

October 15, 1997

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
PRIVATE FUEL STORAGE, LLC)	Docket No. 72-22-ISFSI
)	
(Independent Spent)	
Fuel Storage Installation))	

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF THE PETITION OF
THE CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION
AND DAVID PETE TO INTERVENE AND FOR A HEARING

INTRODUCTION

On August 29, 1997, a Petition to Intervene was filed by the Confederated Tribes of the Goshute Reservation (herein, "the Goshute Tribe") and David Pete, individually and as Chairman of the Goshute Tribal Business Council. The NRC Staff responded to the Petition, expressing its view that Petitioners "have not demonstrated their standing to intervene in this matter." In explaining its position, the Staff stated (Response, p. 8):

[Petitioners] fail to note that the Confederated Tribes' Reservation is located approximately 65 miles south-west of the Skull Valley Goshute Reservation. Further, the Petitioners fail to specify the precise locations of their property or activities, or the frequency of Tribal activities that they claim would be harmed by the proposed licensing of the ISFSI--and thus fail to demonstrate that any alleged harm to their interests is traceable to the proposed ISFSI.

In the absence of such information, it is impossible to conclude that the construction and operation of this facility will cause them a "distinct and palpable" harm that constitutes injury in fact.

Accordingly, their Petition should be denied at this time.

This supplemental Memorandum is submitted to provide additional information to show the interest of the Goshute Tribe and its members in this project and to establish their standing to intervene as a party under 10 C.F.R. §2.714. In addition, the Goshute Tribe believes that it should be allowed to intervene as an interested government entity under 10 C.F.R. §2.715(c).

1. Petitioners Have Standing.

Attached hereto are the supplemental declarations of Goshute Tribal officials Chrissandra Reed and Genevieve Fields. Those declarations show with particularity the nature and frequency of the contacts of the Goshute Tribal members with their cousins at Skull Valley. In considering those declarations, it should be kept in mind that the total population of Skull Valley Band members who actually reside on the Skull Valley Reservation is only about 30 people. As shown in the declarations, members of the Goshute Tribe based in Ibapah, Tooele County, Utah, visit the Skull Valley Reservation on a regular and frequent basis for a wide variety of family, cultural, religious, and social reasons. Given the relatively small number of permanent Skull Valley residents who are located on the Skull Valley Reservation, the contacts and the interaction of the members of the Goshute Tribe with their literal cousins must be deemed to be a significant factor in the Skull Valley community.

In addition, members of the Goshute Tribe actually reside and work only a few miles north of the Skull Valley Reservation on a neighboring ranch. Moreover, as noted in the declarations, the burial ground located on the Skull Valley Reservation is the final resting place for a number of Goshute Tribal members as well as the relatives of many Goshute Tribal members.

The potential contamination of the Skull Valley Reservation area in the event of an accidental release of radioactive material would have a direct and substantial impact on numerous members of the Goshute Tribe. The Goshute Tribe has the responsibility to safeguard the health and safety of its members and to preserve and protect its culture.

Thus, Petitioners have standing and should be allowed to intervene as parties.

2. The Goshute Tribe Should Be Allowed to Intervene.

In addition to the particular facts set forth in the declarations, Petitioners re-emphasize that the Skull Valley Reservation lies wholly within the aboriginal Goshute area. All Goshute Indians have an inseparable tie to that area. An accidental radioactive mishap within the aboriginal area affects all Goshutes who regard their aboriginal area as their mother. The Staff seems to pay little attention to this significant cultural fact.

Likewise, the Goshute Tribe suggests that it is not just "an interested Tribe." When the United States first dealt with the Goshute Indians, it treated all Goshutes as one group. See Treaty with the Shoshoni-Goship (1863) (13 Stat. 681). The lands described in that treaty and regarded as belonging to all Goshutes consisted of: "On the north by the middle of the Great Desert; on the west by Steptoe Valley; on the South by Tooedoe or Green Mountains; and on the

east by Great Salt Lake, Tuilla, and Rush Valleys." Id. at Art. 6. A copy of the map approved by the Indian Claims Commission as the Goshute aboriginal area is attached as Ex. 1. The Indian Claims Commission found that "some of the Goshute Indians were engaged in farming at Skull Valley, Deep Creek, Salt Marsh, and Warm Springs, and that other Goshutes still were roaming upon the entire Goshute tract in search of game and pine nuts for food." 31 Ind. Cl. Comm. 225, 261 (1973).

