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July 8, 2002
OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFFUNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBefore the Atomic Safety and Licensing Board

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

**APPLICANT'S REPLY TO THE PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW OF THE SOUTHERN UTAH WILDERNESS
ALLIANCE AND THE NRC STAFF ON CONTENTION SUWA B**

Pursuant to 10 C.F.R. § 2.754 and the Order of the Atomic Safety and Licensing Board ("Licensing Board" or "Board") dated September 17, 2001,¹ Applicant Private Fuel Storage, L.L.C. ("Applicant" or "PFS") submits its reply to the proposed findings of fact and conclusions of law filed by intervenor Southern Utah Wilderness Alliance ("SUWA")² and the NRC Staff ("Staff")³ concerning Contention SUWA B—Railroad Alignment Alternatives ("SUWA B"). See Joint Report on Schedule for Findings of Fact and Findings of Fact (Responses) for Contention SUWA B (May 8, 2002). PFS's reply findings on SUWA B are submitted separately from its reply findings to be submitted on Contentions Utah K/Confederated Tribes B and Utah L/QQ, which have been the subject of evidentiary hearings beginning on April 8 and concluding on July 3, 2002. PFS's reply generally follows the organization of and responds to the proposed findings of

¹ Order (Revised General Schedule) (September 17, 2001).

² Southern Utah Wilderness Alliance's (SUWA's) Proposed Findings of Fact and Conclusions of Law Relative to Contention SUWA B (June 7, 2002) ("SUWA Find.").

³ NRC Staff's Findings of Fact and Conclusions of Law Concerning Contention SUWA B (Rail Line Alignment Alternatives) (June 7, 2002) ("Staff Find.").

SUWA, in that the Staff's proposed findings are in general agreement with those filed by PFS.⁴

I. INTRODUCTION AND LEGAL BACKGROUND

SUWA cites Colorado Environmental Coalition v. Dombeck, 185 F.3d 1162 (10th Cir. 1999) and Muckleshoot Indian Tribe v. U.S. Forest Service, 177 F.3d 800 (9th Cir. 1999) in support of its claim that the NRC Staff inadequately analyzed alternatives to the proposed alignment of the PFS rail line that would connect the PFS site to the Union Pacific mainline railroad at Skunk Ridge, near Low Junction Utah (the "Low Corridor" alignment). See SUWA Find. at 1-6. These cases do not invalidate the Staff's and PFS's analysis; nor do they contradict the law regarding alternatives analysis under the National Environmental Policy Act ("NEPA") that PFS cited in its proposed findings. See PFS Find. at 8-9.⁵

Colorado Environmental Coalition stands for the proposition that "[w]hat is required [in alternatives analysis] is information sufficient to permit a reasoned choice of alternatives as far as environmental aspects are concerned." 185 F.3d at 1174. "[A]gencies [must] take responsibility for defining the objectives of an action and then provide legitimate consideration to alternatives that fall between the obvious extremes." Id. at 1175. Here, nothing in the NRC Staff's definition of the objective—to provide transportation of spent fuel from the railroad mainline to the PFS site—caused the Staff to reject any alternatives. The Staff—and PFS—provided full consideration to all alternatives and only rejected them after concluding that they would cause greater environmental impacts than the proposed action. See FEIS at 2-47, 2-51; Staff Test. at 32-33;

⁴ PFS employs the abbreviations established in its previously submitted proposed findings (Appendix A of which identifies the location in the transcript of each witness' direct testimony).

⁵ Applicant's Proposed Findings of Fact and Conclusions of Law on Contention SUWA B (June 7, 2002) ("PFS Find.").

Donnell at 4-5, 8. Thus, Colorado Environmental Coalition provides no support for SUWA's challenge to the alternatives analysis.

SUWA (SUWA Findings at 2) quotes Muckleshoot Indian Tribe for the unexceptional proposition that a "viable but unexamined alternative renders [the] environmental impact statement inadequate." 177 F.3d at 814. However, SUWA points to no such "unexamined alternative" here that would render the Staff's Final Environmental Impact Statement ("FEIS") or PFS's analysis of alternatives inadequate. Indeed, SUWA proposed no alternative alignments to the proposed PFS rail line. Tr. at 4844-45, 4912 (Catin). As the Supreme Court has observed in Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 553-4 (1978),

administrative proceedings should not be a game or forum to engage in unjustified obstructionism by making cryptic and obscure reference to matters that "ought to be" considered and then, after failing to do more to bring the matter to the agency's attention, seeking to have that agency determination vacated on the ground that the agency failed to consider matters "forcefully presented."

