



**THE COALITION OPPOSED TO**  
**HIGH LEVEL NUCLEAR WASTE**

**WHITE PAPER**  
Regarding  
**OPPOSITION TO THE**  
**HIGH-LEVEL NUCLEAR WASTE STORAGE**  
**FACILITY**  
Proposed By  
**PRIVATE FUEL STORAGE**  
On The  
**SKULL VALLEY BAND OF GOSHUTE INDIAN**  
**RESERVATION**  
**SKULL VALLEY, UTAH**

November 28, 2000

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**NO !  
THE COALITION OPPOSED TO HIGH-LEVEL NUCLEAR WASTE\***

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**EXECUTIVE SUMMARY**

There are no nuclear power plants in Utah. Despite that, Utah is targeted to be the site of the largest facility ever licensed for storage of spent nuclear fuel rods (high-level nuclear waste) from nuclear power plants. This proposed site would store up to 40,000 metric tons of spent nuclear fuel. The storage of this amount of waste in one location is equivalent to all the commercial spent nuclear fuel rods in the United States.

The Federal government has responsibility for permanently storing this high-level nuclear waste, but after 18 years, it has missed the deadline. The deep geologic storage facility is still not licensed or constructed. Currently, high-level nuclear waste is stored at power plants in states and communities which have benefited from utility jobs and taxes. Now Private Fuel Storage, LLC (PFS), a limited liability company formed by 8 out-of-state utilities with nuclear power plants in the East, South, Mid-West, and California, wants to ship their nuclear waste to Utah and store it above-ground on cement pads at the Skull Valley Band of Goshutes Reservation in Tooele County, 45 miles southwest of Salt Lake City. When PFS ships the high-level nuclear waste, it shifts the risk, from the communities that realized the benefits, to Utahns who once again, not of their own choice, find themselves downwind, showered with promises of nuclear safety.

The risks are numerous and significant:

1. Unnecessary handling and transportation of spent fuel increases the risk of accidents. Communities on the transportation route are not prepared for those accidents.
2. Storage of spent nuclear fuel (SNF) on the Goshute Reservation will not be "temporary." It will be permanent. There is no guarantee that SNF will be removed from Utah. The Federal

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\* Compiled and edited by Dianne R. Nielson, Ph.D.

government has a legal obligation to the utilities to permanently store SNF. Federal law provides no such guarantees for the Skull Valley Band or the State of Utah.

3. Transportation and storage casks will fail.
4. Utahns are at risk from radiation leaks due to damage from natural hazards and terrorism. The rail spur and storage facility increase the risk of wildfires and jeopardize the security of the site and the safety of residents.
5. The PFS facility is at risk from aircraft and Cruise Missile crashes, and restricting the use of the Utah Test and Training Range will compromise Hill Air Force Base operations.
6. Radioactive contamination from an accident on-site or en route would contaminate water and air resources and threaten public health. PFS does not have the necessary financial assets to address the losses.
7. Transportation and storage of high-level nuclear waste in Utah will reduce property values along the Wasatch Front.

As this White Paper explains, there are significant risks to Utah and its citizens from the transportation and "temporary" storage of high-level nuclear waste. Because the licensing of a nuclear waste repository is a matter of Federal law, and because PFS proposes to build the storage facility on the Skull Valley Band of Goshutes Reservation, Utah's power to swiftly stop this project may be limited. Successful opposition to the spent nuclear fuel storage facility will require State legislation, vigorous litigation, Congressional initiatives, and broad and determined public participation in support of the stand that high-level nuclear waste will not be stored in Utah.

## **THE PROJECT**

*Utah is destined to become the nuclear waste capital of the United States.*

A consortium of 8 out-of-state nuclear utilities intend to build a high-level nuclear waste storage facility for 40,000 metric tons of uranium (MTU) in spent nuclear fuel (SNF) in Utah, 45 miles southwest of Salt Lake City, on the tribal reservation of a small band of Native Americans -- the Skull Valley Goshutes. The U.S. Nuclear Regulatory Commission (NRC) is reviewing the license application. Utah's political leaders are unanimously and adamantly opposed to storing this deadly waste in Utah. The purpose of this paper is to explore the facts and risks giving rise to their opposition.

Private Fuel Storage, LLC (PFS), a limited liability company,<sup>1</sup> would transport SNF from nuclear power plants in eastern, southern, mid-western, and west coast states to Utah, storing it just west of 80 percent of Utah's population (Figure 1). The "temporary" storage of 40,000 MTU of SNF in one location is as much nuclear waste as is presently being stored at all U.S. locations combined.

Utah long ago made the decision to say "No" to nuclear power. There are no commercial nuclear power plants in Utah. Now, we are destined to be the nuclear dump for states which chose the nuclear path. PFS plans to store up to 4,000 concrete casks above-ground on uncovered concrete pads. By comparison, today there are only approximately 184 commercial dry storage vaults or casks of SNF in the entire United States. The 15 existing dry cask storage facilities hold between 0 and 49 dry storage casks or vaults, approximately 1/80<sup>th</sup> of the number of casks proposed for the Skull Valley site.

