

December 12, 1997

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before the Atomic Safety and Licensing Board**

In the Matter of	)	
	)	
PRIVATE FUEL STORAGE L.L.C.	)	Docket No. 72-22
	)	
(Private Fuel Storage Facility)	)	ASLBP No. 97-732-02-ISFSI

**APPLICANT'S ANSWER TO THE CONFEDERATED  
TRIBES AND DAVID PETE'S SUPPLEMENTAL MEMORANDUM  
IN SUPPORT OF PETITION TO INTERVENE AND FOR A HEARING**

**I. INTRODUCTION**

Applicant Private Fuel Storage L.L.C. ("PFS" or "Applicant") submits this answer to the "Supplemental Memorandum In Support Of The Petition Of The Confederated Tribes Of The Goshute Reservation And David Pete To Intervene And For A Hearing" ("Supplemental Memorandum"), dated October 15, 1997. In conjunction with the Supplemental Memorandum, the Confederated Tribes of the Goshute Reservation ("Confederated Tribes") also filed two declarations in support of its Petition To Intervene in an attempt to establish representational standing on behalf of its members in order to intervene in this proceeding for the licensing of the Private Fuel Storage Facility (the "Facility").

Despite the additional argument and information presented in the Supplemental Memorandum and the two declarations, the Confederated Tribes has still failed to demonstrate actual or imminent concrete, particularized injury in fact necessary for it to establish standing to intervene in this proceeding. The two declarations purport to show with "particularity" the nature and frequency of the contacts that the members of the Confederated Tribes have on or near the reservation of the Skull Valley Band of Goshute Indians (the "Skull Valley Band") and the supposed harm that would result to them if the Facility were to proceed. However, the declarations for the most part are generalized assertions by the declarants of purported contacts by other members of the Confederated Tribes on or near the Skull Valley reservation which, as a matter of law, are insufficient to establish representational standing. The specific contacts of the two declarants are either non-existent or unspecified occasional contacts insufficient to establish standing under NRC precedent.<sup>1</sup>

The Confederated Tribes also reargues standing based on its claimed interest in the aboriginal lands -- in which it has no legally protectable interest -- and its supposed close continuing ties with the Skull Valley Band, which it expressly acknowledges is a separate and distinct legal entity. Neither argument supports standing here. Finally, the

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<sup>1</sup> The Applicant is filing in conjunction with this Answer a Declaration of Arlene Wash, a member of the Skull Valley Band, which confirms the lack of any significant contact of one of the Confederated Tribes' declarants. See Exhibit 1. The other Confederated Tribes' declarant has asserted no personal contact on or near the Skull Valley reservation.

Confederated Tribes claims to be a "municipality," which clearly it is not, in an attempt to come in under 10 C.F.R. § 2.715(c).

In short, neither the Confederated Tribes nor David Pete has demonstrated the necessary standing in order to be allowed to intervene in this licensing proceeding.

## II. FACTUAL BACKGROUND

In response to the July 31, 1997 notice in the Federal Register that the Nuclear Regulatory Commission ("NRC") was considering the PFS license application and that interested persons could file a written request for hearing and petition for leave to intervene, on August 29, 1997, the Confederated Tribes and David Pete filed a Request for Hearing and Petition to Intervene. On September 15, 1997, the Applicant filed an Answer opposing the Request for hearing and Petition to Intervene because neither the Confederated Tribes nor David Pete had established the prerequisite standing to intervene in this licensing proceeding.<sup>2</sup> As set forth in Applicant's Answer, the Confederated Tribes' reservation straddles the Nevada-Utah border, three mountain ranges and some 70 miles from the separate and distinct reservation of the Skull Valley Band and the proposed Facility. Therefore, the claims of alleged injury by the Confederated Tribes and David Pete on the Confederated Tribes' reservation are too distant and remote from the Facility to establish standing under NRC precedent. Further, the only claims of injury

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<sup>2</sup> See "Applicant's Answer to Request for Hearing and Petition to Intervene of the Confederated Tribes of the Goshute Reservation and David Pete," dated September 15, 1997.

outside the Confederated Tribes' reservation pertaining to the aboriginal area -- an area encompassing millions of acres in which the Confederated Tribes no longer has any legal interest -- consisted of vague, conjectural, generalized assertions insufficient to show real risk or injury. Thus, neither the Confederated Tribes nor Mr. Pete had demonstrated actual or imminent concrete, particularized injury-in-fact required to establish standing.

