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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

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

OFFICE OF THE
RULEMAKING
ADJUDICATION STAFF

IN THE MATTER OF:

INTERNATIONAL URANIUM (USA)
CORPORATION

(Receipt of Material from St. Louis, MO)

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Docket No. 40-8681-MLA-7
ASLBP No. 99-767-07-MLA

June 11, 1999

**INTERNATIONAL URANIUM (USA) CORPORATION'S
OPPOSITION TO THE PETITION OF
KEN SLEIGHT SEEKING LEAVE TO INTERVENE**

I. INTRODUCTION

On June 1, 1999, Ken Sleight, Moab, Utah ("Petitioner"), sent a letter ("the Petition") to the Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission ("NRC") requesting a hearing on International Uranium (USA) Corporation's ("IUSA's") request for a license amendment authorizing IUSA to process 11e.(2) byproduct material from a site being managed under the Formerly Utilized Sites Remedial Action Program ("FUSRAP") in St. Louis, Missouri. This byproduct material is known as the St. Louis material.

II. BACKGROUND

IUSA operates, in accordance with Source Material License No. SUA-1358 issued by the NRC, a uranium recovery facility, the White Mesa Mill (the "Mill"), in Blanding, Utah. The

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U.S. NUCLEAR REGULATORY COMMISSION
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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 March 2, 1999, IUSA requested that NRC amend IUSA's Source Material License to allow the Mill to receive, process, and permanently dispose of uranium-bearing materials from the Formerly Utilized Sites Remedial Action Program ("FUSRAP") site in St. Louis, Missouri. Notice of IUSA's request was published in the Federal Register on May 4, 1999.¹ On June 1, 1999, Petitioner filed a Request for Hearing pursuant to 10 C.F.R. Part 2, Subpart L.

III. ARGUMENT

By the above-referenced letter dated June 1, 1999, Petitioner sought leave, pursuant to regulations promulgated by the NRC², to intervene in this matter and requested a hearing. As detailed below, Petitioner lacks standing to intervene in this matter as he has failed to allege any concrete and particularized injury and has failed to raise any concerns germane to the requested

¹ 64 Fed. Reg. 23876 (May 4, 1999).

² 10 C.F.R. §2.1205(a). Petitioner does not cite to any regulations and does not expressly ask to "intervene." However, he does "request [he] be allowed to respond to this Amendment Request at a full hearing." Petition at 1.

license amendment. 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. Standard of Review.

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.³

As demonstrated below, Petitioner has not shown that he has suffered or is likely to suffer any particular harm from IUSA's proposed 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. These issues are not germane to *the license amendment at issue*. Moreover, no particular injury is alleged to result from the proposed license amendment. Where, as here, Petitioner fails to raise issues that are germane and fails to make a sufficient showing of an injury-in-fact, a hearing request should be denied.

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

To demonstrate standing entitling Petitioner to a hearing, he 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.⁴ 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.”⁵

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."⁶ 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.*"⁷

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,

Footnote continued from previous page

³ 10 C.F.R. § 2.1205(h).

⁴ Northern States Power Company, 44 NRC 138, 1996 Lexis 46, **5-6 (1996).

⁵ Westinghouse Electric Corp., CLI-94-07, 39 NRC 322, 1994 Lexis 31, ** 5-6 (1994).

⁶ Florida Audubon Society v. Bentsen, 94 F.3d 658, 663 (D.C. Cir. 1996) (en banc) (citations omitted) (emphasis added).

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

i.e., the issuance of IUSA's license amendment permitting IUSA to process alternate feed material from the St. Louis site.

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 and chemical waste material that would originate in the St. Louis area," but offers no indication of how or why he is "directly and negatively affected."⁸

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, the volume of truck traffic associated with processing the St. Louis materials is expected to be similar to that described in the attached Affidavit of Harold R. Roberts, IUSA's Executive Vice President with regard to the Ashland 2 materials,⁹ and is actually *less than* that which would be expected if the Mill were operating at design capacity processing conventional feed materials.¹⁰

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

⁸ Petition at 1.

⁹ Affidavit of Harold R. Roberts, (attached hereto as Exhibit A) (previously filed in the Ashland 1 proceeding).

¹⁰ 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 St. Louis materials is expected to average approximately 15 trucks per day. On average during 1996, 370 trucks per day traveled State Road 191 between Monticello, UT and Blanding, UT (1997 NRC personal communication with the State of Utah

Footnote continued on next page

nuclear industry activities, over and above the high levels of naturally occurring radiation in the region, threatens my health and well being” and that he is “highly sensitive and allergic to dust and many chemicals.”¹¹ 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*.”^{12,13} In fact, to the extent that activities pursuant to the proposed license amendment may contribute to any cumulative impacts resulting from nuclear industry activities, such contribution would be no

Footnote continued from previous page

Department of Transportation). Notably, no one, including Petitioner, previously raised any complaint in connection with Mill truck-traffic.