***The proposed nuclear waste site is ringed by defense testing, chemical weapons storage and destruction, the largest population center in the Basin and Range Province, and a Wilderness area, all of which would be jeopardized by high-level nuclear waste storage.***

The PFS facility would be located on 820 acres in the northwest corner of the Skull Valley Band of Goshutes Reservation. The site is adjacent to several active military installations and commercial waste disposal facilities. Skull Valley is bounded on the south by the U.S. Army's Dugway Proving Grounds and on the west by the Utah Test and Training Range, South (Deseret Test Center and Wendover Range). Tooele County's Hazardous Waste Industries Zone, which includes one operational hazardous waste incinerator, a hazardous waste land disposal cell, and low level radioactive and mixed waste land disposal cells, is located to the northwest. Twenty miles to the east in Tooele Valley, 43 percent of the nation's stockpile of chemical weapons are stored pending incineration at the adjacent Deseret Chemical Depot.

***More than 80 percent of Utahns will live, work, and travel along the high-level nuclear waste transportation routes.***

For Utahns, the transportation risk will be twice as great because of the proposed Skull Valley facility. High-level nuclear waste will be shipped through Utah twice, once when it is shipped to the Skull Valley facility, and again if and when SNF is shipped to a permanent repository.

Figure 2 illustrates the high-level nuclear waste transportation routes. What the map does not depict are the people, homes, businesses, rivers and streams, wetlands, or stockpiles of chemical and conventional weapons along the routes, all at risk if an accident with high-level nuclear waste releases radioactivity.

## **THE WASTE**

***This high-level nuclear waste is not only a high risk for nuclear accidents, but is deadly if released.***

Simply put, Spent Nuclear Fuel<sup>2</sup> (SNF) is some of the most radioactive, toxic waste on the planet, and it will remain lethal for more than 10,000 years. SNF is the waste product from generating electricity in a nuclear reactor at commercial nuclear power plants.

As of August 1, 1999, the United States had 104 commercial nuclear reactors located in 31 states.<sup>3</sup> The bulk of SNF is generated east of Utah, where 92 percent of the nuclear power plants

are located. Fuel rods are ceramic pellets of uranium dioxide covered with a zirconium alloy called cladding. Fuel rods are generally 12 feet long and less than one inch in diameter. They are put together in assemblies of 50 to 300 rods. When the fuel rods' capacity to generate energy declines or becomes inefficient, the fuel rods are replaced. Generally, one-third of the fuel rods are replaced every three years.

SNF continues to generate significant heat and deadly amounts of radioactivity even after it is removed from the reactor. Beta and gamma radiation from cesium and strontium present the greatest danger. Beta radiation from nuclides such as tritium and strontium 90 can penetrate the skin, but cause the most serious damage if they are inhaled or ingested. Gamma radiation can penetrate the body and damage critical organs. When SNF is moved, it must be heavily shielded and handled remotely.

***The proposed mega-storage facility duplicates existing storage, results in multiple unnecessary and dangerous transfers of high-level nuclear waste, violates Congressional intent to store spent nuclear fuel on-site until permanent storage is available, and reduces pressure on the U.S. Department of Energy to provide permanent storage as required by law.***

Today, there are 15 dry cask storage facilities, 13 utility-owned and 2 U.S. Department of Energy (DOE) sites, in the United States, storing a total of approximately 184 SNF casks (or vaults). By comparison, PFS plans to store up to 4,000 storage casks, almost 22 times as many casks, at the Skull Valley site. Fourteen of the existing dry cask storage facilities are located at or within 3/4 of a mile of the power plant. The other, a DOE facility in Idaho, is storing high-level nuclear waste from Three Mile Island. If SNF can be stored in Utah, it can just as safely be stored where it is now, at existing nuclear power plants.

There is no need for away-from-reactor storage of SNF. This fact is further substantiated in a U.S. General Accounting Office report.<sup>4</sup> If the utility plans to continue operations or renew an operating license and the reactor is running out of storage space, or if the utility plans to shut down and decommission a reactor, on-site storage should be used pending permanent storage. Congress intended power companies to remain fully liable for their storage of SNF rods at the reactor.<sup>5</sup> The NRC has no authority to license a central, away-from-reactor storage facility.

## **THE LEASE**

***The purported PFS-Tribal Lease has not been approved by the Tribal General Council.***

The lease agreement allegedly allows PFS to build and operate a high-level nuclear waste storage facility on the Reservation. It was authorized by 3 members who claim to be tribal officers authorized to act on the behalf of the Band. However, many tribal members question their authority to serve in that capacity. The lease agreement states on its face that the General Council authorized entering into the lease.<sup>6</sup> However, most members of the General Council have never seen the terms of the lease, and the General Council never approved any resolution authorizing entry into such a lease.<sup>7</sup> A complete, non-redacted copy of the lease has never been available to most General Council members. The terms of the lease and the amount of money or

other benefits paid to the Band or members of the Band are not known to the General Council or most members of the Band.

***The Bureau of Indian Affairs (BIA) has failed to respond to fundamental questions of environmental justice, alleged civil rights violations, and serious challenges to the BIA's own fiduciary responsibility.***

Despite the above-mentioned concerns and in violation of Federal laws governing BIA and U.S. Department of the Interior trust responsibilities to Goshute tribal members, the BIA approved the purported lease agreement on May 23, 1997, just 3 days after the three members of the Band signed it. Members of the Skull Valley Band and the Confederated Tribes of Goshutes have filed administrative and judicial complaints and appeals, documenting numerous problems with the lease, the authority of its signatories, and BIA's failure to follow its laws and regulations.<sup>8</sup> The State of Utah does not recognize the lease and supports members of the Skull Valley Band and the Confederated Tribes of Goshutes opposing the storage facility in their claims and appeals.

