

JULY 23, 2001

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONOFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFFPrivate Fuel Storage, a Limited Liability
Company;(Independent Spent Fuel Storage
Installation).

Docket No. 72-22-ISFSI

**SOUTHERN UTAH WILDERNESS ALLIANCE'S (SUWA)
RESPONSE (AND OBJECTION) TO APPLICANT'S
MOTION FOR SUMMARY DISPOSITION OF SUWA'S CONTENTION B****I. INTRODUCTION**

In its Memorandum and Order dated April 15, 1999, the Nuclear Regulatory Commission (the Commission) admitted for further consideration in this proceeding contention "SUWA B," which reads as follows:

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.

Private Fuel Storage, L.L.C., LBP-99-3, 49 NRC 40, 53, *aff'd*, CLI-99-10, 49 NRC 318 (1999).

The applicant, Private Fuel Storage, L.L.C. (PFS), filed a Motion for Summary Disposition of Contention SUWA B on June 29, 2001, to which SUWA now responds.

As SUWA demonstrates below, PFS's Motion is without merit, because 1) the motion is premature; 2) as a matter of law, PFS and the NRC have failed to consider a range of reasonable range alternatives to the Low Corridor Rail Spur; and, 3) PFS's Motion is **not** based on undisputed facts.

II. ARGUMENT – PFS’s Motion for Summary Disposition of SUWA B is Without Merit

A. Legal Background

“The alternatives analysis is characterized as ‘the heart’ of the environmental impact statement.” Colorado Environmental Coalition v. Dombeck, 185 F.3d 1162, 1174 (10th Cir. 1999) (*quoting* 40 C.F.R. § 1502.14). To fulfill this requirement of the National Environmental Policy Act, 42 U.S.C. §§ 4321 to 4370d (NEPA), an agency “is required to rigorously explore **all** reasonable alternatives to the [proposed action] in comparative form, and give each alternative substantial treatment in the environmental impact statement.” Id. (*citing* 40 C.F.R. §§ 1502.14, 1502.1, 1502.14(a); 42 U.S.C. §§ 4332(2)(C)(iii) & (E); All Indian Pueblo Council v. United States, 975 F.2d 1437, 1444 (10th Cir. 1992))(emphasis added). To assess the sufficiency of an agency’s alternatives analysis, the Tenth Circuit applies the “rule of reason.” Colorado Environmental Coalition, 185 F.3d at 1174 (*citing* Pueblo Council, 975 F.2d at 1445).

The Tenth Circuit recently examined NEPA’s alternatives requirement, noting that the “Seventh Circuit, and other courts, have interpreted [NEPA] to preclude agencies from defining the objectives of their actions in terms so unreasonably narrow they can be accomplished by only one alternative (*i.e.* the applicant’s proposed project).” Colorado Environmental Coalition 185 F.3d at 1174. At the same time, the agency may not completely ignore the applicant’s objectives. Id. at 1175. When reconciled, these directives “instruct agencies to take responsibility for defining the objectives of an action and then provide legitimate consideration to alternatives that fall between the obvious extremes.” Id.; Pueblo Council, 975 F.2d at 1444 (thorough discussion of alternatives is “imperative”).

B. The Commission's Order

Importantly, in determining SUWA B admissible, the Commission recognized that SUWA's contention was founded on NEPA and on the duty, ultimately, of the Nuclear Regulatory Commission (NRC) to comply with the act:

We agree with the Board that SUWA can litigate the question whether, in the circumstances of this case, NEPA requires PFS and the NRC to consider alternate rail routes that might prove more environmentally benign than PFS's chosen route.

CLI-99-10 at 11. Indeed, in concluding its analysis of SUWA B, the Commission emphasized that it was admitting this contention precisely because SUWA sought to ensure that PFS and the NRC complied with their "NEPA obligation to perform an analysis of alternatives." CLI-99-10 at 11-12.

At the same time, the Commission pointed out that the focus of SUWA B is a consideration of a reasonable range of alternatives to the Low Corridor Rail Spur, rather than transportation alternatives, generally:

SUWA's grievance here is not that PFS's environmental analysis fails to examine general transportation alternatives (e.g., trucks rather than railroads), but that it leaves unaddressed ready alternative to the actual proposal at hand, the construction of a rail spur over a specific tract of land.