Finally, many times SUWA asserts that the NRC Staff "violated NEPA by preempting the decisionmaker's responsibility to determine . . . an appropriate transportation route to the proposed storage site." E.g., SUWA Find. at 3. Without even considering SUWA's failure to identify the allegedly preempted decisionmaker, SUWA's claim is legally incorrect. For proposed actions, such as the PFS licensing, for which an FEIS is prepared and a hearing is held under 10 C.F.R. Part 2, Subpart G, the environmental record of decision is the initial decision of the presiding officer, i.e., the Licensing Board, or the final decision of the Commissioners. 10 C.F.R. § 51.102(c). That record "may incorporate by reference material contained in a final environmental impact statement." 10 C.F.R. § 51.103(c). Hence, it is not possible for the FEIS to preempt the NRC decisionmaker.

Furthermore, in making its decision, the Board must consider the entire hearing record in addition to the FEIS. If the Board reaches conclusions different from those set forth in the FEIS, the statement “is simply deemed amended pro tanto.” Allied-General Nuclear Services (Barnwell Nuclear Fuel Plant Separations Facility), ALAB-296, 2 NRC 671, 680 (1975). As noted in Barnwell, the Licensing Board’s conclusions can be – and “ordinarily” are – based on evidence presented by the parties to the case in addition to the Staff. Id.⁶ This NRC process has been explicitly upheld by the federal courts. See, e.g., New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87, 93-94 (1st Cir. 1978) (upholding licensing board assessment of environmental impacts of cooling water intake location not analyzed in FEIS); see also Citizens for Safe Power, Inc. v. NRC, 524 F.2d 1291, 1294 & n.5 (D.C. Cir. 1975). Therefore, SUWA’s “preempting the decisionmaker” argument is meritless.

II. NRC STAFF ANALYSIS OF ALTERNATIVES TO THE PROPOSED PFS RAIL LINE

SUWA claims that the NRC Staff improperly “refused to carry forward for analysis an alternative to the Low Rail spur that would protect the wilderness character of the North Cedar Mountains roadless area.” SUWA Find. at 3. As discussed below this is incorrect, in that the Staff and PFS evaluated an exhaustive range of alternatives to the proposed alignment of the PFS rail line. It is interesting to note that SUWA’s proposed findings completely ignore the Central and East Skull Valley Alternative rail alignments discussed on the record.

A. Staff Consideration of the West Skull Valley Alternative Alignment

First, SUWA claims that the FEIS has preempted the NRC decisionmaker on environmental issues by determining that PFS’s proposed rail route “was better than the

⁶ This remains the case under current NRC regulations. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 705-07 (1985).

West Valley rail route” and refusing to consider “in detail” alternatives to the alignment of the proposed PFS rail line. SUWA Find. at 3. As explained above, this argument is meritless, as the NRC decisionmaker on this issue is the Licensing Board, not the Staff. Moreover, as explained further below, in presenting testimony on the record, both the Staff and PFS have considered in detail the West Skull Valley route, as well as numerous other alternative rail alignments.

SUWA also claims that the Staff’s analysis of the West Skull Valley Alternative Alignment for the PFS rail line is inadequate because the Staff rejected the alternative without “detailed evaluation.” SUWA Find. at 4. SUWA later criticizes the Staff for “refusing to analyze the environmental impacts of the West Skull Valley Alternative.” *Id.* at 5. On the contrary, the Staff assessed in depth the environmental impacts of the West Skull Valley Alternative and compared those impacts to the impacts of the proposed PFS route. *See* FEIS at 2-51; Staff Test. at 27-32. The Staff rejected the West Skull Valley Alternative on the basis of its greater impacts. FEIS at 2-51; Staff Test. at 32. PFS similarly analyzed the impacts of the proposed rail line and the West Skull Valley Alternative and rejected the alternative for the same reasons. *See* Donnell at 4; Hayes at 4-11; Davis at 3-8. SUWA points to no specific information or impacts that the Staff or PFS omitted from their analyses of either the proposed Low Corridor rail line or the West Skull Valley Alternative. Under NEPA, a “rule of reason guides ‘both the choice of alternatives as well as the extent to which the [EIS] must discuss each alternative.’” American Rivers v. FERC, 201 F.3d 1186, 1200 (9th Cir. 1999) (quoting City of Carmel-by-the-Sea v. DOT, 123 F.3d 1142, 1155 (9th Cir. 1997)). Where an alternative is eliminated from detailed study, the FEIS need only “briefly discuss the reasons for [its] having been eliminated.” *Id.* (quoting 40 C.F.R. § 1502.14(a)). Where an alternative is eliminated because of its significant adverse environmental impacts, a brief discussion satisfies NEPA’s requirements. *See id.* at 1201. Here, the evidentiary record provides far more detailed study of

