

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
LBP-98-10
JUN 1 1998

ATOMIC SAFETY AND LICENSING BOARD '98 MAY 18 P2:51

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Jerry R. Kline
Dr. Peter S. Lam

OFFICE OF THE
ADMINISTRATIVE JUDGES

SERVED MAY 18 1998

In the Matter of

PRIVATE FUEL STORAGE, L.L.C.

(Independent Spent Fuel
Storage Installation)

Docket No. 72-22-ISFSI
ASLBP No. 97-732-02-ISFSI
May 18, 1998

MEMORANDUM AND ORDER
(Ruling on Motions for
Reconsideration of LBP-98-7)

Four of the parties to this proceeding, intervenors Ohngo Gaudadeh Devia (OGD) and the State of Utah (State or Utah), applicant Private Fuel Storage, L.L.C. (PFS), and the NRC staff have filed motions requesting reconsideration and/or clarification of portions of our rulings in LBP-98-7, 47 NRC ____ (Apr. 22, 1998). See Motion and Memorandum of [OGD] Requesting Reconsideration of Contentions (Apr. 29, 1998) [hereinafter OGD Reconsideration Motion]; [State] Motion for Clarification and Reconsideration of LBP-98-7 (May 6, 1998) [hereinafter State Reconsideration Motion]; Applicant's Motion for Reconsideration and Clarification (May 6, 1998) [hereinafter PFS Reconsideration Motion]; NRC Staff's Motion for Partial Reconsideration of LBP-98-7 (May 6, 1998) [hereinafter Staff Reconsideration Motion].

In addition, these parties, as well as intervenors Castle Rock Land & Livestock, L.C., and Skull Valley Co., LTD. (collectively Castle Rock), have filed pleadings in response to these motions. See [OGD] Response to Applicant's Motion for Reconsideration of Contentions (May 11, 1998) [hereinafter OGD Reconsideration Response]; State's Response to Motions for Reconsideration (May 13, 1998) [hereinafter State Reconsideration Response]; [Castle Rock] Response to Motion for Reconsideration (May 13, 1998) [hereinafter Castle Rock Reconsideration Response]; Applicant's Response to NRC Staff, [State], and OGD Motions for Reconsideration and Clarification (May 13, 1998) [hereinafter PFS Reconsideration Response]; NRC Staff's Response to Motions for Reconsideration of LBP-98-7, Filed by the Applicant, the [State] and [OGD] (May 13, 1998) [hereinafter Staff Reconsideration Response].

As is detailed below, we grant in part and deny in part the reconsideration/clarification request of PFS, and deny the requests of OGD, the State, and the staff.

I. COMMON ISSUES

A. Licensing Board's Contention Admissibility Explanations

In their motions, various parties raise two "common" issues. Both OGD and the State assert, with the staff's apparent acquiescence, that the Board's explanation of its reasons for rejecting some of their contentions is too terse

and requires further explication. See OGD Reconsideration Motion at 2 n.1; State Reconsideration Motion at 2-6; Staff Reconsideration Response at 3-4. We do not agree. In the context of the record before us, including the arguments of the participants, our reasons for rejecting their contentions "'may reasonably be discerned,'" Motor Vehicle Manufacturers Ass'n of the United States v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (quoting Bowman Trans., Inc. v. Arkansas-Best Freight Sys., Inc., 419 U.S. 281, 286 (1974)), from our April 22, 1998 issuance and so are adequate. We also note in this regard that their reliance on authority relating to "initial decisions" is not applicable to our nonmerits determination of whether their contentions meet the agency's procedural admissibility threshold.

B. Utah B

For their part, both PFS and the staff assert that our admission of contention Utah B relating to licensing of the Rowley Junction intermodal transfer point (ITP) was in error. See PFS Reconsideration Motion at 2-5; Staff Reconsideration Motion at 2-10. They contend that, notwithstanding the unresolved question of the PFS role in operating the ITP, there is no basis for concern because the coverage afforded under 10 C.F.R. Part 71 to Commission "licensees" and common or contract "carriers" relative to the transportation of nuclear materials will not leave a

regulatory gap. The State disagrees, asserting the contention raises unresolved legal and factual issues. See State Reconsideration Response at 2-8.

We see nothing in the arguments of PFS and the staff that gives us cause to dismiss what appears to be essentially a legal contention at this nonmerits stage of the proceeding.¹ Accordingly, as they relate to Utah B, their reconsideration requests are denied.

