LBP-99-3

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of	Docket No. 72-22-ISFSI
PRIVATE FUEL STORAGE, L.L.C.	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel Storage Installation)	February 3, 1999

MEMORANDUM AND ORDER
(Granting Late-Filed
Intervention Petition)

In LBP-98-29, 48 NRC 286 (1998), we denied requests by intervenor State of Utah (State), Confederated Tribes of the Goshute Reservation (Confederated Tribes), and Ohngo Gaudadeh Devia (OGD) to admit late-filed contentions relating to the August 28, 1998 license application amendment of Private Fuel Storage, L.L.C. (PFS). The application amendment in question moves some seventeen miles west the rail line that PFS proposes to construct to bring loaded spent fuel shipping casks from the Union Pacific mainline south to its planned 10 C.F.R. Part 72 independent spent fuel storage installation (ISFSI) located on the reservation of the Skull Valley Band of Goshute Indians (Skull Valley Band). Besides spawning these intervenors'

late-filed contention requests, that application also was the catalyst for the late-filed petition to intervene and supporting contentions of the Southern Utah Wilderness Alliance (SUWA) that is pending before the Licensing Board.

For the reasons set forth below, we grant the SUWA intervention petition and accord it party status, finding that (1) a balancing of the late-filing criteria in 10 C.F.R. § 2.714(a)(1) supports entertaining the petition and the accompanying contentions; (2) SUWA has established its representational standing to intervene; and (3) SUWA has proffered one litigable contention.

I. BACKGROUND

The circumstances surrounding the August 1998 license application amendment that makes the so-called Low Junction rail spur the PFS preferred rail transportation scheme are described in LBP-98-29, 48 NRC at 289. In a November 18, 1998 hearing request, petitioner SUWA sought to intervene in this proceeding, either as of right or as a discretionary intervenor, to challenge that amendment. See [SUWA] Request for Hearing and Petition to Intervene (Nov. 18, 1998) [hereinafter SUWA Petition]. In its petition, SUWA describes itself as a non-profit organization dedicated to identifying and protecting the "wilderness character" of roadless areas under the jurisdiction of the United States

Department of the Interior's Bureau of Land Management (BLM) until such time as Congress has an opportunity to designate those areas as wilderness under the Wilderness Act of 1964, 16 U.S.C. §§ 1131-1136, and the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1784. Id. at 2-3. According to SUWA, in conjunction with an ongoing BLM reinventory of Utah wilderness areas, SUWA has conducted its own inventory of potential wilderness areas and has determined that the North Cedar Mountains area, through which a three-mile portion of the Low Junction rail spur runs, should be designated as a potential wilderness area. In this vein, SUWA submitted two contentions, SUWA A and SUWA B, that assert a PFS failure to consider adequately the wilderness character of the North Cedar Mountains area in and near the Low Junction rail corridor in assessing the impacts of, and a possible range of alternatives to, the PFS proposal in violation of the Wilderness Act, the FLPMA, and the National Environmental Policy Act of 1969 (NEPA). See [SUWA] Contentions Regarding [PFS] Facility License Application (The Low Rail Spur) (Nov. 18. 1998) [hereinafter SUWA Contentions]. In its petition, SUWA also addressed the standards in 10 C.F.R. § 2.714(a)(1) that govern late-intervention, asserting its petition meets those late-filing standards.

Responses to these SUWA filings were submitted by intervenor State, applicant PFS, and the NRC staff. The State supported intervention, asserting SUWA had met the standards for late-filed intervention and had provided admissible contentions. See [State] Response to Request for Hearing, Petition to Intervene and Contentions of [SUWA] (Dec. 1, 1998) [hereinafter State Response]. PFS and the staff, on the other hand, both asserted the SUWA petition should be denied in that (1) the SUWA hearing request did not merit admission under the section 2.714(a)(1) late-filing standards; (2) SUWA had failed to establish its standing as of right; (3) SUWA had not made a case for permitting discretionary intervention; and (4) SUWA had failed to provide an admissible contention. See Applicant's Answer to Petition to Intervene and Contentions of [SUWA] (Dec. 1, 1998) [hereinafter PFS Response]; NRC Staff's Response to [SUWA] Request for Hearing, Petition to Intervene, and Contentions Regarding [PFS] License Application (The Low Rail Spur) (Dec. 1, 1998) [hereinafter Staff Response]. In a reply to the PFS and staff responses, SUWA declared that (1) it did meet the section 2.714(a)(1) standards for late filing so as to warrant admission of its intervention petition and the accompanying contentions; (2) it should be admitted as party to the proceeding because it had established its standing as of right and as a matter of

discretion; and (3) its contentions were admissible. See Reply of [SUWA] to Staff and Applicant Responses to SUWA's Petition to Intervene, Request for Hearing and Contentions (Dec. 8, 1998) [hereinafter SUWA Reply]. Thereafter, during a December 11, 1998 videoconference, the Board entertained arguments from SUWA, the State, PFS, the Skull Valley Band, and the staff concerning the SUWA petition and its contentions. See Tr. at 1050-165.