## **THE PARTIES**

### ***Private Fuel Storage, LLC***

PFS is structured as a limited liability company with no assets of its own. This effectively shields the vast assets of its 8 member utilities:

Consolidated Edison Company of New York<sup>9</sup>  
GPU Nuclear, New Jersey<sup>10</sup>  
Genoa FuelTech, Wisconsin<sup>11</sup>  
Florida Power and Light<sup>12</sup>  
Indiana-Michigan Power (American Electric Power), Michigan<sup>13</sup>  
Northern States Power Company, Minnesota, now Xcel Energy<sup>14</sup>  
Southern California Edison Company<sup>15</sup>  
Southern Nuclear Operating Company, Alabama<sup>16</sup>

### ***Skull Valley Band of Goshute Indians***

Members of the Band are strongly divided on the storage of high-level nuclear waste on their Reservation, and have challenged the lease agreement and the authority of its signatories.<sup>17</sup> The proposal violates the beliefs and culture of many Tribal members.

The Skull Valley Band of Goshutes is a sovereign, Federally-recognized Indian Tribe with approximately 130 members; 70 are adult voting members. Of the approximately 25 members living on the Skull Valley Reservation, 15 have filed a complaint opposing the PFS storage facility.<sup>18</sup> An affidavit has been filed with the BIA, indicating that members of the Band who support the purported Lease have received financial benefits, while members of the Band who opposed the facility receive no benefits or financial payments.

### ***Confederated Tribes of the Goshute Reservation***

The Confederated Tribes of the Goshute Reservation are a party to the NRC licensing hearings and have filed complaints and appeals, opposing the proposed PFS facility and recognizing the failure of the BIA to follow its laws and regulations. Their Reservation is located on the Utah-Nevada border, 65 miles west of the Skull Valley Reservation. There are approximately 450 members, about half of whom live on the Reservation.<sup>19</sup> The Confederated Tribe have historical and current relationships with the lands and people of the Skull Valley Band of Goshute Indians, having until recently been the same group of people.<sup>20</sup> They have opposed the lease and PFS facility through resolution, as an admitted party in the NRC licensing proceedings, and in administrative and judicial appeals.

### ***Ongho Gaudadeh Devia***

Ongho Gaudadeh Devia (OGD) also speaks for some members of the Skull Valley Band opposed to the PFS facility, as an admitted party before the NRC and in other gatherings. OGD supports traditional tribal values and economic development consistent with those values.

### ***Tooele County***

On May 23, 2000, Tooele County Commissioner signed an agreement with PFS to provide law enforcement services and other services, including support and promotion of the PFS' facility. Although Tooele County has no official approval role in the NRC licensing process, the County's agreement to provide law enforcement services is essential in order for PFS to be licensed and operate the facility. In return, Tooele County could receive upwards of \$92 million over a 40-year period. Tooele County's payments are in part dependent on the volume of HLNW stored at the PFS facility.

### ***State of Utah***

The Governor and the Legislature unequivocally oppose storing high-level nuclear waste in Utah. Governor Mike Leavitt announced his opposition to the pending proposal April 14, 1997, and signed an Executive Order opposing the PFS facility the following day. Governor Leavitt previously opposed efforts to store high-level nuclear waste in Utah in 1993, when a spent nuclear fuel storage facility was proposed in San Juan County, as well as subsequent proposals in Box Elder County and on the Skull Valley Reservation.

In addition to filing numerous contentions regarding significant deficiencies in the license application, the State continues to evaluate the modified application, license, and supporting technical data as they are revised, and participates in the administrative hearings before the U.S. Nuclear Regulatory Commission's Atomic Safety and Licensing Board (ASLB). The State has also filed administrative and judicial challenges regarding the PFS-Skull Valley Lease. Utah supports members of the Skull Valley Band of Goshutes opposing the storage of HLNW on their Reservation.

The 1998 Utah Legislature enacted a statute imposing State siting and permitting requirements on high-level nuclear waste transfer, storage, and disposal facilities. The 1998 Legislature also

overwhelmingly passed a nuclear waste storage opposition resolution and transferred jurisdiction of the only road leading to the Skull Valley Reservation, from Tooele County to the State of Utah. The State also has jurisdiction over other dirt roads in Skull Valley. Construction of a rail spur across these roads requires State approval.

In 1999, the Utah Legislature revoked limited liability for any entity that arranges for or engages in the transportation, transfer, or storage of high-level nuclear waste in Utah.

The State may also limit the transfer of water rights. If the Tribe must acquire alternate water sources, change orders would require approval by the State Engineer. There has been no attempt by the Tribe to quantify water rights for the proposed facility, as required by Federal law.

### ***Castle Rock Land and Livestock/Skull Valley Company***

This group of private ranchers in Skull Valley was originally granted standing by the NRC. It later signed an agreement with PFS and withdrew from the proceedings.

### ***Southern Utah Wilderness Alliance (SUWA)***

SUWA, an admitted party to the NRC proceedings, seeks to protect the Cedar Mountain Wilderness Study Area, which is adjacent to the proposed Skull Valley rail spur.