¹¹ Petition at 2.

¹² Id. (emphasis added).

¹³ 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” lacks sufficient specificity for IUSA even to formulate a response; IUSA has provided all information required in support of its requested 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 “[w]e need to recognize the Navajo and Ute concerns. . . [e]nvironmental and social justice for them have long been lacking.” Id. at 5. Petitioner does not suggest that he is a Ute or a Navajo or that he has been empowered to act on behalf of the Ute or Navajo tribes. Moreover, Petitioner’s complaint in this regard appears related to the White Mesa Mill or the nuclear industry generally, both of which long predate and are not germane to the license amendment Petitioner purports to want to challenge.

Petitioner also complains that the Navajo peoples have been neglected and left out of the process. 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.

more than that which would result from processing conventional feeds under the Mill's existing license.^{14,15}

Petitioner alleges that “[t]he public, including myself, have not been fully advised of the dangers of this hazardous waste material. There has been little environmental information given to me and the citizens by NRC or the International Uranium Corporation regarding the acceptance of hazardous waste from the St. Louis area. Few studies have been accomplished during past and present periods of license amendments.”¹⁶

Contrary to Petitioner's allegations, IUSA has submitted all information, environmental and otherwise, required of it by the NRC in connection with the pending license amendment application. The application, and all supporting documentation, is part of the public record and is available to any interested member of the public. To see that the availability of this information has been made known to the public, one need look no further than the Petition and

¹⁴ This concept underscores a critical flaw that runs through Petitioner's argument: Petitioner opposes the activities of the uranium mining and processing industries generally, but does not allege that any quality or characteristic of the activities to be conducted under the requested amendment, *i.e.*, processing the St. Louis materials, is likely to cause any particular harm distinct from any negative impacts that may be associated with previously authorized and ongoing activities. In a similar vein, this Court previously has stated: “[s]ince the disposal of tailings is already authorized under an existing license, the question of possible injury to the petitioners is whether the tailings from the milling authorized by this amendment will be more hazardous than tailings already authorized under the license.” In the Matter of International Uranium (USA) Corporation, 46 NRC 55 (1997).

¹⁵ We note that the Mill was sited under the oversight and with approval of NRC; the license was granted by NRC based on a finding that proposed process activities would provide adequate protection for health, safety and the environment. The Mill has had no adverse impact to the public health or environment offsite since operation began in 1980.

¹⁶ Petition at 2.

another petition filed in response to the Notice of IUSA's pending application published in the Federal Register.¹⁷

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 or on old uranium mines or tailings 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. . . ." ¹⁸ 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, may cause them to go elsewhere."¹⁹

Clearly, any injury Petitioner may have suffered by exposure to "old uranium mines" or historically contaminated rivers, is not germane to IUSA's license amendment and cannot be the basis for Petitioner to intervene herein. IUSA is not responsible for the mines and has not contaminated the rivers; Petitioner has not alleged otherwise. As for "added radiation" and "added risk," processing of the St Louis materials results in no impacts beyond those already allowed by the existing license; in fact, the St. Louis materials possess a somewhat smaller radioactive component than typically would an equal volume of conventional ore. Petitioner fails even to suggest how IUSA's license amendment results in "added radiation" and "added

¹⁷ See n.1 Petitioner's other comments suggesting that the public has been denied an opportunity to participate in this matter also are unfounded. In fact, members of the public are participating in this process in the manner provided by NRC regulations. In response to the aforereferenced Federal Register Notice, Petitioner and others have requested a hearing on IUSA's pending license amendment application. Of course, petitioners wishing to participate in any NRC licensing hearing must show that they possess standing entitling them to do so.

¹⁸ Petition at 2. 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.

¹⁹ Id. at 3.

risk,” and Petitioner’s unsupported and unsubstantiated concerns do not articulate a particularized injury.

Petitioner urges that “diminished water quality . . . would destroy the very thing that outfitters’ customers are coming to see and to experience,” and that diminished environmental quality would inure to his personal detriment.²⁰ However, Petitioner does not (and cannot) claim that contaminated groundwater emanates from the Mill or is likely to emanate from the Mill. Moreover, Petitioner does not explain how IUSA’s St. Louis license amendment might make contamination more likely or subject him to any likelihood of harm greater than or separate from circumstances existing under the current license. In fact, the processing of the St. Louis materials at the Mill, like the processing of similar material from Ashland 1 and Ashland 2, will be similar to 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.²¹ 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 the perched groundwater zone beneath the Mill.²²

Likewise, Petitioner’s generalized ruminations about environmental quality make no connection to IUSA’s license amendment and cannot be the basis for Petitioner’s standing. As

²⁰ Id.

