

Tim Vollmann
3301-R Coors Rd. N.W. #302
Albuquerque, NM 87120
Telephone: (505) 792-9168
Facsimile: (505) 792-9251
Tim_Vollmann@hotmail.com

*Attorney for Movant-Intervenor
Skull Valley Band of Goshute Indians*

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

MARGENE BULLCREEK, *et al.*,
Petitioners,

v.

UNITED STATES NUCLEAR REGULATORY
COMMISSION, and the

UNITED STATES OF AMERICA,
Respondents,

SKULL VALLEY BAND
OF GOSHUTE INDIANS,
Movant-Intervenor.

No. 03-1018

**INTERVENOR SKULL VALLEY BAND OF GOSHUTE INDIANS'
REPLY TO RESPONSE TO MOTION TO DISMISS**

Intervenor Skull Valley Band of Goshute Indians ("the Band") respectfully files this Reply, pursuant to Circuit Rule 27(a)(4), to Petitioners' Opposition to the Band's Motion to Dismiss. The Band contends in its Motion that Petitioners are not "part[ies] aggrieved" within the meaning of 28 U.S.C. § 2344— neither the nine individual petitioners, nor Ohngo Gaudadeh Devia (OGD)— and that they may not therefore invoke the jurisdiction of this

Court pursuant to 28 U.S.C. § 2342 to review the denial of the State of Utah's rulemaking petition.

A. FEDERAL COURTS HAVE NO JURISDICTION OVER INTRATRIBAL DISPUTES.

Petitioners' Opposition begins with a recitation of "Facts" (at pp.2-4), which is a brief and selective history of internal dissension within the Band. This provides no support for the proposition that Petitioners are "parties aggrieved", and is thus irrelevant. In addition, the Opposition refers to the Intervenor Band as "the Leon Bear faction", inviting this Court not to recognize the Intervenor as the federally-recognized Indian tribal government. However, Federal courts have no jurisdiction to interject themselves into internal tribal disputes. That would constitute "an interference with tribal autonomy and self-government" Santa Clara Pueblo v. Martinez, 436 U.S. 49, 59 (1978). Lest Petitioners' assertions be taken at face value, attached as Exhibit A is a May 24, 2002, letter to Chairman Leon D. Bear from the Assistant Secretary of the Interior for Indian Affairs, reconfirming the agency's continued recognition of the current leadership of the Band.

B. THE NINE INDIVIDUAL PETITIONERS ARE NOT PARTIES AGGRIEVED.

Petitioners' Opposition offered no evidence or support for the proposition that the nine individual petitioners qualify as "parties aggrieved", as they could not, since there is nothing in the rulemaking record that any of the nine participated as parties to the agency proceedings. They argue only that, as members of OGD, they should have been considered to have participated as parties. In fact, there is nothing in the administrative record (or the

record before this Court) to indicate that these nine individuals were members of OGD at any time during the agency proceedings.

The proposition that these nine individuals have statutory standing as “parties aggrieved” due merely to their alleged membership in OGD is patently absurd. If this were correct, then each member of such an association could file an individual petition for review of any agency action, as long as an organization of which it was a member had been a party to the agency proceeding. Such a loose interpretation of 28 U.S.C. § 2344 could hardly require such individual “parties” to take uniform positions in the Circuit Court; there could be as many positions and as many briefs as there are members of the association. The strict requirement that a petitioner be a “party” to the agency proceeding admits of no exception. Erie-Niagara Rail Steering Committee v. Surface Transportation Board, 167 F.3d 111 (2nd Cir. 1999).

C. OGD IS NOT A PARTY AGGRIEVED.

Petitioners’ Opposition characterizes the OGD filing of its untimely October 18, 2002, “Joinder” of Utah’s rulemaking petition, as having been done “out of an abundance of caution” (p. 8), because OGD was already participating in the licensing proceedings before the Atomic Safety and Licensing Board. Petitioners then point out that OGD filed a 2-page brief with the Board on May 15, 2002, “in Support of Utah’s Suggestion of Lack of Jurisdiction”. Neither filing establishes that OGD was a party to the rulemaking proceeding.

