notice of this amendment

in the FR -- Federal Register. 1 MR. BLAKE: No, I wouldn't expect one. I quess 2 3 Jeff would have to answer for sure. 4 JUDGE BOLLWERK: Mr. Turk, do you want to say anything about the staff's practice? 5 6 MR. TURK: We normally do not notice revisions to applications, but -- and I don't think this one will be 7 noticed either. 8 9 MS. WALKER: Is a revision different than amendment? 10 11 MR. TURK: In my mind it's the same. MS. WALKER: Do the regulations speak to that? 12 MR. TURK: In terms of notices? 13 MS. WALKER: Um-hum. 14 MR. TURK: No. 15 16 MS. WALKER: They don't. 17 MR. TURK: No. Essentially what the applicant submitted were page changes, came in with a set of pages for 18 each of the different volumes of the application, 19 environmental report, emergency plans, and safety analysis 20 21 report, and said please insert these pages in lieu of the pages that were there. 22 MR. BLAKE: That's what I've received. 23 24 MS. WALKER: Well, it's my understanding that the 25 transportation route is now going to go over BLM land, and I

would think that that would raise issues -- there might be concern of people that are not intervenors right now because of the environmental consequences of a route like that.

MR. KENNEDY: I would agree with -- this is

Kennedy -- I would agree with that, and there may also be

additional contentions that existing parties would want to

raise and possibly it would make sense at this point to try

to set some sort of a timetable for submitting additional

contentions upon receipt of a copy of whatever has been --

MS. CHANCELLOR: Judge Bollwerk, this is Denise Chancellor. I would not describe the license amendment as merely some pages to insert in the license application. While that is the way the amendment is structured, it is a significant amendment to the license application. It changes the point of where the casks will be transported by rail. There's significant changes to the environmental report in terms of describing the vegetation, habitat, and other impacts that will occur because of this amendment.

And the State has reviewed the amendment and we're in the process of getting ready to file new contentions based on that license amendment. And I have contacted the parties to get their approval to file additional pages because of the nature of the license amendment. And I've requested a limit of 20 pages rather than the 10 pages you set back in a previous order.

JUDGE BOLLWERK: All right. 1 MS. CHANCELLOR: And none of the parties have 2 3 objected to that. So I thought I would take this opportunity to request from the Board permission to file up 4 to 20 pages for the new contentions relating to the low new 5 rail transportation corridor. 6 7 JUDGE BOLLWERK: All right. I take it that the 20 pages is for all contentions you're going to file, I take 8 it. 9 10 MS. CHANCELLOR: That's correct. That would include the introduction, the late-filed factors as well --11 JUDGE BOLLWERK: Okay. 12 13 MS. CHANCELLOR: As the actual contentions themselves. 14 JUDGE BOLLWERK: From the Board's perspective I 15 16 don't see, especially if everyone seems to agree to it, I don't see a problem. I would appreciate though if you would 17 18 just file a brief motion so that we can put it on the record 19 and have the papers there. 20 MS. CHANCELLOR: Could I file that at the same 21 time that I file the contentions? JUDGE BOLLWERK: Why don't you go ahead and file 22 it now if you plan on -- if you know that's what you want. 23 24 Go ahead and do it now. MS. CHANCELLOR: Okay. Do I have to wait for a 25

response? I'm about to file the contentions within the next 1 day or so is the reason why I'm asking these questions. 2 JUDGE BOLLWERK: Wait for a response from? 3 MS. CHANCELLOR: From you for permission to do 4 that, or can I take our conversation today as permission? 5 JUDGE BOLLWERK: Well, put it this way. If you 6 7 file the motion promptly, I don't think you're going to have I mean, the rule I set up is that we ought to any problem. 8 have any page extensions I think it was three business days 9 before the filing. So my suggestion then would be just to 10 get the motion in properly. And it doesn't have to be 11 particularly long. It sounds like everybody's in agreement, 12 13 okay? MS. CHANCELLOR: Okay. 14 MR. TURK: Your Honor, I would note for the staff 15 that we do not object to the 20-page request from Ms. 16 Chancellor when she called this morning. 17 18 JUDGE BOLLWERK: Right. MR. TURK: She did indicate in her conversation 19 with me that she would not oppose the same sort of a page 20 21 limit being given to parties who respond, if they need it. JUDGE BOLLWERK: All right. 22 MS. CHANCELLOR: That's correct, Your Honor. Ι 23 have no objection to that. 24 JUDGE BOLLWERK: All right. Then I think from the 25

Board's perspective the best thing to do would be to get 1 that motion in promptly, and then we'll rule on it, and 2 then, you know, you can take that into account when you file 3 your pleading. 4 MS. CHANCELLOR: Okay. 5 JUDGE BOLLWERK: And I can promise you if we have 6 it, you'll get a response within 24 hours, so --7 MS. CHANCELLOR: Okay. You'll get an e-mail 8 9 today. JUDGE BOLLWERK: All right. Very good. 10 Anything else on that subject? 11 MS. WALKER: Yes, this is Joro Walker. What about 12 setting up some sort of timetable for new contentions based 13 on the amendment of the application? 14 JUDGE BOLLWERK: Well, in terms of a timetable, I 15 mean, normally what happens is people file late-filed 16 contentions and at that point there are then motions or 17 responses that are filed as to whether the contentions meet 18 the late-filing requirements, one of which is timeliness. 19 MS. WALKER: I mean, because we didn't get a copy 20 of the application --21 JUDGE BOLLWERK: Um-hum. Then I take it that's 22 one of the arguments you would be making in terms of, you 23 know, the timeliness of any contentions you're filing. 24

