

Michael O. Leavitt
Governor

Dianne R. Nielson, Ph.D.
Executive Director

Brent C. Bradford
Deputy Director

State of Utah

**DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF THE EXECUTIVE DIRECTOR**

168 North 1950 West
P.O. Box 144810
Salt Lake City, Utah 84114-4810
(801) 536-4400 Voice
(801) 536-0061 Fax
(801) 536-4414 T.D.D.

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'97 SEP 11 P4:50

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

September 11, 1997

Ms. Kathryn Marco
Office of the General Counsel
Nuclear Regulatory Commission

BY FAX: (301) 415-3725

Re: Docket No. 72-22

Dear Kathryn,

The State of Utah is filing a petition to intervene pursuant to Federal Register notice 62 FR 41099, but we are unable to comply with the notice's directive to notify the NRC by way of the Western Union datagram service for petitions filed within the last 10 days of the notice period, because Western Union informed me that they no longer offer that service.

In lieu of notification by Western Union, and at your suggestion, we are notifying you by fax, and we understand that you will so inform the Office of the Secretary of the Commission.

We are the State of Utah, petitioner; phone number, (801) 366-0286; our petition is being sent by Federal Express today, September 11, 1997; the facility name is Private Fuel Storage - Skull Valley ISFSI; the FR notice was published July 31, 1997, page 62 FR 41099.

Many thanks for your assistance.

Sincerely,

Sandra Lockhart for
Jean Braxton, Paralegal



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

97 SEP 12 P3:29

In the Matter of:

PRIVATE FUEL STORAGE, LLC
(Independent Spent Fuel
Storage Installation)

Docket No. 72-22

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATION STAFF

NOTICE OF APPEARANCE

In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

The undersigned is an Assistant Attorney General of the Utah Attorney General's Office, a member in good standing of the Utah State Bar with Bar Number 5452, and has been admitted to practice in all Utah State Courts, the United States District Court for the District of Utah, and the United States Court of Appeals for the 10th Circuit.

Pursuant to Utah Code Ann. § 67-5-1(1) and (2), the Attorney General is the legal advisor to the State of Utah, the petitioner in this matter.

DATED this 11th day of September, 1997.

Respectfully submitted,
JAN GRAHAM
Attorney General



Denise Chancellor
Assistant Attorney General
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, Utah 84114-0873
Telephone: (801) 366-0286
Facsimile: (801) 366-0292

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATION

September 11, 1997

Notice of a proposed 10 CFR Part 72 licensing action by the Nuclear Regulatory Commission (NRC), published in the Federal Register July 31, 1997, affords the opportunity to request a hearing and petition to intervene. 62 Fed Reg 41,099 (1997); 10 CFR § 2.105. The State of Utah hereby submits its request for a hearing and petition for leave to intervene, pursuant to 10 CFR § 2.714(a), in the proceeding to license an offsite Independent Spent Fuel Storage Installation (ISFSI) proposed to be constructed by a consortium of nuclear power generators on an Indian reservation located near the Salt Lake City metropolitan area. The State's petition is based on a copy of the license application that the applicant delivered to the State, which it purported to be the same as the application submitted to the NRC, with the exception of the Physical Security Plan required by 10 CFR Part 72, subpart H.

II. BACKGROUND

A. Procedural History

On June 25, 1997, Private Fuel Storage, LLC (PFS) submitted a license application to the NRC¹, pursuant to 10 CFR Part 72, to possess spent fuel and other radioactive materials associated with spent fuel storage in an offsite ISFSI, to be located on the Skull Valley Reservation. On June 27, 1997, the State of Utah filed a 10 CFR 2.206 petition with the NRC requesting the NRC return the PFS's application because PFS did not give emergency response organizations 60 days to review the Emergency Plan as required by 10 CFR § 72.32(a)(14). On July 21, 1997, the State of Utah filed a second 2.206 petition with the NRC, which detailed basic and fundamental omissions in PFS's license submittal, and pointed out that it was a waste of resources for the NRC, the State of Utah, and the public to review the merits of such a hollow application.

A Federal Register notice, inviting public comments on where to set up a local public document room, was published July 7, 1997, the deadline for comments being July 25, 1997. 62 Fed. Reg. 36,320 (1997). On July 22, 1997, NRC announced that it will consider PFS's Part 72 license application. A "Notice of Consideration of Issuance of a Materials License for the Storage of Spent Fuel and Notice of Opportunity for a Hearing" was published in the Federal Register on July 31, 1997. 62 Fed. Reg. 41,099

¹ The PFS application was dated June 20, 1997 but was not delivered to the NRC until June 25, 1997.

(1997).

As of the date of the July 31 Federal Register notice, the NRC had not acknowledged receipt of the State of Utah's 2.206 petitions, nor acted on either of them. In a letter dated August 6, 1997, from Charles J. Haughney, NRC rejected the State's two 2.206 petitions stating that the requests did not seek enforcement action but were licensing issues. By filing this petition to intervene, the State does not waive the objections raised in its two 2.206 petitions.

B. Factual Background

The license, if granted, would authorize PFS to construct and operate an ISFSI on the Skull Valley Reservation for the storage of up to 4,000 casks of spent nuclear fuel rods in dry cask storage, for an initial license term of 20 years. The casks would be shipped to the ISFSI from domestic nuclear power plants throughout the United States by rail to a railhead 24 miles north of the Indian reservation. The initial license term would be for 20 years. The application does not give details about how PFS will actually transport the casks from the railhead to the ISFSI. In passing, PFS mentions that the casks will be transported from the railhead to the ISFSI by either building a rail spur or transferring the casks to heavy haul truck.

