

No. 05-1419

Consolidated with 05-1420, 06-1087

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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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OHNGO GAUDADEH DEVIA,  
Petitioner

v.

NUCLEAR REGULATORY COMMISSION and  
UNITED STATES OF AMERICA,  
Respondents

PRIVATE FUEL STORAGE, L.L.C. and  
SKULL VALLEY BAND OF GOSHUTE INDIANS,  
Intervenors

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On Petitions for Review of Orders and a License of the  
Nuclear Regulatory Commission

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11<sup>TH</sup> REPORT ON STATUS OF REMANDED ACTIONS TO  
THE DEPARTMENT OF THE INTERIOR FOR  
APPROVAL OF LEASE AND RIGHT-OF-WAY APPLICATION

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## **BACKGROUND**

This Court's Order of June 26, 2007 required the parties, including the Intervenor Skull Valley Band of Goshute Indians ("the Band") and Private Fuel Storage, L.L.C. ("PFS"), to file a report within 120 days from the date of the Order, and every 120 days thereafter, on the status of any action challenging the Department of Interior's denial of either the lease between the Band and PFS or the requested right-of-way across public land regarding the facility at issue in this case. The Court's June 26, 2007 Order also required the parties, including the Intervenor, to file motions to govern future proceedings in this case within 30 days of the disposition of any action challenging either the denial of lease or the denial of a right-of-way.

The first status report was filed on October 24, 2007. It reported that the Band and PFS filed suit on July 17, 2007, in the U.S. District Court for the District of Utah ("Utah District Court") against officials of the U.S. Department of the Interior, challenging the two adverse Interior decisions of September 7, 2006. Skull Valley Band, et al. v. Cason, et al., No. 2:07-cv-526 TC. Subsequent status reports were filed thereafter in accordance with the Court's June 26, 2007 Order. The second status report was filed on February 21, 2008; the third on June 20, 2008; the fourth on October 20,

2008; the fifth on February 17, 2009; the sixth on June 17, 2009; the seventh on October 15, 2009; the eighth on February 12, 2010; and the ninth on June 14, 2010. Each reported on the status of the lawsuit in the Utah District Court.

On July 26, 2010, the Utah District Court disposed of the action challenging both the lease denial and the right-of-way denial. *Skull Valley Band of Goshute Indians v. Davis*, ---- F.Supp.2d ----, 2010 WL 2990781 (D. Utah July 26, 2010). The court vacated both denials and remanded the right-of-way application and the lease to the United States Department of the Interior for further consideration consistent with the court's decision.

On August 25, 2010, in accordance with the Court's June 26, 2007 Order, the parties, including the Intervenors, filed a joint motion requesting the Court to enter an Order (1) holding this case in abeyance until further Order of the Court and (2) directing the parties to file status reports on December 23, 2010, and every 120 days (or such longer intervals of time as the Court may set) thereafter until this case is no longer held in abeyance.

On November 15, 2010, the Court entered an Order holding this case in abeyance pending further order of the Court and directing the parties, including the Intervenors, to file status reports on December 23, 2010, and

every 120 days thereafter, on the remanded right-of-way application and lease approval.

Pursuant to the Court's Order of November 15, 2010, the tenth status report was filed on December 23, 2010. It reported that since the filing of the August 25, 2010 joint motion, the time for the Department of the Interior to appeal the July 26, 2010 Utah District Court decision had expired with no appeal filed by the Department and that on November 29, 2010, the Band had sent a letter to the Department requesting an agency official be appointed to undertake consideration of the Band's lease with PFS. The report also noted that on December 2, 2010 Tim Vollmann, counsel for the Band, had died in an accident.

Pursuant to this Court's Order of November 15, 2010, Intervenors now file the following 11<sup>th</sup> Report on behalf of the parties.<sup>1</sup> The State of Utah, the Nuclear Regulatory Commission, and the United States of America join in this report.

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<sup>1</sup> The Band has not yet selected another counsel to replace Mr. Vollmann and has authorized PFS counsel to file this report on its behalf as well as that of PFS.

## **ELEVENTH STATUS REPORT**

Since the 10<sup>th</sup> Status Report of December 23, 2010, no further official action has occurred on the remanded right of way application or lease approval.

Respectfully submitted,

/s/ Paul A. Gaukler

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FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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v.	)	No. 05-1419, 05-1420
	)	06-1087
UNITED STATES NUCLEAR	)	(consolidated)
REGULATORY COMMISSION and the	)	)
	)	)
UNITED STATES OF AMERICA,	)	)
Respondents.	)	)
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**CERTIFICATE OF SERVICE**

I hereby certify that true copies of the foregoing “11<sup>th</sup> Report on Status of Remanded Action to Department of Interior for Approval of Lease and Right-of-Way Application” were served upon the following by United States mail, first class, postage prepaid, on the 22nd day of April 2011:

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Dated: April 22, 2011

/s/ Paul A. Gaukler  
Paul A. Gaukler