CLI-99-10 at 10-11.

Finally, when it speaks of NEPA compliance, the Commission is referring to the preparation of a Final Environmental Impact Statement (FEIS) relative to PFS's license application. See Louisiana Energy Services (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77 (1998) (challenge to an applicant's ER may stand as a complaint against the Staff's EIS once the latter is completed). This is true because the FEIS is the vehicle by which a federal agency, such as the NRC, is required to comply with its NEPA, 42 U.S.C. § 4332(2)(c); 40 CFR § 1502, and because it is ultimately the federal agency, not the applicant, that is responsible for NEPA

compliance. 40 CFR § 1506.5 (agency ultimately responsible for scope and content of EIS). Thus, as the Commission made clear, the core of SUWA's contention, and therefore the basis on which the merits of SUWA B must be decided, is whether the FEIS includes adequate formulation and consideration of a reasonable range of alternatives to the Low Corridor Rail Spur.

C. PFS's Motion is Premature – the Merits of SUWA's Contention Cannot Be Reached Until the NRC Releases the FEIS.

Most obviously, PFS's Motion is premature. This is because the NRC has yet to release the FEIS for the PFS license application. Until the agency produces the FEIS, neither SUWA nor anyone else, including the Board, can determine whether the document adequately considers a reasonable range of alternatives to the rail spur proposal. This is particularly true because SUWA, in commenting on the Draft Environmental Impact Statement (DEIS), specifically pointed out that the DEIS failed to develop and analyze a range of reasonable alternatives to the Low Corridor Rail Spur. Thus, SUWA B cannot be disposed of until release of the FEIS.

To argue that the DEIS represents the NRC's last word on the Low Corridor and therefore that SUWA B can be adjudicated on the basis of this document, is also unpersuasive. To do so would make a mockery of NEPA's commitment to public involvement in the decision making process. 40 C.F.R. § 1503.4 (possible responses to public comment are to "[d]evelop and evaluate alternatives not previously given serious consideration by the agency"). Given this mandate, SUWA is perfectly reasonable to hope that the NRC will amend the FEIS to include adequate consideration of alternatives to the rail spur project. Moreover, SUWA is also prudent (and legally justified) in its desire to conduct discovery against the NRC and to evaluate the NRC's response to its comments on the rail spur alternatives analysis before having to defend its

contention. Because SUWA has yet to pursue either course of action through no fault of its own, SUWA B is not yet ripe for adjudication and PFS's suggestion otherwise must be discounted.

PFS, in its Motion, also suggests that its alternatives analysis, presented for the first time in its Motion for Summary Disposition, can somehow now be incorporated into the DEIS, and thereby resolve SUWA B. PFS Motion at 9, fn. 18. However, this reasoning is also flawed.

First, Allied-General Nuclear Services, et al. (Barnwell Nuclear Fuel Plant Separations Facility), ALAB-296, 2 NRC 671 (October 30, 1975), relied on by PFS to make this assertion, does not stand for the proposition that PFS's alternatives analysis can or should be used to amend the DEIS or FEIS. There, the Commission stated that evidence submitted by the staff during a hearing could essentially be deemed to amend an FEIS. However, the Commission was careful to clarify its remark, stating flatly:

Of course, in a given instance, the staff's evidence may depart so markedly from the positions espoused or information reflected in the [FEIS] as to require formal redrafting and recirculation for comment of the environmental statement . . . before the licensing board gives any further consideration to the subjects involved.

2 NRC 671 at 20.

Applying this analysis to PFS's argument shows that *pro tanto* amendment of the FEIS is not appropriate. At the very least, PFS's analysis departs markedly from the NRC's and therefore must be subject to public notice and comment pursuant to NEPA. This is because the staff's analysis, as it currently stands, mentions nothing at all about the West Skull Valley Alternative. Therefore, any mention of this alternative constitutes a significant departure from the DEIS.