²¹ See Affidavit of Harold R. Roberts, (attached hereto as Exhibit A).

²² Affidavit of Samuel Billins, (attached hereto as Exhibit B) (previously filed in the Ashland 1 proceeding).

stated above, the Mill has had no unauthorized release of any substance and has caused no environmental “desecration” in the nineteen years since the Mill began operation.²³

Petitioner claims that the processing of the St. Louis materials cannot be economical for IUSA and that the White Mesa Mill is functioning as “a nuclear waste dump.”²⁴ Petitioner’s views on the economic viability of processing the St. Louis materials are unfounded and do not evidence any injury suffered by Petitioner. IUSA is not a “nuclear waste 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 St. Louis site as an alternate feed. Petitioner’s unsupported statement that he and others will incur untold costs does not articulate a particularized injury attributable to the subject license amendment and is insufficient to obtain standing.

Finally, Petitioner reiterates several of the allegations stated previously in the Petition (these same allegations were contained in the “Addendum” to Petitioner’s Petition to Intervene in the Ashland 1 proceeding”) and sets out a wide range of rather indefinite complaints, none of which is germane to the requested license amendment and all of which fail to state a particular injury to Petitioner.²⁵ In response, IUSA would like to point out that the Mill and its associated tailings cells were constructed pursuant to a rigorous siting analysis supervised and approved by NRC, and practically every aspect of the Mill’s daily operation is governed by, and in

²³ See Affidavit of Harold R. Roberts, (attached hereto as Exhibit A).

²⁴ Petition at 3, 5.

²⁵ See generally, Petition at 4-7; Addendum to Ken Sleight’s Petition to Intervene in Ashland 1 (Dec. 1, 1998).

accordance with, NRC regulations. In the nineteen years since the Mill has been licensed to operate, the White Mesa Mill has not polluted the environment; processing of the St. Louis materials, which is essentially the same as processing any other feedstock, likewise, will not contaminate the environment and will comply with NRC regulations.

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.²⁶ Accordingly, Petitioner has failed to raise issues germane to the requested license amendment and has failed to state any "concrete and particularized injury that is actual or imminent."²⁷ Thus, Petitioner has failed to satisfy the requirements 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.

IV. CONCLUSION

Petitioner has failed to raise any issue germane to or articulate any injury-in-fact occasioned by the license amendment here at issue. Accordingly, and for all of the reasons set

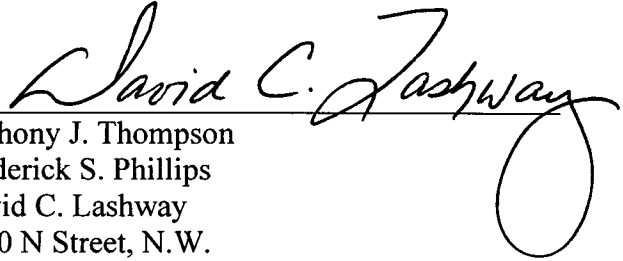
²⁶ A "generalized grievance," shared in similar fashion by many or most of the residents of a community or region, is not a distinct and particularized harm sufficient to support standing. See e.g., Metropolitan Edison Co. 18 NRC 327, 333 (1983).

²⁷ Florida Audubon Society v. Bentsen, 94 F.3d 658, 663 (D.C. Cir. 1996)(en banc)(citations omitted).

forth above, IUSA respectfully submits that Petitioner Ken Sleight, lacks standing to participate in a hearing on the subject license amendment; the Petition should be DENIED.

Respectfully submitted this 11th of June, 1999.

SHAW PITTMAN

A handwritten signature in cursive script, reading "David C. Lashway", is written over a horizontal line. The signature is fluid and extends to the right, ending in a large, open loop.

Anthony J. Thompson
Frederick S. Phillips
David C. Lashway
2300 N Street, N.W.
Washington, DC 20037
(202) 663-8000

COUNSEL TO INTERNATIONAL (USA)
URANIUM CORPORATION

EXHIBIT A

AFFIDAVIT OF ROBERTS

**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)

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:

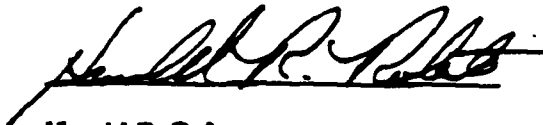
1. I am the Executive Vice President of for International Uranium (USA) Corporation ("IUSA"). I have held this position or a similar position in management or engineering for 18 years in this company or its predecessor and have been employed by IUSA for 1 1/4 years. I am in charge of the daily operation 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 Afirm 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.

EXHIBIT B
AFFIDAVIT OF BILLINS

AFFIDAVIT OF SAMUEL J. BILLIN, P.E.

