

**CASE SCHEDULED FOR ORAL ARGUMENT JANUARY 16, 2004**

**In The**

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**Nos. 03-1018 and 03-1022 (Consolidated)**

**Margene BULLCREEK, et al.,  
Petitioners,**

**v.**

**UNITED STATES NUCLEAR REGULATORY COMMISSION  
and the UNITED STATES OF AMERICA  
Respondents, and**

**PRIVATE FUEL STORAGE, L.L.C. and  
SKULL VALLEY BAND OF GOSHUTE INDIANS  
Intervenors-Respondents.**

**On**

**Petition to Review a Final Decision of the  
United States Nuclear Regulatory Commission**

**ERRATA**

**JOINT BRIEF OF INTERVENORS-RESPONDENTS  
PRIVATE FUEL STORAGE, L.L.C.  
AND  
SKULL VALLEY BAND OF GOSHUTE INDIANS**

**TIM VOLLMANN  
3301-R Coors Road N.W., # 302  
Albuquerque, NM 87120  
Telephone: (505) 792-9168  
Facsimile: (505) 792-9251  
Attorney for Skull Valley Band of  
Goshute Indians**

**JAY E. SILBERG  
DOUGLAS J. ROSINSKI  
SHAW PITTMAN LLP  
2300 N Street, N.W.  
Washington, D.C. 20037  
Telephone: (202) 663-8000  
Facsimile: (202) 663-8007  
Attorney for Private  
Fuel Storage, L.L.C.**

**Dated: October 17, 2003**

## TABLE OF AUTHORITIES

### CASES

<i>America's Cmty Bankers v. FDIC</i> , 200 F.3d 822 (D.C. Cir. 2000).....	23
<i>Board of Trade v. SEC</i> , 187 F.3d 713 (7 <sup>th</sup> Cir. 1999).....	22
<i>Branch v. Smith</i> , 123 S.Ct. 1429 (2003) .....	20
<i>Cellnet Communication, Inc. v. FCC</i> , 965 F.2d 1106 (D.C. Cir. 1992) .....	9
<i>*Chevron U.S.A. Inc. v. NRDC</i> , 467 U.S. 837 (1984) .....	9, 14
<i>Demby v. Schweiker</i> , 671 F.2d 507 (D.C. Cir. 1981) .....	20
<i>Easton Utils. Comm'n v. AEC</i> , 424 F.2d 847 (D.C. Cir. 1970).....	6
<i>*FDA v. Brown &amp; Williamson Tobacco Corp.</i> , 529 U.S. 120 (2000) .....	9, 14
<i>FTC v. Ken Roberts Co.</i> , 276 F.3d 583 (D.C. Cir. 2001) .....	21
<i>Gage v. AEC</i> , 479 F.2d 1214 (D.C. Cir. 1973).....	6
<i>Idaho v. DOE</i> , 945 F.2d 295 (9 <sup>th</sup> Cir. 1991) .....	15
<i>Illinois v. Gen. Elec. Co.</i> , 683 F.2d 206 (7 <sup>th</sup> Cir. 1982).....	11, 18
<i>Indiana Michigan Power Co. v. Department of Energy</i> , 88 F.3d 1272 (D.C. Cir. 1996).....	19
<i>Individual Reference Servs. Group, Inc. v. FTC</i> , 145 F. Supp. 2d 6 (D.D.C. 2001) .....	22
<i>ITT World Communications v. FCC</i> , 699 F.2d 1219 (D.C. Cir. 1983).....	9
<i>Jersey Cent. Power &amp; Light Co. v. Township of Lacey</i> , 772 F.2d 1103 (3 <sup>rd</sup> Cir. 1985).....	11
<i>Kappus v. Comm'r of Internal Revenue</i> , 337 F.3d 1053 (D.C. Cir. 2003) .....	21
<i>Kelley v. Selin</i> , 42 F.3d 1501 (6 <sup>th</sup> Cir. 1995) .....	12, 22
<i>Kulmer v. Surface Transp. Bd.</i> , 236 F.3d 1255 (10 <sup>th</sup> Cir. 2001).....	14
<i>*Morton v. Mancari</i> , 417 U.S. 535 (1974) .....	20
<i>National Customs Brokers &amp; Forwarders v. United States</i> , 883 F.2d 93 (D.C. Cir. 1989) .....	9
<i>National Mining Ass'n v. Dep't of the Interior</i> , 70 F.3d 1345 (D.C. Cir. 1995) .....	9
<i>NRDC v. NRC</i> , 666 F.2d 595 (D.C. Cir. 1981).....	6
<i>Okla. Natural Gas Co. v. FERC</i> , 28 F.3d 1281 (D.C. Cir. 1994).....	10
<i>Pac. Gas &amp; Elec. v. Energy Res. Comm'n</i> , 461 U.S. 190 (1983).....	11, 15
<i>Private Fuel Storage L.L.C. (Independent Spent Fuel Storage Installation),</i> <i>LBP-98-7</i> , 47 NRC 142 (1998).....	3
<i>Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation),</i> <i>CLI-02-11</i> , 55 NRC 260 (2002).....	4

\* Authorities upon which we chiefly rely are marked with asterisks.