The license application gives the misleading impression that the proposed ISFSI site is an isolated place in the middle of a barren desert. However, the site is only 45 miles from Salt Lake City, and the intermodal transfer site directly abuts U.S.

Interstate 80, a heavily traveled major interstate highway. See Map, attached as Exhibit

1. The ISFSI site itself is also on a populated Indian reservation, and is surrounded by military installations, industrial facilities, and farms and ranches. In addition, the area is an important wildlife habitat.

The Skull Valley Reservation is home to approximately 25 to 32 tribal members, who live within three miles of the site. Three miles south of the proposed site, and on the reservation, is the Tekoi Test Facility, which employs tribal members. The facility conducts hazard testing of explosives and stores rocket motors used in aging studies.

Within three to thirty five miles of the proposed site, there are a number of military and industrial facilities. The Dugway Proving Ground, located 12.6 miles southwest of the proposed ISFSI, is used for combat training using live munitions and testing of weapons, and biological and chemical agents. Dugway is also the proposed landing site of the X-33 hydrogen-powered space plane. The facility has 600 employees, which may surge to 12,000 for some missions, and a residential population of 1,761. Portions of the property are also accessible to the public for hunting and recreational activities. Another military weapons testing facility, located about 18 miles west-northwest from the proposed ISFSI site, is the Utah Test and Training Range (UTTR). The UTTR is used by the U. S. Air Force as a training range for air-to-air and air-to-ground live munitions training. The Army's Deseret Chemical Depot,

located 20 miles east of the proposed site, employs about 750 people. A major chemical weapons storage site, it is also the only facility in the continental United States for destroying chemical weapons, including deadly nerve gas and blister agent. The Tooele Army Depot, located 16.2 miles north of the proposed ISFSI, stores, detonates, burns, and destroys conventional munitions.

Northwest of the proposed ISFSI is the Tooele County hazardous waste zone, where the following facilities are located: the APTUS hazardous waste incinerator (25 miles northwest), the Envirocare low level radioactive and mixed waste landfill (22 miles), the Clive Incineration Facility (25.1 miles northwest), and the Grassy Mountain hazardous waste landfill (31.1 miles northwest). These facilities employ approximately 500 individuals. *See Map, Exhibit 1.*

Rowley Junction (also known as Timpie Junction), where PFS plans to transfer spent fuel casks from rail cars to trucks, directly abuts Interstate 80. Cargill, Inc., located at Rowley Junction, employs 85 to 90 people, and processes about a half million tons of salt per year for use in brine for human food products, water conditioning, and animal feed. Cargill annually dries 300,000 tons of salt in the open air, adjacent to the transfer point. Magnesium Corporation of America, a magnesium plant, employs 570 people and is located near the transfer point. Rowley Junction is the access point for both facilities. Also adjacent to the transfer point are two critical and sensitive ecosystems: a waterfowl refuge and the Great Salt Lake.

Skull Valley Road, along which the spent fuel would probably be transferred from Rowley Junction to the ISFSI, is traveled by at least 1,000 vehicles per year, including military vehicles carrying munitions. There are also farms, ranches, and homes along the road and cattle and wildlife are frequently on the road.

The City of Tooele, population 17,877, is 24 miles northeast of the proposed facility. Less than 32 miles from the proposed ISFSI are Salt Lake and Utah counties, an area where most of Utah's 1.959 million population live. Both counties are experiencing exceptional population growth. Populations figures for 1996 are: Salt Lake County 818,860 and Utah County 317,879, or total of 1,136,739. In addition, Salt Lake City will be the host site for the 2002 winter Olympic Games.

The area around the proposed site has significant wildlife habitat, including several wetlands or aquatic areas, which are extremely important resources in this arid State. The Timpie Springs Wildlife Management area, a 784-acre wetland refuge for nongame fish, waterfowl, shorebirds and migratory birds, abuts the applicant's proposed intermodal transfer station at Rowley Junction. The Great Salt Lake and the sensitive and complex ecosystem it supports lie about 22 miles downgradient of the proposed ISFSI. Seventy-five percent of Utah's vital wetlands are supported by the greater Great Salt Lake Wetland Ecosystem, a western hemisphere shorebird reserve and the world's largest staging area for Wilson's Phalaropes. Seventy-five percent of the western population of Tundra swans and 25 percent of the pintail population also

use the Great Salt Lake as a staging area. The shorebirds and waterfowl are dependant upon three species of brine shrimp flies and the brine shrimp themselves. The Great Salt Lake wetlands also provides habitat for bald eagles (a threatened species) and peregrine falcons (an endangered species). The Great Salt Lake is protected for primary and secondary contact recreation, aquatic wildlife, and mineral extraction. The Horseshoe Springs Wildlife Habitat area, 15 miles north of the proposed ISFSI, supports fish, shorebirds, and waterfowl. The Stansbury Mountains and Deseret Peak Wilderness Area, which also lie within 15 miles of the proposed ISFSI, are essential habitat for Bighorn sheep, mule deer, and antelope. Rush Valley, southeast of the proposed ISFSI, is a habitat for bald eagles and other raptors, and a recreational sporting area.