I, SAMUEL J. BILLIN, being duly sworn upon oath, depose and state as follows:

I am a Registered Professional Engineer in the State of Utah, license number 95-180588.

I received a bachelor of science degree in civil engineering from Brigham Young University in 1991 with an emphasis in water resources and hydraulics. I received a master of science degree from Utah State University in civil engineering in 1992 where I studied groundwater hydrology and chemical transport. I have more than seven years of experience assisting the mineral industry with permitting new facilities, permit amendments, and remediation of hazardous waste sites.

At the request of International Uranium (USA) Corporation (IUC), I have directed a multi-disciplinary team of scientists in evaluating the operation of tailings cells at the White Mesa Mill and review of pleadings filed in opposition to IUC's proposed license amendments. These team reviews have included geochemists, groundwater hydrologists, and mining geologists familiar with both the uranium mineral industry and permitting of mineral facilities with both state and federal agencies.

Our reviews have resulted in several observations that are significant in responding to pleadings concerning the amendment of IUC's Source Material License. These technical evaluations are as follows:

- 1) The existing tailings cells were lined with synthetic materials and contain leak detection systems. Quality control and assurance was provided by oversight and inspection by multiple parties including registered professional engineers and representatives of the United States Nuclear Regulatory Commission (USNRC). Since the cells were constructed in the early 1980's, there have been no indications that tailings cells in use were or are discharging tailings liquid to either the leak

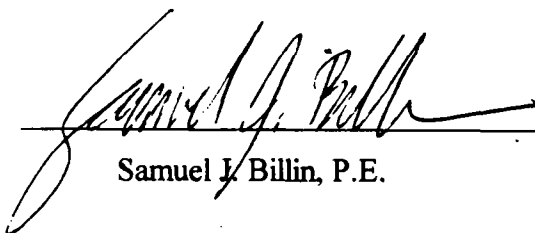
detection systems or the underlying formation.

- 2) The site is underlain by several geologic formations. The uppermost bedrock formation is the Dakota/Burro Canyon Sandstone. The Morrison Formation is a grouping of several similar rock types forming an aquitard (i.e., a barrier to vertical groundwater flow) from 110 feet to 1,300 feet below the site. A significant regional aquifer, the Entrada/Navajo Sandstone Formation, is located below the Morrison Formation.
- 3) Percolating precipitation is intercepted by the low conductivity Brushy Basin Member of the Morrison Formation that results in water being "perched" on top of the Brushy Basin Member. This water flows horizontally through the Dakota/Burro Canyon Formation at very slow rates and discharges as springs and seeps along the canyon walls of the mesa. Due to topography (i.e., adjacent canyons), this perched water zone is discontinuous at all locations downgradient from the facility and is not connected to the San Juan River.

FURTHER AFFIANT SAYETH NOT.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this ^{16th SJB}~~14th~~ day of December 1998.


Samuel J. Billin, P.E.

Voluntarily signed and sworn to before me this 16th day of December 1998, by the signer, whose identity is personally known to me or was proven to me on satisfactory evidence.


NOTARY PUBLIC

Residing at: Denver, CO.

My Commission expires: 6-28-99

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'99 JUN 15 P3:02

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATION STAFF

In the Matter of)
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INTERNATIONAL URANIUM (USA)
CORPORATION)
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(Receipt of Material from St. Louis, Mo.))
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Docket No. 40-8681-MLA-6
ASLBP No. 99-767-07-MLA

CERTIFICATE OF SERVICE

I hereby certify that I caused true and correct copies of the foregoing INTERNATIONAL URANIUM (USA) CORPORATION'S OPPOSITION TO THE PETITION OF KEN SLEIGHT SEEKING LEAVE TO INTERVENE in the above-captioned matter to be served by first-class, postage prepaid mail this 11th day of June, 1999 to:

Administrative Judge
Peter B. Bloch, Presiding Officer
Atomic Safety and Licensing Board
Two White Flint North/11545 Rockville Pike
U.S. Nuclear Regulatory Commission
Rockville, Maryland 20852

Adjudicatory File
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Office of the Secretary
Attn: Rulemakings and Adjudications Staff
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U.S. Nuclear Regulatory Commission
Rockville, Maryland 20852

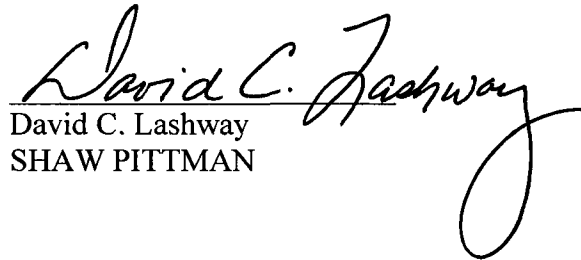
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David C. Lashway
SHAW PITTMAN