the West Skull Valley Alternative than was required. Thus, because both the Staff and PFS eliminated the West Skull Valley Alternative because of its significantly greater environmental impact, further “detailed evaluation” was not necessary.⁷

SUWA argues further that the only basis for not analyzing an alternative is when it is “remote, speculative, or . . . impractical or ineffective.” Id. (quoting Colorado Environmental Coalition, 185 F.3d at 1174). Putting aside the fact that both the NRC Staff and PFS fully analyzed the West Skull Valley Alternative, the Tenth Circuit did not state that the four cited characteristics are the only bases for not analyzing an alternative. See 185 F.3d at 1174. For example, as PFS has pointed out, NEPA does not require the consideration of alternatives that “are not significantly distinguishable from alternatives actually considered.” Headwaters, Inc. v. BLM, 914 F.2d 1174, 1181 (9th Cir. 1990), reh’g en banc denied, 940 F.2d 435 (1991). Second, neither the Staff nor PFS rejected the West Skull Valley Alternative, or any other alternative, entirely because it was infeasible. As stated above, the alternatives to the proposed action were rejected because of their greater environmental impacts. SUWA’s argument here is simply irrelevant to how the alternatives were actually assessed.

Finally, SUWA argues that the Staff should have done more analysis because EISs can contain alternatives that are more expensive or have more environmental impact than other alternatives. SUWA Find. at 6. The Staff should have “fully considered, in detail” the West Skull Valley Alternative and then allowed “the decisionmaker” to choose between it and the proposed action. Id. SUWA’s argument is entirely misplaced. The hearing record fully considers, in detail, the West Skull Valley Alternative and the Board

⁷ Furthermore, because the West Skull Valley Alternative was very similar to the proposed rail line alignment (except for the West Skull Valley Alternative’s increased cut and fill that would give rise to its greater environmental impact), the other impacts of the alternative would be very similar to those of the proposed action. Davis at 6-8. Hence, further “detailed evaluation” of the alternative would not have produced more information than already had been produced with respect to the environmental impacts of the proposed action.

will, among other decisions, choose between PFS's proposed route and the West Skull Valley Alternative. In addition, the purpose of the alternatives discussion in an EIS is to look at "alternatives available for reducing or avoiding adverse environmental effects." 10 C.F.R. § 51.71(d). It is true that NEPA does not require an agency to choose the alternative with the least environmental impact. Louisiana Energy Services, L.P. (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 88 (1998). But it certainly does not follow that an EIS must discuss in greater detail than was done here, alternatives with greater environmental impacts or costs simply for the sake of discussing them. In evaluating alternatives for a private project, the agency may "accord substantial weight to the preferences of the applicant and/or sponsor in the . . . design of the project." Hydro Resources, Inc. (P.O. Box 15910, Rio Rancho NM 87174), CLI-01-4, 53 NRC 31, 55 (2001). Here, the preference of PFS is to transport spent fuel to the PFS site by rail. PFS's proposed rail line route has the least environmental impacts of all of the alternatives considered. See Donnell at 8; Staff Test. at 32-33. Thus, there is simply no reason to discuss any of the alternatives in further detail.

B. Specific Findings on the West Skull Valley Alternative Alignment

SUWA attacks the FEIS's findings that 1) the West Skull Valley Alternative rail line alignment would have greater environmental impacts than the proposed Low Corridor alignment, and 2) the West Skull Valley Alternative would not have significantly less impact on wilderness than the proposed alignment. SUWA Find. at 6. As discussed below, SUWA's claims are without merit.

