

William D. (Bill) Peterson
 300-year SNF disposal solution
 68 W Malvern Ave
 Salt Lake City, Utah 84115
 Tel 801-915-9455, E-mail paengineers@juno.com

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U.S. COURT OF APPEALS FOR
 DISTRICT OF COLUMBIA CIRCUIT

DEC 19 2005

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In The
 United States Court of Appeals
 District of Columbia Circuit
 333 Constitution Avenue NW, Room 5423
 Washington D.C. 20001
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UNITED STATES COURT OF APPEALS
 FOR DISTRICT OF COLUMBIA CIRCUIT

FILED

DEC 19 2005

CLERK

William D (Bill) Peterson	!	
Intervener, Petitioner, Third Party Plaintiff	!	
v	!	MOTION FOR JUDGMENT
State of Utah	!	
Re Governor Jon Huntsman,	!	
Mike Lee, Governor's General Counsel	!	Petition to Intervene
Petitioner, Plaintiff (herein Utah)	!	special new information
v	!	
United States Nuclear Regulatory Commission	!	alternative
Re Commissioners Peter Lyons & Greg Jaczko	!	Spent Nuclear Fuel Solution
Respondent, Defendant	!	
v	!	PETITION
President George W. Bush	!	
Supreme Leader and Controller for	!	U.S. Case Item 05-1420
Spent Nuclear Fuel processing and	!	
Nuclear Waste Deposit Fund	!	Judge: _____

POINTS:

1. Utah is pressing for involvement in spent nuclear fuel (SNF) which is a Federal matter in which U.S. District Court Judge Tina Campbell has ordered Utah out.
2. Disposal of spent nuclear fuel is a Federal matter. It is not a State of Utah matter by order of U.S. District Judge Tina Campbell in U.S. District No.2:01CV00270C.
3. The Congress created the office of Nuclear Waste Negotiator who initiated the current posture in which solutions for SNF disposal are now offered.

4. By Utah's petition for review of the Federal posture of the SNF matter by the U.S. Appellate court, Utah opens confrontation with Private Fuel Storage, Goshute Indian Chief Leon Bear, and William Peterson who are lawfully working in the matter, where Utah is not!

5. Now Utah again risks being subject to Federal orders to cease and desist activities it is using to thwart the development of nuclear energy, which is needed to save the nation from the 3-Es: running out of energy, environmental damage, and economic disaster.

6. Utah is causing delays in the development of crucially needed new nuclear energy, costing losses to Peterson, PFS, and INL of at least the Nuclear Waste Deposit fund, now standing at \$3 million per day. Actually this amount needs to be 25 times greater or \$75 million per day (2500 plants in 15 years see White House Energy report). This does not take into account any of the damages due to the deficiencies caused in the 3-Es, which is much greater.

MOTION FOR JUDGMENT:

1. Utah admits the averments of Peterson petition, by its failure to answer.
2. Utah has no solution for spent nuclear fuel (SNF) disposal. Utah does not work to make any solution for SNF disposal. Utah has only a policy to keep nuclear energy matters out of Utah. Utah's interests in SNF disposal are solely political to gain personal public attention.
3. Utah lacks statutory standing, knowledge, scientific support, and even interest in the issues to attain an SNF solution, and so Utah does not work for a solution in the SNF issue.
4. Peterson and Indian Chief Leon Bear, have rightfully responded to the legislation of the Congress via the Presidents' via the Nuclear Waste Negotiators and rightfully work for disposal solutions for SNF. They are solely and uniquely postured to do this work.
5. Peterson and Bear each offer potential SNF storage sites needed by the nuclear utility industry to continue operations and even grow. No other storage alternatives are offered.

6. Peterson offers a 300-year solution for permanent disposal of SNF. No other permanent disposal solution is offered, available, known, or possible.

7. Utah had its votes in this issue in the Congress, and the Congress and Presidents have made the current law and posture for SNF disposal.

8. Utah has wrongfully invented and made wrongful opposition to nuclear power. Utah has wrongfully deterred and delayed the development of nuclear power for two decades that has caused deficiencies and troubles in U.S. energy, environment, and economy.