The area affected by the proposed ISFSI includes not just the facility and the transfer point, but the areas along the transportation routes. Spent fuel shipments will travel along side of the beds of rivers and lakes owned by the State, and near waterways held in trust by the State for the public. Spent fuel shipments from the east would be transported directly through or adjacent to Utah's population center along the Wasatch Front. Spent fuel shipments entering through the Utah-Wyoming border would pass through Weber Canyon (a watershed area), the city of Ogden, Davis County, and follow the shoreline of the Great Salt Lake passing though Salt Lake City on their way to Rowley Junction. The Utah-Wyoming rail line runs adjacent to the

Weber River and the eastern and southern shorelines of the Great Salt Lake. See Rail Transportation Map of Utah, attached as Exhibit 2.

As described below, the State of Utah is a person whose interest may be affected by the licensing action and meets the requirements for intervening and requesting a hearing.

III. DISCUSSION

A. Requirements for Intervention

A petition for leave to intervene must address the following factors: the nature of petitioner's rights under the Atomic Energy Act to be made a party; the nature and extent of petitioner's property, financial, and other interest in the proceeding; and the possible effect of any order that may be entered on the petitioner's interest. 10 CFR § 2.714(d)(1). In addition, the petition must set forth with particularity the petitioner's interest in the proceeding and the aspects of the proceeding in which the petitioner wishes to intervene. 10 CFR § 2.714(a)(2).

The Commission looks to judicial concepts of standing in determining whether a petitioner's interest may be affected by a licensing proceeding. Thus, petitioner's injury must arguably fall within the zone of interests sought to be protected by the Atomic Energy Act (AEA) and the National Environmental Policy Act (NEPA).

Atlas Corporation (Moab, Utah facility), LBP-97-9, 45 NRC 414, 416 (1997) (*referring*

to Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996)). The petition must allege injury-in-fact; the injury must be fairly traceable to the challenged action; and the injury must be redressable by the Commission. Id.; Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). While the petitioner has the burden of establishing standing, the presiding officer is to “construe the petition in favor of the petitioner.” Georgia Institute of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995); Atlas, 45 NRC at 416.

B. The State Has a Right To Be Made a Party to the Proceeding

Section 189a of the Atomic Energy Act, 42 USC § 2339(a), grants the right to a hearing “upon the request of any person whose interest may be affected by the [licensing] proceeding and shall admit such person as a party to the proceeding.” As more fully discussed below, the State has a right to participate in the proceeding to protect the State’s citizens, its proprietary and sovereign interests, and its interest as trustee for all waters owned by the citizens of the State.

First, under the doctrine of *parens patriae*, the State has a quasi-sovereign right to protect the interests of its citizens. Hawaii v. Standard Oil Co. of California, 405 U.S. 251, 258 (1972) (State may act to prevent or repair harm to its quasi-sovereign interests); Alfred L. Snapp & Son v. Puerto Rico, 458 U.S. 592, 600-607 (1982) (State has a quasi-sovereign interest in the physical and economic health and well-being of its residents).

Second, the State has the right to protect its proprietary and sovereign interest in its lands, waters, wildlife, and other natural resources. The State of Utah owns over 20,000 acres of school trust lands, granted to the State at statehood, around Rowley Junction, near Skull Valley Road, and adjacent to the Indian reservation. The State also owns the Timpie Springs Wildlife Management in fee. Under the "equal footing" doctrine, the State's proprietary rights extend to the bed of Utah Lake, as well as the bed, exposed shorelands, and meander line of the Great Salt Lake, which lie in close proximity to the proposed ISFSI and transportation route. Utah Division of State Lands v. United States, 82 U.S. 193, 196 (1987); Utah v. United States, 420 U.S. 304 (1975); and Utah v. United States, 403 U.S. 9 (1971); and Utah v. United States of America, 427 U.S. 461 (1976).

Finally, the State has the right to protect its interests as Trustee for all the surface and groundwater in the State. See Utah Code Ann. § 73-1-1 ("All waters in this state, whether above or under the ground, are hereby declared to be the property of the public, subject to all existing rights to the use thereof"); J.J.N.P. Co. v. State Division of Wildlife Resources, 655 P.2d 1133, 1136 (Utah 1982) ("The State regulates the use of the water, in effect, as trustee for the benefit of the people."); Tanner v. Bacon, 103 Utah 494, 136 P.2d 957 (1943). In addition, the State is recognized as the trustee for natural resources, including surface and groundwater resources, for damage recovery actions under the Comprehensive Environmental Response, Compensation,

and Liability Act, 42 USC § 9607(f).

C. The State Has Significant Interests in this Proceeding

As demonstrated above, the State has significant interest that it seeks to protect through intervention in this proceeding. First, the State has an interest in protecting the health and safety of its numerous citizens who live, work, or travel at or near the proposed facility, transportation routes, and the intermodal transfer station at Rowley Junction. The citizens protected by the State include workers at the ISFSI and people who live, work or travel nearby. The health and welfare of these citizens could be seriously jeopardized by exposure to radiation and chemicals caused by accidents or leaks during transportation, transfer operations, or operation of the facility.

In addition to health and safety, the interests protected by the State include the economic welfare of its citizens. This includes protecting the integrity of ground and surface water, which is depended upon by local ranchers for irrigation and livestock. It also includes protecting the area's tax base, which may be adversely affected by a drop in property values and loss of economic development caused by the construction of the facility in the area, or by accidents during its operation.

The State also has an interest in protecting the integrity of its wildlife and natural resources, including air, soil, ground and surface water, from contamination caused by the proposed ISFSI. In addition, the State has an interest in protecting its historical resources, which include the historic Polynesian settlement of Iosepa, located

8.7 miles northeast of the proposed ISFSI; a historic cemetery near the ISFSI; and historic Native American sites.