II. INDIVIDUAL PARTY ISSUES

In addition to these "common" issues, OGD, the State, and PFS also seek reconsideration or clarification of matters relating to the Board's rulings on certain specific contentions whose admission they either sponsored or opposed. We address these matters below.

A. OGD Reconsideration Requests

OGD seeks reconsideration of our decision rejecting three of its contentions, OGD B, OGD J, and OGD N. As to each, it again asserts there was sufficient basis to support admission. See OGD Reconsideration Motion at 2-6. The applicant opposes all three requests as does the staff, notwithstanding its original position that OGD J was admissible. See PFS Reconsideration Response at 23-30; Staff Reconsideration Response at 6-11.

¹ They are, of course, free to renew their arguments in summary disposition motions at the appropriate time.

1. OGD B

With regard to OGD B, to the extent OGD now seeks to rely on emergency planning at the ITP as a basis for its contention, this clearly falls outside the stated scope of its original contention, making it an impermissible ground for seeking reconsideration. See Louisiana Energy Services, L.P. (Claiborne Enrichment Center), CLI-97-2, 45 NRC 3, 4 (1997) (reconsideration motions may not rest on a "new thesis"). And as to its assertions the applicant is not in compliance with the offsite notification and coordination requirements of 10 C.F.R. § 72.32 and the provisions of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001-11050, OGD provides nothing that causes us to change our initial ruling that in this regard the contention and its supporting bases failed to establish with specificity any genuine dispute; lacked adequate factual or expert opinion support; and/or failed properly to challenge the PFS application. See LBP-98-7, 47 NRC at ____ (slip op. at 128-29).

2. OGD J

Regarding OGD J, which concerns the purported failure of PFS to comply with all permits, licenses, and approvals required for the facility, the only stated basis for the contention other than the purported "trust responsibility" rationale rejected by the Board is found in the first sentence of the contention's basis. OGD has presented

nothing that leads us to revise our conclusion the contention and this stated basis failed to establish with specificity any genuine dispute; lacked adequate factual or expert opinion support; and/or failed properly to challenge the PFS application. See LBP-98-7, 47 NRC at ____ (slip op. at 135).

3. OGD N

As for OGD N, which involves allegations of water supply contamination and water table depletion, as the staff points out, much of the information cited by OGD is new and thus cannot provide the appropriate basis for a reconsideration request. See Claiborne, CLI-97-2, 45 NRC at 4. Moreover, nothing presented in the reconsideration motion, whether old or new, gives us pause to change our ruling that the contention and its supporting bases failed to establish with specificity any genuine dispute; lacked adequate factual or expert opinion support; and/or failed properly to challenge the PFS application. See LBP-98-7, 47 NRC at ____ (slip op. at 138).

B. State of Utah Reconsideration Requests

As with OGD, the State seeks reconsideration of our rejection of three of its contentions, Utah J, Utah W, and Utah CC. See State Reconsideration Motion at 6-20. PFS and the staff oppose all three requests. See PFS Reconsideration Response at 8-23; Staff Reconsideration Response at 4-5.

1. Utah J

In connection with Utah J, which concerns canister and fuel cladding inspection and maintenance, the State asserts that in finding this contention inadmissible as an impermissible challenge to agency regulatory requirements or generic determinations, the Board's reliance on PFS arguments regarding canister inspection and repair, in particular its citation of 59 Fed. Reg. 65,898, 65,901 (1994), was misplaced. Also, the State declares PFS has failed to comply with the requirements of 10 C.F.R. §§ 72.122(f), 72.128(a)(1) by not proposing a "design" feature that would allow onsite inspection and maintenance of canisters and cladding.

While significant portions of the State's reconsideration claims appear to be based on new materials, and thus inappropriate, see Claiborne, CLI-97-2, 45 NRC at 4, ultimately nothing it presents gives us cause to revise our determination regarding this contention. As both PFS and the staff have documented, the contention and its supporting bases impermissibly challenge agency regulations or rulemaking-associated generic determinations and/or lack adequate factual or expert opinion support. See LBP-98-7, 47 NRC at ____ (slip op. at 66-67).

2. Utah W, Paragraphs One, Three, Four, and Five

The State seeks reconsideration of our rejection of paragraphs one, three, four, and five contention Utah W,

which asserts generally that the PFS facility creates other adverse impacts not considered in the applicant's Environmental Report, on the grounds that our rejection of these paragraphs is inconsistent with our rulings admitting other contentions. Indeed, the bases for these paragraphs reference other contentions we have admitted, specifically Utah K, Utah L, Utah N, and Utah T.