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MS. WALKER: Okay. And --

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JUDGE BOLLWERK: I'm not trying to put words in 1 your mouth here, but that strikes me -- now I'll let the 2 staff or the applicant say something about that if they want 3 to, but --4 MR. BLAKE: It sounds like a pretty good argument 5 to me, Judge. 6 7 MS. WALKER: Well, thank you for your advice. don't know, am I reading the regulations wrong, because I'm 8 looking at 72.16 with regard to notice of amendments, public 9 notice in the Federal Register. Am I making a mistake here? 10 MR. BLAKE: You're talking about amendments to an 11 existing license which typically is noticed by the staff, or 12 13 just an amendment or revision to an application? have the regulations in front of me. 14 MS. WALKER: So that's what it means, that it's an 15 existing license. Okay. So then in terms of getting other 16 parties who might be interested in this new alignment 17 involved, then they just have to rely on word of mouth. 18 JUDGE BOLLWERK: Again, I'm not -- they say there 19 was a distribution list with this. I don't know how that 20 21 list was drawn up. I know Ms. Chancellor's on it, the Board 22 is on it. That's something that you need to talk with Mr. 23 Blake about. MR. TURK: In response to Ms. Walker's question 24

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about 72.16 --

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1 MS. WALKER: Yes, I've been -- it's been explained 2 It's an existing license as opposed to a license 3 application. MR. TURK: Oh, no, 72.16 says it relates to a 4 filing of an application as opposed to amendments to an 5 application. So you have to initially --6 7 MS. WALKER: Well, it says application for a license or a license amendment. 8 MR. TURK: Okay. 9 10 MS. WALKER: Under this part. So I took that to 11 mean an amendment to a license application, as opposed to an amendment to a license. 12 13 MR. TURK: I think we're on the same track right 14 now. JUDGE BOLLWERK: All right, anything anyone else 15 16 wants to say on this subject? 17 MR. KENNEDY: Well, I just want to make clear --18 this is Kennedy. 19 JUDGE BOLLWERK: Yes, sir. 20 MR. KENNEDY: Federated Tribes. That we have not 21 received a copy of this amended application. understand it, neither has OGD nor Castle Rock. So I just 22 think that ought to be clear on the record of today's 23 24 discussion. JUDGE BOLLWERK: All right. 25

MR. TURK: I wonder if the applications are -- I'm 1 sorry, if the amendment is in the PFS document room in Salt 2 Lake City. 3 MR. BLAKE: Jeff, I don't know the answer, but you 4 can rest assured we'll be on this immediately after we hang 5 up, and try to find out. 6 7 MR. TURK: I don't know the answer. It may be It may be in the NRC's LPDR. I don't know if enough 8 there. time has lapsed for it to get there by now. It's about a 9 It should be there by now. Maybe even --10 MR. KENNEDY: Well, it seems to me that there's an 11 12 affirmative obligation to serve an amended application on people who've been granted intervenor status, and we 13 shouldn't have to be going down to find out if something's 14 been put --15 MR. BLAKE: I don't really want to argue the point 16 17 at this point unless you want us to, Judge. I suspect also that it is at the LPDR, MR. TURK: 18 because I received my copy through the formal writs 19 20 distribution process at least a week -- I think about two weeks ago. So you may find it there already. I just don't 21 know for a fact because I haven't seen the -- I haven't been 22 to the PDR to examine that. 23 JUDGE BOLLWERK: All right. Well, at this point I 24

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take it, Mr. Blake, you're going to be looking into this.

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MR. BLAKE: Yes.

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JUDGE BOLLWERK: All right.

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MR. BLAKE: I've already told Ms. Walker.

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thought she had a dandy argument.

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6 is that, you know, whenever there's something filed, the

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Board will rule on it, and whatever you want to ask us for

JUDGE BOLLWERK: Okay. The other thing I'll say

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or whatever you want to put in the form of a motion, or

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obviously Ms. Chancellor apparently is planning on filing a

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motion to have the late -- certain late-filed contentions

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admitted. So we'll wait to hear from you all in terms of

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what further filings you want to make relative to the

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amendment to the application.

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MR. BLAKE: I would really encourage Ms. Walker and Mr. Kennedy or anybody else to give us a call, too, and if you think there's something out there and you haven't gotten it, let us know. On this one in particular, we'll look into it now and follow up and do the things that are right about distributing anything extra that needs to be, and then I want to talk with you about what you'd like in the way of time and see if we can come to an agreement rather than necessarily coming to a big squawk that we have to take to the Board.

