

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	Docket No. 72-22-ISFSI
)	
PRIVATE FUEL STORAGE, LLC)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel)	
Storage Installation))	May 13, 1998

STATE'S RESPONSE TO MOTIONS FOR RECONSIDERATION

Pursuant to the Board's Memorandum and Order dated May 8, 1998, the State of Utah files this response to Motions for Reconsideration submitted on May 6 by the Applicant and Staff. The State responds to the Staff's Motion, which focuses exclusively on issues relating to Rowley Junction, and to the Applicant's Motion for Reconsideration and Clarification of the following contentions, in whole or in part: Utah Contentions B (Rowley Junction), E (Financial Assurance, subparts 7 and 10), H (subparts 3 to 7), and DD (Ecology and Species); and transportation issues related to Contentions V and Z. Applicant's Motion at 1-15. The State's response does not address the Applicant's request for reconsideration of Castle Rock Contention 17 and OGD Contention O. Id. at 15-20.

A. Utah Contention B, License Needed for Intermodal Transfer Facility.

The Staff's Motion for Reconsideration focuses exclusively on issues relating to the admission of Contention B. The Applicant also requests reconsideration of admission of Utah Contention B. Applicant's Motion at 1-4.

The Board admitted Contention B to the following extent:

Utah B -- License Needed for Intermodal Transfer Facility

CONTENTION: PFS's application should be rejected because it does not seek approval for receipt, transfer, and possession of spent nuclear fuel at the Rowley Junction Intermodal Transfer Point ("ITP"), in violation of 10 C.F.R. § 72.6(c)(1),^[1] in that the Rowley Junction operation is not merely part of the transportation operation but a de facto interim spent fuel storage facility at which PFS will receive, handle, and possess spent nuclear fuel. Because the ITP is an interim spent fuel storage facility, it is important to provide the public with the regulatory protections that are afforded by compliance with 10 C.F.R. Part 72, including a security plan, an emergency plan, and radiation dose analyses.

¹ 10 CFR § 72.6(c) requires:

Except as authorized in a specific license and in a general license under subpart K of this part issued by the Commission in accordance with the regulations in this part, no person may acquire, receive, or possess—

- (1) Spent fuel for the purpose of storage in an ISFSI

LBP-98-7 at 58 and App A at 1.

In ruling on Contention B, the Board stated:

[T]he Part 71 regulations authorize transportation of spent fuel under a general license for a Commission licensee or "carrier," which is defined as a "common, contract, or private carrier," that complies with the general controls and procedures requirements, quality assurance measures, and other provision of Subparts A, G, and H of Part 72² (*sic*). 10 C.F.R. §§ 710(d), 71.4, 71.12. In this instance, there is a genuine legal/factual issue that merits further inquiry as to whether the PFS scheme for operation of the Rowley Junction ITP will cause the materials delivered there to remain within the possession and control of an entity or entities that comply with the terms of the general license issued under section 71.12 or will be handled in such a way as to require specific licensing under Part 72. See State Contentions at 11 (PFS will be receiving and handling spent fuel at ITP using PFS owned and operated equipment); Tr. at 144-62.

LBP-98-7 at 58.

The Staff and the Applicant reiterate the arguments made to the Board in their opposition to Contention B, without providing any fresh insight into how the Board might have erred. Once again, the Staff and the Applicant try to characterize the activities that will occur at Rowley Junction as like any other activity that will occur along the transportation route. They argue that only 10 CFR Parts 71 and 73 and U.S. Department of Transportation ("DOT")

² In an Order dated May 8, 1998 the Board noted it made a typographical error and changed the reference from Part 72 to Part 71.

regulations apply to the Rowley Junction facility. However, the transportation regulations, relied on by both the Staff and PFS as controlling activities at Rowley Junction, are not designed to deal with interim storage operations. For example, DOT regulations merely require all rail shipments of hazardous material to be forwarded "promptly" and highway shipments be transported "without unnecessary delay." 49 CFR §§ 174.15 and 178.800(d).

More importantly, PFS and the Staff sidestep the crux of the issue in the Board's ruling: whether materials delivered to Rowley Junction are considered to be under the control of a contract or common carrier or whether the materials at Rowley Junction will be handled in such a way as to come within the specific licensing requirements of Part 72.

