

January 17, 2002 2002 FEB 12 PM 3: 39

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
PRIVATE FUEL STORAGE L.L.C.)	Docket No. 72-22
)	
(Private Fuel Storage Facility))	ASLBP No. 97-732-02-ISFSI

**INTERVENOR SKULL VALLEY BAND'S RENEWED MOTION
FOR PROTECTIVE ORDER AS TO CERTAIN EXHIBITS**

Intervenor Skull Valley Band of Goshute Indians (Skull Valley Band) renews and revises its September 26, 2001, Motion for a Protective Order as to Certain Exhibits attached to the Declaration of Sammy Blackbear which was attached to intervenor Ohngo Gaudadeh Devia's (OGD) June 28, 2001 response to the May 25, 2001 motion of applicant Private Fuel Storage, L.L.C. (PFS), for summary disposition of contention OGD O, Environmental Justice Issues Not Addressed. Counsel for the Skull Valley Band is authorized to state that OGD and PFS do not oppose this motion, as they have recently entered into a Confidentiality Agreement with the Skull Valley Band to continue to treat those Exhibits as confidential. A copy of that Confidentiality Agreement is attached to this unopposed motion, along with a proposed Protective Order, which also has been agreed upon by the aforesaid parties. Counsel for NRC staff also advises that he does not object to this motion or the entry of the proposed Protective Order.

The reasons supporting this motion are found under the heading of DISCUSSION on pages 3-6 of the Skull Valley Band's September 26, 2001, Motion for Protective Order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tim Vollmann", with a long horizontal flourish extending to the right.

Tim Vollmann
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NUCLEAR REGULATORY COMMISSION
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**PROTECTIVE ORDER AS TO CERTAIN EXHIBITS INTRODUCED
IN RESPONSE TO APPLICANT'S MOTION
FOR SUMMARY DISPOSITION OF OGD CONTENTION "O"**

Upon consideration of the January 17, 2002 Renewed Motion of intervenor Skull Valley Band of Goshute Indians (Skull Valley Band) for a Protective Order as to Certain Exhibits attached to the Declaration of Sammy Blackbear which was attached to intervenor Ohngo Gaudadeh Devia's (OGD) June 28, 2001 response to the May 25, 2001 motion of applicant Private Fuel Storage, L.L.C. (PFS), for summary disposition of contention OGD O, Environmental Justice Issues Not Addressed, and it appearing that OGD and PFS have entered into a Confidentiality Agreement with the Skull Valley Band to continue to treat those Exhibits as confidential, and that there is no opposition to the entry of this Protective Order, it is:

ORDERED

- (1) that the exhibits listed below shall be held as nonpublic confidential information;
- (2) that those exhibits shall only be served on parties who are authorized to receive them, the Licensing Board, and the Commission;

- (3) that whenever the parties refer to, or utilize, the confidential information in their filings before the Licensing Board or the Commission, they shall file a cover letter indicating that the attached filing contains confidential information subject to this Protective Order; and
- (4) that OGD, PFS, and the Skull Valley Band treat those exhibits as confidential in accordance with the Confidentiality Agreement to which they are parties.

The exhibits to which this Protective Order shall pertain are as follows:

Exhibit C – Annual Report (FY 1987) of Available Cash.

Exhibit D – Budgets from 1984 to 1992.

Exhibit E – Year-End Financial Reports between 1980 and 1994.

Exhibit F – Budgets from 1980 to 1986, including a December 12, 1980 letter from a BIA official to the Band, and a November 21, 1986, internal BIA memorandum, both of which contain confidential budget information received from the Band.

Exhibit H – Two documents are exempt from disclosure: a November 25, 1989 Memorandum from the Band's Executive Committee to Tribal members, and an April 21, 1990, General Council Resolution on the Budget, including dividend payments to Band members.

Exhibit I – An August 13, 1984, Executive Resolution on the allocation of funds for a contract with an architectural firm.

Exhibit K – Three budget resolutions dated November 8, 1986, May 2, 1987, and June 7, 1987.

Exhibit M – Four Resolutions of the Band, one addressing the investment of funds held in trust for minors in 1981, and three containing Band budget figures in 1985, 1987, and 1988.

Exhibit O – A December 27, 1993, Memorandum from two members of the Executive Committee to the Tribal Secretary, discussing internal procedures of the Band.

Exhibit X – An October 23, 1994 Executive Committee Report addressed to Tribal Members and addressing a variety of budgetary issues. (This is Exhibit U on the Table of Exhibits.)

Exhibit AA – A June 8, 1994, letter from the Tribal Chairman to the BIA describing the tribal business plan and various tribal enterprises in an effort to obtain a federal loan guarantee. (This is Exhibit X on the Table of Exhibits.)

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Confidentiality and Nondisclosure Agreement (this "Agreement") is entered into this 27th day of November, 2001, by and between the Skull Valley Band of Goshute Indians ("the Band"), Ohngo Gaudadeh Devia ("OGD"), and Private Fuel Storage, L.L.C. (PFS). The Band, OGD, and PFS are collectively referred to herein as the "Parties."