Second, the character of PFS's analysis confirms that it cannot be folded into the FEIS – for the analysis provided by the applicant – not by the NRC itself. Not surprisingly, PFS's examination of the alternatives is not an objective presentation of the pros and cons of the West

Skull Valley Alternative but instead constitutes a justification of the Low Corridor alignment and a vigorous argument as to why that new alternative is not worthy of further consideration. Thus, PFS has not presented the decision maker and the public with an objective presentation of reasonable alternatives to the rail spur proposal as required by NEPA, but instead has formulated and, at the same time, soundly rejected one alternative to the proposal. This is nothing like the NRC itself presenting purportedly objective analysis and information during a hearing before the Board. Thus, PFS's analysis cannot be a substitute for the NRC's objective presentation of a range of alternatives to the rail spur and PFS's argument otherwise must be rejected. *See, Colorado Environmental Coalition* 185 F.3d at 1174 (agencies must "take responsibility for defining the objectives of an action and then provide legitimate consideration to alternatives that fall between the obvious extremes").

Moreover, PFS cannot argue that the DEIS (or the FEIS, to the extent that it mirrors the DEIS) is adequate in its formulation of alternatives to the Low Corridor Rail Spur. First, the DEIS only "considers" and perfunctorily dismisses two alternatives to the rail spur – the agency simply has not fully formulated or analyzed any alternative to the rail spur alignment. DEIS at 2.2.4.2. This alone means that the NRC has failed its NEPA obligations. In addition, that the NRC gave these "alternatives" such short shrift shows that they were not meaningful alternatives to the proposed project. At the same time, the agency failed to develop and consider an alternative to the rail spur proposal that was sufficiently reasonable to justify consideration. *See* SUWA B (PFS and NRC must develop and analyze meaningful alternatives). As a result, the NRC presented no real alternative to the rail spur to the public for comment and the public was not given the opportunity to address the environmental costs and benefits of the rail spur alignment in the context of an alternative to this alignment.

Finally, the NRC failed to consider alternatives that were readily apparent and/or did not suffer from the disadvantages characteristic of the two alternatives it summarily dismissed. For example, the agency did not even formulate an alternative that would originate at Low (Skunk Ridge), but would not traverse the North Cedar Mountains area. The NRC also neglected to formulate, much less analyze, an alignment that would minimize the right-of-way or fire buffer zone in order to reduce impacts to the wilderness character of the North Cedar Mountains. *See* SUWA B (specifically addressing alternatives to the “fire buffer zone”). Thus, in the DEIS, the NRC failed its NEPA duties to analyze a range of reasonable alternatives to the proposed rail spur.

D. PFS and the Nuclear Regulatory Commission Staff Have Failed their NEPA Duty to Consider a Range of Reasonable Alternatives to the Low Corridor Rail Spur.

Should the Board decide to address SUWA B now, without a hearing, it should determine that as a matter of law, PFS and the NRC have failed their NEPA duties with respect to a consideration of a range of reasonable alternatives to the Low Corridor Rail Spur. This is because neither the PFS Motion for Summary Disposition nor the DEIS meets this requirement.

As already explained, the DEIS alternative analysis relative to the rail spur is inadequate. Indeed, the NRC failed NEPA to the extent that it could not even formulate an alternative to the rail spur that was sufficiently “reasonable” to deserve further analysis. Moreover, the analysis that the NRC did undertake made no mention of impacts to wilderness or roadless character, but was instead performed exclusively in the context of other resource impacts. Finally, even including the two rejected alternatives, the DEIS is insufficient because it did not consider a range of reasonable alternatives to the Low Corridor Rail Spur to protect wilderness values. For example, the DEIS does not consider a small shift in alignment to the proposed corridor to avoid

the North Cedar Mountains area. The DEIS did not consider an alternative that would reduce the size of the right-of-way relative to the proposed or alternative corridor. The DEIS did not consider an alternative alignment that would reduce or eliminate the fire buffer zone, *see* SUWA B (specifying the need to address alternatives to the fire buffer zone), or would include means for minimizing the spread of exotic weeds, at least while traversing the North Cedar Mountains. *See* Deposition of Dr. Catlin 35-38 (explaining that disturbing vegetation would increase fire danger and spread exotic weeds, thereby impacting the ecosystem of the North Cedar Mountains).

