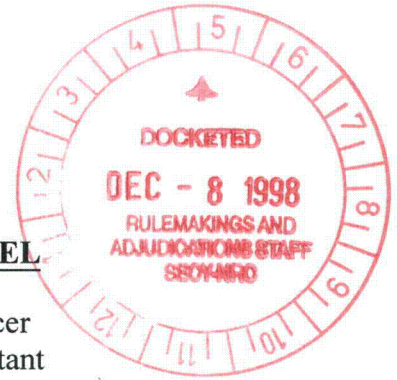


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL



Before Administrative Judges:

Peter B. Bloch, Presiding Officer  
Richard F. Cole, Special Assistant

IN THE MATTER OF:

INTERNATIONAL URANIUM  
CORPORATION  
(Source Material License Amendment)

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Docket No. 40-8681-MLA-4  
ASLBP No. 98-748-03-MLA  
DECEMBER 3, 1998

**INTERNATIONAL URANIUM (USA) CORPORATION'S  
OPPOSITION TO THE PETITION OF  
PACK CREEK RANCH SEEKING LEAVE TO INTERVENE**

INTRODUCTION

By letter dated November 13, 1998, Mr. Ken Sleight, on behalf of the Pack Creek Ranch, Moab, Utah (the "Petitioner"), filed a "Petition for Leave to Intervene Atomic Safety and Licensing Board Panel International Uranium (USA) Corporation Docket No. 40-8681-MLA-4; ASLBP No. 98-748-03-MLA" (the "Petition"). A "cc" of this letter was sent to International Uranium (USA) Corporation ("IUSA") by regular mail on a date unknown; no certificate of service accompanied the mailing. This mailing was stamped "Received" by IUSA on November 23, 1998, and IUSA referred the matter to undersigned counsel on November 25, 1998, at which time, undersigned counsel was out of town on Thanksgiving holiday. These facts were related to Presiding Officer Bloch, via telephone, on November 27, 1998, at which time Judge Bloch granted IUSA until close of business on December 3, 1998 to respond to the Petition.

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## **I. BACKGROUND**

IUSA operates, in accordance with Source Material License No. SUA-1358 issued by the Nuclear Regulatory Commission (“NRC”), a uranium recovery facility called the White Mesa Mill (the “Mill”) in Blanding, Utah. The Mill processes uranium-bearing material to extract the uranium therefrom. Residuals, or “tailings,” from this process, defined as “11e.(2) byproduct material,” are disposed of in an NRC-licensed “cell” or impoundment at the site. IUSA’s Mill is regulated by NRC, pursuant to the Atomic Energy Act of 1954, as amended, and the Uranium Mill Tailings Radiation Control Act of 1978 (“UMTRCA”), as amended, as effectuated by NRC regulations set forth at 10 C.F.R. Part 40, including Appendix A and applicable NRC guidance documents.

On May 8, 1998, IUSA applied to NRC for an amendment to its License No. SUA-1358, to allow IUSA to receive and process uranium-bearing material (i.e., “alternate feed material”) at the Mill. On July 23, 1998, NRC issued the requested license amendment, allowing the receipt and processing of alternate feed known as the “Ashland 2” materials, and the State of Utah filed a petition requesting a hearing on the license amendment that same day. The Presiding Officer issued a Memorandum and Order granting Utah’s petition on September 1, 1998, and on October 15, 1998, notice of same appeared in the Federal Register.

## **II. ARGUMENT**

By the above-referenced letter dated November 13, 1998, Petitioner sought leave, pursuant to regulations promulgated by the NRC<sup>1</sup>, to intervene in this matter and requested a hearing. As detailed below, Petitioner lacks standing to intervene in this matter as Petitioner has

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<sup>1</sup> 10 C.F.R. §2.1205(a).

failed to allege any concrete and particularized injury. Moreover, Petitioner has failed to effect proper service on IUSA and has failed to establish that the request for a hearing is timely. For all of these reasons, and as set forth below, IUSA respectfully requests that the Petition be DENIED.

**A. Petitioner Is Not Entitled To The Requested Hearing.**

1. Standards to be applied.

The Petition requires the Presiding Officer to determine whether Petitioner is entitled to intervene in a hearing on the above-referenced license amendment. NRC's Rules of Practice provide that, in ruling on a request for a hearing, the Presiding Officer

shall determine that the specified areas of concern are germane to the subject matter of the proceeding and that *the petition is timely*. The presiding officer also shall determine that *the requester meets the judicial standards for standing* and shall consider, among other factors --.