D. The State Will Suffer Injury-In-Fact If the NRC Licenses the Proposed ISFSI.

The State has standing to intervene in this proceeding because the proposed ISFSI threatens to cause "distinct and palpable" injury to the State and its citizens. Kelley v. Selin, 42 F.3d 1501, 1508 (6th Cir.), *cert. denied*, 115 S. Ct. 2611 (1995), *quoting* Warth v. Seldin, 422 U.S. 490, 501 (1975). In particular, issuance of a license may injure the health and safety of State and local emergency responders, ISFSI workers and Utah residents and visitors who live, work or travel near the proposed facility, intermodal transfer point, or along the transportation route. It may also injure the integrity of ground and surface water, wildlife, aquatic life, plants, and the environment.

The risk that the proposed ISFSI may cause harm to public health and safety and the environment is recognized in NRC regulations and in the application submitted by PFS. First, the NRC has made a generic determination that the construction and operation of ISFSIs constitute major federal actions significantly affecting the human environment. *See* 10 CFR §§ 51.20(a) and 51.20(b)(9). Because the NRC requires the preparation of an Environmental Impact Statement (EIS) for an ISFSI, it presumptively constitutes an activity that may injure public health and safety or the environment in whose protection the State has a vital interest.

Second, the NRC's emergency planning regulations at 10 CFR § 72.32 recognize the possibility of an accidental radiological release from a spent fuel storage cask, and therefore require emergency planning for ISFSI facilities. In addition, PFS's license application recognizes and discusses the possibility of accidents causing the release of radioactive material. See License Application, Chapter 8, and Environmental Report, Chapter 5. Such radioactive releases could injure workers, emergency responders, and other citizens in the vicinity of the facility.

The proposed facility threatens to cause injury-in-fact to plant workers, emergency responders, and citizens, in other ways not recognized by the applicant. For instance, the application does not discuss the risks to the public of an accident during intermodal transfer at Rowley Junction which is located next to Interstate 80, a major east-west highway and rail connection, and a major crossroads for transporting hazardous, low level radioactive, and industrial waste. It also abuts a large wetlands refuge and is the primary access and evacuation route for two major industrial facilities.

The application also fails to discuss the potential risks caused by the ISFSI's proximity to military and industrial facilities that store, test, and dispose of dangerous weapons and chemicals. For instance, explosives and massive rocket motors are tested at the Tekoi rocket motor test facility, which lies within three miles of the ISFSI, and live munitions are detonated at the nearby Dugway Proving Ground and Utah Test

and Training Range. Air Force jets drop live bombs during combat training and make emergency landings at Dugway with "hanging" bombs stuck in the bomb bay, and the X-33 space plane carrying hydrogen fuel will land at Dugway. A run away rocket motor, misfired bomb, errant explosives, or space plane or jet crash from any of these activities could cause an explosion, fire, or structural damage at the ISFSI, thus leading to radioactive releases.

The proposed site of the ISFSI is also in an area of potential seismic activity. A major earthquake could cause an accident during transportation, transfer, or storage, thus causing radioactive releases and injury to the public. Although the applicant attempts to minimize this risk, the State believes that the applicant has failed to perform an adequate analysis of the existence and capability of faults in the area. In addition to seismic activity, the site does not support the applicant's design criteria because of soil stability and consolidation, ground motion and foundation loading.

The State is also concerned that leakage of contaminants from the proposed ISFSI facility could contaminate ground and surface water in the area, thus adversely affecting public health and the environment. In addition, flooding caused by breach of the flood-prevention berm proposed by PFS could transport chemicals and radioactive contaminants into the environment. Moreover, the applicant expects to meet sanitation needs for the facility with an underground sewage (septic) system with leach field. ER p. 3.3-4,5. Such a system will provide a direct pathway to groundwater for

chemical and radiological contaminants. The retention basin at the north end of the facility may also be a direct contaminant pathway to groundwater. Discharges into the sanitary system may include drain sumps used to catch and collect water which drips from shipping casks in the canister transfer building (SAR p. 7.5-4), and employee hand washing, laundry, restrooms, showers, cafeteria, and laboratory waste streams. The potential for contamination of groundwater from this sanitary system is evident.

In addition, rail and road transportation of spent fuel casks through the State poses a direct risk of accidents and injury. Since 1988, rail accidents in Utah have ranged from 19 to 44 train accidents per year, including up to 26 derailments, nine collisions, and three accidents involving highway rail crossings. All rail shipments in Utah are on tracks owned and operated by Union Pacific. Recently, the Federal Railroad Administration has begun a safety probe of Union Pacific because of a series of train collisions. *See e.g., FRA Launches Safety Inspection Teams to Review Entire Union Pacific Railroad System*, U.S. Department of Transportation press release, August 26, 1997, attached as Exhibit 3. Granting a license to this applicant that will necessitate transportation of up to 200 shipments per year of spent fuel through the State will have the potential for accidents and discharges which may radiologically or chemically contaminate the groundwater or surface waters of the State.

The State is also concerned that air emissions from operations at the ISFSI, including emissions from the concrete batch plant, and the expansion of Skull Valley

Road or construction of a rail spur from Rowley Junction to the ISFSI site, may negatively impact ambient air and harm the health and safety of residents and others in the area.

In addition, the proposed ISFSI would significantly increase traffic and operations in Skull Valley. Thus, the threat of increased wildfires due to the increased activity in the arid desert valley may harm State and private real and personal property, wildlife, and the public.

The citizens and resources of the State will also be injured if the applicant lacks sufficient technical and financial qualifications to build and operate the facility safely.

Gulf States Utilities Co. (River Bend Station, Unit 1), LBP-94-2, 39 NRC 31, 39 (1994).