1. The Wilderness Character of the North Cedar Mountains Area

SUWA asserts that the Staff's assessment of the impact of the West Skull Valley alternative on the "wilderness values" of the North Cedar Mountains Area ("NCMA," see PFS Find. at 7) is flawed because the Staff wrongly stated that the NCMA "contain no

wilderness values or characteristics.” SUWA Find. at 7. SUWA asserts that the NCMA has “wilderness values,” including roadlessness. Id.

It should be pointed out that SUWA’s argument is not the issue raised by its contention. Contention SUWA B claims that the PFS license application “fails to develop and analyze a meaningful range of alternatives to the Low Corridor Rail Spur . . . 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” Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-99-3, 49 NRC 40, 53, aff’d, CLI-99-10, 49 NRC 318 (1999) (emphasis added). The contention concerns the assessment of alternative rail line alignments that would preserve the purported wilderness character of the NCMA, i.e., its purported pristine or natural status. See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-01-34, 54 NRC 293, 302 & n.4, recons. denied, LBP-01-38, 54 NRC 490 (2001). The issue is not whether the proposed rail line or the alternatives would impact some individual wilderness characteristic(s) of the NCMA. Nevertheless, PFS responds to SUWA’s claims below.

SUWA takes issue with the statement in the FEIS that “the North Cedar Mountains contain no wilderness or wilderness study designation and contain no wilderness values or characteristics.” SUWA Find. at 7 (quoting FEIS at 2-49). But there are no wilderness areas or wilderness study areas in the North Cedar Mountains; the Bureau of Land Management (“BLM”) dropped the North Cedar Mountains from further wilderness inventory consideration in 1980 “because of lack of wilderness characteristics.” 45 Fed. Reg. 75,602, 75,603-04 (1980) (emphasis added); see BLM Intensive Wilderness Inventory, Final Decision on Wilderness Study Areas, Utah 35 (Nov. 1980) (PFS Exh. JJ). Any difference between the terms “no wilderness values or characteristics” in the FEIS and “lack of wilderness characteristics” in the BLM notice is at most semantic. Regard-

less of the FEIS's choice of words, the evidence in this proceeding (including but not limited to the FEIS) demonstrates that the area to be traversed by the proposed Low Corridor rail line clearly lacks wilderness character and hence the rail line would have no impact on wilderness. See PFS Find. at 13-15.

a) The Roadlessness of the North Cedar Mountains

SUWA claims that the proposed rail line will impact the wilderness characteristics of the NCMA in that 1) roadlessness is a wilderness characteristic, 2) the NCMA is roadless, and 3) the proposed action will add a "road" in the form of the rail line to the NCMA. SUWA Find. at 7-9. First, the NCMA is not roadless, in that a dirt road runs from the eastern edge of the NCMA into the interior, across the route of the proposed PFS rail line. See PFS Exh. II.⁸ Second, roadlessness is only one requirement that an area must meet to qualify as wilderness under the Wilderness Act of 1964. See 16 U.S.C. § 1131(c). It alone is not sufficient to qualify an area as wilderness. See id. (requiring a minimum size, naturalness, and the potential for "outstanding opportunities for solitude or a primitive and unconfined type of recreation" in addition to roadlessness). Thus, the fact that the proposed Low Corridor rail line might impact the roadlessness of the NCMA does not mean that the rail line would have an impact on wilderness. Third, SUWA's argument presumes that a rail line is a road under the Wilderness Act. The BLM handbook on evaluating areas for potential for wilderness designation, however, does not state that a rail line is a road. See SUWA Exh. 6 at 10. Furthermore, to the extent that the rail line

⁸ SUWA considers only improved roads in discussing roadlessness. See SUWA Find. at 9 & n.4. As shown by the evidence in this proceeding, the portion of the NCMA to be traversed by the rail line and the area to its east contains numerous unimproved dirt trails used by vehicles. See Staff Test. at 18; Donnell at 3; Davis at 3; Tr. at 4835, 4944, 4955 (Catlin); PFS Exh. II (map). SUWA's statement that such vehicle "ways" do not disqualify an area as wilderness is true only with respect to roadlessness. SUWA Exh. 6 at 9-10. The presence of vehicle trails is still considered in evaluating the naturalness of an area. See PFS FF at 3, PFS Exh. JJ (BLM discussing vehicle "ways" as impacting naturalness of North Cedar Mountains).

could be removed through “hand labor” it would not be considered a permanent human imprint that would prohibit an area from being designated as wilderness. See id. at 17.

