

RAS 3941

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 02/22/02

SERVED 02/22/02

Before Administrative Judges:

Michael C. Farrar, 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

February 22, 2002

MEMORANDUM AND ORDER
(Granting Motion for Protective Order)

In a separate decision today, LBP-02-08, 55 NRC __ (Feb. 22, 2002), the Licensing Board rules on the motion of applicant Private Fuel Storage, L.L.C., (PFS) for summary disposition regarding contention OGD O, Environmental Justice Issues are Not Addressed. In the cover letter to its July 28, 2001 response to this PFS dispositive motion, intervenor Ohngo Gaudadeh Devia (OGD) claimed that certain exhibits attached to its response contained proprietary information that should not be disclosed to the public. Thereafter, in a July 24, 2001 memorandum and order the Board requested that the parties discuss entering into a protective order that would allow the Board to move forward on contention OGD O without compromising the party's proprietary information. In response to that order, on September 26, 2001, intervenor Skull Valley Band of Goshute Indians (Skull Valley Band) submitted a protective order motion reflecting the agreement of OGD and PFS to enter into a confidentiality

agreement regarding these exhibits, which the NRC staff indicated in an October 4, 2001 response it did not oppose.¹

Shortly after the Skull Valley Band protective order motion was filed, however, a question arose regarding the status of the leadership and legal representation of the Skull Valley Band that had implications for the validity of the Skull Valley Band's pending protective order request. That matter was resolved, as is outlined in the Board's December 10, 2001 memorandum and order, and on January 17, 2002, the Skull Valley Band renewed its protective order request, once again without staff objection.

After reviewing the proposed protective order request, in accordance with 10 C.F.R. § 2.749(c)(6), we adopt the following terms as governing disclosure of the items in question:

Absent further order of the Board or the Commission,

1. The NRC Office of the Secretary (SECY) should continue to treat the exhibits listed in paragraph four below as nonpublic documents;²
2. OGD, PFS, and the Skull Valley Band, shall treat the exhibits listed in paragraph four below as confidential in accordance with the November 27, 2001 confidentiality agreement between OGD, PFS, and the Skull Valley Band that

¹ In this regard, we note that in response to the Board's July 24, 2001 directive, by letter dated July 28, 2001 OGD initially sought to have the all the exhibits proffered in support of the affidavit of Sammy Blackbear withheld. In an August 31, 2001 letter, however, OGD indicated it no longer sought confidential protection for the exhibits, but that intervenor Skull Valley Band would be filing a motion seeking nondisclosure of certain of the exhibits. The Skull Valley Band notified the Board that same date of its intent to file such a motion and, subsequently, in accordance with September 5 and 10, 2001 Board directives, submitted that request on September 26, 2001.

² Although pages 76 and 77 of the Blackbear declaration (which the exhibits now in question are intended to support) contains a "Table of Exhibits" with alpha designations, the table fails to list all the exhibits attached. Moreover, as provided to the Licensing Board, the exhibits are actually marked numerically. In an effort to avoid any further confusion, we reference both the alpha and numeric designations in this issuance.

was provided to the Licensing Board as an attachment to the Skull Valley Band's January 17, 2002 renewed protective order motion.³

3. The exhibits listed in paragraph four below need be provided by OGD only to PFS, the staff, and the Skull Valley Band as the parties involved in litigating contention OGD O (if they do not already have them); and
4. The exhibits to the June 28, 2001 OGD summary disposition response to which this protective order applies are:⁴
 - a. Exhibit 2 (Table Exhibit C) -- Annual report (FY 1987) of available cash.
 - b. Exhibit 3 (Table Exhibit D) -- Budget resolutions and budgets for FY 1985 (No. 84-06), FY 1987 (No. 86-05), FY 1993 (No. 92-10).
 - c. Exhibit 4 (Table Exhibit E) -- Year-end financial reports for FY 1981, FY 1987, FY 1989, FY 1990, FY 1993, and FY 1994.