II. ANALYSIS

A. Standards Governing Late-Filed Intervention Petitions, Standing, and Late-Filed Contentions

At this juncture, to gain admission as a party to this proceeding, SUWA must clear the following hurdles: (1) establish that its intervention petition and the accompanying contentions should be accepted even though late-filed; (2) show that it has established its standing to intervene, either (a) as of right, or (b) as a matter of discretion; and (3) show that its contentions meet the standards for admissibility. In prior decisions in this proceeding, we have outlined the various standards that govern these assorted aspects of our consideration of the admission of SUWA's petition and contentions. Among these are (1) the five criteria of 10 C.F.R. § 2.714(a)(1) that govern the admission of late-filed intervention petitions

and contentions;[1] see LBP-98-7, 47 NRC 142, 167 (late intervention), 182-83 (late-filed contentions), aff'd, CLI-98-13, 48 NRC 26 (1998); LBP-98-29, 48 NRC at 291 (1998) (late-filed contentions); (2) the requirements to establish standing as of right or discretionary standing, see LBP-98-7, 47 NRC at 167-68; and (3) the standards for admission of contentions, see id. at 178-81; LBP-98-13, 47 NRC 360, 365 (1998). We deal with these admission guideposts first as they apply to the SUWA intervention petition and then with respect to the accompanying contentions.

B. SUWA Intervention Petition

1. Late-Filing Criteria

DISCUSSION: SUWA Petition at 9-11; State Response at 13; PFS Response at 15-17; Staff Response at 4-7; SUWA Reply at 2-5; Tr. at 1050-54, 1060-63, 1070-75, 1091-94, 1105-09.

RULING: As we have noted before, see LBP-98-7, 47 NRC at 173, the first late-filing factor -- good cause for filing late -- is also the most important in the balance. In this instance, SUWA declares that it first found out about the Low Junction rail corridor application amendment

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[1] Absent some demonstration that separate consideration is required, a showing regarding the 10 C.F.R. § 2.714(a)(1) criteria would be equally applicable to a late-filed intervention petition and any concurrently filed contentions.

the second week of October 1998 and filed its petition and contentions some six weeks later. See SUWA Reply at 3; see also Tr. at 1105-08. According to SUWA, it had good cause for taking six weeks of preparation before filing because of the time needed (a) to familiarize itself with the NRC regulatory process and the amendment, including generating maps to compare the Low Junction rail corridor with the areas in which it has an interest as potential wilderness areas; (b) to retain an expert for use in analyzing the revision and preparing the necessary support for its contentions; to retain a volunteer attorney; and (c) to consummate its internal processes to authorize the preparation and filing of a petition and accompanying exhibits. See SUWA Reply at 3.

The State agrees with SUWA's assertion. See State Response at 3. Both PFS and the staff do not, albeit for somewhat different reasons. PFS asserts the six-week period is too long given the nature of the amendment. See Tr. at 1061. The staff's disagreement, on the other hand, is based not on the claimed six-week preparation period, which it indicates would be reasonable under the circumstances, but rather on the basis that SUWA, as an organization generally interested in Utah areas such as that around the proposed PFS site, should have been more vigilant in learning of the amendment because (1) in early July 1998 PFS

placed a letter in the docket of this proceeding indicating it planned to file the Low Junction corridor amendment in late summer or early fall 1998; and (2) the amendment was placed in the local public document room for this proceeding in early September 1998. See Tr. at 1071-72.