The fatal flaw in the State's original claim was its apparent assumption that the admission of a safety issue concerning the adequacy of specific portions of the applicant's Safety Analysis Report or the need for permits or approvals that may relate to safety or other matters a fortiori creates a companion environmental issue. With regard to each of these paragraphs, having failed to make a specific, adequately supported showing that an admissible safety or other issue portends unanalyzed (or inadequately analyzed) but cognizable environmental impacts, they were inadmissible as failing to establish with specificity any genuine dispute; lacking adequate factual or expert opinion support; and/or failing properly to challenge the PFS application. See LBP-98-7, 47 NRC at ____ (slip op. at 86-87). The State presents nothing in its reconsideration request that causes us to revise this ruling.

3. Utah CC

In seeking reconsideration of Utah CC, which asserts the PFS environmental report presents a one-sided cost benefit analysis, in addition to relying on the type of a fortiori "admission of other contentions" analysis we have rejected in section II.B.2 above, the State also asserts that the Commission's discussion of the adequacy of a "no action alternative" analysis in Louisiana Energy Services (Claiborne Enrichment Center), CLI-98-3, 47 NRC ___, ___ (slip op. at 21-25) (Apr. 3, 1998), requires admission of this contention.

Whatever relevance the Commission's Claiborne analysis of the "no action alternative" has for the State's admitted no action alternative contention, Utah Z, we are unable to find it provides any basis for the admission of this contention. As we noted in LBP-98-7, 47 NRC at ___ (slip op. at 91), the problem for the State with regard to this contention is its failure to establish with specificity any genuine dispute; to provide adequate factual or expert opinion support; and/or to properly challenge the PFS application. Once again, nothing in the State's reconsideration request gives us any reason to question our ruling in this regard.

C. PFS Reconsideration Requests

For its part, PFS seeks reconsideration or clarification relative to seven contentions, some of which

encompass consolidated portions of contentions from other parties.

1. Utah E/Castle Rock 7/Confederated Tribes F,
Paragraphs Seven and Ten

PFS first asks for reconsideration of the admission of two paragraphs, seven and ten, of consolidated contention Utah E/Castle Rock 7/Confederated Tribes F, which concerns the adequacy of PFS's financial qualifications to construct and operate the proposed Skull Valley facility. See PFS Reconsideration Motion at 5-9. The State, Castle Rock, and the staff oppose the first request, while the staff, which originally did not oppose the portions of the unconsolidated Utah, Castle Rock, and Confederated Tribes contentions we admitted, now supports the applicant's request regarding paragraph ten. See State Reconsideration Response at 8-13; Castle Rock Reconsideration Response at 1-5; Staff Reconsideration Response at 12-13.

We deny the reconsideration request for paragraph seven concerning the applicant's showing regarding the service agreements it will obtain from customers. In light of the facial difference between the financial qualifications standards of 10 C.F.R. Parts 70 and 72, compare 10 C.F.R. § 70.23(a)(5) with 10 C.F.R. § 72.22(e), and what, at this juncture, are seeming distinctions regarding the scope of the commitments at issue, we are unable to say, as PFS asserts, that the Commission's decision in Louisiana Energy

Services, L.P. (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294, 306-08 (1997), is controlling such that this portion of the contention should be dismissed ab initio.

With regard to paragraph ten, as far as we can ascertain, the PFS arguments regarding the provisions of the Nuclear Waste Policy Act of 1982, 42 U.S.C. §§ 10131(a)(5), 10222(a)(5)(b), and the Price-Anderson Act, 42 U.S.C. § 2210, are not ones it made previously in challenging this portion of the contention, which was derived from Castle Rock 7, paragraph c. They thus constitute an inappropriate basis for a reconsideration. See Claiborne, CLI-97-2, 45 NRC at 4. This PFS request is denied.²

2. Utah H, Paragraphs Three Through Seven

The applicant's next request is for clarification of our ruling admitting Utah H, paragraphs three through seven, concerning inadequate cask thermal design. PFS declares this should be limited to "site-specific issues -- i.e., whether the [PFS facility] site conditions fall within the envelope of the cask vendors' designs" PFS Reconsideration Motion at 10. The staff does not oppose this request, while the State offers its own interpretation of the contention. See State Reconsideration Response at 13-15; Staff Reconsideration Response at 13. We find the

² PFS is, of course, free to renew its arguments in a summary disposition motion at the appropriate time.

applicant is correct in this regard, with the understanding that the site conditions at issue may include conditions resulting from the effects of the site specific cask interactions specified in the contention.