## **THE RISKS**

### ***1. Unnecessary handling and transportation of spent fuel increases the risk of accidents.***

The probability of an accident increases the more frequently SNF is handled or the farther it is transported. DOE is responsible for shipping SNF from power plants to a permanent repository. If SNF is first shipped to Skull Valley and then to a permanent repository, the additional transportation needlessly increases radiation exposure and the risk of an accident. There is no need to incur the additional risk by moving SNF twice.

If a shipment contains a damaged, contaminated, or leaking cask or canister, PFS plans to refuse the shipment and send the damaged, contaminated, or leaking canister or cask back to the utility which owns it. If the shipment is refused, it may also sit unprotected, outside the PFS site boundary until it is shipped. A damaged or leaking shipment would pose even greater risk to workers responsible for the shipment as well as the public, as it travels through populated areas.

Normally, SNF in a damaged or leaking canister can be transferred to a new canister. However, PFS is licensing a "start clean, stay clean" storage facility, which means that it will have none of the substantial equipment or facilities for repairing or repackaging a shipment of contaminated or leaking SNF.

***Communities on the transportation route are not prepared for those accidents.***

Shipping routes will expose more than 80 percent of Utah's population to high-level nuclear waste and the risks of accidents. Unlike Federal shipments, private shippers of SNF are not required to fund assessment of emergency response needs, local emergency response training, equipment for radioactive incidents, or additional training for medical personnel. Private shipments do not require dedicated service, where only SNF is allowed to be carried on a train. Although PFS has indicated it plans to ship SNF by dedicated service, there are no NRC or U.S. Department of Transportation regulatory requirements. If SNF is not shipped by dedicated service, spent fuel casks may be delayed in various rail yards across the country (including Ogden, Provo, and Salt Lake) awaiting a connection to Rowley Junction.

The State estimates that a "maximum reasonably foreseeable" transportation accident in Salt Lake City, as described by the DOE, would result in 114 latent cancer fatalities and cost up to \$313 billion to clean up.

***2. Storage of SNF on the Goshute Reservation will not be "temporary." It will be permanent. There is no guarantee that SNF will be removed from Utah.***

DOE's proposed permanent underground repository at Yucca Mountain, Nevada, is still undergoing extensive testing to determine whether the site is suitable for geologic disposal of high-level nuclear waste. If a repository at Yucca Mountain is not licensed, there is no other permanent disposal site for SNF from Skull Valley. SNF would not be moved, because there would be nowhere for it to go.

Even if Yucca Mountain is licensed, there is still no guarantee if or when all the SNF stored at Skull Valley will be removed. It has been assumed that the oldest SNF will be shipped to Yucca Mountain first. However, each utility decides which SNF to ship and when. Thus, the utility could decide to ship SNF from its power plant first, leaving older SNF in storage in Skull Valley. PFS and Tooele County make more money the longer the SNF is stored on the Reservation. There is no incentive and no requirement to move the high-level nuclear waste from Utah.

Furthermore, Federal law limits Yucca Mountain's capacity for commercial SNF at 63,000 MTU.<sup>21</sup> Based on existing nuclear power plant licenses, DOE projects that by 2046, a total of 105,000 MTU of SNF will have been generated and will need a final storage or disposal location.<sup>22</sup> If 63,000 MTU go to Yucca Mountain for disposal, there will still be over 40,000 MTU of SNF without a permanent, designated storage facility. That amount of SNF is equivalent to the storage capacity at the "temporary" PFS facility.

If there is no permanent repository for HLNW at the end of the 40 years (two 20-year license terms), PFS proposes to ship the SNF back across the country to the utility owner. However, there may be nowhere to ship it. A nuclear power plant, operating under a Part 50 license, may be decommissioned (permanent shut down, reactors removed, and use of power plant lands for other activities), if the spent fuel is stored at an away-from-reactor site. In that case, it would be impossible to return the SNF to the utility's power plant when the PFS license expires.

***The Federal government has a legal obligation to the utilities to permanently store SNF. Federal law provides no such guarantees for the Skull Valley Band or the State of Utah.***

There is no requirement that the Federal government remove SNF, once it is stored in Utah. DOE is required to take possession and ownership of SNF under the Nuclear Waste Policy Act.<sup>23</sup> The waste was to be transported by DOE to a permanent deep geologic repository, which was to have been sited by DOE and licensed by the NRC.<sup>24</sup> DOE failed to meet the January 31, 1998, deadline; there is no permanent repository. The Federal Appeals Court (Federal Circuit) found that DOE was obligated to take title and possession of the SNF from the utilities, including PFS members.<sup>25</sup> In response to that decision, DOE is attempting to establish agreements with nuclear utilities, whereby DOE would either take ownership of SNF at the power plant storage site and operate the storage site for the utility, or pay the utility to continue storing its SNF, pending licensing and construction of a deep geologic repository. One such agreement is pending at this time. For the nuclear power companies, freedom from permanent responsibility for SNF and the ability to recoup their costs are guaranteed.

In siting a "temporary" away-from-reactor storage facility for SNF, the NRC relies on DOE's responsibility for permanent storage.<sup>26</sup> Again, the utilities that store SNF in Skull Valley are compensated. DOE pays the utilities for storage of SNF at the PFS facility, but the Federal government and the utilities have no obligation to the Skull Valley Band or the State of Utah to remove the high-level nuclear waste. In this shell game, Utah loses.

***3. Transportation and storage casks will fail.***

Some canisters and casks in use today have had numerous problems, such as hairline fractures during manufacturing, an explosion due to chemical reaction during loading, and weld failures.