We agree with the staff that, under the circumstances here, the approximately forty-five day period SUWA used to prepare its intervention petition, while perhaps approaching the outer boundary of "good cause," was not unreasonable. We do not agree, however, with the staff's assessment of SUWA's vigilance in discovering the PFS application amendment. Although there was not a Federal Register notice of the amendment application, the fact the amendment was placed in a local public document room (LPDR) created in Salt Lake City, Utah, for the PFS facility provides an enhanced opportunity for access to licensing information that should be taken into account in analyzing the timeliness of SUWA's intervention petition. It is reasonable to expect that, from time to time, those in the area who may have an interest in the proceeding, including SUWA, would visit the LPDR to check on its status. At the same time, the fact SUWA is not a party to this proceeding is a pertinent factor in assessing the frequency of such visits. By way of contrast, we would not expect a nonparty to visit the LPDR as often as a party given the need to

travel to the LPDR, which is located in Salt Lake City on the University of Utah campus, in order to see the files. With this in mind, one LPDR trip a month by a nonparty to monitor this proceeding seems reasonable.[2]

Considering the circumstances here against this backdrop, although the July 1998 letter apparently was placed in the LPDR, it seemingly was not sufficiently specific to prompt an intervention petition or contentions, particularly when it referenced the fact an actual amendment would be filed later. The August 1998 amendment itself thus is the appropriate trigger point for any intervention or contentions regarding the Low Junction rail corridor. Further, although the staff declares the amendment was placed in the LPDR in early September, see Tr. at 1071, it has not provided a specific date. We thus will presume the August 28, 1998 amendment reached the LPDR within two weeks, or by the second week of September 1998. Further, we think it reasonable to count the thirty days within which SUWA would be expected to make an LPDR trip, and thus learn about the amendment, from the date the document is placed in the

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[2] In this regard, we note that by the end of 1999 the agency hopes to implement a paperless document control system under which electronic versions of publically available licensing documents would be placed on the agency's Internet Web site within a short time after the documents are received. How such a system might affect the timing analysis above, at least for those with Internet access, is a question we need not resolve here.

LPDR, or the second week of October 1998. As it turns out, this is the same time frame in which SUWA asserts it received notice of the amendment, albeit not from the LPDR, and began its six-week period of petition preparation.

Consequently, taking into account both when SUWA learned of the amendment and the period it took to prepare and to file its hearing request, we conclude SUWA has demonstrated the requisite good cause for its late-filing.

Having found the first, and most important, late-filing factor weighs in SUWA's favor, we nonetheless must consider the other four factors to arrive at an assessment of the overall balance that accrues. Relative to factor two -- availability of other means to protect the petitioner's interests -- we do not find the PFS and staff assertions regarding a legislative remedy and the right to comment on any NRC draft environmental impact statement (EIS) particularly compelling as alternative fora to protect SUWA's interests. See PFS Response at 16; Staff Response at 5. PFS, however, has suggested that SUWA does have another administrative arena, the BLM, within which to seek a protected wilderness designation for the portion of the Low Junction rail corridor about which it is concerned. Indeed, PFS apparently must win BLM permission to use the federal land upon which the Low Junction rail spur would be constructed, a public process during which there is an

opportunity for participation in an administrative hearing. See Applicant's Reply to [State] Response to NRC Staff Lead Agency Filing (Jan. 5, 1999) at 3-5.

There is, however, a significant question about the degree to which this alternative forum might otherwise afford "a full hearing," see Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1767 n.6 (1982), such that this factor would constitute a substantial negative ingredient in the overall balance. As the staff has made clear, NRC is the "lead agency" that will prepare the EIS relative to the PFS proposal to use federal land for the Low Junction rail spur. The BLM will act only in a cooperating role, providing comments on NRC's preliminary, draft, and final EIS, but not preparing its own NEPA statement. See Letter from Sherwin E. Turk, NRC Staff Counsel, to the Licensing Board (Dec. 16, 1998) at 1-2. Given that any NEPA responsibilities relative to the Low Junction rail corridor have, in the first instance, been assumed by the NRC, it is problematic the degree to which the issue of NEPA compliance, a focus of the SUWA contentions, will be a matter that can (or should) be contested as part of any Department of the Interior review process, neutralizing any negative element this factor might bring to the balance. Compare Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-78-1,

7 NRC 1, 26-27 (1978) (in NEPA analysis, NRC will not relitigate issues delegated to the Environmental Protection Agency).

On the other hand, as the staff notes, see Staff Response at 6, the fourth factor -- extent of representation of petitioner's interests by existing parties -- clearly weighs in favor of SUWA because no other party has raised a wilderness issue or, in fact, been successful in having a Low Junction rail corridor contention admitted in this proceeding. Thus, at best, the second and fourth factors negate each other in the balance.

