

RAS 2919

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'01 APR -3 P2:09

Private Fuel Storage, a Limited Liability
Company;

(Independent Spent Fuel Storage
Installation).

Docket No. 72-22

ASLBP No. 97-732-02 OFFICE OF SECRETARY
ISFSI RULEMAKINGS AND

March 26, 2001

ADJUDICATIONS STAFF

**OHNGO GAUDADEH DEVIA'S (OGD) SECOND SUPPLEMENTAL RESPONSES TO
APPLICANT'S FIRST SET OF DISCOVERY REQUESTS
AND INITIAL RESPONSES TO APPLICANT'S SECOND
SET OF DISCOVERY REQUESTS.**

Ohngo Gaudadeh Devia (OGD) files the following **second** supplemental responses to
Applicant's (Private Fuel Storage L.L.C. (PFS)) First Set of Interrogatories and Document
Requests directed to OGD and to PFS's Second Set of Formal Discovery Requests to Intervenor
OGD:

I. Supplemental Responses to First Set of Requests:

Other Interrogatories and Requests for Documents: It has come to the attention of
counsel that members of OGD have recently uncovered documents that are responsive to
Applicant's First Set of Document Requests to Intervenor OGD – specifically, Document
Request #1 which seeks “[a]ll documents related to the claims raised by OGD in Contention
OGD O, as admitted by the Board.” These documents and records will be available for review
and reproduction by the applicant.

Template = SECY-035

SECY-02

II. Responses to Second Set of Discovery Requests.

A. Requests for Admission.

OGD hereby withdraws its previous response to Applicant's Request for Admission No. 3 and submits the following in its stead:

Request for Admission No. 3: Do you admit that in order to contribute to a cumulative impact, a facility must have some impact in the first place?

Response: No. Events, such as the construction and operation of a facility, can have collectively synergistic or cumulative impacts. Thus, an event could have no impact in isolation while it could have a cumulative or synergistic impact when combined with another event.

B. Supplemental Responses to Interrogatories

Interrogatory No. 8: In OGD's comments on the DEIS, OGD asserts that a majority of the Band does not support the PFS ISFSI. If OGD contends that its assertion falls within the scope of Contention OGD O, specifically identify the bases for the assertion; in any event specify the reason(s) for disagreeing with the DEIS conclusion that the PFS project would result in a net increase in Band members living on the Reservation (*see, e.g.*, page 9-36 of the DEIS).

Response: OGD's basis for this statement is the personal experience of Margene Bullcreek and other Band members. Ms. Bullcreek and other Band members detailed much of this experience in affidavits filed with the United States District Court for the District of Utah in State of Utah v. United States Department of Interior, Case No. 2:98 CV 380 K. Other evidence submitted relative to this case provides a further basis for OGD's claim. Specifically, OGD intends to rely on all evidence submitted in that case by the "Blackbear" Plaintiffs, as contained in affidavits, declarations and other supporting or evidentiary documents and records. Finally, much of the evidence that serves as a basis for this claim is in the possession of Mr. Leon Bear and/or his organization and/or the applicant.

The reasons for which OGD disagrees with the assertion that the project would result in a net gain for Band members are that: 1) individual members of the Band have been, are being and apparently will be denied economic, social and other benefits, and thereby suffering disparate adverse impacts, as a result of their real and/or perceived opposition to the PFS facility or as a result of other issues relevant to the facility; 2) the operation and construction of the proposed facility will have disproportionate adverse impacts on the Skull Valley Band, including its cultural integrity, the perpetuation of its language and traditions, and its relationship to its lands; 3) the operation and construction of the proposed facility will have disproportionate adverse impacts on the Skull Valley Band members because of the individual and cumulative adverse impacts of the facility; 4) the Skull Valley Band is not a voluntary host community; and 5) the analysis in the Draft EIS is inadequate. By “social and other benefits” OGD means the benefits derived from being a part of and participating in a community, tradition and/or culture. These benefits include, for example, the support of community members, feelings of and the gains derived from community and shared values, feeling and/or being included in social gatherings and events, learning from and practicing traditions with others, and generally, feeling a part of a group.

Interrogatory No. 9: Identify and fully explain each specific respect in which OGD claims that the Draft Environmental Impact Statement does not adequately consider any of the environmental justice claims previously raised by OGD in Contention OGD O as admitted by the Board.

Response: The Draft EIS is deficient because it fails to analyze adequately or at all the fact that: 1) individual members of the Band have been, are being and apparently will be denied economic, social and other benefits, and thereby suffering disparate adverse impacts, as a result of their real and/or perceived opposition to the PFS facility or as a result of other issues relevant to the facility; 2) the operation and construction of the proposed facility will have

disproportionate adverse impacts on the Skull Valley Band, including its cultural integrity, the perpetuation of its language and traditions and its relationship to its lands; 3) the operation and construction of the proposed facility will have disproportionate adverse impacts on the Skull Valley Band members because of the individual and cumulative adverse impacts of the facility; and, 4) the Skull Valley Band is not a voluntary host community. By “social and other benefits” OGD means the benefits derived from being a part of and participating in a community, tradition and/or culture. These benefits include, for example, the support of community members, feelings of and the gains derived from community and shared values, feeling and/or being included in social gatherings and events, learning from and practicing traditions with others, and generally feeling a part of a group.