Similarly, PFS's formulation and analysis of the West Skull Valley Alternative is insufficient to meet NEPA's requirements. As shown above, PFS's analysis is not adequately objective or informative to serve the purpose of instructing the public and the decision maker as to the alternatives available to the Low Corridor Rail Spur. Likewise, the PFS analysis is not sufficiently objective or informative to address and compare the environmental impacts of these alternatives, including effects on the wilderness character of the North Cedar Mountains. In addition, as did the NRC, PFS neglected to formulate and examine readily apparent alternatives to the proposed rail spur, including an alternative or alternatives involving a minimized right-of-way and fire buffer zone or exploration of other ways of reducing fire risk.

E. PFS's Facts are in Dispute

PFS's alternative analysis is fundamentally based on an incorrect assumption – that any alternative rail spur that crossed a State Section would be, almost by definition, “unreasonable.” PFS Motion at 10-11. PFS suggests that because the State vehemently opposes the project, it would not allow the applicant a right-of-way across State lands. *Id.* In turn, because of this artificial constraint on the design of West Skull Valley Alternative, PFS has determined that this

alignment is unwieldy and unreasonable and has more environmental impacts than the proposed alignment. *Id.* at 10-11, PFS Statement of Facts, ¶¶ 11-17.

However, PFS is wrong. This parcel at issue is a State school trust land. The State of Utah acquired this land from the federal government pursuant to the Utah Enabling Act, which provided that the state was to receive at statehood four sections in every township “for the support of common schools.” Act of July 16, 1894, ch. 138, 28 Stat. 107, § 6, *reprinted in* 1A Utah Code Annotated. The Utah Constitution provides that lands conveyed to the state pursuant to the Enabling Act “shall be held in trust for the people ... for the respective purposes for which they have been or may be granted.” Utah Const. art. XX, § 1. Interpreting this constitutional provision, the Utah Supreme Court has recently determined that school trust lands must be managed “to maximize [] monetary return” National Parks and Conservation Association v. Board of State Lands, 869 P.2d 909, 920 (1994). Essentially, the Supreme Court ruled that the State “must **always** give the economic interests of the school trust priority over all other considerations in managing trust lands.” *Id.* at 923 (Justice Durham explaining position of the majority while concurring in the result); *see Id.* at 921, fn. 9 (responding to Justice Durham).

As a result, PFS is free to apply to the State to purchase title to or a right-of-way over the relevant parcel. In processing this application, the State **cannot** consider its opposition to the PFS facility, but instead must act to maximize benefit to Utah’s school children. *See Id.* at 918. Thus, an alternative that crosses one or more State school trust sections is by no means unreasonable. *See, Muckleshoot Indian Tribe v. U.S. Forest Service*, 117 F.3d 800, 813 (9th Cir. 1999) (Forest Service must consider alternatives to the proposed project such as reserving or retaining rights in the exchanged lands or purchasing the lands it sought to consolidate, even though the agency did not currently have the funds to do so).

Furthermore, PFS mistaken assumption undermines the applicant's statement of undisputed facts. Based on NPCA, When PFS states that "the route of the west Skull Valley alternative is constrained by two narrow gaps on BLM land thorough which it must pass," PFS Statement of Facts at ¶ 11, it is wrong. By the same token, the applicant is wrong when it states that the alignment must stay west of the parcel of land owned by the State. Id. Therefore, paragraphs 12-17, which are based on these statements are wrong, or, at the very least, disputed. As a result, PFS motion, which relies heavily on these purportedly "undisputed" facts, must be rejected.

F. PFS's Statements of Fact and Arguments Regarding the Future Success of the America's Redrock Wilderness Act Are Wrong and Have Already Been Rejected by this Board.

Finally, to defend its failure to consider a range of reasonable alternatives to the Low Corridor Rail Spur, PFS contends that the Bureau of Land Management's (BLM) rejection of the North Cedar Mountains for wilderness consideration in 1980 and SUWA's subsequent failure to persuade Congress or the BLM to designate the North Cedar Mountains as wilderness renders the potential impact of the rail line on these mountains "essentially" moot. PFS Motion at 8. However, this Board has previously addressed and already rejected this exact argument. Memorandum and Order, LBP-99-3 (February 3, 1999). Already, this Board determined that unwillingness of BLM or Congress to extend wilderness protection to the area had no relevance to SUWA's contention that the NRC must formulate and consider a range of reasonable alternatives to the Low Corridor Rail Spur. Id. at 18-21. Specifically, this Board stated that

in the context of NEPA, even absent the FLPMA [Federal Land Policy and Management Act which requires the BLM to inventory public lands for protection under the Wilderness Act] 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 that project.