Moreover, in the event that the licensee and other liable parties (insolvent or decommissioned utilities) are unwilling or unable to financially resolve an incident, the State of Utah and local governments may, by default, incur the initial financial and physical burden of cleaning up an incident in order to protect the health and safety of its citizens. Thus, if adequate financial assurance and liability are not guaranteed, the State of Utah and its citizens, as taxpayers, will bear the enormous financial burden of attempting to restore the areas's environmental condition to a pre-license status.

Finally, NRC's failure to make an informed decision is a cognizable injury under the National Environmental Policy Act:

[O]nce the plaintiff has established the likelihood of the increased risk for purposes of injury in fact, to establish causation, ... the plaintiff need only trace the risk of harm to the agency's alleged failure to follow the National Environmental Policy Act's procedures. Under the National Environmental Policy Act, an injury results not from the agency's decision, but from the agency's uninformed decisionmaking.

Committee to Save the Rio Hondo v. Lucero, 102 F. 3d. 445, 451 (10th Cir. 1996).

The PFS license submittal does not contain sufficient information for the NRC to make an informed decision or for the State, or other interested parties, to make a meaningful challenge to the licensing action. Such shortcomings harm the interests of the State and its citizens.

E. The State's Concerns Fall Within the Zone of Interest Protected by the Atomic Energy Act and the National Environmental Policy Act.

The State's concerns deal with health, safety and environmental consequences and risks directly attributable to licensing this ISFSI, and as such are within the zone of interest protected by the Atomic Energy Act. Vermont Yankee, LBP-90-6, 31 NRC at 89 (the Atomic Energy Act protects the public from undue hazards posed by the nuclear industry). The zone of interest protected by the Atomic Energy Act also includes protection of property as well as protection of life from radiological hazards. Gulf States Utilities, LPB-94-3, 39 NRC at 38 (radiological protection under the Act is afforded for both human life and property); 42 USC §§ 2133(b) and 2201(b). The State's interests in protecting the quality of the environment fall within the zone of interest protected by NEPA. Babcock and Wilcox (Apollo, Pennsylvania Fuel

Fabrication Facility), LBP-93-4, 37 NRC 72, 80-81 (1993). The State may act to protect its citizen's interest under the Atomic Energy Act and NEPA. Boston Edison Co. (Pilgrim Nuclear Power Station), ASLBP 93-678-03-OLA, 1993 WL 244,926 (NRC) (Massachusetts Attorney General may intervene to protect the environment and the health and safety of its citizens located in the ingestion exposure pathway of applicant's facility).

F. The Injury Caused by the Proposed ISFSI is Redressable

The State's injury may be fully redressed by NRC's denying the license application. Injury to the State's interests in environmental protection would be redressed by preparation of a full and fair Environmental Impact Statement.

IV. Statement of Aspects in which Petitioner Wishes to Intervene

In accordance with 10 CFR § 2.714(a)(2), "the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene" are as follows:

1. The Nuclear Regulatory Commission lacks the statutory authority to issue a license to this applicant—a private limited liability company—for an off-site, away from reactor, centralized facility to store up to 40,000 metric tons (or 4,000 casks) of spent nuclear fuel.
2. The applicant has failed to show that it has the legal right to use the proposed site, use any land at the intermodal transfer point at Rowley Junction, or to construct a rail spur in the public right-of-way along Skull Valley Road. Thus, there is no assurance that the applicant can and will have adequate control for purposes of protecting public health and safety.
3. The application is so lacking in substantive detail that it is incapable of supporting the issuance of a license.
4. The application is so lacking in substantive detail as to deprive the State and its citizens of adequate notice of the nature of the activities and safety and environmental measures proposed by the applicant. Accordingly, the State and its citizens have been deprived of any meaningful opportunity to assess the safety and environmental impacts of the proposed ISFSI or to participate effectively in this

proceeding.

5. The proposed facility is an "installation" subject to Part 75, which the application fails to address. See 10 CFR § 75.3. For example, the application has failed to identify an IAEA material balance area or key measurement point.

6. The license application poses undue risk to public health, safety and the environment because there is no assurance that the spent fuel casks will be removed during the life of this license application, or during a one time license renewal period, or that the proposed facility will not become a defacto permanent or semi-permanent high level nuclear waste repository.

7. The license application poses undue risk to public health, safety and the environment because the applicant's proposed cask storage systems (Holtec HI-STORM 100 and Sierra Nuclear TransStor) have not yet received NRC certificates of compliance. Furthermore, the structural integrity of the existing Sierra Nuclear casks is currently under federal investigation.

8. The application does not adequately explain how the spent fuel will be packaged and removed at the end of the license term, or that it will be done safely.

9. The application is inadequate because it fails to provide for the licensing of the intermodal transfer point at Rowley Junction.

10. The application fails to demonstrate that public health and safety

and the environment will be protected during intermodal transfer of spent fuel.

11. The license application poses undue risk to public health, safety and the environment because it lacks sufficient provisions for prevention of and recovery from transportation accidents and sabotage during the shipment of casks from the nuclear reactor to the rail head at Rowley Junction, Utah.

12. The license application poses undue risk to public health, safety and the environment because the application is inadequate with respect to emergency planning for accidents during operation, intermodal transport, and transportation of casks.

13. The license application poses undue risk to public health, safety and the environment because the application has not provided sufficient general and financial information to satisfy 10 CFR § 72.22.

14. The license application poses undue risk to public health, safety and the environment because the applicant fails to satisfy the technical and financial qualifications required for a 10 CFR Part 72 application.