Whether fuel will be in storage incident to transportation or whether interim storage (and thus possession under Part 72) will occur at Rowley Junction, is not a question that can be summarily dismissed based on the information contained in the PFS license submittal. Both the Applicant and the Staff readily agree that PFS's Part 72 license application does not cover receipt or possession of spent nuclear fuel at Rowley Junction. Clearly, if PFS is considered to be in receipt or possession of spent nuclear fuel at Rowley Junction, the proposed Part 72 license would be deficient to regulate such

activities. Nor will a license issued to a contract or common carrier under 10 CFR Part 71 cover possession at Rowley Junction. See 10 CFR § 71.0(c) ("No provision of this part authorizes possession of licensed material.").

The State has raised a genuine factual and legal dispute with the Applicant and the Staff on the issue of license requirements applicable to Rowley Junction. The State has presented facts based on the Applicant's license submittal to show that the ITP is an integral part of the ISFSI complex (State Contentions at 11-14, Tr. at 139); that PFS will own and control the operations that occur at Rowley Junction (State Contentions at 11, Tr. at 134, 138; SAR at 4.5-3); and that there comes a point when casks stored at Rowley Junction are no longer being stored incident to transportation (State Contentions at 14, Reply at 18-19, Tr. at 144).

The Applicant and the Staff's Motions for Reconsideration go not to the admissibility of Contention B but to a ruling on the merits. Such a standard is contrary to the Commission's final rule in adopting new procedural changes relating to the admissibility of contentions. See 54 Fed. Reg. 33,168, 33,170 (August 11, 1989) (intervenors are not required to make their case at the admissibility stage of the proceeding).

Moreover, the Staff's position is internally inconsistent. The Staff is still

trying to argue on the one hand that Contention B is inadmissible (by characterizing Rowley Junction as like any other transfer point along the transportation route) yet on the other hand, the Staff cannot explain away the concerns it raised in footnote 29 of its Response to Contentions.³ As the Staff concedes in footnote 29, the Staff has not satisfied itself that 10 CFR Parts 71 and 73 and DOT regulations are adequate to meet health and safety concerns at Rowley Junction. Although the Staff remains conspicuously silent regarding in what respects the transportation regulations may be inadequate, the obvious inference is that the transportation regulations were not designed to address the unique characteristics of Rowley Junction as a stationary focal point for receipt and interim storage of large and frequent shipments of spent fuel, located adjacent to a major interstate highway, with virtually no buffer zone. These unique features clearly require safety measures designed to anticipate the storage of spent fuel on a single site, *i.e.*, Part 72 requirements.

Obviously, the Staff has not satisfied itself that 10 CFR Parts 71 and 73 and DOT regulations are adequate to meet health and safety concerns at Rowley Junction. Until such time as the Staff has made a determination

³ As early as March 19, 1997 during a pre-application open meeting, NRC voiced concerns about the Applicant's proposal for transferring casks from rail to truck at Rowley Junction. Tr. at 137.

regarding what further safety measures it deems necessary for Rowley Junction, and the Applicant has submitted further details about the operations at Rowley Junction, the issues relating to Rowley Junction are not ripe for a merits determination.

The Staff argues that there will be some protection for transportation activities at Rowley Junction. NRC Staff Motion at 8. However, the Board has visited Rowley Junction and is cognizant of the security risks associated with the Rowley Junction facility site. Interstate-80 and associated access roads provide an easy public route to the railroad siding. Also, activities that occur at Rowley Junction would be in clear view from the interstate and access roads. Furthermore, the Applicant has provided no details of any arrangement it has with Union Pacific Railroad to use the railroad siding. Whether such arrangement were to eventuate, it is doubtful that security fencing, or other means to prevent intrusion by unauthorized persons, could be installed in the limited right-of-way space next to the siding—or elsewhere at Rowley Junction. See Tr. at 138.

The Board has determined that a genuine factual and/or legal dispute exists with regard to the activities that will occur at the Rowley Junction facility and the Applicant and the Staff have presented no new arguments for

the Board to rule otherwise.

B. Utah Contention E, Financial Assurance, Subpart 7

The Applicant, relying on Louisiana Energy Services, L.P. (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294 (1997), requests the Board to reconsider admission of the "existing market" portion of consolidated Contention E, subpart 7.⁴ In addition, the Applicant says that, like the Claiborne case, it has made a commitment to "no construction" unless a significant quantity of spent fuel storage contracts have been signed. Applicant Motion at 6.