Illustrative of the continuing close ties between the Goshute Tribe and the Skull Valley Band is a provision contained in the Goshute Tribe's initial Tribal Constitution. Article III, Section 1 (Membership) provided as follows (Constitution and By-laws of the Confederated Tribes of the Goshute Reservation, approved by the Department of the Interior on November 25, 1940):

The membership of the Confederated Tribes of the Goshute Reservation shall consist as follows:

a) All persons of Indian blood whose names appear on the official census rolls of the Confederated Tribes of the Goshute Reservation as of April 1, 1939: *Provided*, That within one year after approval of this Constitution and By-laws, such roll may be corrected by the Goshute Business Council of the Confederated Tribes subject to the approval of the Secretary of the Interior.

b) All children born to any member of the Confederated Tribes who is a resident of the reservation at the time of the birth of said children.

c) All persons of Indian blood whose names appear on the official census rolls of the Skull Valley Reservation; *Provided*, That the Skull Valley Indians may affiliate hereafter with Confederated Tribes of the Goshute Indians. [Emphasis added.]

The Goshute Tribe's Constitution was not modified to delete the Skull Valley reference until 1988, after the Skull Valley Band confirmed its own separate governmental identity.¹ The Indian Claims award for the Goshute claims case was divided between the two groups, in recognition that together they were "culturally and politically representative" of the aboriginal Goshute Indians and "also representative in terms of territorial continuity of the Goshute Indians of 1875." Results of Research Report on Goshute Judgment in Dockets 326-B and J before the Indian Claims Commission, Bureau of Indian Affairs, Phoenix Area (by Jose Zuni), March 5, 1976.

Hence, the Goshute Tribe is not merely "an interested Tribe." Until relatively recently, the Goshute Tribe included the Skull Valley people. The close relationship of these people with the members of the Goshute Tribe is an historical fact and continues to the present. To suggest that the Goshute Tribe does not have standing to intervene in a proceeding which involves their ancestral lands is an affront to history, tradition, and modern reality.

¹ The Skull Valley Band adopted its first enrollment ordinance in 1956. The Skull Valley Band did not formally organize until the 1980's.

3. The Goshute Tribe Should Be Allowed to Intervene as a "Municipality."

Under Section 2.715(c), an interest "municipality" is entitled to intervene in a proceeding such as this. *Black's Law Dictionary* defines "municipality" as "a legally incorporated or duly authorized association of inhabitants of limited area for local governmental or other public purposes." Clearly, a federally-recognized Indian Tribe meets that definition and in this case, the Goshute Tribe has demonstrated a legitimate interest. The decisions in *Exxon Nuclear Co.*, 6 NRC 873 (1977), are pertinent, particularly p. 879 (opinion of Mr. Salzman):

Moreover, the California commission's interest is not limited to the outcome of the proceeding as my dissenting colleague suggests. What is at stake is the agency's right to participate in the development of the record, to insure that the matters of particular concern to California are fully explored, to ask hard questions about them and to probe the answers given. It is precisely those privileges which Section 2.715(c) was designed to afford state governments without demanding that they prejudge the situation to take advantage of them. In short, in our proceedings a state agency is not to analogized to a private party but enjoys a more advantageous position precisely because it represents an aspect of the public interest."

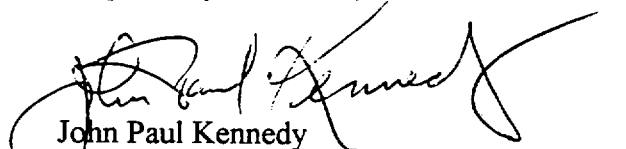
Therefore, the Petition of the Goshute Tribe as an interested municipality should be granted.

Conclusion

Based upon the foregoing and the materials previously submitted, it is respectfully submitted that the Petition of the Goshute Tribe and David Pete to intervene in this matter should be granted.