3. Utah V

PFS also asks for reconsideration of our admission of Utah V, concerning environmental consideration of transportation-related impacts. PFS asserts that, consistent with 10 C.F.R. § 72.108, our decision to admit the contention relative to the "weight" component of Table S-4, 10 C.F.R. § 51.52(c), should be circumscribed to include only consideration of regional impacts. See PFS Reconsideration Motion at 11-12. We do not agree. As the staff points out in opposing this PFS request, see Staff Reconsideration Response at 13-14, this siting regulation does nothing to circumscribe the agency's responsibility under the National Environmental Policy Act of 1972 (NEPA) to consider reasonably foreseeable environmental impacts, included the potentially extra-regional impacts reflected in Table S-4.

4. Utah Z

In connection with our admission of Utah Z, concerning the no-action alternative, PFS declares that we should exclude consideration of the impacts of "sabotage" and "cross-country transportation" as litigable bases. See PFS Reconsideration Motion at 13. The State opposes both these

requests, while the staff, which originally did not oppose admission of the contention, now supports dismissal of the contention's sabotage basis. See State Reconsideration Response at 19-21; Staff Reconsideration Response at 14-15.

Having rejected the sabotage-related aspects of other contentions, including Utah U and Utah V, consistency concerns counsel that we consider PFS's renewed argument regarding this component of the contention to ensure we have not overlooked a similar matter with respect to Utah Z. See Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-83-25, 17 NRC 681, 687 (1983) (reconsideration asks that the deciding body take another look at existing evidence because evidence has been misunderstood or overlooked). And in doing so, we find this aspect of the contention likewise is an impermissible challenge to the Commission's regulations or generic rulemaking-associated determinations. See LBP-98-7, 47 NRC at ____ (slip op. at 47-48).

The same result is not appropriate for "cross-country transportation," however. As the staff notes, see Staff Reconsideration Response at 15, because averting the transportation of spent fuel to the Skull Valley site is a reasonably foreseeable consequence of the no action alternative, this an impact that merits consideration under this contention.

5. Utah DD/Castle Rock 16, Paragraphs One and Three

With respect to Utah DD/Castle Rock 16, which concerns the PFS environmental report's discussion of species and ecology impacts, the applicant asks for clarification that the Board intended to limit paragraphs one and three simply to the specific species identified. See PFS Reconsideration Motion at 13-15. Although, as the staff points out, see Staff Reconsideration Response at 15, this seemingly was clear from the Board's action on the contention, we nonetheless verify that this is the intended limitation.³

6. Castle Rock 17, Paragraphs b. and e.

Paragraphs b. and e. of Castle Rock 17, which concern the adequacy of the PFS Environmental Report's discussion of the Salt Lake Valley population and the potential impacts on a national wilderness area in the vicinity of the proposed PFS facility, also are the subject of the PFS reconsideration request. In both instances, PFS renews its assertions there was an inadequate basis for the admission

³ In addition, the State asks that we reword paragraph one of the contention to make it clear the contention is not limited to only one peregrine falcon with a nest or nests on the Timpie Springs Wildlife Management Area. See State Reconsideration Response at 22-23. We adopted the existing contention language based on our understanding it reflects the negotiated agreement of the State and PFS. See Tr. at 822; Licensing Board Memorandum and Order (Contention Revisions and Transcript Corrections) (Feb. 9, 1998) at 1-2 & attach. 1 (State of Utah Contentions A through DD at 16) (unpublished). At this point, we are not inclined to make any further revisions to the language of this contention absent an additional agreement between the parties.

of these portions of the contention. See PFS Reconsideration Motion at 15-19. Castle Rock opposes these requests, while the staff, which initially supported admission of both paragraphs, now agrees with PFS's position. See Castle Rock Reconsideration Response at 5-8; Staff Reconsideration Response at 15-16.

Again, given our rejection of related assertions relative to Castle Rock 9 and Utah W, considerations of consistency warrant further consideration of PFS's arguments. And after reviewing the particular parts of the contention's basis that supported these paragraphs, which constituted only two sentences, we conclude the applicant is correct with regard to the admissibility of both paragraphs.