In the Claiborne decision, the Commission had before it the Staff's Safety Evaluation Report that concluded "operations will not begin until firm supply contracts with utility customers are in place." Claiborne, 46 NRC at

⁴ Subpart 7 provides:

The applicant must document an existing market for the storage of spent nuclear fuel and the commitment of sufficient number of Service Agreements to fully fund construction of the proposed ISFSI. The applicant has not shown that the commitment of 15,000 MTUs is sufficient to fund the Facility including operation, decommissioning and contingencies.

LBP-98-7, App. A at 3.

307. Also, the Commission found that Louisiana Energy Services, L.P. ("LES") had developed "a reasonably sophisticated financial plan that projects sufficient operating funds for the [Claiborne Enrichment Center] over the course of time." Id. In addition, the intervenor had not challenged the applicant's construction cost estimate. Id. at 306. Furthermore, the Commission shored up LES's "unequivocal" promises not to proceed with the project in the absence of sufficient advanced equity and debt funding commitments and advance purchase contracts by making those commitments license conditions. Id. at 308-309.

By contrast, as demonstrated in Contention E, PFS has provided very sketchy financial information in its license application. Moreover, the scope of the NRC Staff's first "Request for Additional Information" ("RAI") dated April 1, 1998, further evidences the lack of financial information in the license application. The first RAI requests the Applicant provide, *inter alia*, (1) the text to the Subscription Agreement among PFS member utilities and the schedule for equity funding of facility construction; (2) adequate information to explain the basis of PFS's \$100 million cost of facility construction and whether that amount relates to a 15,000 MTU or a 40,000 MTU facility; (3) the Applicant's financing plan; (4) the text of the service agreement with customers

to fund the non-equity portion of facility construction, and the terms and schedule of payments; and (5) the Applicant's debt financing plan to finance, in whole or in part, the non-equity portion of construction. RAI at LA-1-1.

It remains unresolved how much money PFS needs, or what constitutes a sufficient number of contracts to adequately finance the project. This "sufficiency" will be established by market conditions. Thus, the Applicant's reliance on its statement that construction will not start until sufficient customers have signed up for storage contracts provides insufficient information to meet the demonstration that is required by 10 CFR § 72.22(e) that PFS either has the necessary funds or has reasonable assurance of obtaining the necessary fund to cover construction and other costs associated with the proposed ISFSI. Therefore, subpart 7 should remain as admitted by the Board.

C. Contention E, Financial Assurance, Subpart 10

The Applicant also requests reconsideration of subpart 10 of Contention E, to the extent that it requires consideration of costs for transportation accidents. Subpart 10 reads as follows:

The Application does not provide assurance that PFS will have sufficient resources to cover non-routine expenses, including without limitation the costs of a worst case accident in transportation, storage, or disposal of the spent fuel.

LBP-97-8, Appendix A at 3. The Applicant argues that this subpart of Contention E should be limited to accidents in transporting spent fuel on the site of the ISFSI, on the grounds that (a) offsite transportation is outside the scope of 10 CFR Part 72; and (b) compensation for costs associated with off-site transportation would be covered by the Price-Anderson Act, and therefore lies beyond the scope of this hearing. Applicant's Motion at 8.

These arguments must be rejected out of hand. As pointed out by the NRC Staff in its Motion for Partial Reconsideration of LBP-98-7, a motion for reconsideration must be limited to the elaboration or refinement of arguments previously advanced, and may not rely upon an entirely new thesis or include new arguments unless they relate to a Board concern that could not reasonably have been anticipated. Staff Motion at 2 n. 2, *citing Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-418, 6 NRC 1, 2 (1977); *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-84-10, 19 NRC 509, 517-18 (1984). Neither of the legal theories presented in the Applicant's Motion can be found in its responses to the parties' financial qualifications contentions.

The portion of the contention admitted by the Board which challenges the Applicant's failure to demonstrate an adequate assurance of sufficient

financial resources to cover transportation accidents originated in the basis of Castle Rock Contention 7.⁵ See Castle Rock Contentions at 35-36; Applicant's Answer to Contentions at 367 (December 24, 1997). In responding to this aspect of the contention, the Applicant's sole argument was that it must be dismissed "for lack of basis." Applicant's Answer to Contentions at 371-72. No mention was made of the scope of 10 CFR Part 72, or of the Price-Anderson Act. Moreover, the Applicant did not raise either of these arguments in its oral presentation at the Prehearing Conference. See Transcript at 222-241. Accordingly, it is too late now for the Applicant to raise these new arguments.