Dated: October 15, 1997.

Respectfully submitted,



John Paul Kennedy
Attorney for Petitioners Goshute Tribe and
David Pete

Certificate of Service

I hereby certify that copies of the above Supplemental Memorandum were served upon the persons indicated below in the manner stated on the date stated:

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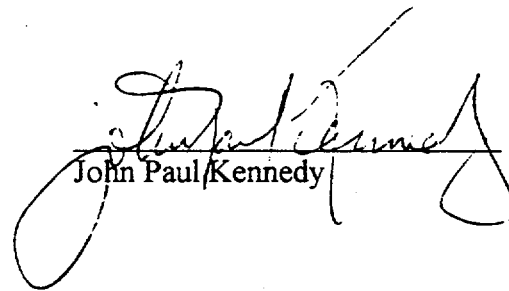
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Dated: October 15, 1997.


John Paul Kennedy

October 15, 1997

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
PRIVATE FUEL STORAGE, LLC)	Docket No. 72-22-ISFSI
)	
(Independent Spent)	
Fuel Storage Installation))	

SUPPLEMENTAL DECLARATION OF CHRISSANDRA M. REED IN SUPPORT
OF THE PETITION OF THE CONFEDERATED TRIBES OF THE GOSHUTE
RESERVATION TO INTERVENE

CHRISSANDRA M. REED, hereby declares under penalty of perjury:

1. She is an enrolled member of the Confederated Tribes of the Goshute Reservation (herein the Goshute Tribe) and currently serves as a member of the Tribal Business Council, which is the governing body of said Indian Tribe.
2. The Goshute Tribe is a federally-recognized Indian Tribe with its headquarters in Ibapah, Tooele County, Utah.
3. She has lived virtually her entire adult life on the Reservation of the Goshute Tribe and has served in many official capacities in addition to her current position on the Tribal Council. Those positions include heading the Goshute Tribe's education office and serving on the Board of Commissions of the local housing authority. She is personally acquainted with nearly all of the living members of the Goshute Tribe and knows many

of the members of the Skull Valley Band of Goshutes. She has personal knowledge of the matters set forth herein.

4. Many members of the Goshute Tribe have visited and continue to visit the Skull Valley Reservation on a regular and recurring basis. For example, Declarant takes her granddaughter, Michaela, to the Skull Valley Reservation approximately every other week and leaves her there in the care of Declarant's first cousins who are enrolled members of the Skull Valley Band. Michaela is an enrolled member of the Goshute Tribe. The duration of such stays by Michaela are from one night to periods of up to two weeks. During her stays on the Skull Valley Reservation, Michaela resides in the home of her cousins and plays with her cousins and has gone horse-back riding there on the Skull Valley Reservation. Also, during such stays, she drinks local water and eats the food prepared and served by her cousins, which food includes natural foods gathered in the Skull Valley area.
5. Declarant visits with her cousins at the Skull Valley Reservation on a regular basis. A similar practice is followed by other enrolled members of the Goshute Tribe who visit with their relatives on the Skull Valley Reservation.
6. Because of blood relationships and intermarriage, members of the Goshute Tribe attend family gatherings, parties, and other events on the Skull Valley Reservation. Enrolled members of the Skull Valley Band also live on and regularly visit the Reservation of the Goshute Tribe. It is the custom and practice during such visits to share food and local water with visitors. Thus, Goshute members eat the food of the Skull Valley members, which food includes natural foods gathered in the Skull Valley area.