On September 18, 1997, the NRC Staff filed a response to the Confederated Tribes and David Pete's Request for Hearing and Petition to Intervene also concluding for largely the same reasons that neither the Confederated Tribes nor David Pete had demonstrated standing, and that, absent any further information, their petition for leave to intervene should be denied. On October 15, 1997, the Confederated Tribes and David Pete filed their Supplemental Memorandum and the two declarations purporting to provide such additional information. By Memorandum and Order dated October 24, 1997, the Board extended the time for filing responses to the Supplemental Memorandum to December 22, 1997.

### III. ARGUMENT

#### A. **The Two Supplemental Declarations Fail To Establish Representational Standing Of The Confederated Tribes**

The Confederated Tribes has filed a Supplemental Declaration of Chrissandra M. Reed ("Reed Declaration") and a Supplemental Declaration of Genevieve P. Fields ("Fields Declaration") in support of its petition to intervene. The Reed and Fields

declarations, however, are insufficient to establish representational standing of the Confederated Tribes on behalf of its members.

Where an organization seeks to derive standing based on the interests of its members, the organization must come forward with at least one member who (1) possesses individual standing to participate in the proceeding and (2) has authorized the organization to represent his or her interests. Georgia Institute of Technology, (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 N.R.C. 111, 115 (1995); Houston Lighting and Power Company, (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 N.R.C. 377, 396-97 (1979). These two criteria apply equally to Indian tribes as well as to other organizations. As stated by the licensing board in Sequoyah Fuels Corporation (Gore, Oklahoma Site), 40 N.R.C. 9, 15 n. 25 (1994), "to represent the interests of its members, [a] tribe must identify at least one member who will be injured and obtain authorization to represent that individual."

The Reed and Fields Declarations satisfy neither of these two criteria. For the most part, the declarations are assertions by the declarants of purported contacts on or near the Skull Valley reservation by other members of the Confederated Tribes, and not of the two declarants themselves. Such assertions are insufficient to establish representational standing of the Confederated Tribes because, even assuming injury in fact to these other members, the declarations do not provide the necessary authorization of these other tribe members for the Confederated Tribes to represent their interests in this proceeding.

With respect to the assertion of contacts by the two declarants themselves, it is either non-existent (as with the Fields Declaration) or consists of vague, unspecified occasional contacts (as with the Reed Declaration) insufficient to establish standing under NRC precedent. Thus, although the two declarants authorize the Confederated Tribes to represent their individual interests in this proceeding, they lack individual standing and therefore cannot confer representational standing on the Confederated Tribes.

1. The Fields Declaration

The Fields Declaration describes visits made by various members of the Confederated Tribes to the Skull Valley reservation, including declarant's older sister, but the declarant asserts no particularized present-day contacts that she has near or on the Skull Valley reservation. See Fields Declaration, ¶¶ 4-9.

First, in paragraphs 4 and 5, the declarant asserts that her oldest sister, a member of the Confederated Tribes, currently lives only a few miles from the Skull Valley reservation and regularly visits the grave of her husband on the Skull Valley reservation. It is well established under NRC precedent, however, that a petitioner cannot establish standing on the basis of a third party, even where the third party is a close relative, such as a son or daughter. See, e.g., Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 N.R.C. 1418, 1421 (1977) (mother did not have standing based upon son who was attending a nearby university); accord Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 N.R.C. 381, 387, affirmed,

ALAB-470, 7 N.R.C. 473, 474-75, n. 1 (1978). Thus, even assuming the asserted facts are sufficient to show standing of the sister, they do not give the declarant, and hence the Confederated Tribes, standing here.

Second, in paragraphs 4, 6, 8, and 9, the declarant asserts that many members of the Confederated Tribes visit friends and relatives and attend religious and other events at the Skull Valley reservation. However, these assertions of contact by other individuals near or on the Skull Valley reservation do not give declarant standing and, as discussed above, declarant's declaration does not provide the necessary authorization of these other tribe members for the Confederated Tribes to represent their interests in this proceeding, even assuming injury-in-fact of the other members. Thus, these assertions provide no basis for the Confederated Tribes to intervene in this proceeding.