(1) The nature of the requester's right under the [Atomic Energy Act] to be made a party to the proceeding;

(2) The nature and extent of the requestor's property, financial, or other interest in the proceeding; and

(3) The possible effect of any order that may be entered in the proceeding upon the requestor's interest.<sup>2</sup>

As demonstrated below, Petitioner has not shown that he has suffered or is likely to suffer any particular harm from IUSA's license amendment, alleging, as he does, only generalized grievances about what he perceives to be environmental degradation inflicted by industry generally, and by "nuclear activities" specifically. Where, as here, Petitioner fails to make a sufficient showing of an injury-in-fact, a hearing request should be denied.

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<sup>2</sup> 10 C.F.R. § 2.1205(h)(emphasis added).

2. Petitioner has failed to demonstrate standing to intervene in this matter.

To demonstrate standing entitling Petitioner to a hearing, Petitioner must show (1) that he has suffered, or likely will suffer, *injury in fact* from the license amendment at issue; (2) that the alleged injury is arguably within the zone of interests sought to be protected by the statute at issue; and (3) that the injury is redressable by a favorable decision in the proceeding.<sup>3</sup> As this Court is well aware, “[s]tanding is not a mere legal technicality, it is in fact an essential element in determining whether there is any legitimate role for a court or an agency adjudicatory body in dealing with a particular grievance.”<sup>4</sup>

To satisfy the "irreducible constitutional minimum" of standing, a potential litigant must demonstrate that there is a "*concrete and particularized injury* that is: 1) actual or imminent; 2) caused by, or fairly traceable to, an act that the litigant challenges in the instant litigation; and 3) redressable by the court."<sup>5</sup> To show the required injury in fact based on an assertion of future harm, NRC has held that that future harm "*must be threatened, certainly impending, and real and immediate.*"<sup>6</sup>

Petitioner has failed to satisfy the requirements for standing because he has failed to make the fundamental showing of an *injury in fact* that can be attributed to the challenged action, i.e., the issuance of IUSA's license amendment permitting IUSA to process alternate feed material from the Ashland 2 site.

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<sup>3</sup> Northern States Power Company, 44 NRC 138, 1996 Lexis 46, \*\*5-6 (1996).

<sup>4</sup> Westinghouse Electric Corp., CLI-94-07, 39 NRC 322, 1994 Lexis 31, \*\* 5-6 (1994).

<sup>5</sup> Florida Audubon Society v. Bentsen, 94 F.3d 658, 663 (D.C. Cir. 1996) (en banc) (citations omitted) (emphasis added).

<sup>6</sup> Babcock & Wilcox, LBP-93-4, 1993 NRC Lexis 6, \*\*7-8 (1993) (emphasis added).

3. Petitioner suffers no redressable injury as a result of IUSA's license amendment.

Petitioner asserts that "I am directly and negatively affected by the increasing truck travel on U.S. 191 (Moab to White Mesa) by the hauling of nuclear waste material that originates in Tonawanda, New York," but offers no indication of how or why he is "directly and negatively affected."<sup>7</sup>

General unhappiness with the possibility of occasional increased traffic cannot confer on Petitioner standing to challenge IUSA's license amendment for processing of alternate feed. Moreover, as set forth in the attached Affidavit of Harold R. Roberts, IUSA's Executive Vice President,<sup>8</sup> the volume of truck traffic associated with processing the Ashland 2 materials is actually *less than* that which would be expected if the Mill were operating at design capacity processing conventional feed materials.<sup>9</sup> Finally, it is anticipated that transportation of all Ashland 2 alternate feed materials will be completed by or before February 1, 1999, and thus this issue is moot after that date.<sup>10</sup>

Petitioner states that "I am concerned with my own health and that of my passengers. I am concerned that the cumulative amounts of radioactivity and other chemicals resulting from nuclear industry activities, over and above the high levels of naturally (sic) occurring radiation in

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<sup>7</sup>Petition at 1.

<sup>8</sup> Affidavit of Harold R. Roberts, attached hereto as Exhibit A.

<sup>9</sup> The Environmental Assessment ("EA") prepared in support of the Mill's original license application stated that IUSA expected, on average, more than 70 trucks per day to transport materials to the Mill. Truck traffic to the Mill during the hauling of the Ashland 2 materials has averaged fewer than 15 trucks pe day. Notably, no one, including Petitioner, previously raised any complaint in connection with Mill truck-traffic.