7. In certain cases, one family will have some members who are enrolled in the Skull Valley Goshute Band and other members of the same family who are enrolled with the Goshute Tribe at Ibapah. An example of such a family is the Clover family, most of whom are enrolled at Skull Valley, while one family member (Charlene Clover) is enrolled at Ibapah.
8. Declarant's father's sister was Stella Murphy Black Bear. Stella was married to an Indian who I believe was a member of the Skull Valley Band. She is now deceased and is buried in the Tribal burial ground there on the Skull Valley Reservation. The cemetery is located about one-half mile from the homes of the Skull Valley Band's members. Declarant regularly visits that cemetery.
9. Declarant knows Ethelyn Murphy who is an elderly member of the Goshute Tribe and resides on the Goshute Reservation. Ethelyn is the sister of Stella. Ethelyn's former husband is Edgar Moon, who is an enrolled member of the Skull Valley Band. Two of Ethelyn's children have predeceased her and are buried in the cemetery at Skull Valley. Her son who is buried at Skull Valley passed away about three years ago. Another one of Ethelyn's sons still resides on the Skull Valley Reservation. Ethelyn regularly visits the graves of her children and also visits her living son on the Skull Valley Reservation.
10. When Declarant was younger, she attended religious ceremonies on the Skull Valley Reservation on a regular basis, approximately monthly. Declarant frequently attended such ceremonies with her father (now deceased) who traveled with her and who was an active participant in such ceremonies. The ceremonies are held in an Indian tepee which is moved from place to place, but is typically located near the tribal residential area on

the Skull Valley Reservation. Such ceremonies still take place and are attended by other enrolled members of the Goshute Tribe including Ethelyn Murphy, Mabel Salazar, and Bernice Steele. Dan Murphy (former Chairman of the Goshute Tribe) and Lee Moon (who is a member of the Goshute Business Council) also have attended those ceremonies held on the Skull Valley Reservation. Occasionally, some of the ceremonies are also held on the Goshute Reservation near Iapah and are attended by Goshute Tribal members and Skull Valley Band members.

11. Declarant is concerned for herself personally, her granddaughter, her other relatives, and for other members of the Goshute Tribe and for her constituents that a nuclear waste storage facility sited so close to places which are regularly occupied and used by such people will irreversibly harm that environment in the event of an accidental release of radioactive material in the area. Declarant's concern extends to the natural wildlife and plant life as well as the physical and emotional well being of herself and such other people as those who are specifically described herein.
12. Declarant is concerned that the proposed facility, in the event of an accidental release of radioactive material in the Skull Valley area, will destroy the health and safety of herself, her relatives, and other members of the Goshute Tribe who visit such area regularly for various purposes described herein. Declarant is further concerned that the facility will have an adverse impact on sacred burial sites located on the Skull Valley Reservation which are used and visited by herself and other members of the Goshute Tribe as described herein.


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- 13 Declarant is also concerned that such a facility, in the event of an accidental release of radioactive materials, would have a direct and substantial impact upon the culture and cultural activities of herself and other members of the Goshute Tribe who regularly visit and participate in ceremonies on the Skull Valley Reservation and who regularly and frequently participate in family activities on the Skull Valley Reservation
- 14 Release of radioactive material into the air will endanger Declarant, her granddaughter, her other relatives, and other members of the Goshute Tribe. Because of the extremely dangerous nature of radiation even low levels of radiation exposure could result in increased cancer and leukemia rates or cellular and genetic defects many years into the future. Declarant and many other members of the Goshute Tribe are very concerned about this danger
- 15 Declarant has authorized the Goshute Tribe and its Chairman David Pere to represent her and her family in this matter.

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

Dated: October 14, 1997


Chrsandra M. Reed

October 15, 1997

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
PRIVATE FUEL STORAGE, LLC)	Docket No. 72-22-ISFSI
)	
(Independent Spent)	
Fuel Storage Installation))	

SUPPLEMENTAL DECLARATION OF GENEVIEVE P. FIELDS IN SUPPORT
OF THE PETITION OF THE CONFEDERATED TRIBES OF THE GOSHUTE
RESERVATION TO INTERVENE

GENEVIEVE P. FIELDS, hereby declares under penalty of perjury:

1. She is an enrolled member of the Confederated Tribes of the Goshute Reservation (herein the Goshute Tribe) and currently serves as Secretary to the Tribal Business Council, which is the governing body of said Indian Tribe.
2. The Goshute Tribe is a federally-recognized Indian Tribe with its headquarters in Ibapah, Tooele County, Utah.
3. She has lived virtually her entire adult life on the Reservation of the Goshute Tribe and has served in many official capacities in addition to her current position as Secretary to the Tribal Council. She is personally acquainted with nearly all of the living members of the Goshute Tribe and knows many of the members of the Skull Valley Band of Goshutes. She has personal knowledge of the matters set forth herein.