Although the jurisdictional issue raised by the State in the licensing proceeding is identical to the legal issue raised in the rulemaking proceeding, they are two separate proceedings. Indeed, the Bullcreek Petition for Review in No. 03-1018 honored this

distinction. Footnote 1 on page 2 of the Petition states: “The Petitioners do not petition for review of the Order to the extent it resolves Utah’s Suggestion of Lack of Jurisdiction ... in the licensing proceeding” The point of this footnote should be apparent. Petitioners know that there has been no final agency action in the licensing proceeding, and that the NRC’s orders in that proceeding are not ripe for review. Nonetheless, on December 1, 2002, OGD prematurely filed a petition for review in the 10th Circuit (No. 02-9583) from an October 1, 2002, Memorandum and Order of the NRC denying OGD’s lone remaining contention opposing the license application. Private Fuel Storage, L.L.C., CLI-02-20, 56 NRC 147.¹

It was only after that October 1 adverse decision in the licensing proceeding that OGD filed its belated “Joinder” in the rulemaking proceeding— ostensibly in the desire to provide OGD with an opportunity to do some forum-shopping with its challenges to NRC orders. But, as pointed out in the Band’s Motion to Dismiss, there was no meaningful or timely participation in the rulemaking proceeding on the part of OGD. Nor does OGD’s brief in the licensing proceeding qualify it as a “party aggrieved.” Because these are two separate proceedings, the sum of OGD’s two 2-page filings does not make OGD a “party”.

The Opposition’s argument concludes with the self-serving assertion (footnote 6, p. 12) that “[t]he Goshute petitioners are independent, represented by independent counsel, and have a uniquely personal investment in the issue presented by this case.” Such a claim of independence and “personal investment” is a sham, as the State of Utah is paying Petitioners’ attorney fees and costs. See Exhibit B, an invoice for Petitioners’ legal services approved for payment by Utah’s Special Assistant Attorney General and the Executive Director of the

¹ On December 16, 2002, Respondent Intervenor Private Fuel Storage filed a Motion to Dismiss No. 02-9583 for lack of jurisdiction. On December 20, 2002, the NRC moved the 10th Circuit to hold the case in abeyance.

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing Intervenor Skull Valley Band of Goshute Indians' Reply to Response to Motion to Dismiss were served upon the following by United States mail, first class postage prepaid, on this 10th day of April 2003:

John F. Cordes, Jr., Esq.
Solicitor
Office of General Counsel
U.S. Nuclear Regulatory Commission
Washington D.C. 20555

Maureen Rudolph, Attorney
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 4390, Ben Franklin Station
Washington, D.C. 20044-4390

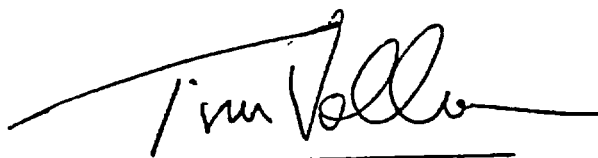
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Jay E. Silberg, Esq.
SHAW PITTMAN, L.L.P.
2300 N Street, N.W.
Washington, D.C. 20037

Paul EchoHawk, Esq.
Larry EchoHwk, Esq.
Mark EchoHawk, Esq.
EchoHwk PLLC
P.O. Box 6119
Pocatello, ID 83205-6119

Diane Curran, Esq.
Harmon Curran Spielberg & Eisenberg L.L.P.
1726 M Street, N.W., Suite 600
Washington, D.C. 20036

Monte Stewart, Esq.
Special Assistant Attorney General
Helen A. Frohlich, Esq.
Assistant Attorney General
Mark L. Shurtleff, Esq.
Utah Attorney General
5110 State Office Building
Salt Lake City, UT 84114-2477



Tim Vollmann

Utah Department of Environmental Quality. Subsidizing tribal dissidents is just one example of the State's relentless efforts to prevent the Band from receiving economic benefits from the Independent Private Fuel Storage Facility on its isolated reservation in the Utah West Desert.

Respectfully submitted,

A handwritten signature in black ink that reads "Tim Vollmann". The signature is written in a cursive style with a long horizontal line extending to the right.

Tim Vollmann
Attorney for Movant-Intervenor
Skull Valley Band of Goshute Indians

Dated: April 10, 2003



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

MAY 24 2002

Honorable Leon D. Bear
Chairman, Executive Committee
Skull Valley Band of Goshute Indians, #808
3359 South Main Street
Salt Lake City, Utah 84115

Dear Chairman Bear:

Thank you for your letter of April 25, 2002, informing us of the alleged theft of tribal funds and providing us with information regarding the position of banks holding other funds of the Skull Valley Band of Goshute Indians (Band).