<sup>10</sup> See Affidavit of Harold R. Roberts.

the region, threatens my health and well being.”<sup>11</sup> Again, Petitioner makes no attempt to discuss what threats to his health and well-being, if any, might be occasioned by *the NRC action at issue: IUSA’s license amendment*. Likewise, Petitioner makes no allegation suggesting how or if activities conducted pursuant to *IUSA’s license amendment* may contribute to the “cumulative amounts of radioactivity and other chemicals resulting from *nuclear industry activities*”<sup>12, 13</sup>

Petitioner asserts that, as an outfitter whose business is taking paying customers on wilderness trips, he is concerned that he and his customers have been “near old uranium mines”

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<sup>11</sup> Petition at 2.

<sup>12</sup> Id. (emphasis added).

<sup>13</sup> Petitioner offers several other complaints that are wholly unsupported and/or are otherwise insufficient to confer on Petitioner standing to participate in this matter. Petitioner’s assertion that “[F]ew studies were accomplished as were required during the period of license amendments” (Petition at 2) lacks sufficient specificity for IUSA even to formulate a response; IUSA has provided all information required in support of its requested license amendment. Petitioner’s assertion that NRC has failed to respond to a Freedom of Information Act request (Id.) raises a procedural complaint for which NRC’s public affairs office may be the appropriate forum; it is not a basis for standing to intervene in IUSA’s license amendment. The bald statement that county and State taxpayers are faced with an “added burden . . . regulating and overseeng (sic) nuclear waste problems. . . .” (Id. at 3) is misinformed. IUSA’s White Mesa Mill is a uranium processing facility, licensed and regulated by NRC, and not by San Juan County or the State of Utah. Petitioner’s mistaken belief regarding the Mill’s regulatory status cannot form the basis for Petitioner’s participation in IUSA’s license amendment proceeding.

Petitioner asserts that the Ute people are concerned about the “desecration of their own burial sites on the property of the White Mesa mill” and that “[I]t becomes a case of environmental justice.” Id. At 5. Petitioner does not suggest that he is a Ute or that he has been empowered to act on behalf of the Ute tribe. Moreover, Petitioner’s complaint in this regard appears related to the White Mesa Mill, the existence of which long predates and is unrelated to the license amendment Petitioner purports to want to challenge.

Petitioner also complains that “the Navajo peoples have been neglected” and that “their needs have not been treated fairly.” Id. Again, Petitioner does not purport to be a Navajo or to speak for the Navajo and, in any event, fails to state how he or the Navajo suffer any particular injury on account of the license amendment at issue.

and “uranium mining ores during river travel on the Green, Colorado, and San Juan rivers . . . for years unknowingly to us that the rivers were heavily contaminated with radionuclides and other chemicals. . . .”<sup>14</sup> Petitioner states that he is subjecting his customers “to the dangers of added radiation,” and that “the prospective customers’ knowledge that there is an added risk . . . would cause many to go elsewhere.”<sup>15</sup>

Clearly, any injury Petitioner may have suffered by exposure to “old uranium mines” or historically contaminated rivers, is irrelevant to IUSA’s license amendment and cannot be the basis for Petitioner to intervene herein. Petitioner fails even to suggest how IUSA’s license amendment results in “added radiation” and “added risk,” and Petitioner’s unsupported and unsubstantiated concerns do not articulate a particularized injury.

Petitioner claims that “[A]ny contaminated groundwater from the White Mesa mill facilities would drain towards the San Juan River . . . and adjacent areas (and) would affect me and my operations negatively.”<sup>16</sup> Petitioner urges that “we can’t afford to damage the very areas that people are coming to see and to experience,” and that diminished environmental quality would inure to his personal detriment.<sup>17</sup> However, Petitioner does not (and cannot) claim that contaminated groundwater emanates from the Mill or is likely to emanate from the Mill. Petitioner does not suggest that IUSA’s Ashland 2 license amendment somehow increases any such likelihood. In fact, the processing of the Ashland 2 materials at the Mill will be similar to

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<sup>14</sup> Petition at 3. As with Petitioner’s stated concerns regarding the Utes and Navajos, Petitioner has no basis for asserting concerns his customers may or may not have.

<sup>15</sup> Id. at 4.

<sup>16</sup> Id. at 5.

<sup>17</sup> Id. at 4.

the processing of any other uranium-bearing feed materials and poses no greater risk of contamination to groundwater or any other environmental media than that posed by Mill activities conducted pursuant to IUSA's source materials license and previous amendments thereto over nearly twenty years.<sup>18</sup> Moreover, if any groundwater contamination was to emanate from the Mill, contamination would not impact the San Juan River. There exists no hydrologic communication between the San Juan River and/or beneath the Mill.