9. Utah has brought the SNF disposal issue to this appellate court. There are issues that need to be resolved or else the intentions of the Congress for U.S. energy needs, environmental pollution and global warming problems, and U.S. economic balance of trade problems cannot be resolved.

10. Utah has created huge extraneous problems that have filtered into every state in our Nation that now hampers all the members of Congress ability to deal with the SNF issue.

11. The situation is so messed up by Utah's political misrepresentations that this matter needs orders from the court to get the issues rightfully back on track for the Congress and President.

12. Peterson moves the Appellate Court ratify the U.S. District Court order of Judge Tina Campbell in U.S. District No.2:01CV00270C.

13. The utilities are now expected to store SNF at their own expense despite the stipulation of the Federal Government contract requiring that SNF belongs to the Government and after 5 years the Government is required to take possession of SNF and remove it from utility sites. The nuclear utilities will not both pay for storage, reprocessing, and disposal of SNF and also pay one mil per kWh into the Nuclear Waste Disposal Fund. The Federal Government must get square with the nuclear utilities.

14. Peterson moves the Appellate Court move the payment of the Nuclear Waste Deposit fund back from the U.S. General fund to Peterson, Bear, Private Fuel Storage, and the Idaho National Laboratory (all work with NRC oversight) for development of intermediate storage and 5-9s reprocessing of SNF that will attain its permanent disposal according the 300-year disposal solution.

15. Peterson moves the court find Utah's activities in SNF disposal unlawful and contrary to Congress's legislation and order of the U.S. District Court order of Judge Tina Campbell in U.S. District No.2:01CV00270C. Peterson moves Utah be assessed for damage it has caused.

16. It has taken two decades to posture this. We do not have time to do this over again.

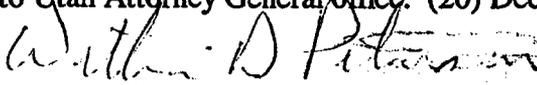
Dated this 17th day of December, 2005.



William D. (Bill) Peterson

CERTIFICATE OF E-mail SERVICE / DELIVERY

Copies of this MOTION were sent this date by Internet e-mail transmission to (1) Atomic Safety Licensing Board Judge G. Paul Bollwerk, III, Esq., Judge - Dr. Jerry R. Kline, and Judge - Dr. Peter S. Lam, (2) Nuclear Regulatory Commissioners Dr. Peters Lyons and Greg Jaczko, (3) Secretary of Energy Sam Bodman (4) Senate House Energy Committees, (5) OCRWM Director Jeff Williams, (6) EPA Director Betsy Forinash, (7) Governor of Utah Jon Huntsman, via Utah Governor Correspondent Jami Palmer, (8) Utah Governor Correspondent Anna Atwater (9) Utah Energy Adviser Dr. Laura Nelson, (10) Box Elder County Commission, (11) Park Valley Committee for Pigeon Spur SNF Work Employment, and (12) Grouse Creek Committee for Pigeon Spur SNF Work Employment. (13) PFS President John Parkyn, (14) Skull Valley Goshute Indian Chief Leon Bear, (15) Associated Press Writer Paul Foy. (16) Attorney Fred Nelson in Utah Attorney General Office. (17) Denise Chancellor in Utah Attorney General Office, (18) Saturday, Dec 17, 2005, mailed to Appellate Court in Washington D.C. (19) Monday Dec 19, 2005 Hand delivered to Utah Attorney General office. (20) Dec 17, 2005, Emailed to Nuclear Solutions Group.