Third, the only specific contact asserted by the declarant with the Skull Valley reservation is that "[w]hen Declarant was younger, she attended religious ceremonies on the Skull Valley Reservation." Fields Declaration ¶ 8 (emphasis added). However, contact that declarant may have had with the Skull Valley reservation when she was young is irrelevant for purposes of showing standing today. Lujan v. Defenders of Wildlife, 504 U.S. 555, 564 (1992). In Lujan, the petitioners asserted standing, in part, on the fact that in the past they had visited locations where the Department of Interior's regulations (which they were challenging) would have future effect. The Supreme Court firmly rejected this as a basis for standing, stating "[t]hat the women 'had visited' the areas of the projects before the projects commenced proves nothing." Id. at 564

(emphasis added). As in Lujan, the fact that the declarant had visited the area of the proposed Facility before the Facility commences proves nothing.

Thus, the Fields Declaration sets forth no assertions of actual or imminent concrete and particularized injury that the declarant would suffer by the licensing, construction and operation of the Facility.<sup>3</sup> Accordingly, the Fields declaration does not establish her standing to intervene in this proceeding, nor therefore can it confer standing on the Confederated Tribes.

## 2. The Reed Declaration

The Reed Declaration makes virtually the same assertions found in the Fields Declaration concerning contact with the Skull Valley reservation by members of the Confederated Tribes other than herself. See, e.g., Reed Declaration, ¶¶ 6-7, 9-10. These assertions are insufficient to establish representational standing on behalf of the Confederated Tribes for the same reasons set forth above with respect to the Fields declaration. However, unlike the Fields Declaration, the Reed Declaration does assert

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<sup>3</sup>The only paragraphs that even suggest present-day contact by the declarant with the Skull Valley reservation are two of the generalized paragraphs at the end of the declaration alleging harm to herself, her relatives and other members of the Confederated Tribes. See Fields Declaration, ¶¶ 11-12. These are, however, concluding paragraphs that summarize the claimed harm arising from the asserted contacts with the Skull Valley reservation described in the previous paragraphs of the declaration. This is apparent from (i) the structure of the declaration, (ii) the language of the paragraphs 11-12, as well as by (iii) the fact that the language in paragraphs is virtually identical to the language in the analogous concluding paragraphs of the Reed affidavit. See Reed Declaration, ¶¶ 12-13. In any event, the generalized, unspecified contact of declarant asserted in paragraphs 11 and 12 of the Fields declaration is insufficient to establish standing. See legal discussion with respect to Reed declaration infra.



some present-day contact by the declarant (and her granddaughter) with the Skull Valley Reservation. These asserted contacts do not, however, establish standing.

First, the declarant relates how her granddaughter, Michaela, visits and stays at the Skull Valley reservation. Reed Declaration, ¶ 4. However, nowhere does she identify herself as the legal custodian for her granddaughter such that she could authorize the Confederated Tribes to represent the interests of her granddaughter. It is well established that the parents of a Indian minor are the presumed legal custodian and the declarant has presented no evidence that she has been granted legal custody of Michaela. See, e.g., People in Interest of J.J., 454 N.W. 2d 317, 327 (S.D. 1990). Absent such a showing, it must be presumed that declarant is not the legal custodian of Michaela. Id. Accordingly, she cannot derive standing for herself nor confer standing on the Confederated Tribes based on the alleged harm to her granddaughter.

Second, the declaration is unclear exactly how Chrissandra Reed drops off and picks up Michaela at the Skull Valley reservation. See Reed Declaration, ¶ 4. According to the attached Declaration of Arlene Wash, who is the cousin of Chrissandra Reed with whom Michaela stays while visiting the Skull Valley reservation, Chrissandra does not come onto to the reservation when dropping off Michaela. Exhibit 1, Wash Declaration, ¶¶ 2-3. Rather, Arlene Wash or her daughter meet Chrissandra Reed and Michaela at Exit 77 on Interstate 80 and escort Michaela from there to the Skull Valley reservation. Id. at ¶ 3. Exit 77 on Interstate 80 is 25 miles from the Skull Valley reservation. Id. Similarly, Chrissandra does not come onto the Skull Valley reservation when picking up

Michaela but meets Michaela, escorted by Arlene Wash or her daughter, at the same exit on Interstate 80 or at West Valley, Utah. *Id.* West Valley is a city located adjacent to Salt Lake City, two valleys and mountain ranges and over 50 air miles east of the Skull Valley Reservation. See Figure 1-1 ("PFSF Location") in the License Application.