<i>Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation),</i> CLI-02-29, 56 NRC 390 (2002).....	4, 10, 25
<i>Prof'l Reactor Operator Soc'y v. NRC</i> , 939 F.2d 1047 (D.C. Cir. 1991) .....	6
<i>Public Citizen, Inc. v. HHS</i> , 332 F.3d 654 (D.C. Cir. 2003).....	25
<i>Rapaport v. OTS</i> , 59 F.3d 212 (D.C. Cir. 1995).....	22
<i>Ratzlaf v. United States</i> , 510 U.S. 135 (1994) .....	18
<i>Reytblatt v. NRC</i> , 105 F.3d 715 (D.C. Cir. 1997).....	6
<i>Salleh v. Christopher</i> , 85 F.3d 689 (D.C. Cir. 1996).....	22
<i>Siegel v. AEC</i> , 400 F.2d 778 (D.C. Cir. 1968).....	15, 22
<i>Skidmore v. Swift &amp; Co.</i> , 323 U.S. 134 (1994) .....	25
<i>Skull Valley Band of Goshute Indians v. Leavitt</i> , 215 F.Supp. 1232 (D. Utah 2002).....	3
<i>South Carolina v. Catawba Indian Tribe, Inc.</i> , 476 U.S. 498 (1986).....	18
<i>Strang v. United States Arms Control &amp; Disarmament Agency</i> , 864 F.2d 859 (D.C. Cir. 1989) .....	26
<i>Traynor v. Turnage</i> , 485 U.S. 535 (1988) .....	20
<i>Udall v. Tallman</i> , 380 U.S. 1 (1965).....	17
<i>United States v. Kentucky</i> , 252 F.3d 816 (6 <sup>th</sup> Cir. 2001) .....	12
<i>United States v. Williams</i> , 216 F.3d 1099 (D.C. Cir. 2000).....	20
<i>Watt v. Alaska</i> , 451 U.S. 259 (1981).....	16
<i>Whitman v. Am. Trucking Ass'ns, Inc.</i> , 531 U.S. 457 (2001) .....	18
<i>WWHT, Inc. v. FCC</i> , 656 F.2d 807 (D.C. Cir. 1981).....	9, 10

## STATUTES AND REGULATIONS

10 C.F.R. § 72.15(a)(1).....	11
10 C.F.R. § 72.3 .....	10
10 C.F.R. § 72.46 .....	2
10 C.F.R. Part 72.....	10
28 U.S.C. § 2344.....	6
42 U.S.C. § 10131 .....	12
42 U.S.C. § 10141 .....	24
42 U.S.C. § 10151(b).....	12
42 U.S.C. § 10153.....	24
42 U.S.C. § 10155.....	12

42 U.S.C. § 10155(a)(1).....	13
42 U.S.C. § 10155(b)(1)(B) .....	12, 16, 21
42 U.S.C. § 10155(h) .....	12, 13, 14, 18
42 U.S.C. § 10156(a) .....	13
42 U.S.C. § 10156(a)(1).....	16
42 U.S.C. § 2014(e), (z) and (aa).....	10
42 U.S.C. § 2021a(a).....	11
42 U.S.C. § 2201(b) .....	10
42 U.S.C. §§ 10161-69 .....	12
42 U.S.C. §§ 2231, 2239 .....	2
43 Fed. Reg. 46,309 (1978) .....	11

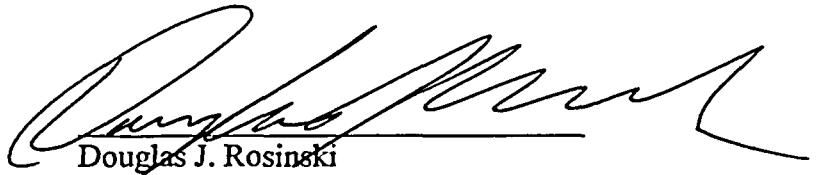
#### OTHER AUTHORITIES

45 Fed. Reg. 74,701 (1980) .....	11
51 Fed. Reg. 19,106 (1986) .....	17
53 Fed. Reg. 31,651 (1988) .....	17
67 Fed. Reg. 18,253 (2002) .....	4
97 Cong. Rec. 28,033 (1982).....	13, 19
Amendment No. 9 to License SNM-2500, dated June 16, 1995 (Docket No. 72-1).....	17
H.R. Rep. No. 97-491 (1982).....	13
<i>In the Matter of Private Fuel Storage, L.L.C.</i> , NRC Docket No. 72-22-ISFSI.....	2
<i>Radioactive Waste Legislation: Hearings on H.R. 1993, H.R. 2800, H.R. 2840, H.R. 2881, and H.R. 3809 Before the Subcomm. On Energy and the Environment of the House Comm. On Interior and Insular Affairs, 97<sup>th</sup> Cong. 326 (1981).....</i>	24
S. Rep. No. 97-282 (1981).....	23, 24
West Valley Demonstration Project Act, Pub. L. 96-368 § 2(b)(4)(A) .....	17

Monte Stewart, Esq.  
Special Assistant Attorney General  
Mark L. Shurtleff, Esq.  
Utah Attorney General  
5110 State Office Building  
Salt Lake City, UT 84114-2477

Maureen E. Rudolph, Attorney  
Environment & Natural Resources Division  
U.S. Department of Justice  
P.O. Box 4390  
Ben Franklin Station  
Washington, DC 20044-4390

Larry EchoHawk, Esq.  
EchoHawk PLLC  
P.O. Box 6119  
Pocatello, ID 83205-6119



Douglas J. Rosinski