³ In its October 4, 2001 response to the September 26, 2001 Skull Valley Band protective order motion, the staff noted that it is subject to agency requirements pertaining to the treatment of protected information so that it did not need to execute any confidentiality agreement. See NRC Staff's Response to Intervenor Skull Valley Band's Motion for Protective Order as to Certain Exhibits (Oct. 4, 2001) at 3 n.4.

⁴ On the other hand, the Blackbear declaration exhibits or portions of exhibits not listed in paragraph four of the text below should be placed on the public record by the Office of the Secretary. These include (1) Exhibit 1 (Table Exhibit B); (2) Exhibit 6 (Table Exhibit G); (3) Exhibit 7 (Table Exhibit H) -- November 8, 1990 memorandum from tribal executive council to tribal members, and October 31, 1993 special general council meeting agenda; (4) Exhibit 9 (Table Exhibit J); (5) Exhibit 10 (Table Exhibit K) -- April 30, 1986 and May 3, 1986 council meeting notices, January 6, 1989 executive resolution (No. 89-01), May 4, 1989 executive committee resolution (No. 89-04); (6) Exhibit 11 (Table Exhibit L); (7) Exhibit 12 (Table Exhibit M) -- December 24, 1979 resolution (No. 79-08), July 31, 1982 resolution (No. 82-06), April 21, 1990 resolution (No. 90-09), and February 19, 1994 general council resolution (No. 94-02); (8) Exhibit 13 (Table Exhibit N); (9) Exhibit 15 (Table Exhibit P); (10) Exhibit 16 (Table Exhibit Q); (11) Exhibit 17 (Table Exhibit R); (12) Exhibit 18; (13) Exhibit 19; (14) Exhibit 20 (Table Exhibit S); (15) Exhibit 21 (Table Exhibit T); (16) Exhibit 23 (Table Exhibit V); (17) Exhibit 24 (Table Exhibit W); (18) Exhibit 26 (Table Exhibit Y).

Any party to this proceeding desiring a copy of any of those exhibits should contact OGD counsel, who should provide the requested copies with reasonable dispatch.

- d. Exhibit 5 (Table Exhibit F) -- December 12, 1980 letter from La Follette Butler, Bureau of Indian Affairs (BIA) assistant area director, to members of the Skull Valley Band council and November 21, 1986, BIA memorandum from the Uintah and Ouray agency superintendent to the Phoenix area director and the attached budget resolutions and budgets for FY 1981 (No. 80-11) and FY 1987 (No. 86-05).
- e. Exhibit 7 (Table Exhibit H) -- (i) September 25, 1989 memorandum from the Skull Valley Band's executive committee officers to tribal members; and (ii) an April 21, 1990, general council resolution (No. 90-07).
- f. Exhibit 8 (Table Exhibit I) -- August 13, 1984 executive resolution (No. 84-05).
- g. Exhibit 10 (Table Exhibit K) -- FY 1987 budget resolution (No. 86-05), May 2, 1987 executive resolution (Resolution No. 87-?⁵), and June 7, 1987 executive resolution (Resolution No. 87-09).
- h. Exhibit 12 (Table Exhibit M) -- October 3, 1981 resolution (No. 81-04), and budget resolutions for FY 1986 (No. 85-04), FY 1988 (No. 87-11), and 1989 (No. 88-06).
- i. Exhibit 14 (Table Exhibit O) -- December 27, 1993 memorandum from two members of the tribal executive committee to the tribal secretary.
- j. Exhibit 22 (Table Exhibit U) -- October 23, 1994 tribal executive committee report addressed to tribal members.

⁵ The resolution copy provided to the Board has the number cut off.

- k. Exhibit 25 (Table Exhibit X) -- June 8, 1994 letter from tribal chairman Leon Bear to BIA superintendent Perry Baker.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael C. Farrar
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 22, 2002

Copies of this memorandum and order 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 of Utah; and (3) the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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(Independent Spent Fuel Storage)	
Installation))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (GRANTING MOTION FOR PROTECTIVE ORDER) 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 AND ORDER
(GRANTING MOTION FOR
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[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 22nd day of February 2002