The declarant, Chrissandra Reed, does not specifically allege any harm arising from meeting her cousin at Exit 77 on Interstate 80 to drop off and pick up Michaela. See Reed Declaration, ¶¶ 4, 11-14. The remoteness of this location from the Skull Valley reservation, and her infrequent, limited presence there in dropping off and picking up Michaela<sup>4</sup> would require her to show with particularity how her short presence there would give rise to actual or imminent concrete, particularized harm, which she has not done. See, e.g., Sequoyah Fuels Corp. (Gore, Oklahoma Site), LBP-94-19, 40 N.R.C. 9, 11-12 (1994); Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-92-23, 36 N.R.C. 120, 130 (1992); Boston Edison Company (Pilgrim Nuclear Power Station), LBP-85-24, 22 N.R.C. 97 (1985). Further, even assuming sufficient proximity to the proposed facility, such intermittent, limited visits are not sufficient, as discussed below, to establish standing.

Third, the Reed declaration also asserts that the declarant "visits with cousins at the Skull Valley Reservation on a regular basis" and that she "regularly visits" the

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<sup>4</sup> In her declaration, Chrissandra Reed asserts that she takes her granddaughter "approximately every other week" to the Skull Valley reservation. Reed Declaration, ¶ 4. However, according to the declaration of Arlene Wash, Michaela visits the Skull Valley reservation only "about 3 or 4 times a year." Wash Declaration, ¶ 3.

cemetery on the Skull Valley Reservation where her aunt is buried. Reed Declaration, ¶¶ 5, 8. The declaration, however, does not define regularly. We do not know from her declaration therefore whether her visits are on a regular basis once a month, once a year or once every ten years. The declaration of Arlene Wash provides more information, stating that Chrissandra's visits to the Skull Valley reservation are "random and usually no more than once a year." Wash Declaration, ¶ 4.

As such, Chrissandra Reed's visits to the Skull Valley reservation are analogous to the "unspecified," "occasional trip" made by the petitioner to his farm in the vicinity of a nuclear plant which the licensing board in Washington Public Power Supply Systems (WPPSS Nuclear Project No. 2), LBP-79-7, 9 N.R.C. 330, 338 (1979) found insufficient to establish standing. Similarly, in Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 N.R.C. 1423, 1448 (1982), the licensing board found such "occasional visits" to be insufficient to establish standing. As stated by the licensing board in that case:

Dr. Lochstet's residence 120 miles from the plant is not sufficient to provide standing.

\* \* \* \* \*

Nor do Dr. Lochstet's visits to the vicinity of the site suffice to bring this interest to the level necessary for intervention. His petition, as amended, shows only occasional visits close to the site. At best, six occasions are mentioned specifically when he has been within 50 miles of the site, and no time frame for these visits is provided.

Intermittent visits to the area do not show an interest sufficient to require granting intervenor status.

Id. at 1447-48 (emphasis added) (citations omitted). Similarly here, the intermittent visits by the declarant, Chrissandra Reed, to the vicinity of the proposed site do not suffice to give her, or therefore the Confederated Tribes, standing to intervene in this proceeding.<sup>5</sup>

**B. The Confederated Tribes Has Not Established Organizational Standing**

The Supplemental Memorandum re-argues generalized claims of the Confederated Tribes in the Goshute aboriginal lands and the close ties of its members to the Skull Valley Band. Neither, however, is sufficient to establish standing for the reasons set forth in Applicant's Answer to the Petition for Leave to Intervene. The specific points raised in the Supplemental Memorandum do not overcome the deficiencies cited in Applicant's Answer.