By “including its cultural integrity,” OGD means the health and wholeness of the community, tradition and culture of the Skull Valley Band of Goshute Indians. OGD detailed these impacts in its responses to Applicant’s First Set of Interrogatories Directed to Intervenor OGD. In particular, OGD’s responses to Interrogatory No. 3, No 5, and No. 7, which explain, for example, adverse impacts to traditional ceremonies; disruption of Band members’ connection to their homes, their lands, the earth, each other and their customs; the acceleration of the acculturation of Band members into the dominant culture; the impediment of efforts to revitalize and invigorate traditional Band Goshute Shoshone culture; and the diaspora of Band members away from their lands and their cultural center.

C. Document Requests

Document Request No. 4: In its comments on the DEIS, *supra* note 2, OGD alleges instances of improper treatment of Band members by the Skull Valley Band government related to the lease with PFS and related to the transfer of lease funds. If OGD claims that its allegations fall within the scope of OGD O, provide all documents related to the allegations, including but not limited to threats to withhold tribal membership and other tribal benefits, the actual withholding

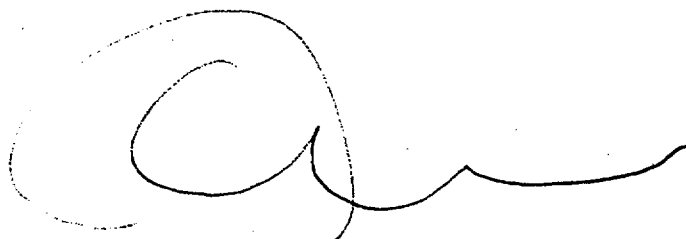
of funds, attempts to interfere with the attorney-client relationship, and attempts to interfere with tribal members ability to participate in tribal government.

Response: It has come to the attention of counsel that members of OGD have recently uncovered documents that are responsive to this Request for Documents. These documents and records will be available for review and reproduction by the applicant.

Other documents responsive to this request are in the possession of Mr. Leon Bear and/or his organization and/or the applicant. Other relevant documents have been filed in as evidence in State of Utah v. United States Department of Interior, Case No. 2:98 CV 380 K, in which the applicant is a party. Specifically, all evidence submitted in that case by the "Blackbear" Plaintiffs, as contained in affidavits, declarations and other supporting or evidentiary documents and records, is or can be relevant to demonstrating the improper treatment of Band members by purported members of their tribal government.

Regarding Declaration: OGD is required to file the declaration of the person or persons responsible for OGD's responses to PFS's interrogatories and requests for admission. Unfortunately, counsel has been unable to secure the necessary declarations at this time, but will do so as soon as possible. I apologize for any inconvenience this delay might cause.

DATED March 26, 2001

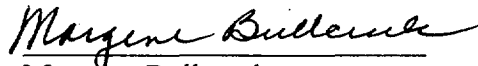
A handwritten signature in black ink, appearing to be 'Joro Walker', with a large, stylized initial 'J' and a long, horizontal flourish extending to the right.

JORO WALKER
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Attorney for OGD (until April 1, 2001 and SUWA)

I, Margene Bullcreek, hereby certify that the statements in the foregoing Answers to Interrogatories are Requests for Admissions true and correct to the best of my knowledge and belief.

Dated the 26th of March, 2001.

A handwritten signature in cursive script, reading "Margene Bullcreek", written in black ink.

Margene Bullcreek
Chair of Ohngo Gaudadeh Devia

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CERTIFICATE OF SERVICE

I hereby certify that copies of **OHNGO GAUDEDH DEVIA'S SECOND SUPPLEMENTAL RESPONSES TO APPLICANT'S FIRST SET OF DISCOVERY REQUESTS AND INITIAL RESPONSES TO APPLICANT'S SECOND SET OF DISCOVERY REQUESTS** and **LAND AND WATER FUND OF THE ROCKIES WITHDRAWAL OF COUNSEL FOR OHNGO GAUDEDH DEVIA'S (OGD)** were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 26th day of March, 2001.

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* Adjudicatory File
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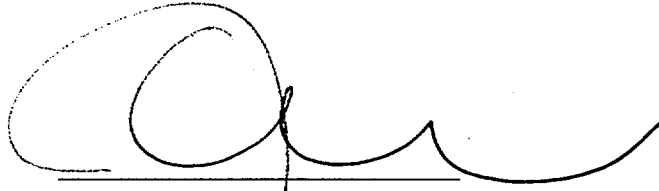
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