PFS often refers to the results of cask testing (i.e., crashing a train into a cask, firing a missile at a cask). However, concrete storage casks have not been subject to these types of tests. Additionally, there are a variety of armor-piercing weapons and technologies today that were not available when the initial cask tests were conducted. Moreover, none of the transportation, transfer, and storage casks that PFS plans to use have been subject to full-scale tests of any kind. Contrary to nuclear industry supporters, the casks are not infallible.

Long-term, dry cask technology is unproven; it has only been in existence for approximately 14 years. Yet, PFS proposes to keep high-level nuclear waste in dry storage casks above-ground in Skull Valley for up to 40 years.

***4. Utahns are at risk of radiation leaks due to damage from natural hazards and terrorism.***

The site does not comply with NRC standards for seismic safety and acceptable geologic conditions. Despite the fact that the proposed site is in a seismically active area, PFS has requested an exemption from current NRC seismic regulations, and the NRC appears prepared to grant the exemption. If that happens, storage pads, the canister transfer building, safety equipment, and casks of SNF could be damaged during a major earthquake.

Earthquake, ground motion, soil stability concerns, surface rupturing, and other major geologic and seismic considerations are not adequately addressed in the PFS license application. The storage casks will be freestanding, not anchored, on uncovered concrete pads, as illustrated in Figures 3a and 3b. Thus, in the event of an earthquake, the storage casks could slide on the pads or tip over. The storage casks would need to be upright within 48 hours in order to avoid overheating. The cladding, another layer of radiation protection, will break down if the SNF is allowed to overheat. It is highly unlikely that PFS will be able to re-position as many as four thousand 175-ton casks in the required 48 hours. While the breakdown of cladding alone may not cause a release of radiation, such an accident would make the SNF unacceptable for shipment to a permanent repository. DOE would not accept and store damaged spent nuclear fuel rods.

Earthquakes and accidents affect more than the storage site. The problems extend to the rail spur and the Intermodal Transfer Facility (ITF) at Rowley Junction, as well as the Skull Valley Road and Interstate 80, with potentially more significant consequences. For example, closure of I-80 due to an accident involving high-level nuclear waste, even if ultimately it was determined that there was no radiation leak, could create serious public safety and interstate commerce problems.

***The rail spur and storage facility increase the risk of wildfires and jeopardize the security of the site and the safety of residents.***

Wildfire is a significant threat in the West. The PFS facility, including construction, operation, and transportation, will increase the potential for wildfires in Skull Valley. An increased risk of wildfires could compromise the secure operation of the storage facility. Currently, there is no rail line in Skull Valley, and no risk of train-caused wildfires. A Tooele County fire fighter testified during the Draft EIS comment period that Tooele County volunteer fire fighters will be reluctant to fight wildfire in Skull Valley after the PFS facility begins operations.<sup>27</sup> In addition, any increase in the risk of wildfires will have significant impacts to county, state, and federal (BLM and BIA) fire fighting resources. During the summer of 2000, fire fighting resources were stretched thin; people and the environment suffered.

***5. The PFS facility is at risk from aircraft and Cruise Missile crashes, and restricting the use of the Utah Test and Training Range operations will compromise Hill Air Force Base operations .***

The Utah Test and Training Range (UTTR) and Hill Air Force Base (AFB) are not only essential to the Air Force, but critical to Utah's economy. Hill AFB is the fourth largest employer in Utah. Currently, Hill AFB employs 21,077 people, including 11,628 civilians, 4,619 military personnel, 1,112 reservists and 3,718 contractors.<sup>28</sup> It is estimated that Hill AFB will provide an additional 2,700 to 3,000 jobs over the next three years.<sup>29</sup> In addition, 12,351 Utah jobs are attributable to the operation of Hill AFB. Moreover, Hill AFB contributes approximately \$2 billion annually to Utah's economy.<sup>30</sup>

In its 1999 National Defense Authorization Act, Congress recognized the potential for conflict between possible uses of Federal lands and the important goal of preserving the UTTR. The use of the UTTR and adjacent Military Operating Areas (MOA) are essential to military training and national security.

The proposed PFS facility is located approximately 8 miles northeast of the Dugway Proving Grounds and 18 miles east of the eastern boundary of UTTR South Range.<sup>31</sup> The PFS facility and portions of the proposed rail line would be located under the Sevier B MOA of the UTTR and less than 2 miles to the east of the UTTR restricted airspace.<sup>32</sup> The PFS facility and the proposed location of the transfer facility are under the flight path IR420 from Hill AFB to Dugway Proving Grounds, en route to the UTTR via Skull Valley. The PFS facility is also directly under the Mosher Recovery route used by pilots returning to Hill AFB.

The Sevier B MOA is authorized for air-to-air training, low altitude training, cruise missile testing, and major exercises.<sup>33</sup> The main use of the Skull Valley airspace and Sevier B MOA is to allow low and medium altitude entries of F-16s into the UTTR from Hill AFB. Annually, approximately 4,000 military aircraft fly over the proposed PFS facility location. The number of flights through Skull Valley will increase as the Air Force increases the number of F-16s stationed at Hill AFB. Hill AFB was also recently designated by the Air Force as one of ten expeditionary centers, which will deploy complete teams of personnel to hostile areas.