First, the Confederated Tribes asks the Board to take into account the fact that the "population of Skull Valley Band members who actually reside on the Skull Valley Reservation is only about 30 people." Supplemental Memorandum at 2. However, the Confederated Tribes does not explain the legal significance of this fact, and there is none. As Confederated Tribes expressly acknowledges later, the Skull Valley Band is a separate

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<sup>5</sup> Paragraph 10 of the Reed Declaration makes an assertion similar to that in the Fields Declaration, "[w]hen Declarant was younger, she attended religious ceremonies on the Skull Valley Reservation on a regular basis, approximately monthly." Reed Declaration, ¶ 10 (emphasis added). This assertion is insufficient to establish standing for the identical reasons set forth above with respect to the Fields declaration.

and distinct legal entity from the Confederated Tribes. *Id.* at 5. As a separate and distinct legal entity, the Skull Valley Band is responsible for ensuring the safety of its members -- and their visitors -- on the Skull Valley Reservation. The Confederated Tribes has no jurisdiction or responsibility in this respect, regardless of the size of the Skull Valley Band or the ties between members of the Confederated Tribes and the Skull Valley Band. In this regard, the Skull Valley Band has extensively studied the location of a fuel storage facility on its reservation over a period of several years and responsibly believes that there will be no adverse health and safety consequences for its members and their visitors.

Second, the Confederated Tribes makes additional claims regarding the aboriginal lands, which are confusing, incorrect and irrelevant. The Confederated Tribes refers to an 1863 treaty between the United States and the Shoshoni-Goship bands, which it asserts treated all Goshutes as one group and recognized the aboriginal lands as belonging to all Goshutes. Supplemental Memorandum at 3. However, this treaty is not an acknowledgment or recognition of Goshute ownership and title to the lands described in the treaty, but a treaty of "peace and friendship" which recognized that the Goshutes claimed ownership and title to certain lands. See Exhibit 1, "Treaty With the Shoshoni-Goship, 1863," Articles 5 and 8.<sup>6</sup> Moreover, as set forth in Applicant's Answer to the

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<sup>6</sup> Further, the treaty is with various bands of Indians reflecting that even at that time the Goshutes were not one monolithic organization of Indians as the Confederated Tribes would now have the Board believe. See Exhibit 2, Introductory phrase to the Treaty which describes the Treaty as one between the United States and the "Shoshonee-Goship bands of Indians,

Petition for Leave to Intervene at 6-7, the Indian Claims Commission concluded that Goshute title in the aboriginal lands had "extinguished" by January 1, 1875 except for the two small areas which correlate to the current Confederated Tribes and the Skull Valley reservations. Thus, as discussed more completely in Applicant's Answer, the Confederated Tribes has no legally cognizable rights or claims in the aboriginal lands outside the boundaries of its reservation.<sup>7</sup>

Third, the Confederated Tribes cites its 1940 Constitution as illustrative of its "continuing close ties" with the Skull Valley Band. Supplemental Memorandum at 4. However, the provisions cited merely reflect how membership could be obtained in the Confederated Tribes up until 1988, and does not establish any legal responsibility or jurisdiction of the Confederated Tribes for the Skull Valley Band. Indeed, as the Confederated Tribes recognizes at page 5 of its Supplemental Memorandum, the Skull

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represented by their chiefs, principal men, and warriors," and Article 5 which refers to the "boundaries of the country claimed and occupied by the Goshute tribe, as defined and described by said bands . . . ."

<sup>7</sup> Page 4 of the Supplemental Memorandum quotes from a 1973 decision of the Indian Claims Commission which describes Goshutes roaming "the entire Goshute tract in search of game and pine nuts for food." This is, however, the same decision which concluded that the Goshute title in the aboriginal lands had extinguished by 1875, except for the two small areas which correlate to the current Confederated Tribes and the Skull Valley reservations. The passage of the decision quoted in the Supplemental Memorandum is describing conditions that existed at a point in time prior to 1875. See Goshute Tribe or Identifiable Group, represented by the Confederated Bands of the Goshute Reservation v. United States, Dkt. No. 326-J, 31 Ind. Cl. Comm. 225, 261. ("In 1875 John W. Powell reported that the Goshute did not occupy and use their ancestral lands. They were concentrated at Deep Creek and Skull Valley.") Thus, this reference, like the reference to the 1863 Treaty, does not support the Confederated Tribes claimed current interest in the aboriginal lands.

Valley Band is a separate governmental entity and, therefore, as set forth above, it is the Band, and not the Confederated Tribes, which is fully responsible for ensuring the safety of its members and their guests on the Skull Valley reservation.

**C. The Confederated Tribes Has Not Established Any Right To Participate Under 10 C.F.R. § 2.715(c)**

The Confederated Tribes argues in its Supplemental Memorandum that it is a municipality and therefore entitled to participate under 10 C.F.R. § 2.715(c).