Generally, we rely upon the Bureau of Indian Affairs (BIA) Regional Directors to carry out the government-to-government relations with the federally recognized Indian tribes, which includes the Band. However, in response to the dubious "court order (issued by an entity, that we are not familiar with, namely the "First Federal District Court, Western Region"). we contacted the Agency Superintendent, Uintah & Ouray Agency, Ft. Duchesne, Utah, in late September 2001 to obtain his perspective as the BIA line official closest to the Band.

We were advised then, and have been advised consistently since that time, that the BIA Agency office at Fort Duchesne recognizes you, Leon D. Bear, as the Chairman and Ms. Lori Skiby as the Vice-chairman of the Executive Committee for the Band. In January 2002, in response to a general request to update our tribal leaders directory, the BIA Western Region office in Phoenix, Arizona, again identified you, Leon D. Bear, as the recognized chairman of the Band. We have not been informed of any change in leadership and continue to recognize Leon D. Bear, as the Chairman and Ms. Lori Skiby as the Vice-chairman. We are aware that a March 25, 2002, letter from acting Agency Superintendent Allen J. Anspach reconfirms your status and that of Ms. Skiby as the recognized Band leadership.

We agree that it is important that congressionally appropriated Federal funds transferred to the Band for purposes of implementing Indian Self Determination contracts under provision of the 1975 Indian Self Determination and Education Assistance Act, Pub. L. 93-638, 25 U.S.C. 450 et seq., as amended, be released to the Band in order for the tribe to perform the agreed upon scope of work and carry out the purposes for which Congress appropriated the funds. We also agree that the banks holding tribal funds are

obliged to perform in accordance with the Depositor's Agreement and applicable provisions of the Uniform Commercial Code as codified in the laws of the state, and are dismayed to learn of the wrongful disbursement of tribal funds to unauthorized individuals in reliance upon a fictitious and possibly fabricated "court order."

We agree that it is proper for you, as the recognized Chairman of the Band to demand the release of the Band's funds from the banks for the purposes of tribal administration and for the administration of BIA education and community services programs contracted under Pub. L. 93-638 to provide assistance to members of the Band and other eligible Indians. We feel that it is improper for the subject banks to continue to withhold funds from the recognized, elected leadership of the Band. Unless the banks reach an accommodation forthwith with the Band, we intend to support the Band's Motion for Summary Judgment in *Skull Valley Band of Goshute Indians v. Zions Bank, et al.*, No. 2:01-CV-813 S. U.S. District Court, District of Utah, if such a motion is filed.

Sincerely,



Assistant Secretary - Indian Affairs

cc: Regional Director, Western Region

Zions Bank c/o Robert Goodman
10 East Temple, 5th Floor
Salt Lake City, Utah 84111

Brighton Bank c/o David E. Worthen
7101 Highland Drive
Salt Lake City, Utah 84121

Bank One c/o Brad Baldwin
50 West Broadway, Suite 300
Salt Lake City, Utah 84101

LARRY ECHOHAWK
 PAUL C. ECHOHAWK
 MARK A. ECHOHAWK
 ATTORNEYS AT LAW
 SALLY A. BEHRE
 PARALEGAL



171 N. 4TH AVENUE, SUITE A
 P.O. BOX 6119
 POPLARFLO, ID 83205-0119
 208.479.1624
 FAX 208.479.1670
 WWW.ECHOHAWK.COM

LAW OFFICES

January 13, 2003

Client: OGD

TO: Monte Stewart
 Special Assistant Attorney General
 5110 State Office Building
 Salt Lake City, UT 84114-2477

JAN 2003

INVOICE

1. Legal Fees

DATE	DESCRIPTION	HOURS
12/1/2002 – 12/31/02	General Legal Services (see attached billing statements)	Larry: 34.3 Paul: 28.4 Mark: 34.4

- Per the Revised Agreement, the legal services are billed at \$8,000.00 per month.
 97.10 total attorney work hours in December, 2002.

TOTAL LEGAL SERVICES	\$8,000.00
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2. Expenses

DATE	DESCRIPTION	AMOUNT
Dec. 1, 2002 through Dec. 31, 2002	Expenses –EchoHawk Law Offices (see attached expense sheet)	\$2,284.85
TOTAL EXPENSES		\$2,284.85

Deduction for previous quarter overages - 3,270.00
 Previous Balance 1,588.92
 Paid or Disputed (see p. 6) (1,050.17)
TOTAL BALANCE DUE ~~\$8,603.77~~
\$ 7,553.60

Approved for payment
 of \$7553.60
 Danner Johnson
 2/04/03 X118

O.K for payment.
 Monte Stewart