

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Private Fuel Storage, a Limited Liability
Company;

(Independent Spent Fuel Storage
Installation).

Docket No. 72-22
November 18, 1998

**SOUTHERN UTAH WILDERNESS ALLIANCE'S
CONTENTIONS REGARDING
PRIVATE FUEL STORAGE FACILITY LICENSE APPLICATION
(THE LOW RAIL SPUR).**

Pursuant to 10 C.F.R. § 2.714, the Southern Utah Wilderness Alliance (SUWA) hereby submits its contentions regarding the amendment to the license application of Private Fuel Storage ("PFS") to operate a nuclear fuel storage facility on the Skull Valley Goshute Indian Reservation in Tooele County, Utah. SUWA is filing, with this statement of its contentions, a petition for intervention and request for hearing, which, along with the attachments to that document, SUWA hereby incorporates and references.

SUWA's petition and request establish that SUWA should be allowed to fully participate in this proceeding with regard to assessment of and decision-making involving the alignment, construction and operation of the Low Rail Spur and the construction and maintenance of any associated impacts such as the fire buffer zone.

As documented below, the applicant PFS has not complied with the required standards established for licensing a nuclear fuel storage facility. In fact, PFS's license application is

substantially incomplete. SUWA therefore respectfully submits that this license application should be denied.

I. CONTENTION A:

Statement: The License Application Amendment fails to consider adequately the impacts of the Low Corridor Rail Spur and the associated fire buffer zone on the wilderness character and the potential wilderness designation of a tract of roadless Bureau of Land Management (BLM) land — the North Cedar Mountains -- which it crosses. SUWA has determined, after significant analysis, that the North Cedar Mountains qualifies for and should be designated as wilderness under the Wilderness Act of 1964 and therefore should be preserved in its current natural state until the United States Congress has an opportunity to evaluate the land for wilderness designation.

Basis: PFS's amendment to its license application includes, *inter alia*, as a preferred option, construction and operation of the Low Rail Spur and the associated fire buffer zone. PFS intends to use the Low Rail Spur to transport high level nuclear waste from the Union Pacific main rail line at Low Junction to the Skull Valley Reservation. License Application Amendment, August 28, 1998 ("Amendment").

The Low Rail Spur will traverse approximately 32 miles of undeveloped public lands administered by the Bureau of Land Management (BLM) including the North Cedar Mountains, an outstanding natural area identified by SUWA as possessing wilderness character and therefore suitable for wilderness designation and protection under the Wilderness Act of 1964. The Low Rail Spur will entail construction of a right of way of 250 feet on each side of the railroad center line, *Amendment at Figure 4.5-6, Sheet 1*, and "clearing and grubbing activities for a width of

approximately 50-ft.” Id. at 3.2.1.5. Furthermore, “[t]o reduce the potential for increased range fires that may be caused by rail transport, the 40 ft wide rail spur corridor will be cleared of vegetation” Id. at 4.4-9.

SUWA included the North Cedar Mountains in its 1998 Citizens’ Wilderness Reinventory, which specifies all the BLM lands in Utah that qualify as wilderness. SUWA has widely publicized the results of the reinventory to the public. The event generated a great deal of media coverage and was taken seriously by the government and the public. Further, SUWA and the Utah Wilderness Coalition (UWC) will attempt to educate members of Congress about Utah’s wilderness areas and support the passage of federal legislation that will designate all the lands in the 1998 reinventory as wilderness. Until then, SUWA will take all necessary steps to preserve these lands, including the North Cedar Mountains, in their current state and to protect them from any development or other impacts which would disqualify them for wilderness designation. See, SUWA’s petition and request.

The inventory of the North Cedar Mountains area was conducted according to a rigorous and informed procedure. Inventory staff spent approximately 10 hours, including review of aerial photographs, preparing maps for field survey work. The area was then surveyed by a volunteer who took field notes describing each of 24 pictures which were also linked to USGS maps. Inventory staff members revisited the site and took 38 more photographs, described in field notes and linked to maps. The technical review team then used this information to determine the boundaries of the proposed wilderness area depicted on Exhibit “2”, attached to SUWA’s petition and request. See, also, Affidavit of Jim Catlin.