The NRC does not have the authority to implement restrictions on overflights. Nor does it have the authority to require the Air Force to implement such restrictions. If there is a risk of an accident, the NRC in accordance with its own regulations must deny the PFS' license application. If the NRC approves the location of a SNF storage facility within the MOA, it obligates Hill AFB to implement restrictions in order to avoid the resulting additional risk and liability. Storage of nuclear waste in the "driveway" to UTTR will impact range operations by compromising the usability of major portions of the range.<sup>34</sup>

Weapons tested on the UTTR are tested because of either the unproven performance of a weapon or the inexperience of the operators. In either event, tested weapons and trained operators may not perform as planned. Three cruise missiles have crashed since December 1997, including two outside the UTTR, under the MOA airspace.

The potential of aircraft crashes into the storage facility is significant. The majority of aircraft that fly over the proposed facility location are F-16 fighters from Hill AFB. On any flight, a F-16 aircraft emergency may require a pilot to discard all external stores such as fuel tanks and live and inert weapons. Both discarded live and inert weapons may potentially damage the storage casks or the HLNW transfer building.

In the proposed 40-year life of the PFS facility, the F-16 will be replaced with a new fighter such as the F-22. Once the F-16s are replaced, the probability of an aircraft crash will increase due to the higher accident rates of military aircraft in the initial years of use and training.

Any overflight restrictions will compromise use of the Sevier B MOA and a significant portion of the UTTR. The location of the proposed PFS facility compromises large footprint weapons testing at the UTTR.

Regardless of whether restrictions are supported by the NRC, the Air Force will likely restrict its current use of the Sevier B MOA if the PFS facility is constructed. In fact, PFS admits and promotes that the Air Force will likely restrict flights over the proposed facility. Flight space is currently voluntarily restricted over nuclear reactors. Both current and former Air Force pilots

agree that if there is any chance of a military aircraft or weapons crash into a nuclear facility, fighter wing commanders will not allow their pilots to fly over the facility.

Thus, at the high cost of a reduction in training effectiveness and military readiness, the Air Force would be forced to voluntarily compromise use of the Sevier B MOA. The reduction in effectiveness of the UTTR will impact the military value of Hill AFB, threatening Hill's standing in future base closure decisions.

***6. Radioactive contamination from an accident or terrorism on-site or en route would damage water and air resources and threaten public health. PFS does not have the necessary financial assets to address the losses.***

One nuclear fuel assembly from a Pressured Water Reactor (PWR), about ½ ton of fuel, contains as much long-lived radioactivity as 10 Hiroshima bombs. The National Commission on Radiation Protection and Measurements recently released a report entitled, *Radiation Protection Issues Related to Terrorism Activities that Result in the Dispersal of Radioactive Material*.<sup>35</sup> It showed that a blast of 1000 pounds of TNT will release enough radiation from 100 kg of nuclear fuel (about 1/5 of a PWR nuclear fuel assembly) to expose everyone within a 20-mile radius to a lethal dose of radioactivity.

PFS has failed to adequately evaluate the risks from terrorism and does not have the assets to repair the inevitable damage that would result from an accident or terrorism. Prior to license issuance, NRC will not require PFS to demonstrate that it will be able to obtain sufficient funds to build, operate, safeguard, and close the proposed facility. Instead, NRC will allow PFS to build the storage facility upon a showing that PFS has sufficient commitments, rather than actual funds in hand, to cover construction. In addition, NRC will allow PFS to operate if it has contract commitments, not funds, to cover costs of storing the volume of waste designated by PFS contracts. None of these commitments cover victims of accidents at Skull Valley.

Potential economic costs of a storage or transportation accident could be significant. The NRC has no on-site nuclear property or nuclear liability insurance requirements. NRC cannot look to PFS' liability under the lease agreement with the Skull Valley Band, because it is ordinarily limited to the amount of money available through commercially reasonable nuclear liability insurance, even if actual costs are much higher. Furthermore, the contractual lease arrangements between PFS and the Band are beyond NRC's control and may change over the life of the facility. In sum, there are no assurances that there will be financial resources available to address potential on- or off-Reservation impacts from an on-site incident.

It is unclear whether Federal law will allow recovery of damages for accidents that occur in transportation of SNF to or from this facility. But even if it does, nuclear utilities would be liable for less than a maximum of \$9.43 billion of accident costs. The Federal government and ultimately U.S. taxpayers would be responsible for the rest, and the rest could be significant. The Band would be financially destroyed, and victims would not be helped. The estimated economic costs for a transportation accident in a metropolitan area range from \$14 to \$313 billion.

***7. Transportation and storage of high-level nuclear waste in Utah will reduce property values along the Wasatch Front.***

Property prices are based on people's perception of value. Dan Jones and Associates conducted a poll, which began on September 14 and ended on September 19, 2000. The sample size included 402 completed interviews and was conducted along the Wasatch Front. At that time, 85 percent of the people polled were aware of the Skull Valley proposal, and 79 percent of them opposed it. The main reason for opposing it was because they believe the operation will be dangerous, unsafe, hazardous and risky. When asked about the transportation of waste by rail, 64 percent said it would have a negative impact on residents close to the railroad tracks, and 64 percent believed it would have an impact on property values. Eighty-five percent of all respondents said the proposal would have an impact on whether they purchased property within a mile of the tracks, and 74 percent of them said it would affect their decision to purchase even more than one mile away from the tracks. Sixty-three percent of all respondents said the transportation will cause a drop in property value and 20 percent believed the drop would be 21-30 percent. Seventy-five percent believed the project would have a negative impact on current homeowners near the railroad trying to sell their homes.<sup>36</sup>

## **LICENSING AND REGULATORY REQUIREMENTS**

### ***NRC Licensing Process***

Acceptance by the NRC of the incomplete and technically inadequate license application, which PFS submitted on June 25, 1997, marked the beginning of a rush to license.