In addition, all of the alternative rail alignments considered would impact “roadlessness” at some point. The West Skull Valley Alternative would impact the roadlessness of the area just to the east of the NCMA (as would the “SUWA Alternative” addressed by the NRC Staff, Staff Test. at 32-33, and discussed in PFS Find. at 23-24). See PFS Exh. EE (map). The Central Skull Valley Alternative would impact the roadlessness of central Skull Valley. See FEIS Fig. 1.2. The East Skull Valley Alternative, where not running alongside Skull Valley Road, would impact the roadlessness of eastern Skull Valley. See PFSF Transportation Study, Fig. 6-8 (PFS Exh. HH, depicting potential starting points for the alternative). Thus, the impact of the proposed Low Corridor line on roadlessness is not that different from the impact of the other alternatives on the roadlessness of the areas their routes traverse.

SUWA claims that roadlessness is a “key wilderness value” because it protects biodiversity and prevents habitat fragmentation. SUWA Find. at 8.⁹ The FEIS, however, showed that the PFS rail line would have little or no impact on biodiversity and would not cause habitat fragmentation. PFS Find. at 16-17. At the hearing, Dr. Catlin acknowledged that he was not a biologist and he offered no specific information as to how the PFS rail line would cause habitat fragmentation or loss of biodiversity. Tr. at 4814, 4820 (Catlin); see Catlin at 6.

⁹ SUWA cites the Second Declaration of Dr. Catlin ¶ 17 (see SUWA Find. at 8). There is no paragraph 17 in Dr. Catlin’s declaration. See Catlin 2nd Decl. Paragraph 13 of his declaration mentions habitat fragmentation and biodiversity but provides no more than his testimony at the hearing. (PFS Exh. KK (PFS cited the Catlin declaration solely for the location of the NCMA. See Hayes at 5)).

b) Additional Wilderness Values of the North Cedar Mountains

SUWA claims that the NCMA possesses wilderness values above and beyond its roadlessness. SUWA Find. at 9-12. Even if it were true, it does not mean that the Low Corridor rail line would adversely impact wilderness. First, as noted above, the issue here is the PFS rail line's impact on the wilderness character of the NCMA, not just whether the NCMA possesses wilderness characteristics. Second, while SUWA quotes extensively from the 1979 BLM Intensive Wilderness Inventory Decision in which BLM decided that the North Cedar Mountains qualified for the intensive inventory, see SUWA Find. at 9-10 (quoting SUWA Exh. 7), after completing the intensive inventory, BLM in 1980 rejected the North Cedar Mountains for further consideration for wilderness designation because of lack of wilderness characteristics. 45 Fed. Reg. at 75,603-04; see PFS Exh. JJ. The excerpts from the rationale for the 1980 decision quoted by SUWA (see SUWA Find. at 10-11) concern portions of the NCMA, like the upper elevations and interior of the area, that would not be traversed by the proposed PFS rail line nor affected by it, and therefore they do not support SUWA's claims. See PFS Exh. JJ.

Third, SUWA cites the Licensing Board's summary disposition decision (LBP-01-34) to support its claim that BLM's rejection of the NCMA for wilderness designation does not mean that the area "including the area traversed by the proposed Low rail spur, does not exhibit wilderness values." SUWA Find. at 11. The Board's decision, however, only reiterated its holding that it was the potential impact of the proposed rail line on the wilderness character of the NCMA rather than the NCMA's designation as wilderness per se that was at issue here. See LBP-01-34, 54 NRC at 302 & n.4. Notably, the Board's decision did not hold that the NCMA or the portion of it to be traversed by the rail line possessed wilderness character. The evidence in this proceeding, including the prior

BLM findings, clearly demonstrates that the portion of the NCMA to be traversed by the rail line does not possess wilderness character. PFS Find. at 12-15.

