

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

PRIVATE FUEL STORAGE, L.L.C.

(Independent Spent Fuel Storage Installation)

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

June 11, 2001

MEMORANDUM
(Clarification Request)

By motion submitted May 31, 2001, intervenor State of Utah (State) requests clarification from the Licensing Board of the effect upon its contention Utah O, Hydrology, of any ruling we may make regarding the pending motion of applicant Private Fuel Storage, L.L.C., (PFS) for summary disposition of contention OGD O, Environmental Justice Issues Are Not Addressed. Specifically, the State expresses the concern that, in the context of its determination regarding PFS arguments about the impacts of the PFS proposed Skull Valley, Utah independent spent fuels storage installation (ISFSI) on groundwater and surface water quality, the Board may make a ruling that would have res judicata/claim preclusion or collateral estoppel/issue preclusion effect relative to contention Utah O. According to the State, an anticipated PFS dispositive motion regarding contention Utah O would be the better forum for discussing the merits of the State's hydrological issues, but if the Board "intends" its ruling on the PFS motion to bind the State on those (or similar) issues, the State is willing to brief the matters in response to the PFS motion. [State] Request for Clarification of the Effect of a

Ruling on Ground and Surface Water in Contention OGD O on Contention Utah O
(May 31, 2001) at 2.

In responses filed June 6, 2001, PFS and the NRC staff suggest that the State's preclusion concerns are misplaced. PFS declares that any Board ruling on contention OGD O would not have preclusive effect because the State is not in privity with intervenor Ohngo Gaudadeh Devia (OGD), the sponsor of contention OGD O, and because the Board can rule in favor of PFS on its pending motion without reaching the PFS facility water impact issues that the State asserts are the focus of contention Utah O. For its part, the staff declares that because contention OGD O does not raise any facility groundwater or surface water impact issues, there is no basis to invoke either preclusion doctrine.

Notwithstanding the State's suggestion, it would not be the Board's "intent" to apply either preclusion doctrine in the context of ruling on the pending PFS dispositive motion regarding contention OGD O. Rather, the preclusive effect of any Board ruling would depend upon whether that ruling, in the context in which it is made, would meet the standards for claim or issue preclusion long recognized as part of this agency's adjudicatory practice. See Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-673, 15 NRC 688, 695 (1982) (citing cases going back to 1974). Given that the two parties likely to invoke these preclusion doctrines have both expressed the view those principles would not apply to contention Utah O relative to any contention OGD O ruling we might make,

the State seemingly has received the clarification it sought so that we need not address the matter further at this juncture.

FOR THE ATOMIC SAFETY^{*}
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

June 11, 2001

* Copies of this memorandum were sent this date by Internet e-mail transmission to counsel for (1) applicant PFS; (2) intervenors Skull Valley Band of Goshute Indians, OGD, Confederated Tribes of the Goshute Reservation, Southern Utah Wilderness Alliance, and the State; and (3) the staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM (CLARIFICATION REQUEST) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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LB MEMORANDUM (CLARIFICATION
REQUEST)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 11th day of June 2001