4. Many members of the Goshute Tribe have visited and continue to visit the Skull Valley Reservation and adjacent area on a regular and recurring basis. For example, Declarant's oldest sister, Kathryn resides on a ranch located about four miles north of the Skull Valley Reservation. Kathryn is an enrolled member of the Goshute Tribe and was married to Wynn Murphy until his death. She now resides full time with her son, Ivan Murphy, who works on the ranch where they live, only a few miles from the proposed storage facility.
5. Wynn Murphy is buried at the cemetery located on the Skull Valley Reservation. Kathryn regularly visits that grave.
6. Because of blood relationships and intermarriage, members of the Goshute Tribe attend family gatherings, parties, and other events on and immediately adjacent to the Skull Valley Reservation. Enrolled members of the Skull Valley Band also live on and regularly visit the Reservation of the Goshute Tribe. It is the custom and practice during such visits to share food and local water with visitors. Thus, Goshute members eat the food of the Skull Valley members, which food includes natural foods gathered in the Skull Valley area.
7. In certain cases, one family will have some members who are enrolled in the Skull Valley Goshute Band and other members of the same family who are enrolled with the Goshute Tribe at Ibapah. An example of such a family is the Clover family, most of whom are enrolled at Skull Valley, while one family member (Charlene Clover) is enrolled at Ibapah.

8. When Declarant was younger, she attended religious ceremonies on the Skull Valley Reservation. The ceremonies are held in an Indian tepee which is moved from place to place, but is typically located near the tribal residential area on the Skull Valley Reservation. Such ceremonies still take place and are attended by other enrolled members of the Goshute Tribe including Ethelyn Murphy, Mabel Salazar, and Bernice Steele. Dan Murphy (former Chairman of the Goshute Tribe) and Lee Moon (who is a member of the Goshute Business Council) also have attended those ceremonies held on the Skull Valley Reservation. The same is true for Kathryn and Wynn (while he was alive). Occasionally, some of the ceremonies are also held on the Goshute Reservation near Ibapah and are attended by Goshute Tribal members and Skull Valley Band members.
9. My niece, Lorraine Pete (who is the daughter of Myrtle Bear, an enrolled member of the Skull Valley Band, and Glen Pete, an enrolled member of the Goshute Tribe) frequently visits with her relatives at Skull Valley.
10. Declarant is concerned for herself personally, her sister and nephew, her niece and her niece's family, her other relatives, and for other members of the Goshute Tribe that a nuclear waste storage facility sited so close to places which are regularly occupied and used by such people will irreversibly harm that environment in the event of an accidental release of radioactive material in the area. Declarant's concern extends to the natural wildlife and plant life as well as the physical and emotional well being of herself and such other people as those who are specifically described herein.

11. Declarant is concerned that the proposed facility, in the event of an accidental release of radioactive material in the Skull Valley area, will destroy the health and safety of herself, her relatives, and other members of the Goshute Tribe who visit such area regularly for various purposes described herein. Declarant is further concerned that the facility will have an adverse impact on sacred burial sites located on the Skull Valley Reservation which are used and visited by herself and other members of the Goshute Tribe as described herein.
12. Declarant is also concerned that such a facility, in the event of an accidental release of radioactive materials, would have a direct and substantial impact upon the culture and cultural activities of herself and other members of the Goshute Tribe who regularly visit and participate in ceremonies on the Skull Valley Reservation and who regularly and frequently participate in family activities on the Skull Valley Reservation.
13. Release of radioactive material into the air will endanger Declarant, her relatives, and other members of the Goshute Tribe, not to mention friends who are enrolled at Skull Valley. Because of the extremely dangerous nature of radiation even low levels of radiation exposure could result in increased cancer and leukemia rates or cellular and genetic defects many years into the future. Declarant and many other members of the Goshute Tribe are very concerned about this danger.
14. Declarant has authorized the Goshute Tribe and its Chairman David Pete to represent her and her family in this matter.

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

Dated: October 14, 1997.