As the description of the proposed project indicates, the construction and operation of the Low Rail Spur and the clearing of the fire buffer zone will irreversibly impair the wilderness character of the North Cedar Mountains. See, Affidavit of Jim Catlin, attached as Exhibit "3" to SUWA petition and request. If constructed pursuant to the PFS amendment, the Low Rail Spur will significantly intrude into the North Cedar Mountain roadless area so that it will no longer be an area which "generally appears to have been affected primarily by the forces of nature, with the imprint of [human] work substantially unnoticeable; . . ." Wilderness Act, 16 U.S.C.A. § 1131(c)(1). In addition, the operation of the rail spur will significantly intrude upon the areas currently "outstanding opportunities for solitude. . . ." Id., § 1131(c)(2). Finally, the construction and operation of the rail spur will have adverse impacts on the area's wildlife and plant life, values which are essential to the ecological health of the area. Id., § 1131(c)(4). See, Affidavit of Jim Catlin.

Despite the wilderness character of the North Cedar Mountains and its potential designation as wilderness pursuant to the Wilderness Act of 1964, PFS has failed to adequately address the potential impacts of the Low Rail Spur and the associated fire buffer zone on this roadless, wild area. Specifically, PFS fails to analyze the impacts that the construction and operation of the proposed project will have on the North Cedar Mountains roadless area and its current status as an area which "generally appears to have been affected primarily by the forces of nature, with the imprint of [human] work substantially unnoticeable." PFS fails to consider that the operation of the rail spur will significantly intrude upon the area's currently "outstanding opportunities for solitude." Finally, PFS does not adequately address the consequences of the

construction and operation on the area's wildlife, wildlife habitat, plant life, and other ecosystem values which are essential to the ecological health of the area and favor it for wilderness designation. See, Amendment. See, PFS Amendment.

To establish the basis for this contention SUWA relies and intends to rely on: 1) the expert opinion of Dr. Jim Catlin and his affidavit attached to SUWA's petition and request; 2) maps, field notes, photographs and other information documenting SUWA's 1998 reinventory and in the possession of Dr. Catlin and SUWA; 3) Wilderness Act of 1964, 16 U.S.C.A. §§ 1131-36, and the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C.A. §§ 1701-84, National Environmental Policy Act of 1969 (NEPA), BLM regulations and other relevant statutes and regulations; and, 4) the opinions of biological experts who consulted on the reinventory process including Dr. Leila M. Shultz of Harvard University.

II. CONTENTION B:

Statement: The License Application Amendment fails to develop and analyze a meaningful range of alternatives to the Low Corridor Rail Spur and the associated fire buffer zone that will preserve the wilderness character and the potential wilderness designation of a tract of roadless Bureau of Land Management (BLM) land — the North Cedar Mountains -- which it crosses.

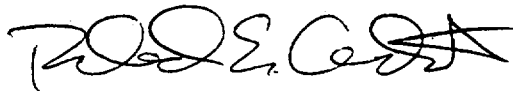
Basis: SUWA incorporates as a basis for this Contention, the basis stated for Contention A. As was demonstrated in Contention A, despite the wilderness character of the North Cedar Mountains and its potential designation as wilderness pursuant to the Wilderness Act of 1964, PFS has failed to adequately develop and analyze a meaningful range of alternatives to the Low Rail Spur and the associated fire buffer zone on this roadless and the alignment of these proposed

projects that will protect the wilderness character of the North Cedar Mountains and will preserve, for Congress, the opportunity to designate the area as wilderness pursuant to the Wilderness Act of 1964.

III. Conclusion

In sum, as a result of the inadequacies in the current application, the PFS's license application amendment should be rejected, SUWA should be allowed to intervene in this proceeding and these issues should be litigated in this proceeding.

Respectfully submitted this 18th day of November, 1998



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