William D. (Bill) Peterson
December 17, 2005

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ATTACHMENTS:

Local News Paper Articles

Salt Lake Tribune Saturday, December 17, 2005
Utah scores in nuke-dump fight
Skull Valley: The bill would stop a rail line to a proposed nuclear storage site
Wilderness: The bill blocking a rail line to the PFS site clears key panel leaders.
By Robert Gehrke WDP file: c:\p\nuc\LAUTvNRC\T121705list.doc

Deseret Morning News Saturday, December 17, 2005
Utah nuclear waste foes 'wild' about defense bill
New wilderness would block Skull Valley rail line
By Suzanne Struglinski WDP file: c:\p\nuc\LAUTvNRC\D121705wild.doc

Deseret Morning News Saturday, December 17, 2005
Hatch says his Yucca opposition helps Utah
By Suzanne Struglinski WDP file: c:\p\nuc\LAUTvNRC\D121705Hatch.doc

Deseret Morning News editorial Saturday, December 10, 2005
Don't let up on nuke fight
WDP file: c:\p\nuc\LA\DFight12105.doc

Salt Lake Tribune, Saturday, Dec 17, 2005

Article Last Updated: 12/17/2005 01:56:31 AM

Utah scores in nuke-dump fight

Skull Valley: The bill would stop a rail line to a proposed nuclear storage site

Wilderness: The bill blocking a rail line to the PFS site clears key panel leaders

By Robert Gehrke
The Salt Lake Tribune

WASHINGTON - Utah's congressional delegation achieved a significant, hard-fought victory Friday in its effort to block a nuclear waste storage site in the state, winning approval of a wilderness area aimed at blocking a rail line that would deliver the waste.

The Cedar Mountain wilderness language was approved by leaders of the House and Senate armed services committees after a weeks-long push by Utah members of Congress who were aided by Gov. Jon Huntsman Jr., environmental groups and Nevada Democratic Sen. Harry Reid.

The creation of the 100,000-acre wilderness area would prevent the preferred route for a rail line to the Skull Valley Goshute Indian Reservation 45 miles southwest of Salt Lake City, where a group of electric utilities known as Private Fuel Storage has won a license to store 44,000 tons of high-level radioactive waste from nuclear power plants until a permanent home is built in Yucca Mountain, Nev.

"It does not take all their potential routes away . . . but it has slowed down the process and made that more difficult to accomplish," said Rep. Rob Bishop, R-Utah. "We have put a big nail in the coffin, but it's not dead yet and we must dedicate ourselves to working forward to make sure this is killed once and forever."

Backers of the wilderness also say it assures the Air Force will be able to continue to use the Utah Test and Training Range. There was concern that jets would not be able to fly over the waste site to the range, limiting its usefulness.

"This is a significant impediment for Private Fuel Storage's plan to store spent nuclear fuel in Skull Valley and Governor Huntsman is very happy about it," said Mike Lee, counsel to the governor.

PFS has said the wilderness area would not block construction of the site, but would only force the

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consortium to rely on the riskier option of trucking the waste on the two-lane Skull Valley highway.

"We do have another transportation option. It is not our preferred option, but nevertheless, we can carry spent fuel safely on Skull Valley Road if that's the way the Utah delegation insists it be done," said Sue Martin, PFS spokeswoman. "If we do it that way, it will be done safely."

But changing plans could create headaches for PFS. Bishop said the alternate routes are not "as efficient, effective or easy as the rail spur that was proposed."

"Those roads would be immensely expensive and difficult to do," said Sen. Orrin Hatch, R-Utah. "It would be very expensive and there would be lots of litigation if they want to use that road."

The wilderness language was adopted as part of a broader Defense Department policy bill after the leaders of the House and Senate armed services committees wrapped up differences in the final version of the bill.

Both the House and Senate must give final approval to the bill and it must be signed by the president, but those actions almost certain to happen.

The wilderness legislation appeared to be dead as recently as Thursday.

Nevada Sen. John Ensign, a member of the Senate group negotiating the bill, was steadfastly opposed to it, in part because of ill feelings from Hatch and Sen. Bob Bennett's votes in 2002 supporting construction of Yucca Mountain.

But Hatch, Bishop and Ensign met Thursday in Hatch's office in the Capitol and came to an agreement on the provision. Neither Hatch nor Bishop would say what made Ensign change his mind.

Ensign's spokesman, Jack Finn, said that Ensign "came away convinced that, in the Utah delegation, Nevada has an ally in exploring viable alternatives to the nuclear waste storage issue."