I understand what you're saying. You haven't gotten a copy, and you'd like a copy before you have to file

contentions. It all makes sense to me. Obviously we'd like to get on with it as quickly as we can, and I'd like an opportunity to talk with you before we turn it into a war.

and I'm not going to -- well, if you want to talk to Ms.

Chancellor, feel free to do that as well. Maybe what she has is something you can use. I have no idea. There's nothing wrong with joint contentions, either, a joint late-filed motion -- motion for late-filed contentions. So I don't want to hold her up. She obviously has other, you know, a timetable in mind. So -- all right, any other questions or comments on that subject?

All right, anything else in terms of anything we talked about or anything anybody wants to raise with the Board?

All right, hearing nothing, again I appreciate --

MR. QUINTANA: This --

JUDGE BOLLWERK: Yes.

MR. QUINTANA: This is Danny Quintana.

JUDGE BOLLWERK: Yes, Mr. Quintana.

MR. QUINTANA: On the lawsuit that was filed by the State of Utah that's currently pending in district court, which Hol Estol is counsel on, did you want me to just send a copy of the final motions on that to the parties, because to send all of the pleadings on everything

to all of the parties is going to require some effort on the 1 part of the staff, and again dispositive motions are being 2 filed on that this week. 3 JUDGE BOLLWERK: It's sort of really up to you all 4 as to how you want to work it out. As I said, all the Board 5 6 is interested in, if there's a ruling on a dispositive 7 motion, we'd like to know about that. If you want to attach the ruling, that's fine too. I'm more interested in seeing 8 9 the actual rulings when something comes out from the court 10 rather than simply the motions that go in. MR. QUINTANA: That's what I would recommend. 11 don't I just do that? 12 13 JUDGE BOLLWERK: All right. And then in terms of anything that you want to work out with Ms. Walker or 14 anybody else on any other filings, I'll leave that up to you 15 16 all. It's really --MR. QUINTANA: Yes, they're free to obtain those 17 documents from the Federal Court themselves. 18 MS. WALKER: Yes. Do you have a case number on 19 20 this? 21 MR. QUINTANA: Not in front of me. 22 MS. WALKER: Do you know the title of it? 23 MR. QUINTANA: Actually the State of Utah could probably give you the best information on that, since it's 24 their case. 25

MS. CHANCELLOR: I'd be happy to provide you with 1 any information you need. 2 3 MS. WALKER: Great. Thanks, Denise. JUDGE BOLLWERK: All right. Just let me mention 4 in terms of future scheduling, I think we will ask for 5 another status report, and perhaps in about three weeks, and 6 I think this one we'll have it done in writing, given it 7 looks like you're headed toward informal interviews at that 8 9 point. And I guess one of the things we'd like to hear about in that status report, and I'll put out an order and 10 give you a specific date, is the status of informal 11 12 interviews. It sounds like that's the next major step here. 73 Also, anything you want to provide the Board, additional 14 information about discovery, document exchanges, or 15 privileged documents, the sort of thing we talked about 16 here. 17 Would the parties be amenable to having the next 18 status report in writing rather than having a conference 19 call, or what do you prefer? Any preference one way or the 20 other? 21 MR. KENNEDY: I think the status call over the phone is fine, Your Honor. This is Kennedy. 22 23 MR. ALLEN: This is Bryan Allen. I think a 24

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conference call is easier, too. I think by the time you

circulate multiple drafts of a written report, it takes much

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more time.

JUDGE BOLLWERK: All right.

MR. ALLEN: Phone call.

JUDGE BOLLWERK: Anyone else have any feelings on that?

MR. TURK: Your Honor, for the staff, I think the written filing has always proven to be pretty easy to coordinate. When Mr. Blake has put together a draft and e-mailed it to people, I think it's been agreed on pretty quickly. I think we can save the expense of a court reporter and all the time involved in trying to set up a conference call by doing it that way.

JUDGE BOLLWERK: Mr. Blake, do you have any comments on this, since you probably -- this looks like everybody's looking to you to --

MR. BLAKE: I don't want to break this tie, Judge.

JUDGE BOLLWERK: All right. Okay. We'll think about this. I'm perhaps inclined to go ahead with something in writing, because I think it probably is not going to be too extensive. But we'll talk about that and then we'll give you something and a date on which we'd like to see it. Just so you know, probably something toward the middle to end of October we'll be looking for another status report or a conference perhaps in November, and then a final one perhaps in the middle of December. All right? So we're

looking kind of following this in at least twice more or probably three times more. All right, any other comments from anyone? Okay, at this point again I like the word "cooperation," go forward in that spirit, we appreciate everyone making themselves available, and if anyone has any motions or whatever they're going to file, we'll respond to them when we see them. At this point we stand adjourned. I thank you very much. [Whereupon, at 1:56 p.m., the prehearing conference was concluded.] 

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NAME OF PROCEEDING:

PRIVATE FUEL STORAGE, L.L.C.

PRE-HEARING CONFERENCE

CASE NUMBER:

72-22-ISFSI

PLACE OF PROCEEDING:

Rockville, MD

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Doug Swift

Official Reporter

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