As to factors three and five, which carry more weight among the four section 2.174(a)(1) non-good cause considerations, they are marginally positive (or at least not negative) elements in the balance. SUWA does identify three of the witnesses it may utilize and, in the context of the affidavits supporting the SUWA petition and contentions, provides an outline of the testimony of one of those individuals, Dr. Jim Catlin, thereby affording at least some minimal support for acceptance of its petition under factor three -- extent to which petitioner's participation may lead to development of a strong record. See LBP-98-29, 48 NRC at 294 n.5. At the same time, any broadening of the proceeding by the entry of SUWA with its new "wilderness" issues is offset to a considerable degree by the fact that admission

is unlikely to result in any protracted delay because this case still is in its informal discovery phase, so that factor five -- broadening the issues or delaying the proceeding -- is, at worst, a neutral element in the balance.

Accordingly, with good cause for lateness having been shown and the other four factors providing little, if any, counterweight, we conclude that a balancing of the five section 2.714(a)(1) factors favors entertaining the SUWA petition and the accompanying contentions despite their late filing.

2. Standing

DISCUSSION: SUWA Petition at 12-15; PFS Response at 5-14; Staff Response at 10-18; SUWA Reply at 6-11; Tr. at 1053-58; 1063-69; 1076-85; 1110-1131.

RULING: Having gotten over the "late-filing" barrier, SUWA still must establish its standing to intervene. As presented by the parties, the dispute regarding standing centers on whether (1) SUWA as an organization has standing to intervene; and (2) SUWA has standing through its representation of the interests of one or more of its members. We see no need to address the first controversy, because, as we explain below, SUWA has fulfilled the qualifications for representational standing relative to its member, Dr. Jim Catlin.

Of the four showings required by an organization wishing to establish standing as the representative of its members' interests, see CLI-98-13, 48 NRC at 30-31, only one -- whether one or more of its members would otherwise have standing to sue in his or her own right -- is at issue here.[3] Further, relative to the three elements at play in this determination of Dr. Catlin's standing as the represented individual, see id. at 31, we consider only the first and third -- injury in fact and redressability -- to be in serious question.[4]

Regarding Dr. Catlin's injury in fact, both the PFS and the staff assert that he has failed to establish that his injury is sufficiently concrete and particularized. Both declare the asserted injury involved is not sufficiently concrete because it does not involve a specific, tangible environmental harm. See PFS Response at 8-11, 13; Staff Response at 12. Additionally, both challenge the

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[3] Relative to representational standing, neither PFS nor the staff has contested whether (1) the interests SUWA seeks to protect are germane to its purpose; (2) the claim asserted or relief requested requires an individual member to participate in the organization's adjudicatory challenge; or (3) the organization has demonstrated that at least one of its members upon which its standing rests has authorized it to represent his or her interests. See PFS Response at 11-13; Staff Response at 12-15; Tr. at 1063-69, 1078-81. We likewise do not see these elements as negating SUWA's representational standing.

[4] As the staff notes, the causation element relative to Dr. Catlin's purported injury in fact appears to have been met. See Staff Response at 13-14.

sufficiency of Dr. Catlin's affidavit describing the injury to his personal interests, which states:

> I have a personal interest in and have frequently visited, used and enjoyed the natural resources of the North Cedar Mountains and benches, including the section of this area that will be traversed by the proposed rail spur, for many health, recreational, scientific, spiritual, educational, aesthetic, and other purposes and will do so frequently in the future. I have visited these areas, including the exact tract of land within the North Cedar Mountains area that will be traversed by the proposed rail spur, and have developed an ongoing and deep bond with the land and its wilderness character which I will continue to cultivate in the future. I frequently enjoyed and will, in the future with some frequency, enjoy hiking, camping, birdwatching, study, contemplation, solitude, photography, and other activities in and around the North Cedar Mountains roadless area, including the exact tract of land -- the bench of the North Cedar Mountains -- over which the proposed rail spur will traverse. I will be personally harmed and my health, recreational, scientific, spiritual, educational, aesthetic, informational, and other interests will be directly affected and irreparably harmed by a decision to allow construction and operation of the Low Rail Spur and by other agency actions which may impact the North Cedar Mountains, including the exact tract of land -- the bench of the North Cedar Mountains -- over which the proposed rail spur will traverse.