The final language included in the defense bill is actually a somewhat watered-down compromise Bishop's original bill that passed the House. It creates a wilderness area but, unlike the original version, would not impose other restrictions on the use of the federal land surrounding the reservation.

Also, it would leave in place a provision requiring the Air Force to report on how nuclear waste storage might impede the military's use of the Utah Test and Training Range, adjacent to the reservation, before the Bureau of Land Management can approve a rail line to the reservation.

With the wilderness in place, Bishop's original language would have lifted the Air Force's obligation. That would have given the BLM the ability to change its management plan for the area, something it can't currently do.

The inclusion of the Cedar Mountain language marks the culmination of a bid five years ago by Rep. Jim Hansen, who has since retired, to slip wilderness language into the bill.

The Hansen version was opposed by environmental groups, who said it was watered down and would not protect the land, and was blocked by Democrats.

Since then, the Utah members have tried several times to pass Cedar Mountain wilderness legislation as part of the PFS fight. This time, after months of negotiation, Bishop had the backing of environmental groups, who fought for the measure. If it wins final approval as expected, the Cedar Mountain area would be the first wilderness created in Utah since 1984.

"This legislation accomplishes something that's never been done before in Utah - unanimous agreement on a Utah wilderness proposal that truly protects Utah's deserving wilderness," Scott Groene, executive director of the Southern Utah Wilderness Alliance, said in a statement. "This kind of wilderness agreement was made possible by the years of work that Utah wilderness activists have poured into protecting Utah's redrock country and deserts."

Utah nuclear waste foes 'wild' about defense bill

New wilderness would block Skull Valley rail line

By **Suzanne Struglinski**

Deseret Morning News

House and Senate negotiators have agreed to include Rep. Rob Bishop's Cedar Mountain Wilderness Area in a massive defense bill. The House and Senate must approve the final version, and the president must sign it before it becomes law.

The proposed protected area includes land where PFS would like to build a railroad to move waste to the proposed storage site on Goshute Indian reservation land in Tooele County's Skull Valley.

nuclear waste still could be moved via trucks to the proposed Private Fuel Storage site, according to PFS spokeswoman Sue Martin. She had not seen a copy of the final language of the proposed bill, so could not comment specifically.

The state, however, has also vowed to block transport of waste over its highways.

Martin said it is safer to move waste via rail in an area where no one lives, rather than on trucks. She said PFS chose rail as its preferred option if the nuclear waste proposal eventually comes to fruition, but the license application also includes the truck option.

Utah's congressional delegation realizes this does not kill the storage site proposal, but members were still ecstatic the wilderness area language stayed in the bill, saying it is another step toward blocking the PFS project entirely.

"This is a time when this delegation, which may be small in number, proves it can pack a pretty good punch," said Rep. Jim Matheson, D-Utah. "We may only be five, but I think this delegation can get a lot done in this country and in this Congress."

Bishop, a Utah Republican, originally introduced the bill in March and was able to attach it to the House version of the 2006 National Defense Authorization bill. Former Rep. Jim Hansen had originally introduced the idea of using wilderness designation to block PFS before he left Congress.

As Congress tries to wrap up its business for the year, weeks of discussion and intense lobbying, including a personal visit from Gov. Jon Huntsman Jr. last week, kept the provision in the defense bill. There was optimism but little certainty, particularly in the past few days, on what the final outcome would be. After a Thursday night meeting with Sen. John Ensign, R-Nev., the delegation was relieved to know it would stay.

"We have eliminated the preferable route for the Private Fuel Storage consortium to take a rail spur into Skull Valley," Bishop said. "We have put a big nail in the coffin, but it's not dead yet."

Bishop emphasized that his proposed legislation does not take all of PFS's

potential routes away, but that it would slow down the process and "make it more difficult to accomplish."

Sen. Bob Bennett, R-Utah, said there is still more to do to block PFS, but this is "a significant step forward militarily and environmentally, and we can all rejoice that we find ourselves in the position we are in."