Relative to paragraph b., Castle Rock's claims concerning the adequacy of the consideration of regional population impacts in the PFS Environmental Report hinge on the otherwise unsupported allegation that the fifty-mile radius used by PFS in reliance on the staff's standard review plan for independent spent fuel storage installations, see Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Comm'n, Standard Review Plan for Spent Fuel Dry Storage Facilities, NUREG-1567, app. B, at § B.4.2.2 (Draft Oct. 1996), is "misleading." Looking again at the basis for this paragraph, we find it fails to establish with specificity any genuine dispute; impermissibly challenges the Commission's regulations or

generic rulemaking-associated determinations; lacks adequate factual or expert opinion support; and/or fails properly to challenge the PFS application. See LBP-98-7, 47 NRC at ____ (slip op. at 45-48, 50-52).

In connection with paragraph e., although Castle Rock in its reconsideration response provides a discussion of the potential impacts of the PFS facility on the Deseret National Wilderness area, this clearly is new material that is not appropriate grist for the reconsideration mill.⁴ See Claiborne, CLI-97-2, 46 NRC at 4. As to the original contention, upon reconsideration we find its conclusory discussion regarding impacts at the national wilderness area was inadequate to support admission as failing to establish with specificity any genuine dispute; lacking adequate factual or expert opinion support; and/or failing properly to challenge the PFS application. See LBP-98-7, 47 NRC at ____ (slip op. at 45-48, 50-52).

Appendix A to this memorandum and order includes the language of Castle Rock 17, as revised per these rulings.

7. OGD O

In seeking reconsideration of OGD O, which is an "environmental justice" contention, PFS renews its claims

⁴ Castle Rock may, however, wish to submit this information as part of any comments it may make to the staff regarding the scope and substance of the staff-prepared environmental impact statement. See 63 Fed. Reg. 24,197, 24,198 (1998).

regarding a lack of basis. Specifically, it asserts there is no basis whatsoever for consideration of two of the facilities listed in the contention because, unlike the other listed facilities, the petitioner failed to provide any information on hazardous wastes or other harmful substances on those sites. See PFS Reconsideration Motion at 19-20. The OGD and the staff oppose this request. See OGD Reconsideration Response at 4; Staff Reconsideration Response at 16. Premised on ensuring that this lack of supporting information is not overlooked, PFS's point is valid. Accordingly, we delete the references to the Utah Test and Training Range South and the Utah Test and Training Range North from the contention.⁵ Appendix A to this memorandum and order sets forth the language of the revised contention.

Also with respect to this contention, again seeking to ensure a lack of supporting information is not overlooked, PFS asserts, with the staff's support and in the face of OGD opposition, that Environmental Protection Agency (EPA) sites on a map referenced without further explanation in basis five of the contention and attached as Exhibit 20 to OGD's

⁵ The staff opposes this request on the basis of Exhibits 25 and 26 attached to OGD's November 24, 1997 contentions pleading. These exhibits, which OGD does not reference in its reconsideration response, appear applicable to the Tooele Army Depot rather than the north and south Utah Test and Training Ranges. If there remains some question in this regard, the matter should be brought to the Board's attention promptly.

November 24, 1997 contentions pleading should not be considered as within the litigable scope of this contention. See PFS Reconsideration Motion at 20; OGD Reconsideration Response at 3-4; Staff Reconsideration Response at 16. The Board agrees that attaching a document in support of a contention without any explanation of its significance does not provide an adequate basis for a contention. See Louisiana Energy Services, L.P. (Claiborne Enrichment Center), LBP-91-41, 34 NRC 332, 338 (1991). Thus, the impact of the EPA sites is not a matter subject to litigation within the scope of this contention.

III. CONCLUSION

We reject the reconsideration/clarification requests of (1) OGD and the State for a further explication of the reasons for our rejection of certain of their contentions; (2) PFS and staff for dismissal of Utah B; (3) OGD for admission of OGD B, OGD J, and OGD N; (4) the State for admission of Utah J, paragraphs one, three, four, and five of Utah W, and Utah CC; (5) PFS for dismissal of paragraphs seven and ten of consolidated contention Utah E/Castle Rock 7/Confederated Tribes F; (6) PFS for the limitation of Utah V, to the environmental consideration of transportation-related regional impacts; and (7) PFS for dismissal of the cross-country transportation-related aspects of Utah Z. Further, we grant the PFS

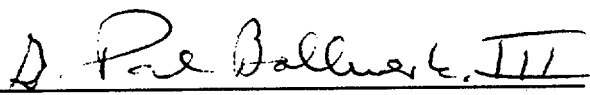
reconsideration requests for dismissal of (1) the sabotage-related aspects of Utah Z; (2) Castle Rock 17, paragraphs b. and e.; and (3) certain facilities or sites from consideration in connection with the environmental justice claims of OGD O. We also provide the clarification requested by PFS regarding our rulings admitting (1) Utah H, paragraphs three through seven; and (2) Utah DD/Castle Rock 16, paragraphs one and three.