Fourth, SUWA claims that BLM has recognized the “wilderness values” of the NCMA because it regulates off-road vehicle use in the area. SUWA Find. at 11. The BLM Off-Highway Vehicle Designation for the NCMA (see SUWA Exh. 4), however, does not mention wilderness anywhere; thus it provides no support for SUWA’s position. While SUWA may claim that the vehicle use that takes place in the NCMA is illegal, SUWA Find. at 11, it does in fact occur and its impacts were properly recognized by BLM when it assessed that the area was lacking in naturalness. See PFS Exh. FF, JJ. Therefore, contrary to SUWA’s claims, neither BLM nor this Board has found that the NCMA possesses wilderness character.

Finally, SUWA argues that BLM’s policy that human impacts outside of an area containing wilderness values do not “normally” detract from the area’s naturalness means that any human imprints found outside the NCMA have no effect on its naturalness. SUWA Find. at 12. SUWA fails to recognize that this BLM policy also means that the PFS rail line would adversely affect at most the small portion of the NCMA (about six percent of the total area, see PFS Find. at 10-11) that it would separate from the remainder of the area. If the NCMA boundary were redrawn after the rail line were built, the NCMA would remain potentially eligible for wilderness designation. Id. at 11.

2. Staff Conclusion Regarding Impact of West Skull Valley Alternative on Wilderness

SUWA claims that the Staff’s conclusion that the West Skull Valley Alternative rail line alignment would have the same impact on wilderness as the proposed Low Corridor alignment was flawed because the Staff erroneously concluded that the NCMA possessed no wilderness characteristics. SUWA Find. at 12. First, the evidence in this proceeding shows that the easternmost portion of the NCMA that would be traversed by the

Low Corridor rail line lacks wilderness character. PFS Find. at 11-15. SUWA has pointed to nothing to the contrary. Second, the characteristics of the eastern NCMA and the area just to the east, i.e., the area that would be traversed by the West Skull Valley Alternative, are very similar; indeed, the two areas are only 2,000 to 3,000 feet apart. Davis at 6. Therefore, the impact of the Low Corridor route and the West Skull Valley Alternative alignment on wilderness would be very similar.

3. Potential Restoration of the North Cedar Mountains

SUWA claims that the Low Corridor rail line would preclude the NCMA's "return to its natural condition."¹⁰ SUWA Find. at 13. The issue here is not the potential for the NCMA to be returned to its natural state—the issue is the impact of the proposed PFS rail line on the area which SUWA has heretofore claimed to be in a natural state. See PFS Find. at 15. The rail line would only separate the easternmost six percent of the NCMA from the remainder of the area. Thus, it would have no impact on any potential future wilderness designation of the vast majority of the NCMA. See id. at 10-11.

4. Impact of the Proposed Rail Line on Additional Wilderness Values

SUWA claims that the proposed rail line would adversely affect wilderness values in the NCMA other than roadlessness because BLM draws wilderness boundaries at the edges of human imprints and thus would have to redraw the boundary of the NCMA. SUWA Find. at 14. On the contrary, the evidence in this proceeding shows that the easternmost six percent of the NCMA, which would be traversed by the proposed PFS rail line, lacks wilderness characteristics. PFS Find. at 13-15. Thus the rail line would not harm any wilderness. SUWA claims further that the rail line would create a "zone of in-

¹⁰ SUWA claims that BLM considers the potential for an area to be restored to its natural state in assessing its wilderness character and in 1979 found that the NCMA could be restored. SUWA Find. at 13 (citing SUWA Exh. 5). Nevertheless, BLM rejected the NCMA for wilderness designation in 1980 on the grounds of lack of wilderness characteristics and declined to revisit that decision in 2001 when petitioned by SUWA. See PFS Exh. FF, JJ.

fluence” in the remainder of the NCMA that would push the influence of human imprints into the area and compromise its integrity. SUWA Find. at 14. The BLM wilderness handbook (SUWA Exh. 6), which SUWA cites, however, specifically rejects the concept of a “zone of influence” of external human imprints in that it allows the boundaries of wilderness areas to be drawn right up to the edges of the imprints. SUWA Exh. 6 at 16. Thus, SUWA’s argument is meritless.