SUWA Reply, Second Declaration of Jim Catlin for Petitioner [SUWA] (Dec. 8, 1998) at 4-5. According to PFS and the staff, Dr. Catlin's use of the word "frequently" to describe

his past and future contacts with the Low Junction rail corridor is insufficiently particularized to establish the requisite concreteness for his asserted injury in fact. See Tr. at 1066-67, 1078-79.

Relative to the PFS and staff assertions about the concreteness of any purported environmental-related injury, we find the decision of the United States Court of Appeals for the Ninth Circuit in Idaho Conservation League v. Mumma, 956 F.2d 1508 (9th Cir. 1992), instructive.[5] Initially, we note the court's admonition that when "Congress is the source of the purportedly violated legal obligation, we look to the statute to define the injury." Id. at 1514. In this instance, SUWA in its contentions has based its claims on alleged violations of the Wilderness Act, FLPMA, and NEPA. As the Mumma court suggests, NEPA provides a procedural protection for potential intervenors by imposing an agency duty to consider all reasonable alternatives before making a decision affecting the environment. In this NEPA context, even without the Wilderness Act or FLPMA, agency consideration of an action that would alter assertedly

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[5] As PFS noted, see Tr. at 1116-17, at least one other federal circuit has declined to follow the Mumma decision. See Sierra Club v. Robertson, 28 F.3d 753, 759-60 (8th Cir. 1994). It did so, however, based on the fact the matter under scrutiny in Mumma was a proposed resource management plan, as opposed to a site-specific action. See id. at 760. Here, of course, we are concerned with a proposed site-specific action.

pristine public land without a discussion of alternatives seemingly would constitute a sufficiently direct and concrete injury to an intervenor's legitimate interests under NEPA to provide standing to contest that action. Consequently, with the provisions of the Wilderness Act and FLPMA, which make it clear maintaining wilderness, and by implication the option to obtain a wilderness designation that results in such preservation, has more than nominal value, see 16 U.S.C. § 1131(c) (wilderness defined as land "which is protected and managed so as to preserve its natural conditions"), agency action without sufficient consideration of alternatives that would preserve any designation potential is equally injurious to an intervenor's NEPA procedural interests so as to provide standing.[6]

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[6] Both PFS and the staff maintain that the fact BLM previously declined to designate the area in question as potential "wilderness" area for further consideration by Congress renders speculative any SUWA injury in losing the opportunity to have the land designated for protection. See PFS Response at 9; Staff Response at 12. As we have noted, however, in the context of NEPA, even absent the FLPMA statutory scheme, there would be a need to consider the natural state of the land and the alternatives, if any, that would be available to preserve that status. This is particularly so in an instance when that natural state will be irrevocably changed by the proposed project. Compare PFS Response, exh. 3, at 17 (Utah BLM Statewide Wilderness Final EIS) (impact of not designating Cedar Mountains wilderness area is area would not receive protection, but in foreseeable future on development anticipated that would affect wilderness values).

(continued...)

As is specifically alleged in contention SUWA B, it is this NEPA interest in considering alternatives that Dr. Catlin and, as his representative, SUWA clearly want to protect. Accordingly, there is a concrete injury in fact in a proposal to take such an action without an adequate consideration of alternatives that accrues to SUWA as it acts as Dr. Catlin's representative.

Because, as the staff concedes, there is a chain of causation by which approval of the PFS application will result in at least a small portion of the Low Junction rail spur corridor becoming ineligible for protected "wilderness" designation under the Wilderness Act and FLPMA (at least as long as the rail line is in existence), see Staff Response at 14, this leaves only the matter of redressability, which can be promptly disposed of. The staff makes the argument that SUWA has failed to demonstrate that a favorable decision likely will redress its injury, and so establish its standing, because even if PFS's application is rejected, the BLM could grant a separate proposal for the land to some other lessee. To adopt this reading, however, would

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[6](...continued)
In this regard, the staff also questions the sufficiency of SUWA's interest in light of the fact the proposed rail spur would only go through three miles of the several thousand acre area identified by SUWA as wilderness. See Staff Response at 5 n.6; see also PFS Response at 10. While this fact may influence the consideration of alternatives, it is not disqualifying relative to SUWA's standing.

misapply the redressability standard. What SUWA seeks to gain from this challenge is to preclude the danger the PFS proposal poses for the wilderness designation of the land in question. If, as a result of agency NEPA consideration of the PFS Low Junction rail spur in this proceeding, the PFS proposal is implemented in a way that is not inconsistent with SUWA's asserted interest in the land, then SUWA has won all it can expect from this proceeding and its potential injury has been redressed. We thus find the redressability requirement is not a bar to SUWA's representational standing.