Likewise, Petitioner's generalized ruminations about environmental quality<sup>19</sup> make no connection to IUSA's license amendment and cannot be the basis for Petitioner's standing. IUSA agrees with Petitioner that the natural scenic beauty of San Juan County should not be desecrated. The Mill has had no unauthorized release of any substance and has caused no environmental desecration in 20 years of operation.<sup>20</sup> The license amendment at issue likewise will cause no such desecration; Petitioner makes no specific allegations to the contrary.

Finally, Petitioner claims that the White Mesa Mill is functioning as a nuclear waste dump, that the processing of the Ashland 2 materials cannot be economical for IUSA, and that "[A]llowing IUC to receive the uranium waste material will adversely affect my and others rights and interests."<sup>21</sup>

Petitioner's views on the economic viability of processing the Ashland 2 materials are unfounded and do not evidence any injury suffered by Petitioner. IUSA is not a "nuclear waste

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<sup>18</sup> See Affidavit of Harold R. Roberts, attached hereto as Exhibit A.

<sup>19</sup> See, e.g., Petition at 4.

<sup>20</sup> See Affidavit of Harold R. Roberts

<sup>21</sup> Petition at 4, 5.

dump,” but a uranium mill, licensed to process various uranium-bearing feeds and to dispose, in an NRC-regulated, on-site containment cell, of the tailings therefrom. Consistent with NRC’s alternate feed guidance, the license amendment at issue allows IUSA to receive and process 11(e) 2 byproduct material from the Ashland 2 site as an alternate feed. Petitioner’s unsupported statement that his “rights and interests” are adversely affected does not articulate a particularized injury and is insufficient to obtain standing.

Petitioner’s assertions of harm resulting from IUSA’s license amendment consist entirely of generalized grievances concerning environmental degradation, misstatements of fact, unsupported conclusions, and broad concerns about undefined harms to Petitioner, to others, and to the environment that may or may not result from mining and related activities generally. These assertions fail to state any “concrete and particularized injury that is actual or imminent.”<sup>22</sup> Thus, Petitioner has failed to state any injury-in-fact upon which standing can be based. Consequently, Petitioner is without standing to intervene in this proceeding and the Petition for Leave to Intervene must be denied.

**B. The Petition Should Be Stricken For Failure To Comply With Regulatory Requirements**

Petitioner has failed to comply with several fundamental regulatory requirements applicable to petitions to intervene in NRC licensing proceedings. Consequently, the Petition should be stricken.

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<sup>22</sup> Florida Audubon Society v. Bentsen, 94 F.3d 658, 663 (D.C. Cir. 1996)(en banc)(citations omitted).

1. Petitioner has failed to effect proper service on IUSA.

“A request for a hearing or a petition for leave to intervene must be served in accordance with §2.712 . . . .”<sup>23</sup> Section 2.712(b) requires that service on a party represented by counsel “must be made upon the attorney of record.”<sup>24</sup> Section 2.712(f) states that “[P]roof of service, stating the name and address of the person on whom served and the manner and date of service, *shall be shown for each document filed . . . .*”<sup>25</sup>

Petitioner failed to serve the Petition on IUSA’s attorney of record. Moreover, Petitioner also has failed to provide a proof of service reflecting the persons served with the Petition and the manner and date of service. Consequently, Petitioner has failed to effect proper service on IUSA and the Petition should be stricken.

2. Petitioner has failed to establish that the Petition is timely.

Section 2.1205(d) provides that a person wishing to intervene in a license amendment hearing shall file a request within thirty days of the NRC’s publication in the Federal Register of a notice referring to the requested licensing action.<sup>26</sup> Section 2.1205(e) states that the petitioner “must describe in detail –

(4) The circumstances establishing that the request for a hearing is timely in accordance with paragraph (d) of this section.”<sup>27</sup>

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<sup>23</sup> 10 C.F.R. §2.1203(e).

<sup>24</sup> 10 C.F.R. §2.712(b).

<sup>25</sup> 10 C.F.R. §2.712(f).

<sup>26</sup> 10 C.F.R. §2.1205(d).

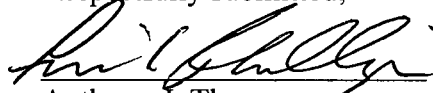
<sup>27</sup> 10 C.F.R. §2.1205(e)(4).