PFS requested a site-specific license from the NRC to store (receive, transfer, package, and possess) HLNW at a for-profit, private, away-from-reactor facility under 10 CFR Part 72.<sup>37</sup> The NRC licensing process includes a safety review and an environmental review. A three-person administrative law judge panel, the Atomic Safety Licensing Board (ASLB), oversees the licensing proceeding.

Initially, six entities were admitted as parties. The Skull Valley Band of Goshutes was admitted as supporting the PFS proposal. Ongho Gaudadeh Devia (Skull Valley Band of Goshute members opposed to the PFS facility), Confederated Tribes of Goshute Reservation, Castle Rock Land and Livestock/Skull Valley Company, and the State of Utah were admitted in opposition to the PFS proposal in April 1998. In December 1998, Castle Rock Land and Livestock/Skull Valley Company withdrew from the proceeding after a deal with PFS. The Southern Utah Wilderness Alliance was later admitted as a party.

### ***Safety Review***

As a parallel process to its environmental review and the licensing proceeding, NRC reviews PFS' safety information in the Safety Analysis Report (SAR). All aspects of the SAR are under challenge, including seismic and subsurface evaluation, design of the facility and equipment, the potential for credible accidents, including aircraft or cruise missile crashes, methods for controlling and limiting radiation exposure, site-specific analysis of the storage cask, financial

assurance, decommissioning (closure), and site security. NRC issued a partial Safety Evaluation Report in January 2000 and the final Safety Evaluation Report September 29, 2000. NRC is not required to consider or respond to public comment on the report.

### ***Environmental Review***

The National Environmental Policy Act of 1969 (NEPA) requires that NRC evaluate the environmental impacts of the proposed storage facility, consistent with NEPA, and issue an Environmental Impact Statement (EIS). The EIS process includes a public review and comment period, and is the only process in which non-intervening parties may formally participate in the NRC decision-making process.

The NRC, in conjunction with the BLM, the BIA, and the STB, published a Draft Environmental Impact Statement (DEIS) in June 2000. The DEIS covers the application by PFS for a license from the NRC to construct and operate the nuclear storage facility, a request by PFS for a right-of-way on public lands from BLM to build and operate a rail spur to transport nuclear waste through Skull Valley or to build and operate a transfer facility. The BIA plans to use the EIS to evaluate the lease agreement between PFS and the Skull Valley Band of Goshutes, and the STB will use it to approve any rail alignment in Skull Valley.

In June 1998, NRC held the first of two EIS scoping hearings in Salt Lake City and Tooele to receive public statements on the scope of the proposed EIS. NRC issued an EIS scoping document in September 1998. Subsequent to the initial scoping hearing, PFS applied to the BLM for right-of-ways to build the rail spur on public land and to build the transfer facility on public land. In April 1999, NRC, BLM, and BIA held an additional EIS scoping hearing in Salt Lake City to receive public statements on the scope of the EIS with respect to the requested right-of-ways from the BLM.

In January 2000, the Great Salt Lake and Southern Railroad, LLC,<sup>38</sup> wholly owned by PFS, submitted an application to the U.S. Surface Transportation Board (STB) for approval of the rail alignment for the proposed rail spur in Skull Valley. The STB joined NRC, BLM, and BIA as a cooperating agency in the EIS. However, the public did not have an opportunity to provide additional scoping statements with respect to STB's role.

On June 23, 2000, NRC, in conjunction with BLM, BIA, and STB, issued a draft EIS. The federal agencies established a 90-day public comment period based on BLM's requirements. NRC staff refused the State's request to make copies of the draft EIS available to the general public. In addition, at least for the full 90 day comment period, the NRC document repository at the University of Utah Marriott Library for the PFS licensing proceeding also did not have a copy of the DEIS. The Federal agencies held hearings to receive oral statements on the DEIS in Salt Lake City and Granstville, on July 27 and 28, 2000, respectively. The hearing gave those wishing to make oral statements no more than 34 days to review the DEIS. Other than the original federal register notice, the hearings were not advertised by any of the federal agencies. Elected officials, local emergency response agencies, interested organizations and citizens, and the media received notice of the hearings by the State. In addition, attendees at the July 27 Salt Lake City hearing were physically removed by security for carrying oversized posters, not

allowed entrance into the main hearing room due to the small size of the room, limited to two minutes of comments, continually harassed by NRC to shorten comments, and continually told that those at the later part of the comment list would not have the opportunity to comment. Similar admonitions to limit comments continued at the Grantsville hearing. An additional public hearing was scheduled in Salt Lake City in August 2000. Numerous requests for additional time for review of the DEIS and additional hearings throughout Utah and along the transportation corridor through the U.S. were denied by the NRC. Instead, the public was told to send written comments or participate in ASLB Limited Appearance Hearings in mid-2001, despite the fact that the ASLB will not consider those public comments when making its decision.<sup>39</sup>

The NRC has indicated it expects to produce a Final EIS in the Spring of 2001. The ASLB has indicated it expects to make a decision on the license by November 2001.