Even assuming for purposes of argument that the Board could entertain the Applicant's new arguments, the Applicant urges a limitation on the scope of transportation accidents that is overly narrow, and inconsistent with the Board's decision to admit subparts 1 and 4 of Contention B. As the Board ruled in Contention B, there is a legal/factual issue as to whether the Rowley

⁵ In its Answer to Contentions, the Applicant recast this particular basis as a "subcontention" and rephrased it as follows:

PFS's proposed financing plan does not account for non-routine expenses of operation and decommissioning, such as an accident in transporting, storing, or disposing of spent fuel or other emergencies, fires, accidents, or injuries to neighbors.

Applicant's Response to Contentions at 367.

Junction intermodal transfer facility constitutes a storage facility that must be licensed under 10 CFR Part 72. This raises a further question as to the legal/factual status of transportation and other activities that occur between Rowley Junction and the proposed ISFSI and whether those activities are regulated under Part 72. The Applicant's newly formed argument, together with the lack of information about the Applicant's plans for the operation of the Rowley Junction facility, offer no justification to the Board to overturn its ruling that the Applicant must show it has sufficient resources to cover non-routine expenses, including worst case accidents in the transportation, storage and disposal of the spent fuel.

D. Utah Contention H, Thermal Design (Subparts 3 through 7)

The Applicant seeks clarification of the Board's ruling with respect to Utah Contention H, subparts 3 through 7. Applicant's Motion at 9-11. Contention H, subparts 3 through 7, asserts that the design of the proposed ISFSI is inadequate to protect against overheating of storage casks and of the concrete cylinders in which they are to be stored in that:

3. PFS's projection that average daily temperatures will not exceed 100°F fails to take into account the heat stored and radiated by the concrete pad and storage cylinders.

4. In projecting ambient temperatures, PFS fails to take into consideration the heat generated by the casks themselves.
5. PFS fails to account for the impacts of heating the concrete pad on the effectiveness of convection cooling.
6. PFS has not demonstrated that the concrete structure of the TranStor cask is designed to withstand the temperatures at the proposed ISFSI.
7. PFS has not demonstrated that the concrete structure of the HI-STORM cask is designed to withstand the temperatures at the proposed ISFSI.

LBP-98-7, Appendix A at 4. According to the Applicant, these subparts may be read to challenge the designs of the HI-STORM and TranStor casks, which must be addressed in the generic proceedings for cask design approval and may not be challenged in this proceeding. Applicant's Motion at 9-11, citing LBP-98-7 at 59-60 and n. 11. Thus, the Applicant asks that litigation of subparts 3 through 7 of Contention H be limited to whether the PFSF site conditions fall within the envelope of the cask vendors' designs.

The Applicant misperceives the focus of Contention H. Contention H does not seek to litigate the adequacy of the design of a single HI-STORM or TranStor cask in isolation, which is the focus of the generic proceedings. Rather, the State seeks to examine the site-specific interaction of many casks with each other, with the cylinders where they are stored, with the storage pad

on which they rest, and with climatic conditions. As the State has demonstrated, these interactions are reasonably likely to create conditions that are beyond the temperatures which the casks are designed to withstand, therefore adversely affecting the safety of the ISFSI's operation. The design basis for each individual cask is relevant in the sense that if it is exceeded as a result of these interactions, the ISFSI cannot be found to be safe and in compliance with the regulations.

Accordingly, to the extent the design and characteristics of storage casks relate to the adequacy of the design of the proposed ISFSI, they are legitimate subjects of Contention H that may not be excluded as inappropriate generic matters. Similarly, NRC design requirements and recommendations intended to address such site-related issues as maintaining cask integrity under extreme temperature conditions are also legitimate areas of inquiry for the contention.

E. Contention V, NEPA: Transportation

The Applicant seeks reconsideration of the Board's partial admission of Utah Contention V, so as to exclude consideration of transportation across the country to and from the proposed ISFSI. Applicant's Motion at 11-13. As admitted, Contention V asserts that:

The Environmental Report ("ER") fails to give adequate consideration of the transportation-related environmental impacts of the proposed ISFSI in that PFS does not satisfy the threshold conditions for weight specified in 10 C.F.R. § 51.52(a) for use of Summary Table S-4, so that the PFS must provide "a full description and detailed analysis of the environmental effects of transportation of fuel and wastes to and from the reactor" in accordance with 10 C.F.R. § 51.52(b).

LBP-98-7 at 8.

