

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Private Fuel Storage, a Limited Liability Company;
(Independent Spent Fuel Storage Installation).

Docket No. 72-22
ASLBP No. 97-732-02-ISFSI
July 9, 2001

**OHNGO GAUDADEH DEVIA'S (OGD) RESPONSE TO NRC STAFF'S RESPONSE
TO PRIVATE FUEL STORAGE'S (PFS) MOTION FOR SUMMARY DISPOSITION
OF OGD CONTENTION "O"**

1. Response to NRC Staff's Response to PFS' Motion for Summary Disposition:

OGD hereby provides this Response to NRC Staff's June 28, 2001 Response to PFS' May 25, 2001 Motion for Summary Disposition of OGD Contention "O."

2. Even Accepting *Arguendo* PFS' Statement of Scope and In Light of NRC Staff's Response, PFS' Motion Should Be Rejected: In OGD's June 28, 2001 Response, OGD showed that PFS' current Motion for Summary Disposition (even given PFS' statement of scope) should be rejected for reasons which the NRC Staff's Response does not adequately address. These reasons include, in part and without limitation:

a. Inaccurate Information and False Assumptions: OGD has shown that PFS' Motion (and its application) is based on inaccurate information and false assumptions. The NRC Staff's response does not address this issue and it and the DEIS suffers from the same inaccurate information and false assumptions identified by OGD in its June 28, 2001 Response.

b. Disparate Treatment along Racial Lines: OGD has shown that PFS' Motion (and its application) fails to account for and mitigate the damages of disparately burdening one race to the exclusion of all others, such as to induce the social stigma of racial discrimination. This causes

the damages associated with racial discrimination, even if the conditions had not resulted from intentional or deliberate racial discrimination. These damages include deprivation of personal dignity, stigma, humiliation, emotional distress, general malaise, and individual, family, and community disesteem. Such "stigmatizing injuries" are litigable damages (*Roberts v. United States Jaycees*, 468 U.S. 609, 625 (1983)) and are not the type of psychological stress which PFS claims should be banned from consideration. The NRC Staff's response fails to address this issue.

c. **"Facts" In Dispute:** The Motion relies on "facts" which are in dispute. OGD has shown that PFS' purported Statement of Facts On Which No Genuine Dispute Exists is essentially composed entirely of "facts" which are in genuine dispute. The NRC Staff's response does not make OGD's dispute of a single "fact" less genuine, nor supply additional information which could settle any of the disputed "facts" in PFS' favor, but rather rehashes PFS's position.

d. **Economic and Sociological Impacts Not Addressed:** OGD has shown that PFS' Motion does not address the lack of adequate treatment of certain economic and sociological impacts, including those caused by a failure to deal with the legitimate Tribal government; failure to use project controls to ensure projects funds reach the Tribe; failure to account for and mitigate damages due to the project's adverse impact on other uses of the land, damages due to offenses against Native American morality and damages due to disruption of Native American social and cultural traditions. The NRC Staff's response does not provide additional treatment of any of these issues, but rather rehashes PFS' position.

3. **Disproportionate Effects and Cumulative Impacts Not Addressed:** OGD has shown that there have been no studies addressing disproportionate effects. The DEIS does not address any disproportionate effects with respect to any of the potential health or environmental affecting impacts it considers. PFS has stipulated that PFS has conducted no studies whatever

addressing disproportionate effects. Cumulative impacts, not being based on any proper treatment of disproportionate effects, are inadequate. The NRC Staff's response does not provide additional treatment of any disproportionate effects, but rather rehashes PFS' position with respect to cumulative impacts.

4. **Project Effects Have Not Been Fully Identified:** OGD's Response shows that PFS' Summary Disposition Motion must be denied because the effects and associated impacts of the proposed action have not been fully identified. Until that is done, the Board cannot determine whether the effects are adverse and, most importantly, whether such effects will be borne disproportionately by minority and low income populations. As a result, the conclusion in the DEIS that "no disproportionately high and adverse impacts will occur to the Skull Valley Band" is currently unsubstantiated (DEIS 6.2.1.2). The Applicants' Motion, which is based on that conclusion, must therefore be denied. The NRC Staff's response fails to address this issue.

5. **Failure to Address Damages to Property Values:** The DEIS inadequately addresses impacts to property values in part because it fails to consider the target population's differing value system, the only people who can live on the Reservation and therefore the only people who can establish the value of the land. OGD shows that Native Americans value their Reservation land in spiritual terms. They consider it sacred and tied with religious factors, so Native Americans primarily move to the Reservation for spiritual and traditional lifestyle reasons. Because Native Americans believe a nuclear waste storage facility is not a spiritually suitable use for sacred Reservation land, the facility will make a large adverse impact on the spiritual and traditional lifestyles and therefore on the value of the remaining land on the Reservation.

