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72-22

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NOTICE OF APPEAL AND REQUEST FOR IMMEDIATE RELIEF  
STATEMENT OF REASONS

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Bureau of Indian Affairs  
Department of the Interior  
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400 North Fifth Street  
Phoenix, Arizona 85004

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VIRGINIA

Dear Mr. Quasula:

The State of Utah hereby appeals from a decision apparently made by David Allison, Superintendent of the Uintah and Ouray Agency, conditionally approving a lease of lands held in trust for the Skull Valley Band of Goshute Indians to a limited liability company reportedly known as "Private Fuel Storage" for the storage of spent nuclear fuel rods. No formal notification of the conditional approval of the lease has been given by Mr. Allison, as required, but the lessee has advised that State that such conditional approval has been given and the State can only assume that this information is correct. No information at all has been received from Mr. Allison.

BACKGROUND

The following background information will help you understand what has happened and why immediate relief is needed.

1. For some time the State of Utah has been aware that the Skull Valley Band was considering leasing reservation land for the storage of high level nuclear waste. The State has indicated, both publicly and privately, its opposition to the project and its desire to participate actively in all proceedings involving the proposed lease and storage project.

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2. Even before the application to approve the proposed lease had been filed with him, Mr. Allison, indicated to representatives of the State, including the undersigned, that he strongly favored the project, that he considered his role in considering the proposed lease to be somewhat perfunctory (with the real action to take place before the Nuclear Regulatory Commission) and that he intended to approve the lease subject only to NRC approval.

3. The State of Utah clearly and repeatedly communicated its concerns and desire to be heard to Mr. Allison. Attached hereto are copies of the following:

- (a) April 28, 1997 - Request for Notice of Initiation of Lease Approval Process
- (b) April 28, 1997 - Freedom of Information Act Request
- (c) May 28, 1997 - Petition for Leave to Intervene
- (d) June 16, 1997 - Freedom of Information Act Request #2

4. The communications to Mr. Allison have been completely ineffective thus far. No notification was given to the State of the initiation of the lease approval process - the State otherwise learned of it and confirmed in a telephone call to Mr. Allison's office that an application had been filed. No action has been taken on the State's request for leave to intervene. The initial FOIA request resulted in a response from Mr. Allison (May 14, 1997 letter attached) but the documents were not produced by the June 11, 1997 deadline and, as a result, the State filed an appeal in the required manner (sixth attachment). It now appears that Mr. Allison has conditionally approved the lease, but no notice has been given to the State of such approval, in violation of 25 C.F.R. § 2.7(a).

5. In spite of all of the efforts made by the State and Mr. Allison's obvious awareness from the press and otherwise that this is a matter of great public concern, the application to approve the lease has apparently been given some kind of conditional approval. Attached hereto (seventh attachment) is a letter from the proposed lessee. Your attention is directed to Answer 1.7, which is part of Attachment A to the letter. The proposed lessee reports that,

The lease with the Band has been approved subject to the completion of the environmental analysis, issuance of the EIS, modification of the lease to incorporate mitigation measures, if any, and the issuance of the NRC license.

### STATEMENT OF REASONS

1. The lease approval process thus far has been unfair and the State of Utah has been denied fundamental due process. The Secretary of the Interior, acting through the Bureau of Indian Affairs, has a clear, statutory (25 U.S.C. § 415) duty to take an independent look at proposed leases of Indian lands and evaluate them on their merits, giving consideration to a variety of factors, including:

... the relationship between the use of the leased lands and the use of neighboring lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject.

2. The State of Utah was given no opportunity to participate in the process even after a great effort was made to request such an opportunity and indicate to Mr. Allison the State's concern and desire to be heard. Mr. Allison's decision to conditionally approve the lease under these circumstances is highhanded, it shows an inexcusable bias in favor of the project and it completely leaves the State of Utah and other interested parties out of the process.

3. The secretive, hurried approval of the lease without any public input violates the letter and intent of Part 301 of the Department of the Interior's "Departmental Manual" (301 D.M. 2.1 et seq.). Paragraph 2.1 of said manual reads as follows:

The Department of the Interior will offer the public meaningful opportunities for participation in decision-making processes leading to actions and policies which may significantly affect or interest them.

A copy of Part 301 of the "Departmental Manual" is attached hereto for ease of reference.

4. The State of Utah is deeply concerned about the proposed use of the leased property. Private Fuel Storage, a limited liability company, is a consortium of electric utility companies and they intend to ship spent nuclear fuel rods to Utah for storage for an extended period of time. All of the fuel rods will come from outside the State. In theory the storage period is limited to a defined number of years, but in practice the storage period could turn out to be perpetual. The fuel rods are high level nuclear waste which remains radioactive for thousands of years. The proposed storage location is relatively close to the major population center of the State of Utah and an accident involving the waste could be cataclysmic.

#### RELIEF REQUESTED


For the reasons indicated hereinabove, the State of Utah asks that,

1. Mr. Allison be disqualified from handling this matter. He has shown a clear lack of objectivity and a disregard for the rights of persons and entities with an interest in the proceeding. His apparent approval of the lease was based upon only cursory, if any, consideration of the factors required to be taken into account and he apparently accepted the unchallenged information submitted by the applicant on its face. The State of Utah has been shut out of the process, being denied the right to see what was submitted in support of the application and the right to challenge said material.

2. The conditional approval of the lease should be revoked unless and until there has been a full review of the matter with an opportunity given to interested parties to provide input.

The BIA cannot simply rely on a parallel consideration of the environmental and other issues involved in this matter by another Federal agency. It is required to conduct its own, independent evaluation of the impact of the proposed lease on the quality of the human environment - see Davis v. Morton, 469 F.2d 593 (10th Cir. 1972). And, as a result of its trust responsibility to Indians and the provisions of 25 U.S.C. §415, it has an obligation to consider a number of other factors. A matter of this complexity cannot have been studied with anything close to the required care in the short time that it has been before Mr. Allison and it clearly has had no public input and scrutiny.

Respectfully submitted this 30th day of June, 1997.

  
Philip C. Fugsley  
Assistant Attorney General

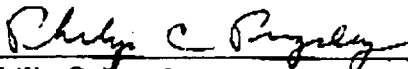
## CERTIFICATE OF SERVICE

I hereby certify that copies of this Notice of Appeal and Request for Immediate Relief and all attachments thereto were mailed by first class mail, postage prepaid, on the 30th day of June, 1997 to the following:

David Allison, Superintendent  
Uintah and Ouray Agency  
Bureau of Indian Affairs  
Department of the Interior  
Fort Duchesne UT 84026

Scott Northard  
Project Manager  
Private Fuel Storage, LLC  
c/o NSP, 414 Nicollet Mall, RS7  
Minneapolis MN 55401

Leon D. Bear, Chairman  
Skull Valley Band of Goshute Indians  
P O Box 150  
Grantsville UT 84029

  
Philip C. Pugsley