Supplemental Memorandum at 6. Although the Confederated Tribes is clearly a separate legal entity, it is not a municipality. The Tribes' claim -- based solely on a partial definition of "municipality" from Black's Law Dictionary -- is undermined by the full definition of "municipality" set forth there.

The Confederated Tribes states that "Black's Law Dictionary defines 'municipality' as 'a legally incorporated or duly authorized association of inhabitants of limited area for local government or other public purposes,'" and asserts, based on this broad-brush statement, that "[c]learly, a federally-recognized Indian Tribe meets that definition . . . ." Supplemental Memorandum at 6. The definition of "municipality" cited by the Confederated Tribes continues in relevant part, however, as follows:

A body politic created by the incorporation of the people of a prescribed locality invested with subordinate powers of legislation to assist in the civil government of the state and to regulate and administer local and internal affairs of the community. A city, borough, town, township or village.

Black's Law Dictionary 1018 (6th ed. 1991) (emphasis added, citation omitted). Surely, the Confederated Tribes is not asserting that sovereign Indian tribes are "subordinate powers . . . to assist . . . the state." As a federally recognized sovereign entity, the Confederated Tribes also is not a "city, borough, town, township or village" within the ordinary use of those terms.

Moreover, even assuming that the Confederated Tribes was a municipality, it would not be entitled to participate under 10 C.F.R. § 2.715(c) in this licensing proceeding. As set forth in Applicant's Answer to the Petition for Leave to Intervene at 13-14, a governmental entity must have some legitimate interest akin to standing -- some real stake in the proceeding -- in order to participate under 10 C.F.R. § 2.715(c), which the Confederated Tribes has not established here (*id.* at 20-21). The Confederated Tribes quotes broad language from Judge Salzman's opinion in Exxon Nuclear Company, Inc. (Nuclear Fuel Recovery and Recycling Center), ALAB-447, 6 N.R.C. 873 (1977) to support its participation as an interested governmental entity here. Supplemental Memorandum at 6. However, its reliance on Exxon Nuclear is misplaced. As Mr. Salzman observed in his opinion, the Energy Commission of the State of California had "far more than" a general interest in the proceeding (for the construction of a facility to store and reprocess spent nuclear fuel) because under California law the Energy Commission was required to determine the "adequacy of facilities for reprocessing or storing used nuclear fuel rods" before new nuclear plants could be built and licensed in



California. 6 N.R.C. at 879.<sup>8</sup> Similarly, Mr. Sharfman (who together with Mr. Salzman constituted the majority) found that the California Energy Commission had a “significant interest in the decision as to whether the construction of a facility [for the storage and reprocessing of spent fuel] should be authorized” because new nuclear plants could not be built within the State unless the Commission found that such facilities were available. 6 N.R.C. at 877 (emphasis added).

The State of California’s well defined interest in Exxon Nuclear in the implementation of its State laws is significantly different from the generalized statements of interest provided by the Confederated Tribes. The Confederated Tribes here has cited no implementation of law issue that depends on this proceeding and provides only generalized assertions of harm to a reservation separated from the Applicant’s proposed facility by almost 70 miles, several federal military installations, and three intervening mountain ranges. These generalized claims of interest are insufficient for the Confederated Tribes to participate under 10 C.F.R. § 2.715(c). See Applicant’s Answer to Petition for Leave to Intervene at 13-14 and 20-21.

In short, the Confederated Tribes request to participate in this licensing proceeding pursuant to 10 C.F.R. § 2.715(c) should be denied.

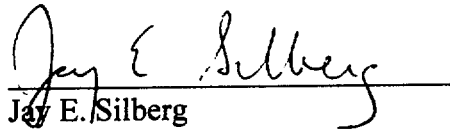
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<sup>8</sup> Further, Mr. Salzman specifically noted that the decision in Exxon Nuclear “does not compel us . . . to allow every state to participate in every proceeding” to license a nuclear a nuclear facility. Id.

## CONCLUSION

For the foregoing reasons and those set forth in Applicant's Answer to the Petition for Leave to Intervene, neither the Confederated Tribes nor David Pete have established standing to allow their intervention in this licensing proceeding.

Respectfully submitted,



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Paul A. Gaukler

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Counsel for Private Fuel Storage L.L.C.