PFS argues that the impacts of cross-country transport should be excluded "because, as recognized by the Board in denying admission of Utah V, Subpart 1 (see Memorandum and Order at 82, 84-85; Applicant's Answer at 295-297), the consideration of the environmental impacts of transportation across the country is an impermissible challenge to the applicable Commission regulations." Applicant's Motion at 12. According to the Applicant, "[t]he Commission expressly considered in promulgating 10 C.F.R. Part 72 the extent to which the environmental impacts of transporting spent fuel to and from the ISFSI are to be considered, and concluded that such impacts are to be evaluated only 'within the region' (10 C.F.R. § 72.108) where the ISFSI will be located." Id.

The State submits that it is inappropriate to consider this aspect of the Applicant's Motion for Reconsideration until the Board has more fully explained the basis for its rejection of most of Contention V. Without a better

understanding of why the Board rejected most of the contention, and in particular paragraph 1, the State is unable to evaluate the Applicant's claim that the contention as admitted by the Board is inconsistent with the Board's ruling on paragraph 1.⁶ An examination of paragraph 1 and the Board's ruling on the contention illustrates the problem. Paragraph 1 states that:

In order to comply with NEPA, PFS and the NRC Staff must evaluate all of the environmental impacts, not just regional impacts, associated with transportation of spent fuel to and from the proposed ISFSI, including preparation of spent fuel for transportation to the ISFSI, spent fuel transfers during transportation to the ISFSI, transferring and returning defective casks to the originating nuclear power plant, and transfers and transportation required for the ultimate disposal of the spent fuel.

The Board's explanation for its rejection of paragraph 1 also encompasses parts of paragraph 2 and all of paragraph 3 and 4 and their numerous subparts, which address various specific issues relating to Table S-4:

Inadmissible as to paragraph one, the balance of the assertions in paragraph two, and paragraphs three and four, and their supporting bases,[] which fail to establish with specificity any genuine dispute; impermissibly challenge the applicable Commission's regulations or rulemaking-associated generic determinations, including 10 C.F.R. §§ 51.52, 72.108, and "Environmental Survey of Transportation of Radioactive Materials to and from Nuclear Power Plants," WASH-1238 (Dec. 1972), as supplemented, NUREG-75/038 (Supp. 1 Apr. 1975); lack

⁶ The State notes that it has filed a Motion for Reconsideration which seeks a fuller explanation of the Board's ruling on Contention V. State's Motion for Reconsideration dated May 6, 1998, at 5.

adequate factual or expert opinion support; and/or fail properly to challenge the PFS application. See section II.B.1.a.i., ii., v., vi, above.

LBP-98-7 at 86 (footnote omitted). As a result, it is impossible to determine what exactly was the Board's reasoning with respect to paragraph 1. In particular, it is not at all clear whether the Board was relying on 10 CFR § 72.108 in rejecting paragraph 1 of Contention V, or some other rationale. Moreover, even assuming for purposes of argument that it could somehow be inferred that the Board was relying on § 72.108, it is not clear how paragraph 1 of the contention could impermissibly challenge both 10 CFR § 72.108 and 10 CFR § 51.52 at the same time. While § 72.108 provides that the applicant must consider regional transportation impacts, § 51.52(b) (which the Board relied on in rephrasing the contention) comprehensively requires the consideration of transportation-related impacts "to and from the reactor," *i.e.*, impacts of cross country transportation, for applicants which do not meet the requirements for reliance on Table S-4.

Finally, the Board does not explain how it interpreted 10 CFR § 72.108 in a manner consistent with NEPA, which requires consideration of all reasonably foreseeable impacts of a proposed action. *See* State's Reply to the NRC Staff's and Applicant's Response to State of Utah's Contentions A Through DD, dated January 16, 1998 at 87. Clearly, the licensing of the ISFSI

will trigger cross-country shipments of spent fuel, whose impacts go far beyond the "region" specified in 10 CFR § 72.108. It would constitute a violation of NEPA to arbitrarily restrict the scope of the NEPA analysis for the proposed ISFSI to a smaller geographic area than the geographic area that is actually impacted by the licensing of the ISFSI.

Accordingly, the State is unable to respond to the Applicant in a meaningful or effective way, absent a fuller explanation from the Board of the basis for rejecting Contention V. The State reiterates its previous request for clarification, and requests a further opportunity to respond to the Applicant.