The final language is not identical to what Bishop proposed in March but a good compromise, according to the delegation. It would protect the fly-zone around the southern portion of the Utah Test and Training Range and the land under it.

Sen. Orrin Hatch, R-Utah, said it was a "major achievement" just to protect Hill Air Force Base, which operates the range, but he said it was also a "serious blow" to PFS, especially when coupled with the fact that a financial backer has pulled out and the Bush administration is working against it.

Rep. Chris Cannon, R-Utah, said this is a critical moment in the fight against the storage site. "Utah should celebrate, because we are not going to be a dumping ground for nuclear rods," Cannon said.

The Southern Utah Wilderness Alliance, which supported Bishop's effort, said that once approved, the new wilderness area would break the 20-year lag since the last time any Utah land received such a designation.

"With the passage of this legislation, not only will Utah get its first new wilderness area in two decades, but Congress will have taken the first significant step in protecting Utahns and other Americans from transportation and storage of this dangerous material," said Lawson LeGate, senior Southwest representative of the Sierra Club.

The delegation said it will continue to work on ways to fight PFS, including getting more companies to drop out of the project and potentially passing legislation that would block PFS's trucking option as well.

E-mail: suzanne@desnews.com

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Hatch says his Yucca opposition helps Utah

By **Suzanne Struglinski**

Deseret Morning News

WASHINGTON — It's four against one in Utah's congressional delegation when it comes to Yucca Mountain, but Sen. Orrin Hatch, R-Utah, believes his reluctance to go against the proposed nuclear waste repository in Nevada has kept the Bush White House on Utah's side in fighting Private Fuel Storage.

Yucca Mountain, in Nevada, was selected as a site for permanent storage of nuclear waste. PFS wants to temporarily store such waste in Utah's Goshute Indian reservation in Tooele County's Skull Valley. Both proposals have generated extreme controversy.

"I stick with the administration, which is ultimately the only way to kill this (PFS) project," Hatch said in an interview.

As the five congressional members stood shoulder to shoulder at a press conference Friday announcing the latest turn in the fight against the proposed nuclear waste site planned for Skull Valley, each acknowledged the others' efforts in getting the job done. Hatch praised his colleagues' work but also focused on help from the White House.

"We need to get continued support of this administration to put this issue to bed with regard to Skull Valley once and for all," Hatch said.

House and Senate negotiators approved Rep. Rob Bishop's Cedar Mountain Wilderness Area in the 2006 National Defense Authorization bill. Although the bill still awaits final passage, the Utah Republican is confident it will make it through. The wilderness designation would rob PFS of a preferred site for a rail line to carry waste to the Tooele site.

The House approved Cedar Mountain earlier this year, but it took intense lobbying and a day-by-day effort to convince lawmakers to keep it in. Hatch said the White House sent people to the Hill to discuss the eventual compromise, something that he thinks would not have happened if he opposed Yucca.

In September, Sen. Bob Bennett, R-Utah, made a Senate floor speech withdrawing his support for the proposed nuclear waste repository at Yucca Mountain, 90 miles northwest of Las Vegas. Hatch and Bennett had voted to move the project forward in 2002.

But Hatch did not withdraw his support, and he says that by sticking with Yucca, which the administration strongly supports, he has been able to get help that will make a difference in the fight against PFS.

"I have never felt good about having to vote for Yucca Mountain, except I understand we need Yucca Mountain," Hatch said in an interview this week.

Bennett's Yucca opposition aligned him with Senate Minority Leader Harry Reid, D-Nev., who strongly opposes Yucca. This also brought him Reid's power to convince Democrats to vote with Utah. Meanwhile, Hatch stuck with the White House, drawing a distinction between the delegation that Hatch says is not going to hurt.

"I decided that I had to work the other side, in spite of criticisms, because if we ever failed just because we were on one side, with one approach, all of us

would rue the day," Hatch said.

Hatch said Air Force Secretary Michael Wynn would not have written a letter last week acknowledging that the Cedar Mountain Wilderness Area would help protect the training range, which is operated by Hill Air Force base, had he not worked with the administration.