Id. at 19-20, fn. 6. Thus, as this Board determined, because the North Cedar Mountains area displays wilderness character, the NRC must consider alternatives that would avoid jeopardizing that character, and as a result, the option for wilderness designation, regardless of how Congress or the BLM currently view the area.

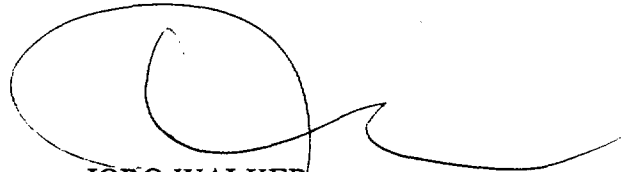
Furthermore, contrary to PFS's statements otherwise, PFS's Statement of Material Facts on Which No Genuine Dispute Exists at ¶ 5, Congressional support for protecting the North Cedar Mountains does in fact exist. America's Redrock Wilderness Act, a legislative proposal to designate as wilderness several of Utah's unique wildlands, including the North Cedar Mountains, has been endorsed by key members of the House and Senate of both parties. There has also been rapid growth of congressional cosponsorship for America's Redrock Wilderness Act. By the close of the 106th Congress, America's Redrock Wilderness Act surpassed its previous marks in both chambers by substantial margins, garnering 168 House cosponsors and 16 Senate cosponsors. Further congressional support for protecting the North Cedar Mountains and similar wilderness areas in Utah will likely continue as the bill is reintroduced in the 107th Congress, including the now Democratic Senate. SUWA website.

III. CONCLUSION

For the above reasons, PFS's Motion for Summary Disposition is without merit. First, because the NRC has yet to release the FEIS, the motion is premature. Second, should the Board deem PFS's motion ripe, the motion should still be rejected – neither the applicant nor the staff has adequately formulated or addressed a range of reasonable alternatives to the proposed Low Corridor Rail Spur. Third, PFS's motion should be rejected because it is not founded on

undisputed facts. As a result of these considerations, SUWA respectfully requests that the Board deny PFS's motion and rule that SUWA B requires remand of the EIS for proper alternatives analysis.

Respectfully submitted July 23, 2001.



JORO WALKER
Attorney for SUWA

CONDENSED TRANSCRIPT

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

PRIVATE FUEL STORAGE, L.L.C.

-v-

(Private Fuel Storage Facility)

Defendant.

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Docket No. 72-22

ASLPB No. 97-732-02-ISFSI

Deposition of:

JAMES C. CATLIN

(Utah Contention DD)

April 24, 2001 - 9:30 a.m.

Location: Parsons, Behle & Latimer
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Reporter: Diana Kent, RPR
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1 rail line, in addition to the rails and the road bed,
2 what else is there. Because that's a critical part of
3 assessing the potential impact and how broad the impact
4 is of the area.

5 Q. And what sort of -- assuming hypothetically
6 there were to be a road built next to the rail line.
7 What impact would that have? How would that have an
8 impact on the area?

9 A. It could do a couple things. This is a very
10 high attraction area for mechanized recreation, for
11 people going out there. It would likely offer, if it's
12 a high quality road, it would likely offer the
13 opportunity for large site campsites where a number of
14 vehicles use this new route to go in areas they didn't
15 before. So you could have several, as much as 50
16 recreation vehicles, trucks, and trailers bringing in
17 motorcycles and ATVs and Jeeps into the area. And they
18 would then spread out in this area.

19 Q. So you are talking about people subsequently
20 then driving into the area with Jeeps or ATVs,
21 motorcycles, that sort of thing?

22 A. Using the access route built beside the
23 railroad or built for the railroad.

24 Q. All right. In addition to that, is there
25 anything that the road, per se, assuming that the rail

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1 line was built outside the area itself, is there
2 anything that the road per se would impact; an impact
3 that would have on the area?