5. The Relative Impacts on Wilderness of the Low Corridor Route and the West Skull Valley Alternative

SUWA erroneously claims that the FEIS concluded that the West Skull Valley Alternative rail alignment would have the same impact on the wilderness character of the NCMA as the proposed Low Corridor route. SUWA Find. at 14-15. SUWA’s claim is incorrect. The FEIS did not say that the proposed rail line and the West Skull Valley alternative would have the same impact on the NCMA; it said that the West Skull Valley alternative would not result in a significant reduction in impacts to wilderness characteristics of the adjacent land. FEIS at 2-51. The FEIS is correct. The two alternatives are separated only by 2,000 to 3,000 feet and there is not a significant difference in wilderness characteristics between the land traversed by each of them. See Davis at 6. Furthermore, as noted, the evidence in this proceeding shows that the portion of the NCMA to be traversed by the proposed rail line lacks wilderness character.

6. Staff Conclusions Regarding the Environmental Impacts of the West Skull Valley Alternative Alignment

SUWA claims that the Staff erred when it concluded that the West Skull Valley Alternative would have greater environmental impacts than the proposed Low Corridor rail line. SUWA Find. at 15-16. SUWA simply ignores the principal reason for the Staff’s conclusion—the significantly greater excavation and cut and fill that would be

necessary to build the alternative. FEIS at 2-51.¹¹ The Staff's conclusion is fully supported by the evidence. See Hayes at 7-10; Staff Test. at 28-30. Contrary to SUWA's assertion, the Staff complied with NEPA by "taking a hard look" at the environmental impacts of the proposed action and its alternatives.

C. The West Skull Valley Alternative as a Genuine Alternative

SUWA claims that the West Skull Valley alternative rail alignment is not a real alternative to the Low Corridor alignment in that it is "merely a detour around the North Cedar Mountains." SUWA Find. at 16-17. SUWA asserts—without any reference to the evidentiary record—that the alternative alignment could have been designed differently to balance cut and fill requirements and to minimize other environmental impacts. Id. at 16. SUWA claims that the design of the alternative was sub-optimal in that the segment in which the alternative would rejoin the Low Corridor south of the NCMA requires fill; SUWA claims with no evidentiary basis that if PFS had not "forced [the West Skull Valley Alternative alignment] to rejoin the Low [C]orridor in this location" it would have required less fill. Id. at 17.

Notwithstanding SUWA's colorful description of the West Skull Valley Alternative as an "awkward appendage," it provides no evidentiary basis for its argument. First, SUWA performed no calculation of cut and fill requirements to show that the West Skull Valley Alternative was improperly designed. See Tr. at 4853-54, 4899-4902 (Catlin). Second, PFS routed the alternative from the Union Pacific mainline at Skunk Ridge through a narrow gap so as to avoid the NCMA to the west and State of Utah-owned land and Skull Valley mudflats to the east. Hayes at 6; see PFS Exh. EE. SUWA points to nothing to show that the alignment could have been routed differently to avoid those ar-

¹¹ SUWA's argument about the "massive cuts" required for the Low Corridor line at the siding near the Union Pacific mainline, SUWA Find. at 18, does not point to a difference between the Low Corridor and the West Skull Valley alternative, since the two alignments would not diverge until after they had passed south of the siding area. See, e.g., PFS Exh. EE; PFS Exh. BB, Fig. 3.2-2, Sheet 2 of 4.

eas while simultaneously reducing its cut and fill requirements.¹² PFS Exhibit EE shows that substantial amounts of fill are required on those segments of the West Skull Valley Alternative north of its reconnection with the Low Corridor. Changing the alignment of the segment where the alternative reconnects with the Low Corridor would have no effect on the other segments of the alternative. Third, PFS Exhibit EE also shows that the elevation of the southernmost segment of the alternative alignment is approximately 4,275 feet. The PFS site's elevation is between approximately 4,450 feet and 4,490 feet. FEIS at 2-3. Therefore, from the southernmost segment of the West Skull Valley Alternative (where SUWA asserts that the alignment was improperly designed), the rail line would have to gain approximately 175 to 215 feet in elevation to reach the PFS site.¹³ SUWA points to nothing to show that the rail line could climb that distance without requiring any fill. On the other hand, when the NRC Staff evaluated the West Skull Valley Alternative the only modifications it identified that would save on fill were changes to the rail profile grade line that would only save about 50,000 cubic yards out of a total fill requirement of over 500,000 cubic yards. Staff Test. at 30. Therefore, there is no basis to SUWA's claim that the West Skull Valley Alternative could have been designed so as to require significantly less fill or so as to avoid any other environmental impacts.