The Petition states that it “is made in accordance to the notice published by NRC on October 15, 1998, in the Federal Register . . . .”<sup>28</sup> “This does not describe in detail [T]he circumstances establishing that the request for a hearing is timely;” indeed, Petitioner’s failure to provide the required proof of service makes it impossible to determine when the Petition was filed and served. Accordingly, the Petition fails to comply with regulatory requirements and should be stricken.

### III. CONCLUSION

Petitioner has failed to comply with several regulatory requirements applicable to petitions to intervene in NRC licensing proceedings. Thus, the Petition should be stricken. Moreover, Petitioner has failed to articulate any injury-in-fact occasioned by the license amendment here at issue. Accordingly, and for all of the reasons set forth above, IUSA respectfully submits that Petitioner, Mr. Ken Sleight, on behalf of Pack Creek Ranch, lacks standing to participate in a hearing on the subject license amendment and the Petition, if not stricken for failure to comply with NRC regulations, should be **DENIED**.

Respectfully submitted,



Anthony J. Thompson

Frederick S. Phillips

David C. Lashway

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Washington, DC 20037

(202) 663-8000

Counsel to Licensee, International (USA)

Uranium Corporation

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<sup>28</sup> Petition at 1.

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**ATOMIC SAFETY AND LICENSING BOARD PANEL**

Before Administrative Judges: Peter B. Bloch, Presiding Officer  
Richard F. Cole, Special Assistant

IN THE MATTER OF:

INTERNATIONAL URANIUM  
CORPORATION  
(Source Material License Amendment)

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Docket No. 40-8681-MLA-4  
ASLBP No. 98-748-03-MLA  
DECEMBER 3, 1998

**AFFIDAVIT OF HAROLD R. ROBERTS**

I, Harold R. Roberts, do solemnly state as follows:


1. I am the Executive Vice President of for International Uranium (USA) Corporation ("IUSA"). I have held this position or a similar position in management or engineering for 18 years in this company or its predecessor and have been employed by IUSA for 1 ½ years. I am in charge of the daily operation of IUSA's White Mesa Mill in Blanding, Utah (the "Mill").
2. The Ashland 2 alternate feed materials have been trucked to the Mill since August 1998. On average, fewer than 15 trucks per day have arrived at the Mill during this time.
3. The Environmental Assessment ("EA") filed in support of the Mill's original license application estimated that more than 70 trucks per day would be arriving at the Mill.
4. Transport of all Ashland 2 materials to the Mill is expected to be completed by or before February 1, 1999.

5. To the best of my knowledge, there have been no releases to the environment of any substance from the Mill, except as authorized by the Mill's license and related permits, at any time during the Mill's operating life.

6. To the best of my knowledge, there have been no releases of any substance to groundwater from the Mill. As there is no hydrologic communication between the San Juan River and groundwater beneath the Mill, any release to groundwater from the Mill would not impact the San Juan River.

Further Affiant Sayeth Not.

I declare, under penalty of perjury, that the foregoing is true and correct.



Harold R. Roberts

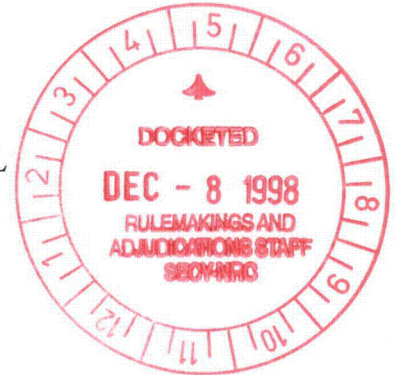
dated: this 3d day of December, 1998, at Blanding, Utah.

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:  
Peter B. Bloch, Presiding Officer  
Richard F. Cole, Special Assistant



In the Matter of )

INTERNATIONAL URANIUM (USA) )  
CORPORATION )

Docket No.40-8681-MLA-4

December 3, 1998

Re: Materials License Amendment

ASLBP No. 98-748-03- MLA

**CERTIFICATE OF SERVICE**

I hereby certify that I caused true and complete copies of the foregoing International Uranium (USA) Corporation's Response To Petition of Pack Creek Ranch Seeking Leave To Intervene in the above-captioned matter to be served, via facsimile, certified mail, and e-mail on this 3rd day of December, 1998 to:

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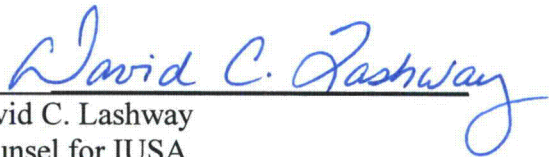
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