15. The applicant has failed to demonstrate sufficient financial assurance for decommissioning.

16. The license application poses undue risk to public health and safety because the applicant has not provided sufficient technical information as required by 10 CFR § 72.24.

17. The license application poses undue risk to public health, safety and the environment because it fails to adequately address the siting evaluation factors in 10 CFR Part 72, Subpart E.

18. The license application poses undue risk to public health, safety and the environment because it underestimates the probable maximum flood at the proposed ISFSI site by using too limited a drainage area. This could result in an under-designed facility and affect the operation, maintenance and ultimate safety of the ISFSI.

19. The license application poses undue risk to public health, safety and the environment because it fails to provide adequate design criteria as required by 10 CFR § 72.120, or to satisfy the design criteria in §§ 72.122 through 72.130.

20. The license application poses undue risk to public health and safety and State water resources because of potential berm failure, flooding, storm water run off, and discharge from the retention basin. This may result in contamination of offsite groundwater, surface water, or soils.

21. The license application poses undue risk to public health, safety and the environment because its sanitation system creates a direct contaminant pathway to ground and surface water.

22. The license application poses undue risk to public health, safety and the environment because construction and transportation activities and operation of the concrete batch will significantly impact air quality off the reservation and

potentially violate the National Ambient Air Quality Standards.

23. The license application poses undue risk to public health, safety and the environment because it has no contingencies to deal with damaged, contaminated or leaking casks, or casks containing damaged fuel, that cannot be immediately returned to the originating nuclear power plant.

24. The license application poses undue risk to public health, safety and the environment because it does not describe an adequate ALARA program, nor does the applicant give relevant details about monitoring, including offsite monitoring, and health protection for its workers or others who may be affected by its operations.

25. The license application poses undue risk to public health, safety and the environment because the applicant fails to satisfy the quality assurance criteria in 10 CFR § 72, Subpart G.

26. The license application poses undue risk to public health, safety and the environment because it relies on an incomplete safety analysis that does not adequately address or evaluate the risks of radiological and non-radiological accidents associated with the transportation of casks and construction, operation, and decommissioning of the ISFSI. Nor does it take into account the cumulative risks posed by surrounding activities, physical sensitivity and composition of the Utah citizens, and background conditions.

27. The license application poses undue risk to public health, safety

and the environment because of the proximity of incompatible and hazardous activities near the ISFSI such as military weapons testing and range fires.

28. The license application fails to comply with the National Environmental Policy Act (NEPA) because it fails to adequately identify or evaluate the adverse environmental impacts of the proposed ISFSI, including disparate adverse impacts on a minority community, of the proposed ISFSI.

29. The license application fails to comply with NEPA because it fails to provide an adequate comparison of the costs and benefits of constructing and operating the ISFSI.

30. The license application fails to comply with NEPA because it fails to identify a reasonable range of alternatives to the proposed ISFSI, including the no action alternative.

31. The license application fails to comply with NEPA because it fails to propose reasonable mitigative measures.

32. The license application fails to comply with NEPA and the National Historic Preservation Act because it fails to adequately identify and evaluate disparate impacts to important historic, cultural, and natural aspects of national heritage.

33. The Bureau of Indian Affairs has not complied with its statutory and regulatory obligations under NEPA.

34. The Secretary of the Interior, acting through the Bureau of Indian Affairs, has not satisfied his trust responsibility to American Indians or complied with the requirements of 25 USC § 415 in conditionally approving the lease between the Skull Valley Band of Goshute and the applicant.

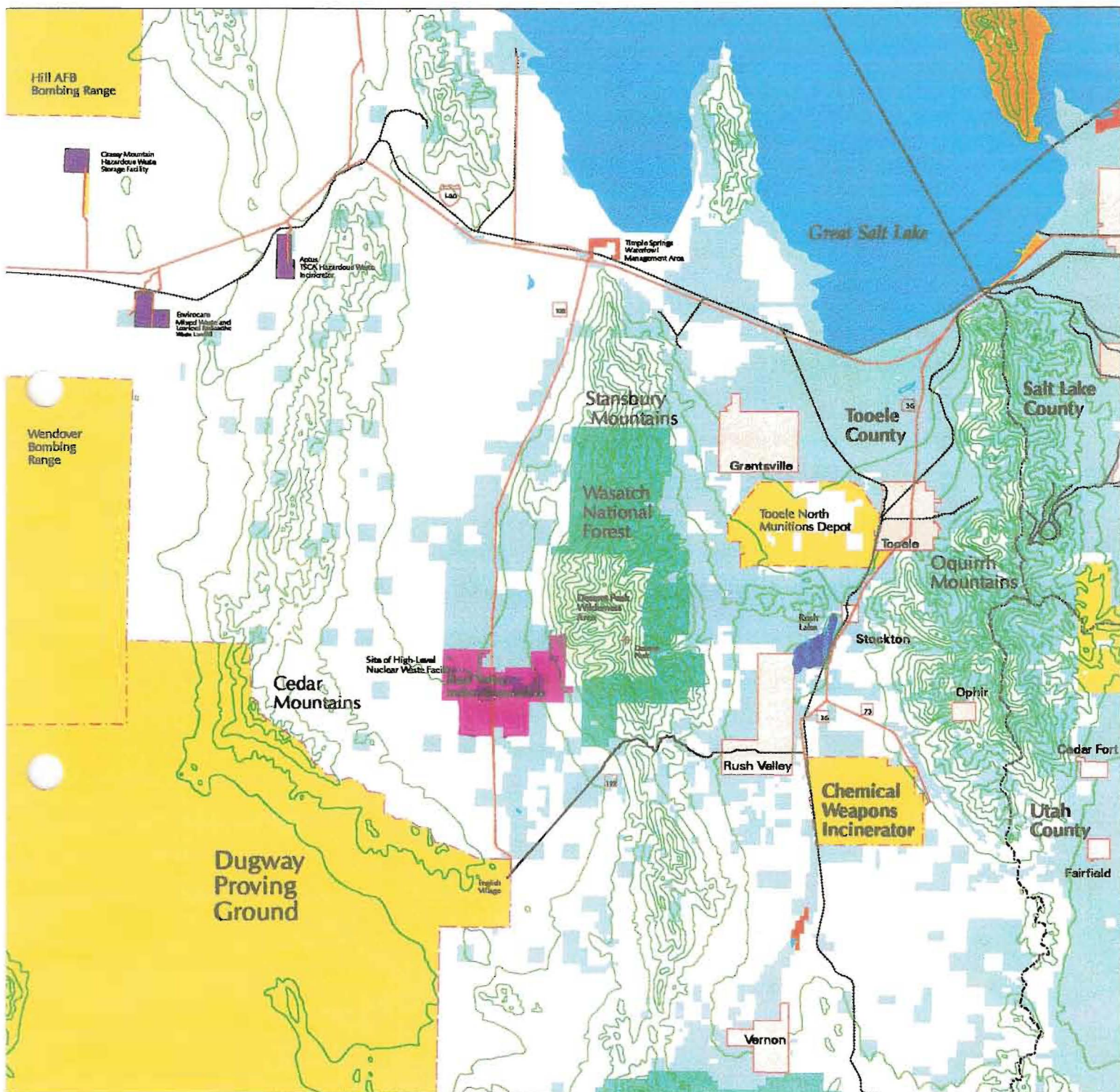
DATED this 11th day of September, 1997.