D. Staff Comparison of the West Skull Valley Alternative and the Low Corridor Rail Alignments

SUWA asserts that PFS mischaracterized the West Skull Valley Alternative Alignment and the Low Corridor route so as to render the Staff's comparison of the two alternatives invalid. SUWA Find. at 17-18. First, SUWA complains about the graphical

¹² Furthermore, the uncontroverted evidence shows that moving the West Skull Valley Alternative farther to the east into the State-owned land would increase rather than reduce cut and fill requirements. Hayes at 10-11.

¹³ The Low Corridor is at an elevation of approximately 4,360 ft. where the West Skull Valley Alternative rejoins it. From there the corridor gradually rises to an elevation of 4,480 ft. where it enters the PFS site. Staff Test. at 29.

representation of the cuts and fills required on the West Skull Valley Alternative in PFS Exhibit EE. Id. at 17. However, the style of representation in Exhibit EE is commonly used by civil engineers to depict grade. Tr. at 4608-11 (Hayes). PFS's exhibit included numerical indices that allow the reader to see the heights and widths of the excavations and embankments. Id. Moreover, PFS did not calculate the fill requirements for the Low Corridor route and the West Skull Valley Alternative using the diagrams that SUWA dislikes. Rather, PFS used 3-D digital models of the terrain and the rail lines and the INROADS computer program. Hayes at 11.

Second, SUWA complains that the Low Corridor route involves "massive cuts" at the siding area and at least one embankment nearly 20 feet high. SUWA Find. at 18. PFS and the Staff fully accounted for the cuts at the siding area (which would be present for both the Low Corridor and West Skull Valley Alternative routes) in calculating the net fill requirements for both alignments. See FEIS at 2-49; Staff Test. at 15, 29-30; Hayes at 7, 10. The point at which the Low Corridor route would require a 20-ft. embankment is south of the point at which the West Skull Valley Alternative would rejoin the corridor, so it would also be present in both alignments. See Tr. at 4596, 4599-4600 (Hayes) (identifying 20-ft. embankment located at station 520); id. at 4602, 4634-35 (Hayes) (identifying station 477 as location where West Skull Valley Alternative rejoins Low Corridor).¹⁴ By contrast, the West Skull Valley Alternative would require three embankments 20 feet high for a total length of approximately 5,500 feet in just the 6.5 miles in which it follows a different alignment than the Low Corridor route, while the Low Corridor would only require embankments a maximum of 12 to 15 feet high. Staff Test. at 30.

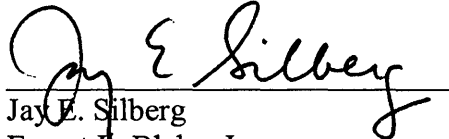
¹⁴ The station is the distance in hundreds of feet along the rail line from its beginning at Skunk Ridge. Tr. at 4602 (Hayes).

SUWA asserts that the two alternatives contain “many of the same elements that the Staff used to disqualified [sic] the West Valley route from detailed evaluation.” SUWA Find. at 18. SUWA is incorrect, in that it is the magnitude of the embankments and the fill requirement that renders the West Skull Valley Alternative inferior to the proposed Low Corridor route. SUWA’s claim that the two alternatives are “more alike in terms of cut and fill than indicated by the Staff in the EIS,” *id.*, is simply wrong. The Staff and PFS both characterized the cut and fill requirements of the alternatives accurately. Thus, the Staff accurately assessed the environmental impacts of the alternative.

III. CONCLUSION

For the foregoing reasons and the reasons described in its proposed findings of fact and conclusions of law, the Applicant respectfully requests that the Board rule in its favor on Contention SUWA B.

Respectfully submitted,



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July 8, 2002

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the Applicant's Reply to the Proposed Findings of Fact and Conclusions of Law of the Southern Utah Wilderness Alliance and the NRC Staff on Contention SUWA B 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 8th day of July, 2002.

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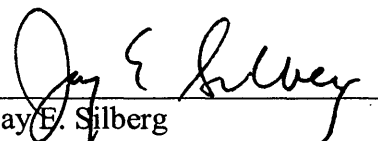
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