F. Contention Z, NEPA: No Action Alternative

Contention Z asserts: "[t]he Environmental Report does not comply with NEPA because it does not adequately discuss the 'no action' alternative." LBP-98-7, Appendix A at 9. The Applicant seeks exclusion of that portion of Contention Z's basis which asserts, by way of example, that: "the application does not consider the advantages of not transporting 4,000 casks of spent fuel rods thousands of miles across the country, [and] not enhancing the potential for sabotage at a centralized storage facility." According to the Applicant, cross country transportation and sabotage lie outside the scope of admissible issues.

Applicant's Motion at 13.

The Applicant refers to its discussion of Contention V in support of its effort to exclude the cross country transportation aspect of this contention. For the same reasons discussed above in the State's response to the Applicant regarding Contention V, LBP-98-7 does not provide enough information to permit the State to respond to the Applicant on this issue in an effective or meaningful way. Therefore the State seeks further clarification from the Board regarding its ruling on paragraph 1 of Contention V, and a further opportunity to respond to the Applicant.

With respect to sabotage, the Applicant cites Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 697 (1985) for the proposition that its environmental report need not include the environmental effects from the risk of sabotage. The Limerick decision did not unequivocally exclude sabotage from consideration in environmental reports for all time, but rather held that the risk of sabotage is "not yet amenable to a degree of quantification that could be meaningfully used in the decisionmaking process." 22 NRC at 701. It provides no basis for excluding the benefits of avoiding sabotage from the discussion of the no action alternative.

The Applicant also cites the Board's ruling on Utah Contention V

subparts 1 and 4.c and Utah Contention U subparts 4 in support of its position. Applicant's Motion at 13. As discussed above with respect to Contention V, it is impossible to determine precisely the Board's basis for rejecting any of the various specific subparts of Contention V. Therefore, the State is unable to respond to this argument in a meaningful way. With respect to Contention U subpart 4, the Board appeared to base its ruling in part on the fact that the contention raised issues regarding "transportation sabotage," but did not mention storage-related sabotage. LBP-98-7 at 82. Moreover, the Board did not explain in what aspect the contention impermissibly challenged a regulation or generic determination regarding transportation-related sabotage. Thus, the Board's ruling on Contention U does not support the rejection of the sabotage-related basis in Contention Z.⁷ The State seeks further clarification from the Board regarding the basis for its ruling on Contention U, should it consider rejecting the sabotage aspect of Contention Z based on the Contention U ruling.

⁷ The State notes that it has requested clarification of the Board's ruling on Contention U. State of Utah's Motion for Reconsideration of LBP-98-7 at 5.

G. Contention DD, NEPA Ecology/Species (subparts 1, 3)

The Applicant requests the Board clarify that subparts 1 and 3 of consolidated Utah Contention DD and Castle Rock Contention 16 be limited to the species listed in subparts 1 and 3.⁸ PFS Motion at 14. Subparts 1 and 3, as rewritten by the Board, are clear except to the extent that there is any implication in subpart one that only one peregrine falcon has a nest or nests on the Timpie Springs Wildlife Management Area. Part of the basis for the State's contention is that the peregrine falcon species nests on the Timpie Springs Waterfowl Management Area (*i.e.* peregrine falcons use that area for nesting sites). State Contention at 183; State Reply to Contentions at 102. The State requests the wording of basis one be changed to say:

⁸ Subparts 1 and 3 provide:

1. The License Application fails to address all possible impacts on federally endangered or threatened species, specifically the peregrine falcon nest in the Timpie Springs Waterfowl Management Area.

....

3. The License Application has not adequately identified plant species that are adversely impacted or adequately assessed the impact on those identified, specifically the impact on two "high interest" plants, Pohl's milkvetch and small spring parsley.

LBP-98-7, App. A at 9.

1. The License Application fails to address all possible impacts on federally endangered or threatened species, specifically peregrine falcons nesting on the Timpie Springs Waterfowl Management Area.

DATED this 13th day of May, 1998.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Denise Chancellor", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that copies of STATE'S RESPONSE TO MOTIONS
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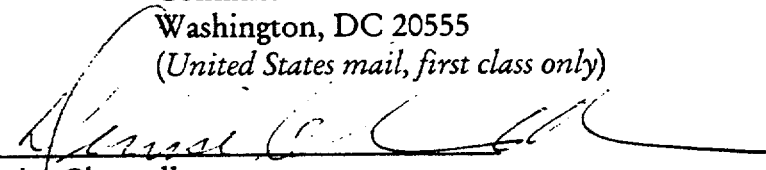
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