Dated: December 12, 1997

# **EXHIBIT 1**

November 10, 1997

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before the Atomic Safety and Licensing Board**

In the Matter of	)	
PRIVATE FUEL STORAGE L.L.C.	)	Docket No. 72-22
(Private Fuel Storage Facility)	)	ASLBP No. 97-732-02-ISFSI

**DECLARATION OF ARLENE WASH**

Arlene Wash states as follows under penalties of perjury:

1. I am a member of the Skull Valley Band of Goshute Indians and reside on the Skull Valley Indian Reservation of the Skull Valley Band of Goshute Indians. I am a cousin of Chrissandra M. Reed of the Confederated Tribes of the Goshute Reservation.

2. I have reviewed the Supplement Declaration of Chrissandra M. Reed dated October 15, 1997 filed with the Atomic Safety and Licensing Board for the Private Fuel Storage Facility. I am the cousin referred to in paragraph four of the Declaration with whom Michaela, the granddaughter of Chrissandra M. Reed stays while on the Skull Valley Indian Reservation.

3. Michaela comes to stay with us at the Skull Valley Reservation about 3 or 4 times a year or more whenever Chrissandra needs a place for Michaela to stay. When Michaela comes to stay with us, Chrissandra does not come onto the reservation to drop off or pick up Michaela. Most the time, I and my daughter Miranda meet Chrissandra at Teddy Bears, (Exit 77 on I-80) 25 miles north of the

Skull Valley Indian Reservation. Similarly, when Chrissandra picks up Michaela, I or my daughter Miranda takes Michaela to Teddy Bear's or Thelma Moon's home in West Valley, Utah to meet her.

4. On occasion Chrissandra does visit with me and other people on the reservation. These visits are random and usually are no more than once a year.

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

Executed on November 10, 1997

  
Arlene Wash

# **EXHIBIT 2**

INDIAN AFFAIRS.

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LAWS AND TREATIES.

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Vol. II.  
(TREATIES.)

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COMPILED AND EDITED  
BY  
CHARLES J. KAPPLER, LL. M.,  
CLERK TO THE SENATE COMMITTEE  
ON INDIAN AFFAIRS.

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WASHINGTON:  
GOVERNMENT PRINTING OFFICE.  
1904.

## Witnesses to the treaty:

Jno. G. Nicolay, Secretary to the Commission.  
 Chas. E. Phillips, Assistant Secretary to Commission.  
 J. W. Croughton, Colonel First Cavalry of Colorado, Com-  
 manding District.  
 Samuel F. Tappan, Lieutenant-Colonel First Cavalry of Colo-  
 rado.  
 Charles Kerber, Captain, First Cavalry of Colorado.  
 J. P. Benesteel, Captain, First Cavalry of Colorado.

## Interpreters:

Juan V. Valdes.  
 Bernardo Sanchez, his x mark.  
 Amador Sanchez, his x mark.

## TREATY WITH THE SHOSHONI-GOSHIP, 1863.

*Treaty of peace and friendship made at Tuilla Valley, in the Territory of Utah, this twelfth day of October, A. D. one thousand eight hundred and sixty-three, between the United States of America, represented by the undersigned commissioners, and the Shoshonee-Goship bands of Indians, represented by their chiefs, principal men, and warriors, as follows:*

Oct. 12, 1863.

13 Stats., 681.  
 Ratified Mar. 7, 1864  
 Proclaimed Jan. 17,  
 1865.

ARTICLE 1. Peace and friendship is hereby established and shall be hereafter maintained between the Shoshonee-Goship bands of Indians and the citizens and Government of the United States; and the said bands stipulate and agree that hostilities and all depredations upon the emigrant trains, the mail and telegraph lines, and upon the citizens of the United States, within their country, shall cease.

Peace and friend-  
ship.

ARTICLE 2. It is further stipulated by said bands that the several routes of travel through their country now or hereafter used by white men shall be forever free and unobstructed by them, for the use of the Government of the United States, and of all emigrants and travellers within it under its authority and protection, without molestation or injury from them. And if depredations are at any time committed by bad men of their own or other tribes within their country, the offenders shall be immediately taken and delivered up to the proper officers of the United States, to be punished as their offences may deserve; and the safety of all travellers passing peaceably over either of said routes is hereby guaranteed by said bands.

Routes through their  
country to be free and  
peaceful.Surrender of offend-  
ers.