"That letter was the key letter that opened the door," Hatch said. "Without the administration, this would not have happened. It's very, very difficult to resolve these kinds of issues because there are all kinds of interests and interest groups."

Hatch said the Bureau of Land Management's decision last week to reopen the public comment period on the proposed right-of-way for the PFS rail would not have happened without the administration's support.

When Hatch also announced last week that Xcel Energy was putting a hold on its funding for PFS and Southern Company announced it was dropping its support completely, Hatch emphasized the administration helped bring those moves about, but he would not go into details how. He said his current seniority and his expected future role in the Senate are important in his arguments for the companies to drop out of the PFS plan.

"They know this is important to me, and I am important to them," Hatch said in an interview.

Hatch has taken the lead on working with the companies because he is slated to be Senate Finance Committee Chairman in 2008, if re-elected in 2006 and if the Republicans keep a majority in the Senate. The committee would handle any type of tax that might be imposed on power companies.

Rep. Chris Cannon, R-Utah, said taxes are a big deal to power companies because other costs are fixed and they are running at 110 percent of their capacity.

Hatch said "Reid's side" is covered by the rest of the delegation and his tenure in the Senate will only help him.

"The only way to kill this project is through the administration," Hatch said in an interview.

But Bennett said nothing has changed with the administration since his Yucca switch.

"I have not received a single comment from the administration since I gave my speech," Bennett said. "They have not made any indication whatsoever that they were in any way unhappy."

Bennett said his alliance with Reid helped the language geared to create Cedar Mountain Wilderness Area to remain in the defense bill. He said the language would always pass the House but would never make it in the Senate.

"We've now come to a different time in the Senate, it's a different atmosphere over here," Bennett said.

He emphasized there was a new willingness on behalf of other states to work on this issue. A growing sentiment among some that nuclear waste should be stored where it is created may fuel some rethinking.

E-mail: suzanne@desnews.com

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Don't let up on nuke fight

Deseret Morning News editorial

The state's roller coaster ride against a nuclear waste dump on the Goshute Reservation has taken some wild turns lately and suddenly started to slow down. However, it is unclear whether this is just a temporary stop to let a couple of people off. For that reason, the state and its congressional delegation can't afford to take chances. They must continue the fight.

Sen. Orrin Hatch announced this week that two of the six investors in Private Fuel Storage, the consortium that planned to ship high-level nuclear waste to Utah, have decided to back off. One, Xcel Energy, has put a hold on its investment. The other, Southern Co., completely pulled out.

Hatch suggested this marks the end to the PFS saga in Utah's western desert. But that seems a bit premature. It was indeed welcome news, but these types of problems don't disappear so easily, especially in a nation chock full of nuclear waste.

As a PFS spokesman said, plenty of other nuclear power utilities are looking for ways to dispose of their spent fuel rods. The Goshute site already has received federal approval for a license to store such waste. With Congress still far from approving a permanent nuclear waste repository, the "temporary" site in Utah remains attractive.

That means the Utah congressional delegation needs to keep working on a bill that would create a federal wilderness area around the site, making it impossible to bring in shipments.

Hatch suggested his continued support for a permanent storage site in Nevada's Yucca Mountain helped him persuade Xcel and Southern to back off. Indeed, both companies apparently pulled away because they felt the Goshute site would not be ready in time and that more attention should be placed on getting final approval for Yucca.

But Yucca isn't any better of a solution than is the Goshute site. With the president's energy policy pushing for a continuation of nuclear production, the idea of creating ever-expanding storage sites for deadly waste is unworkable. Congress and the president would be better served by turning their attention toward fuel-rod recycling technology.

Meanwhile, the on-site storage of nuclear waste has worked well for decades. There is little reason to abandon it to create a transit and environmental disaster in Utah and Nevada.

Westerners can't afford to bequeath thousands of years of contamination to future generations, especially when the waste in question is likely to continue in an endless stream.

We applaud Hatch's announcement and the newfound reluctance of two PFS investors. But as for the state's wild ride on the nuclear waste roller coaster, it's best to still keep arms and legs inside.