OGD shows that the DEIS also erroneously relies on project funds reaching the Tribe and surrounding political subdivisions and on the unsupported and unverified but inaccurate and

misleading statements. OGD also shows that virtually no jobs will be available which would justify movement to the Reservation. David Allison in his Affidavit admits that only Indians can live on the Reservation and admits that "some" Tribal members have argued in the meetings that members may move away because of the Project. As the only support for his statement that the Project "could have" a net positive effect, he says "a number" stated they would "be interested" in moving to the Reservation if there were good jobs there.

But David Allison and the Staff's Response and the DEIS all fail to consider the difference in valuing land between the Native American population (the only ones allowed to use the land) and the invading population whose value system is the only one considered (see Fred Payne's revised Declaration, at ¶ 9).

Respectfully submitted,

Steadman & Shepley, LC



Samuel E. Shepley, Esq.
550 South 300 West
Payson, Utah 84651-2808
(801) 465-0703
E-mail: Steadman&Shepley@usa.com
slawfirm@hotmail.com
DuncanSteadman@mail.com
Attorney for OGD

July 9, 2001

REVISED DECLARATION OF FRED PAYNE
JULY 9, 2001

Fred Payne deposes, declares and states:

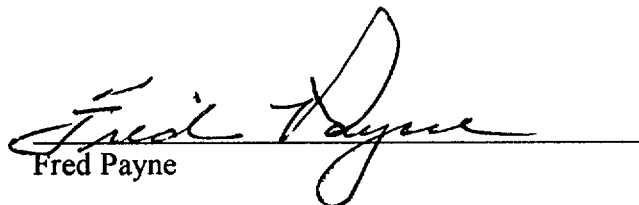
1. I am over eighteen and am competent to testify as an expert concerning the matters set forth herein.
2. I have studied the material in the Declarations of Sammy Blackbear and Margene Bullcreek, have visited the Reservation and attended meetings with, and met on a personal basis with, a number of members of the Skull Valley Band Tribal General Council.
3. I have seen the sizeable modernized Reservation home of Leon Bear and observed the satellite dishes and numerous late model vehicles in his driveway.
4. I have seen the hovels and the very old broken down house trailers which house the families of most of the Goshutes who live on the Reservation. Many of those homes are without heat or electricity and without working plumbing.
5. Other members of the Goshute Tribal General Council confirmed to me the Declarations of both Sammy Blackbear and Margene Bullcreek.
6. I have inspected the documents relevant to the issue of Leon Bear's legitimacy as Tribal leader and have discussed those issues with BIA officials. I believe that the rights of the Skull Valley Goshute Band have been abridged primarily due to the lack of appropriate actions, priorities and inadequate funding to assure appropriate actions by the BIA.
7. I am convinced that under the traditional form of government of the tribe, Sammy Blackbear has a legitimate claim as the Tribal leader and that by traditional process and policies, Leon Bear did not have proper authority to take the actions he has. I personally

believe that some of his actions constitute violations of federal civil rights statutes, including the Indian Civil Rights Act.

8. I am convinced that the improper use and unequal distribution of PFS project money has been, and continues to be, detrimental to the Tribe and is, in my opinion, an environmental justice related issue. The adverse effects on the Skull Valley Band and its Tribal General Council will undoubtedly compound, if appropriate project controls are not instituted.
9. I have considerable experience in dealing with the acquisition, trade, and contract use of Indian Trust Lands and I categorically state that the land and land use values for those lands are totally dependent on the cultural and economic values of each Tribe and each member. Many consider certain lands to be sacred and virtually beyond commercial value. Such land would not be suitable for a waste facility.
10. Under the circumstances, I have found the actions of PFS to be questionable at best and I foresee a strong possibility of Congressional investigations of these and related matters. I strongly urge the NRC Board to conduct its own investigation and to hold public hearings.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 9th day of July, 2001.


Fred Payne

PROFILE OF FREDERICK E. PAYNE

Frederick E. Payne
8791 S Blue Jay Lane
Salt Lake City, Utah

July 9, 2001

Fred Payne was Born in Sacramento, California on October 26, 1933. He is the owner manager of Payne Land Services (PLS) of Salt Lake City, Utah which he founded in 1974. PLS provides Land and Consulting services, primarily for the Oil, Gas, and Mining industries. Mr. Payne has specialized in American Indian Affairs and government to government relations and negotiations with Indians and Indian tribes since 1988.