4 A. It would do two things. Potentially two
5 things. One is it might change somewhat the ground
6 water recharge in the basin. I don't know how large an
7 effect that would be. That might affect springs that
8 are found in the area. It might affect surface water.

9 Q. How would that occur? How would the road
10 affect the ground water recharge?

11 A. It would cut off -- as the rail line is
12 going on the edge of the west side of this basin, it
13 would cut off and contain streams that are going down
14 through the area, potentially. It might be constructed
15 so the streams could continue to flow. The railroad
16 would do the same thing.

17 Q. Do you mean in terms of physically blocking
18 the stream?

19 A. Yes. That's a possibility. Without looking
20 at the engineering details, I wouldn't know whether
21 that's likely to occur or not.

22 Q. Now, hypothetically speaking, if it were to
23 cross such a stream, if there were something built to
24 allow the stream to flow under the road bed, say a
25 culvert were put in, would that mitigate that sort of an

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1 impact?

2 A. It would, to a certain degree. The problem
3 is that in semi-arid areas like this, you will have an
4 event where everything flows and each little rivulet
5 that normally is dry, flows. It's normal to only put in
6 culverts where you feel there's so much water that it
7 may imperil the road or the railroad. So they are not
8 put in for ground water recharge. They are put in to
9 protect the structure and to protect the right-of-way
10 access. So there will be lots of smaller streams that
11 are contained. And it will change what happens in that
12 case.

13 Now, these events are often the trigger that
14 brings to life most of the plants in the area. So
15 downstream from the road and the railroad you may see,
16 after a storm, you may see completely different
17 characteristics of the plant community; on one side a
18 lot more and on the other side a lot less.

19 Q. Is that because the road would block the
20 water from getting to the lower elevation on the other
21 side?

22 A. Right. Runoff in those areas. But I think
23 the more serious impact would be these fire barriers
24 that I have heard about. Because particularly if they
25 are going to be periodically burned, it is highly likely

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1 that they are going to burn the shrub community around
2 it and lead to increased cheat grass in the area.
3 Potentially leading to a net loss of habitat in the
4 whole area. That, to me, is probably the most serious
5 impact that could happen.

6 Q. Well, would that happen with the burning,
7 are you talking about burning in -- let's say
8 hypothetically there is some sort of cleared area on
9 either side of the rail line. You are talking about
10 burning just in the area that is supposed to be cleared
11 or are you talking about burning that spreads into
12 adjacent areas?

13 A. Both. Because once you clear an area, it
14 now becomes a favored place for cheat grass, for exotic
15 species. And whether it's induced fire or whether it is
16 accidental fire or natural fire from lightning or other
17 sources, whatever the case, it is unlikely to be
18 contained in that area. It's likely to move off through
19 the fire break.

20 Q. You say the cheat grass is unlikely to be
21 contained?

22 A. Well, and the fire from the break. It is
23 unlikely to be contained. It is likely to move off into
24 the natural community and go for miles.

25 Q. Now, say hypothetically one were to take

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1 measures to try to contain the fire within the cleared
2 area, what sort of impacts would you see then with that
3 clearing process? What sort of impact would you see
4 that having?

5 A. I don't know if that's ever been done
6 successfully, controlling fire on a regular basis. A
7 prescribed fire in a cheat grass area. I don't think
8 anybody has ever been successful in doing that. I can't
9 imagine it. You'd have to basically blade the area with
10 a road grader every time before you burned. So you
11 would have an edge of this fire buffer that was bare
12 ground. And even then it is easy for fire to jump, even
13 wide breaks.

14 Q. All right. Taking that point, but just as a
15 hypothetical question, if one were to contain the fire
16 within the cleared area, what impact would you see that
17 process of using fire to clear the fire buffer, as it
18 were, what effect would you see that having on the rest
19 of the region?

20 A. Well, it would continue to probably be a
21 source for exotics, exotic plants that would serve as a
22 seed source to further create problems in the natural
23 community around it. So even if it is contained, fire
24 is contained, it still would be a problem because it
25 would be an exotic plant community that is a seed source

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1 for the natural community that surrounds it.