Respectfully submitted,
JAN GRAHAM
Attorney General



Denise Chancellor
Assistant Attorney General
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City UT 84114-0873
Telephone: (801) 366-0286
Fax: (801) 366-0292

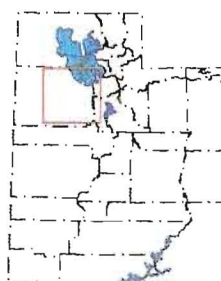
EXHIBIT 1



Land Ownership Surrounding High Level Nuclear Waste Facility

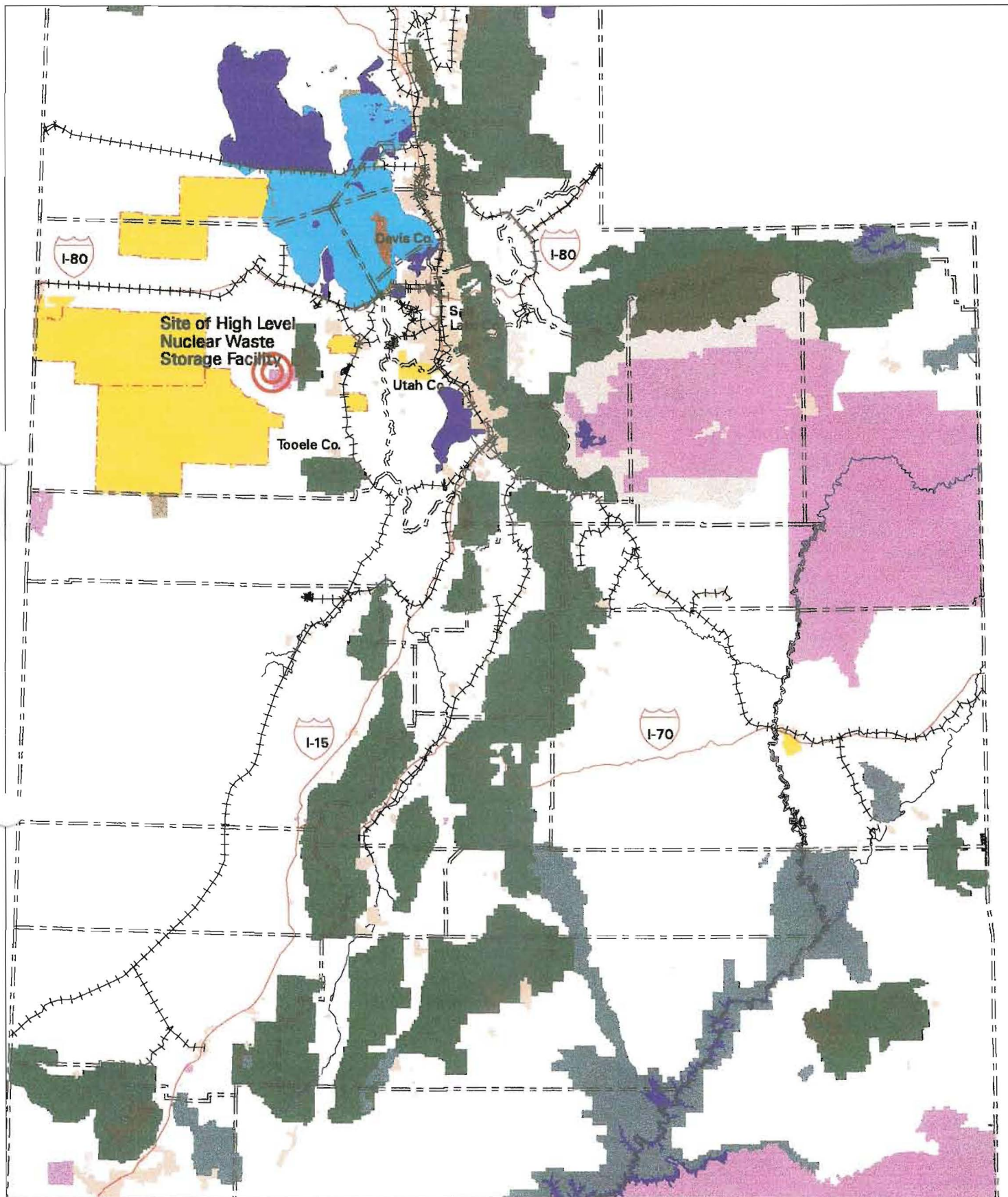
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Utah Department of Environmental Quality