Finally, we do not find convincing the PFS and staff assertion that Dr. Catlin has not shown sufficient contacts with the Low Junction rail corridor to establish a personal injury. Dr. Catlin, as was noted above, indicated in his affidavit that he had "frequently visited, used, and enjoyed" the area and planned to do so "frequently in the future." As used in this context, the root term "frequent" is defined in the dictionary as meaning "habitual" or "persistent." Webster's Third New International Dictionary 909 (unabr. 1976). While Dr. Catlin could have been more specific about the number of times he has traversed and otherwise used (and plans to use) the Low rail corridor

lands in question,[7] his adoption of the term "frequently" in this context demonstrates that his bond with the area is sufficiently concrete to establish his standing and, consequently, that of his representative SUWA.

Because we find that SUWA has established it has representational standing as of right, we need not reach the question of whether it should be admitted as a matter of discretion.[8]

C. SUWA Contentions

SUWA A

CONTENTION: 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

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[7] In this connection, we are considerably less concerned about precision regarding a standing showing that is based on actual physical contact (i.e., hiking, camping, etc.) with the object of the purported injury, in this case the Low Junction rail corridor, then we would be for a standing showing based on distance from the object in question (i.e., reside "x" miles from the facility). An ongoing presence via physical contact can be adequately conveyed with a general term such as "frequently." General references regarding distance, however, will usually be inadequate to establish the requisite concreteness. See Atlas Corp. (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 426-27, aff'd, CLI-97-8, 46 NRC 21 (1997).

[8] We note, however, that given SUWA's showing of its strong, persistent concern for the local environment, SUWA would be a much stronger candidate for discretionary standing than petitioner Scientists for Secure Waste Storage, a group we earlier dismissed from this proceeding for having failed to establish its standing as of right or its eligibility for discretionary standing. See LBP-98-7, 47 NRC at 175-78.

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.

DISCUSSION: SUWA Contentions at 2-5; PFS Response at 18-23; Staff Response at 20-24; SUWA Reply at 11-14; Tr. at 1132-33; 1136-41; 1143-48; 1151-54, 1155-56.

RULING: Inadmissible in that this contention and its supporting bases lack adequate factual or expert opinion support; and/or fail properly to challenge the PFS application, as amended.

SUWA B

CONTENTION: 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.

DISCUSSION: SUWA Contentions at 5-6; PFS Response at 23-25; Staff Response at 24-25; SUWA Reply at 14-15; Tr. at 1133-35; 1141-43; 1148-51; 1154-55.

RULING: As it seeks to explore the question of alignment alternatives to the proposed placement of the Low Junction rail spur, admissible in that the contention and its supporting basis are sufficient to establish a genuine dispute adequate to warrant further inquiry.

III. CONCLUSION

For the reasons given above, we find that petitioner SUWA has established (1) its intervention petition should be entertained under a balancing of the late-filing criteria set forth in 10 C.F.R. § 2.714(a)(1); (2) it has representational standing as of right; and (3) it has proffered an admissible contention -- SUWA B. Accordingly, SUWA is admitted as a party to this proceeding.

For the foregoing reasons, it is this third day of February 1999, ORDERED,

1. The November 18, 1998 SUWA hearing request/intervention petition is granted and SUWA is admitted as a party to this proceeding.

2. SUWA contention SUWA A is rejected as inadmissible for litigation in this proceeding.

3. SUWA contention SUWA B is admitted for litigation in this proceeding and shall be considered as a Group III contention under the general schedule for this proceeding, as revised on December 28, 1998.

4. In accordance with the provisions of 10 C.F.R. § 2.714a(a), as it rules upon an intervention petition, this

memorandum and order may be appealed to the Commission within ten days after it is served.

THE ATOMIC SAFETY
AND LICENSING BOARD[9]

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Jerry R. Kline
ADMINISTRATIVE JUDGE

Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland

February 3, 1999

[9] Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) the applicant PFS; (2) intervenors Skull Valley Band, OGD, Confederated Tribes, Castle Rock Land and Livestock, L.C./Skull Valley Company, LTD., and the State; (3) petitioner SUWA; and (4) the staff.

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-GRANT'G..PET.--LBP-99-3 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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Docket No.(s)72-22-ISFSI
LB M&O-GRANT'G..PET.--LBP-99-3

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Dated at Rockville, Md. this
3 day of February 1999

Office of the Secretary of the Commission