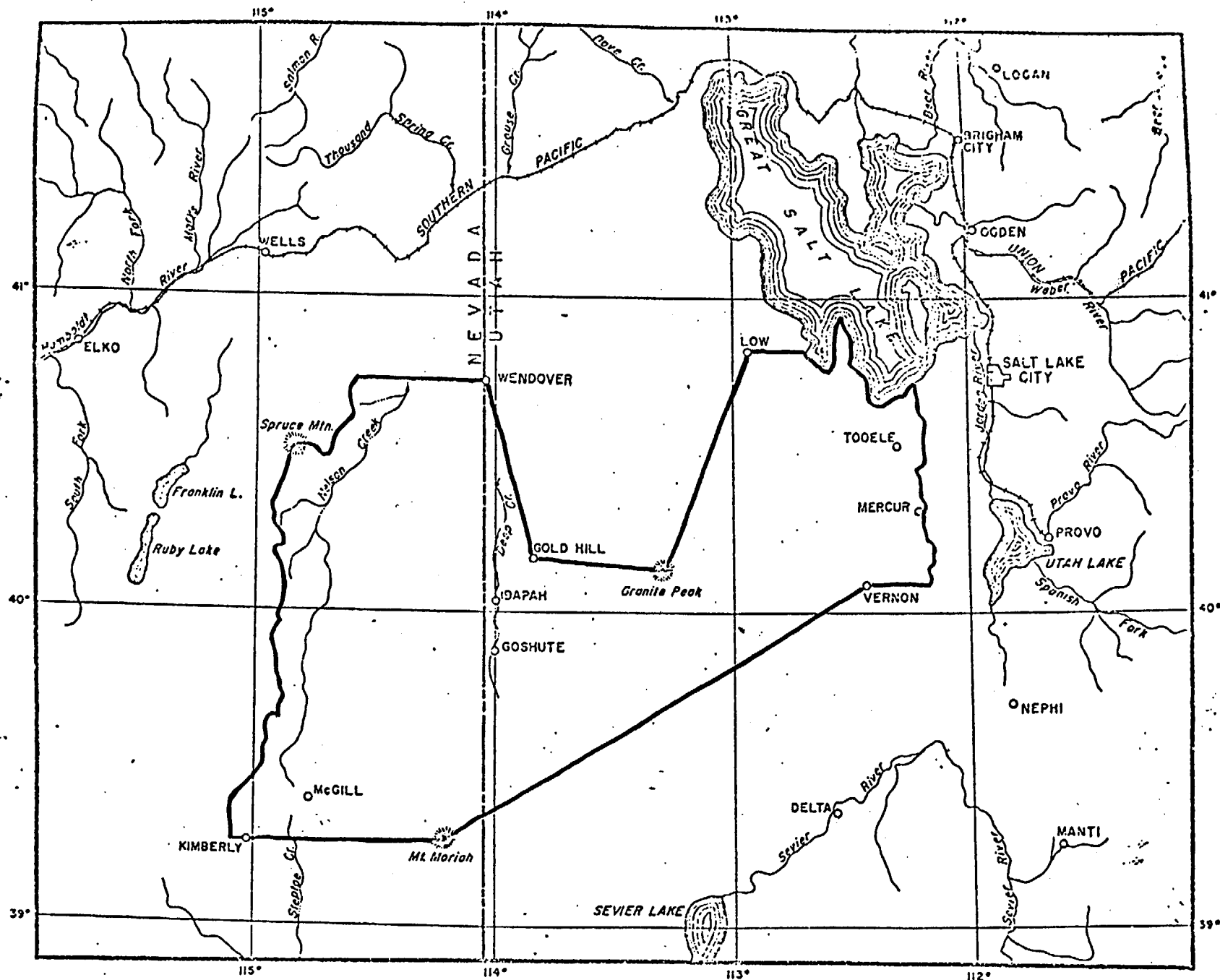
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Genevieve P. Fields

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EXHIBIT

GOSHUTE TRACT, NEVADA AND UTAH-DOCKET NO. 326-J

AS DECIDED OCTOBER 16, 1962 BY THE INDIAN CLAIMS COMMISSION

SCALE 0 10 20 30 40 50 60 70 80 90 100 MILES