WHEREAS, PFS desires to develop, construct, finance, own, and operate an independent spent fuel storage installation for the temporary storage of spent nuclear fuel on land leased from the Band on the Skull Valley Indian Reservation in the State of Utah (the "Facility");

WHEREAS, PFS has applied to the United States Nuclear Regulatory Commission ("NRC") for a license permitting it to receive, transfer, and possess power reactor spent nuclear fuel for temporary storage at the Facility;

WHEREAS, both OGD and the Band have intervened in PFS's license application proceeding, NRC Docket No. 72-22 ISFSI (the "NRC Proceeding");

WHEREAS, in connection with the NRC Proceeding, OGD has offered into evidence certain documents of the Band, which the Band claims contains certain information that is confidential, sensitive, proprietary, or that is not otherwise available to the public, namely certain exhibits listed in Paragraph 6 below, which were appended to the Declaration of Sammy Blackbear which was offered by OGD in its opposition, filed June 28, 2001, to PFS' Motion for Summary Disposition of OGD Contention O; and

WHEREAS, OGD, without admitting that the subject documents are confidential, is willing to keep the exhibits listed in Paragraph 6 below confidential for purposes of the NRC Proceeding according to the terms set forth below; and

WHEREAS, the Band has filed a Motion for Protective Order in the NRC Proceeding to protect the confidentiality of these documents, whereby the documents would be available only to the parties to this Confidentiality and Nondisclosure Agreement and to the NRC;

NOW, THEREFORE, in consideration of these premises, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. This Agreement is limited exclusively to the Exhibits listed in Paragraph 6 below.
2. The Exhibits listed in Paragraph 6 below shall be deemed to be "Band Confidential Information" for all purposes of this Agreement. However, while OGD is willing to treat the Exhibits as confidential in accordance with the terms of this Agreement, OGD does not admit that the information contained in the Exhibits is confidential in accordance with the Band's claim.
3. The Parties agree not to disclose Band Confidential Information, as described in Paragraph 6 below, to anyone other than the Parties, through counsel, and to the NRC, including any and all employees of the Commission, and any contractors and consultants to the NRC, and the Atomic Safety and Licensing Board, without the written permission of the Band. However, members of OGD who are members of the Skull Valley Band reserve the right to disclose Band Confidential Information to other members of the Skull Valley Band of Goshute Indians, and to federal law enforcement authorities when requested pursuant to a valid criminal investigation. OGD also reserves the right to disclose Band Confidential Information pursuant to court order or subpoena. Counsel for OGD agrees to notify counsel for the Band when Band Confidential Information is disclosed pursuant to this paragraph.
4. The Parties agree not to object to the entry of a Protective Order by the Board which would provide that the Band Confidential Information: 1) may be disclosed by the Parties in accordance with the terms in Paragraph 3 above; 2) may be considered by the Board in conjunction with OGD's Response to the PFS Motion for Summary Disposition of Contention O, but that the Band Confidential Information will be held as nonpublic, confidential information in accordance with the Protective Order ; and 3) that the Protective Order would also provide that the Band Confidential Information need not be served on parties who are not litigating OGD Contention O.
5. The Parties agree that, in the event that OGD Contention O is the subject of a hearing, they will not object to the Board's continued treatment of the Band Confidential Information as nonpublic information, and that any discussion of the Band Confidential Information in testimony at that hearing could, if necessary, be the subject of a closed hearing.
6. The Band Confidential Information subject to this Agreement, consists solely of the following documents which are Exhibits to the Declaration of Sammy Blackbear, which was offered as part of OGD's June 28, 2001, Response to PFS' Motion for Summary Disposition of OGD Contention O:

Exhibit C – Annual Report (FY 1987) of Available Cash.

Exhibit D – Budgets from 1984 to 1992.

Exhibit E – Year-End Financial Reports between 1980 and 1994.

Exhibit F – Budgets from 1980 to 1986, including a December 12, 1980 letter from a BIA official to the Band, and a November 21, 1986, internal BIA memorandum, both of which contain confidential budget information received from the Band.

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Exhibit AA – A June 8, 1994, letter from the Tribal Chairman to the BIA describing the tribal business plan and various tribal enterprises in an effort to obtain a federal loan guarantee. (This is Exhibit X on the Table of Exhibits.)

7. Each Party hereby agrees and confirms that the subject matter of this Agreement is unique, and that it may be impossible to measure the damages which would result to the Band from violation of this Agreement. In addition to any other remedies which the Band may have at law or in equity, it shall have the right to obtain preliminary and permanent injunctive relief to secure specific performance and to prevent a breach or threatened breach of the provisions of the Agreement.

8. No interest in the Band Confidential Information shall be deemed to have been granted to any party or person to whom such information was provided.

9. The failure or delay in exercising any right, power, or privilege hereunder shall not constitute a waiver thereof, nor shall any single or partial exercise preclude any other or further exercise or the exercise of any other right, power or privilege hereunder.

10. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which shall constitute the same agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Confidentiality and Nondisclosure Agreement, or have caused this Confidentiality and Nondisclosure Agreement to be duly executed on their behalf, as of the date set forth above.

SKULL VALLEY BAND OF GOSHUTE INDIANS

By: Leon D Bear
Name: Leon D Bear
Title: CHAIRMAN.

OHNGO GAUDADEH DEVIA

By: Margene Bullcreek
Name: Margene Bullcreek
Title: Chairperson, OGD

PRIVATE FUEL STORAGE, L.L.C.

Name: John D. Purby
Title: Chairman of the Board.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Before the Atomic Safety and Licensing Board

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CERTIFICATE OF SERVICE

I hereby certify that copies of the Intervenor Skull Valley Band's Renewed Motion for a protective Order as to Certain Exhibits were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage paid, this 17th day of January, 2002.

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