2 Q. Do you know of any way of preventing an
3 exotic species like cheat grass from coming into a
4 cleared area like a fire buffer for a rail line?

5 A. There are experiments going on in doing
6 this. The best resistance to cheat grass spreading is
7 to have a healthy natural plant community. That is the
8 best resistance, the best way to protect an area. One
9 of the biggest problems out there is heavy grazing,
10 domestic livestock which is keeping the plant community
11 at perhaps one-tenth or maybe one-hundredth of its
12 potential. Not the shrubs but the herbaceous plants.
13 So the political problems of removing grazing in order
14 to stabilize the plant community to be resistant to
15 exotic species and fire is a whole other issue. I don't
16 know if this proposal is considering changing grazing
17 management out there to protect the natural plant
18 community or not.

19 Q. Well, assuming for our purposes that it is
20 not.

21 A. Okay.

22 Q. Now, you are talking about maintaining -- in
23 addition to maintaining or attempting to maintain a
24 healthy plant community, is there anything you could do
25 with the buffer area itself adjacent to the rail line

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1 that would protect the surrounding region from the
2 introduction of these foreign species?

3 A. Well, I would say that you could not build
4 fire buffers and not build any road adjacent to the
5 railroad.

6 Q. If you did that, would that increase the
7 likelihood of a fire?

8 A. Well, the railroads that operate across that
9 area don't have fire buffers that go along them. And I
10 would think that it's possible for the rail operators to
11 inspect a train, particularly for the kinds of hot
12 couplings and hot components that sometimes fall off the
13 train and cause the fire. Usually it is caused by
14 something overheating on the train and then a spark or
15 something is let go. I would think a train before it
16 went on that route could be inspected and could safely
17 travel without much fire danger. But my worry is
18 putting these fire barriers there and then actually
19 maintaining them and burning them periodically and
20 grading them. That, to me, is more serious personally
21 than putting the rail line in.

22 Q. And that's because of the potential for
23 introduction of foreign species?

24 A. Right. And of course a road going beside
25 it, too; because it brings in people and more use and a

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1 whole bunch of other things.

2 Q. Do you know whether the current railroads
3 that operate in that part of Utah, the Union Pacific,
4 for example, take measures to reduce the hazard of fire
5 when they are running their trains across the region?

6 A. They do. They have people who travel the
7 lines. I have seen them as I have been out doing field
8 work. I can't say that they are looking just for fire,
9 but I know that that's one of their concerns. And I
10 have seen rail lines, for example south of Delta, that
11 have no buffer or fire road that I have never seen
12 burned. But they don't have much rail traffic, either.

13 Q. Do they have vegetation that might be
14 susceptible to fire in that area? Well, you talked
15 about south of Delta?

16 A. They do.

17 Q. So would you consider the measures that the
18 rail roads in the region are taking to mitigate the
19 possibility of fire, do you consider them to be
20 effective?

21 A. Not totally, no. I do see -- in fact, some
22 of the fires I think in the grassy mountains were
23 railroad related and they were really big fires. Before
24 I would answer that question with authority, I'd talk to
25 the railroads and I'd talk to the Bureau of Land

July 23, 2001

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

Private Fuel Storage, a Limited Liability
Company;

(Independent Spent Fuel Storage
Installation).

Docket No. 72-22
ASLBP No. 97-732-02-
ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of **SUWA's Response to Applicant's Motion for Summary Disposition of SUWA's Contention B and SUWA's Motion to File its Response to Applicant's Motion for Summary Disposition Late** 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 23rd day of July 2001.

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Attention: Rulemakings and Adjudications
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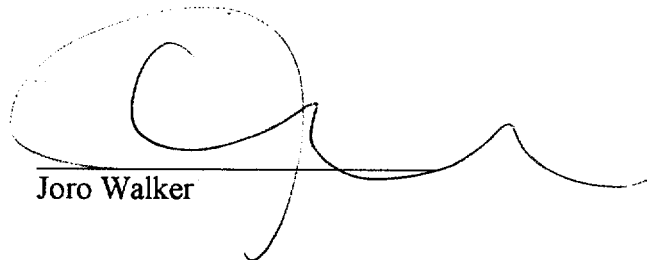
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