- National Forest
- Bureau of Land Management
- State of Utah
- Indian Reservation
- Private Land
- Military Reservation
- State Wildlife Reserves
- USFS / BLM Wilderness Area

EXHIBIT 2



Major Transportation Routes and Watercourses

Utah Department of Environmental Quality

Created by Craig Smith 9/97

EXHIBIT 3



U.S. Department of
Transportation

News:

Office of the Assistant Secretary for Public Affairs
Washington, D.C. 20590
<http://www.dot.gov/briefing.htm>

For Immediate Release

Tuesday, August 26, 1997

Contact: David A. Bolger

Tel.: (202) 632-3124

FRA 18-97

FRA Launches Safety Inspection Teams To Review Entire Union Pacific Railroad System

The Federal Railroad Administration (FRA) today launched round-the-clock inspections by 60 federal and state safety inspectors concerning operations on the Union Pacific Railroad (UP).

The inspection has been initiated to determine ways to improve railroad safety as a result of the Union Pacific's involvement in three railroad collisions resulting in the deaths of 7 people and millions of dollars in property damage over the past three months. Five other Union Pacific employees have been killed in five separate incidents since January of this year.

"Safety is our highest priority. The FRA's investigations of the recent collisions on the Union Pacific Railroad have led us to believe there are critical safety deficiencies present at some locations and immediate action across the entire UP system is necessary," stated FRA Administrator Jolene M. Molitoris. "This system-wide safety review will provide us with critical operational information for us to improve safety on this railroad."

The FRA started to review of Union Pacific operations Saturday, August 23, with a moderate deployment of operating practices safety specialists at various points on the UP system. Today, the combined federal and state safety teams begin round-the-clock reviews for the next 7-10 days in the following locations: Chicago, Denver, Ft. Worth, Houston, Los Angeles, Kansas City, Omaha, Pocatello (ID) Portland (OR), Sacramento, and San Antonio.

Inspection reviews include: safety inspectors riding with select UP crews on trains throughout the system to determine whether the highest levels of operating practices are maintained; dispatching specialists overseeing operations in Omaha and Denver to monitor whether trains throughout the UP network are dispatched safely; and operating practices specialists conducting interviews with local railroad officials, train crews, labor representatives, managers and contractors to review safety operations and

practices to determine potential unsafe conditions. The FRA Administrator and senior FRA officials will be meeting this week in Washington with the CEO of Union Pacific, Jerry Davis, and senior UP officials to review preliminary findings of the team inspections.

Recent collisions prompting this team inspection by the FRA included:

- June 2, 1997 Devine, TX, two UP freight trains collided head-on. As a result of the collision, two crew members were killed as well as two stowaways.
- July 2, 1997 Kenefick, KS, a UP freight train in a siding struck the sixth head car of a passing UP intermodal train. As a result of the collision, the engineer of the westward train was killed.
- August 21, 1997 Fort Worth, TX, four unattended UP locomotives moving eastward at an estimated speed of 60 mph collided head-on with a UP freight train as it departed the UP's Centennial Yard. The freight train's engineer and engineer pilot were killed.

The FRA is assisting the National Transportation Safety Board in its investigations of the causes of these collisions.

The FRA has been working with the Union Pacific on operational management issues following UP's merger with the Southern Pacific Railroad (SP) in 1996. In the Department of Transportation's post-merger review filing before the Surface Transportation Board, the FRA identified problems in the train control, operating practices, training, train inspection, hazardous materials defects, and quality control at the dispatch centers on the UP rail network. The team inspectors will be reviewing these and other operational safety measures on the railroad.

The Union Pacific Railroad is the nation's largest railroad, employing more than 53,000 persons and operating over 36,000 miles of track in the western two thirds of the United States.

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Briefing Room

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AND
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Attn: Docketing & Services Branch
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Mail Stop: O16G15
11555 Rockville Pike, One White Flint North
Rockville, MD 20852-2738

and also certify that I caused to be mailed first class postage prepaid a copy of the
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Office of General Counsel
U. S. Nuclear Regulatory Commission
Mail Stop: O15B18
11555 Rockville Pike, One White Flint North
Rockville, MD 20852-2738

Jay Silberg
Shaw, Pittman, Potts & Trowbridge
2300 N Street N.W.
Washington, D. C. 20037-8007

Leon Bear, Chairman
Skull Valley Band of Goshute
Skull Valley Reservation
P. O. Box 150
Grantsville, Utah 84029

John Paul Kennedy
Attorney for David Pete and the Confederated Tribes of the Goshute
Reservation
1385 Yale Avenue
Salt Lake City, Utah 84105

Mark Delligatti
U. S. Nuclear Regulatory Commission
Spent Fuel Project Office
Mail Stop 06G22
Washington, D. C. 20555

Dated this 17th day of September, 1997