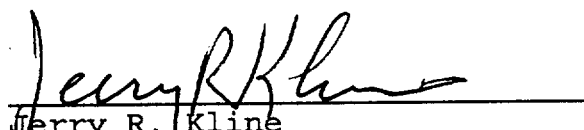
For the foregoing reasons, it is this eighteen day of May, 1998, ORDERED,

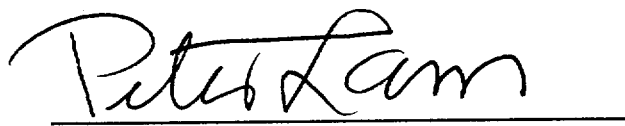
1. That the April 29, 1998 and May 6, 1998 reconsideration/clarification motions of OGD, the State, and the staff are denied.

2. That the May 6, 1998 reconsideration/clarification motion of PFS is granted in part and denied in part in accordance with the rulings in sections I.B. and II.C. above.

THE ATOMIC SAFETY
AND LICENSING BOARD⁶


G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE


Jerry R. Kline
ADMINISTRATIVE JUDGE


Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland

May 18, 1998

⁶ Copies of this memorandum and order were sent this date to counsel for the applicant PFS, and to counsel for petitioners Skull Valley Band of Goshute Indians, OGD, Confederated Tribes of the Goshute Reservation, Castle Rock, and the State by Internet e-mail transmission; and to counsel for the staff by e-mail through the agency's wide area network system.

ATTACHMENT A

CONTENTIONS REVISED PER RULINGS ON REQUESTS
FOR RECONSIDERATION OF LBP-98-7

1. Castle Rock 17 -- Inadequate Consideration of Land Impacts

CONTENTION: The Application violates NRC regulations and NEPA because the ER does not adequately consider the impact of the facility upon such critical matters as future economic and residential development in the vicinity, potential differing land uses, property values, the tax base, and the loss of revenue and opportunity for agriculture, recreation, beef and dairy production, residential and commercial development, and investment opportunities, all of which have constituted the economic base and future use of Skull Valley and the economic interests of Petitioners, or how such impacts can and must be mitigated, see, e.g., 10 C.F.R. §§ 72.90(e), 72.98(c)(2) and 72.100(b), in that:

- a. the ER does not recognize the potential use of the areas surrounding the PFSF for residential or commercial development;
- b. the ER fails to consider the effect of the PFSF on the present use of Castle Rock's lands for farming, ranch operations and residential purposes or the projected use of such lands for dairy operations, residential development, or commercial development; and
- c. the ER provides no, or inaccurate, information on the economic value of current agricultural/ranching operations conduct on Castle Rock's lands.

2. OGD 0 -- Environmental Justice Issues Are Not Addressed

CONTENTION: The license application poses undue risk to public health and safety because it fails to address environmental justice issues. In Executive Order 12898, 3 C.F.R. 859 (1995) issued February 11, 1994, President Clinton directed that each Federal agency "shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations in the United States." It is not just and fair that this community be made to suffer more environmental degradation at the hands of the NRC. Presently, the area is surrounded by a ring of environmentally harmful companies

and facilities. Within a radius of thirty-five (35) miles the members of OGD and the Goshute reservation are inundated with hazardous waste from: Dugway Proving Ground, Deseret Chemical Depot, Tooele Army Depot, Envirocare Mixed Waste storage facility, APTUS Hazardous Waste Incinerator, and Grassy Mountain Hazardous Waste Landfill.

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of

PRIVATE FUEL STORAGE, LLC

**(Independent Spent Fuel Storage
Installation)**

Docket No.(s) 72-22-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (RULING ON...LBP-98-7) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Washington, DC 20555**

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Docket No.(s)72-22-ISFSI
LB M&O (RULING ON...LBP-98-7)

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Dated at Rockville, Md. this
18 day of May 1998

Adria T. Byrdson
Office of the Secretary of the Commission