Mr. Payne received his education at the University of Utah, Colorado State University, Denver, University, and Idaho State University. He worked as a Materials Technician at the Atomic Atmospheric Nuclear Testing Program in the summer of 1951. He worked as a lands support specialist for Stanolind Oil and Gas (now BP/AMOCO) while attending school at the University of Utah and the University of Colorado. He served as staff assistant to the chief engineer of Phillips Petroleum, Atomic Energy Division, at the Material Test Reactor, National Reactor Test Station in Arco, Idaho. He was supervisor of Design Engineering at Sperry Univac in Salt Lake City, Utah for several Department of Defense programs. He served as a systems analyst for Systems Analysis and Applications, Americas Division of Univac. He founded a manufacturing company to produce and market small equipment for an invention he patented. He returned full time to the Minerals and Energy industries in 1972.

Mr. Payne has, since 1988, served as a consultant concerning federal government regulation of the use of Indian land and government to government relations and negotiations with Indians and Indian tribes. As part of this, Mr. Payne consulted with members of Congress and their staffs concerning legislation on Indian affairs, with federal agencies on rule-making and on relations with Indians and Indian tribes. Mr. Payne has been called to testify as an expert before Congress on Indian affairs.

Mr. Payne was last called to testify at a United States Senate Judiciary Sub-committee hearing for Courts and Administrative Rules on June 15, 1998. Mr. Payne was selected, by Senator Daniel K. Inouye, then Chairman of the Senate Committee on Indian Affairs, to testify as the Oil and Gas industries representative for Indian Affairs. The oversight hearing was for "Taxation and Economic Development in Indian Country."

Mr. Payne has developed a specialized expertise in negotiating with Native Americans with respect to land and land use.

Mr. Payne has routinely been associated with projects involving environmental justice

considerations.

Mr. Payne currently serves as a voluntary consultant to the Utah Joint Legislative Committee for Indian Affairs. He is a member of several professional associations. He is currently a member of the Public Lands Committee for the Coordinated Resource Management Planing for the Book Cliffs Resources Area of Uintah and Grand Counties, Utah. Over eighty five percent of the lands in the Book Cliffs are within the Ute Indian Reservation boundaries.

As a Land Consultant, for the Minerals Industries, Mr. Payne has provided supporting data for several Department of Interior appeals made by his clients.

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CERTIFICATE OF SERVICE

I hereby certify that copies of **OHNGO GAUDADEH DEVIA'S (OGD) RESPONSE TO NRC STAFF'S RESPONSE TO PRIVATE FUEL STORAGE'S (PFS) MOTION FOR SUMMARY DISPOSITION OF OGD CONTENTION "O"** and all supporting documents including **REVISED DECLARATION OF FRED PAYNE dated JULY 9, 2001 and PROFILE OF FREDERICK E. PAYNE** were served on the persons listed below by e-mail (unless otherwise noted) with conforming copies by United States mail, first class, postage prepaid, this July 9, 2001.

G. Paul Bollwerk III, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: GPB@nrc.gov

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board Panel U.S.
Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: PSL@nrc.gov

Office of the Secretary
Attn: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: hearingdocket@nrc.gov
(Original and two copies)

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: JRK2@nrc.gov; kjerry@erols.com

* Adjudicatory File
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

* Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

CERTIFICATE OF SERVICE

OGD'S RESPONSE TO NRC STAFF'S RESPONSE TO PFS' MOTION FOR SUMMARY DISPOSITION

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Catherine L. Marco, Esq.
Sherwin E. Turk, Esq.
Office of the General Counsel
Mail Stop O-15 B18
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
E-mail: pfscase@nrc.gov; set@nrc.gov;
clm@nrc.gov

Jay E. Silberg
Shaw, Pittman
2300 N Street, NW
Washington, D.C. 20037
E-mail: jay_silberg@shawpittman.com
ernest_blake@shawpittman.com
paul_gaukler@shawpittman.com

John Paul Kennedy, Sr., Esq.
David W. Tufts, Esq.
Confederated Tribes of the Goshute
Reservation and David Pete
DURHAM JONES & PINEGAR
111 East Broadway, Suite 900
Salt Lake City, Utah 84105
E-mail: dtufts@djplaw.com

Danny Quintana, Esq.
68 South Main Street, Suite 600
Salt Lake City, Utah 84101
E-mail: quintana@xmission.com


* By United States Mail only

Denise Chancellor, Esq.
Assistant Attorney General
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, Utah 84114-0873
E-mail: dchancel@state.ut.us
jbraxton@email.usertrust.com

Joro Walker, Esq.
Director, Utah Office
Land and Water Fund of the Rockies
1473 South 1100 East, Suite F
Salt Lake City, Utah 84105
E-mail: lawfund@inconnect.com
joro61@inconnect.com

Diane Curran, Esq.
Harmon, Curran, Spielberg &
Eisenberg, L.L.P.
1726 M Street, N.W., Suite 600
Washington, D.C. 20036
E-mail: dcurran@harmoncurran.com

James M. Cutchin
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: jmc3@nrc.gov



Samuel E. Shepley, Esq.