Military posts may be established by the President of the United States along said routes, or elsewhere in their country; and station-houses may be erected and occupied at such points as may be necessary for the comfort and convenience of travellers or for the use of the mail or telegraph companies.

Military posts and  
station houses.

ARTICLE 3. The telegraph and overland stage lines having been established and operated by companies under the authority of the United States through the country occupied by said bands, it is expressly agreed that the same may be continued without hindrance, molestation, or injury from the people of said bands, and that their property, and the lives and property of passengers in the stages, and of the employees of the respective companies, shall be protected by them.

Telegraph and over-  
land stage lines.

And further, it being understood that provision has been made by the Government of the United States for the construction of a railway from the plains west to the Pacific Ocean, it is stipulated by said bands that the said railway or its branches may be located, constructed, and operated, and without molestation from them, through any portion of the country claimed or occupied by them.

Railway and branch-  
es.



Mines, mills, and  
ranches.

Timber.

Boundaries.

Reservations.

Residence thereon.

Annuities.

Cattle.

Receipt.

ARTICLE 4. It is further agreed by the parties hereto that the country of the Goship tribe may be explored and prospected for gold and silver, or other minerals and metals; and when mines are discovered they may be worked, and mining and agricultural settlements formed and ranchos established wherever they may be required. Mills may be erected and timber taken for their use, as also for building and other purposes, in any part of said country.

ARTICLE 5. It is understood that the boundaries of the country claimed and occupied by the Goship tribe, as defined and described by said bands, are as follows: On the north by the middle of the Great Desert; on the west by Steptoe Valley; on the south by Tooodoe or Green Mountains; and on the east by Great Salt Lake, Tuilla, and Rush Valleys.

ARTICLE 6. The said bands agree that whenever the President of the United States shall deem it expedient for them to abandon the roaming life which they now lead, and become settled as herdsmen or agriculturists, he is hereby authorized to make such reservations for their use as he may deem necessary; and they do also agree to remove their camps to such reservations as he may indicate, and to reside and remain thereon.

ARTICLE 7. The United States being aware of the inconvenience resulting to the Indians, in consequence of the driving away and destruction of game along the routes travelled by white men, and by the formation of agricultural and mining settlements, are willing to fairly compensate them for the same. Therefore, and in consideration of the preceding stipulations, and of their faithful observance by said bands, the United States promise and agree to pay to the said Goship tribe, or to the said bands, parties hereto, at the option of the President of the United States, annually, for the term of twenty years, the sum of one thousand dollars, in such articles, including cattle for herding or other purposes, as the President shall deem suitable for their wants and condition either as hunters or herdsmen. And the said bands, for themselves and for their tribe, hereby acknowledge the reception of the said stipulated annuities as a full compensation and equivalent for the loss of game and the rights and privileges hereby conceded; and also one thousand dollars in provisions and goods at and before the signing of this treaty.

ARTICLE 8. Nothing herein contained shall be construed or taken to admit any other or greater title or interest in the lands embraced within the territories described in said treaty in said tribes or bands of Indians than existed in them upon the acquisition of said territories from Mexico by the laws thereof.

James Duane Doty, commissioner.

P. Edw. Connor,

Brigadier-General U. S. Volunteers,  
Commanding District of Utah.

Tabby, his x mark.

Adaseim, his x mark.

Tintsa-pa-gin, his x mark.

Harray-nup, his x mark.

Witnesses:—

Amos Reed.

Chas. H. Hempstead,

captain and chief commissary district of Utah.

William Lee, interpreter.

Jos. A. Gebon, interpreter.

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
PRIVATE FUEL STORAGE L.L.C.	)	Docket No. 72-22
	)	
(Private Fuel Storage Facility)	)	ASLBP No. 97-732-02-ISFSI

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the "Supplemental Memorandum in Support Of The Petition Of The Confederated Tribes Of The Goshute Reservation And David Pete To Intervene And For a Hearing" dated December 12, 1997 were served on the persons listed below (unless otherwise noted) by facsimile with conforming copies by US mail, first class, postage prepaid, this 12<sup>th</sup> day of December 1997.

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Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

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Administrative Judge  
Atomic Safety and Licensing Board Panel  
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Dr. Peter S. Lam  
Administrative Judge  
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\* Adjudicatory File  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
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Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
Attention: Rulemakings and Adjudications  
Staff  
(Original and two copies)

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Paul A. Gaukler