### ***U.S. Bureau of Land Management***

PFS has applied for a right-of-way across BLM land for its proposed rail spur from the main line at Low to the storage site on the Reservation, and for the use of BLM land for an Intermodal Transfer Facility west of Rowley Junction. The BLM Pony Express Resource Management Plan (RMP) prohibits approval of these applications, which are not provided for in the current plan. Furthermore, the current BLM Pony Express RMP specifically requires that "public lands will not be made available for inappropriate uses such as storage or use of hazardous materials (munitions, fuel, chemicals, etc) and live artillery firing." BLM has proposed amending its RMP, is participating in the NEPA planning process and the DEIS, and has noticed the proposed plan amendment. It has indicated it will use the NRC's DEIS as the basis for its plan amendment decision.

The language in the 1999 National Defense Authorization Act<sup>40</sup> precludes the Secretary of the Interior from amending individual resource management plans covering "Utah National Defense lands" pending completion of a Department of Defense study evaluating the impact of any land use changes upon military training, testing, and operational readiness. Utah National Defense Lands are defined to include, *inter alia*, lands beneath Military Operating Areas (MOAs) that make up the UTTR.<sup>41</sup> The proposed right-of-way is located directly under the Sevier B MOA.

In a letter to U.S. Representative James V. Hansen, the Solicitor for the Department of the Interior indicated that the 1999 National Defense Authorization Act freezes not only any decision to change the RMP, but also any planning with respect to that decision.<sup>42</sup> Accordingly, the BLM cannot participate in this EIS process and cannot take any other actions to amend or plan to amend the RMP.

### ***State of Utah Regulations***

The Skull Valley Goshutes have no environmental regulations. The federal government in many cases also lacks regulations regarding PFS activities. Because of this void in environmental regulatory oversight, the State's interests are potentially directly affected. Therefore, State approvals must be obtained and State requirements must be met to protect State interests. The

NRC is primarily concerned with radiological pollution. Unless the State's jurisdiction is accepted as described below, there would be a void in regulation. This is particularly true for sources of pollution not regulated by the EPA, e.g., septic tanks and ground water contamination.

PFS has challenged the State's authority to enforce otherwise applicable state regulations because the proposed storage project will be located on the Reservation of the Skull Valley Band of Goshute Indians, and has asserted that State law has no application to activities in "Indian Country." This is a simplistic and misleading statement of the pertinent law, which recognizes State civil-regulatory authority in the case of some on-reservation activities, particularly where those activities have off-reservation effects.<sup>43</sup> Activities and resources requiring State environmental regulation and permits include:

discharge of pollutants into waters of the State, treatment works (including drain fields and lagoons), classification and protection of surface water in Skull Valley, storm water discharge during construction activities, construction permits for septic tank systems, construction permits for wastewater retention ponds, ground water permits, Section 404 permits and State certification, Underground Injection Control Class V permit, construction permit for a drinking water system and system operation requirements, water rights jurisdiction over the water within the State (to include water on or under the Skull Valley Goshute Reservation), well permits, certificate of appropriation of water, change of point of diversion, place or nature of use of water, air quality approval orders, fugitive dust, Title V permit, spill prevention for diesel fuel, stream alteration permit, permits and approvals under UCA §19-3-301 et seq., rail construction, State roads and excavations in State right-of-way, State Lands regulations, underground storage tanks, liquified petroleum gas, fire prevention, and other permits and approvals.

## CONCLUSION

In summary, there are significant risks to Utah and its citizens from the transportation and "temporary" storage of high-level nuclear waste.

Because the licensing of a nuclear waste repository is a matter of Federal law, and because PFS proposes to build the storage facility on the Skull Valley Band of Goshutes Reservation, Utah's power to swiftly stop this project may be limited. Successful opposition to the Skull Valley SNF storage facility will require State legislation, vigorous litigation, Congressional initiatives, and broad and determined public participation in support of the stand that high-level nuclear waste will not be stored in Utah.

## ACRONYM INDEX

AFB	Air Force Base (Hill)
ASLB	Atomic Safety Licensing Board of the U.S. Nuclear Regulatory Commission
BIA	U.S. Bureau of Indian Affairs
BLM	U.S. Bureau of Land Management
DEIS	Draft Environmental Impact Statement
DOE	U.S. Department of Energy
EIS	Environmental Impact Statement
F-16	Air Force Fighter Plane
GAO	U.S. General Accounting Office
Holtec	Holtec International Corporation (cask builder)
HLNW	High Level Nuclear Waste
ISFSI	Independent Spent Fuel Storage Installation
ITF	Inter-modal Transfer Facility
LLC	Limited Liability Company
MOA	Military Operating Area
MRS	Monitored Retrievable Storage
MTU	Metric Tons of Uranium
NEPA	National Environmental Policy Act
NRC	Nuclear Regulatory Commission
OGD	Ongho Gaudadeh Devia (Indian Group opposed to PFS)
PFS	Private Fuel Storage
PWR	Pressured Water Reactor
RMP	Resource Management Plan
RS2477	Revised Statute determining road ownership on federal lands Designation of specific roads subject to the statute
SAR	Safety Analysis Report
SER	Safety Evaluation Report
SNF	Spent Nuclear Fuel
STB	Surface Transportation Board (US)
SUWA	Southern Utah Wilderness Alliance
TNT	Trinitrotoluene, an explosive
UTTR	Utah Test and Training Range

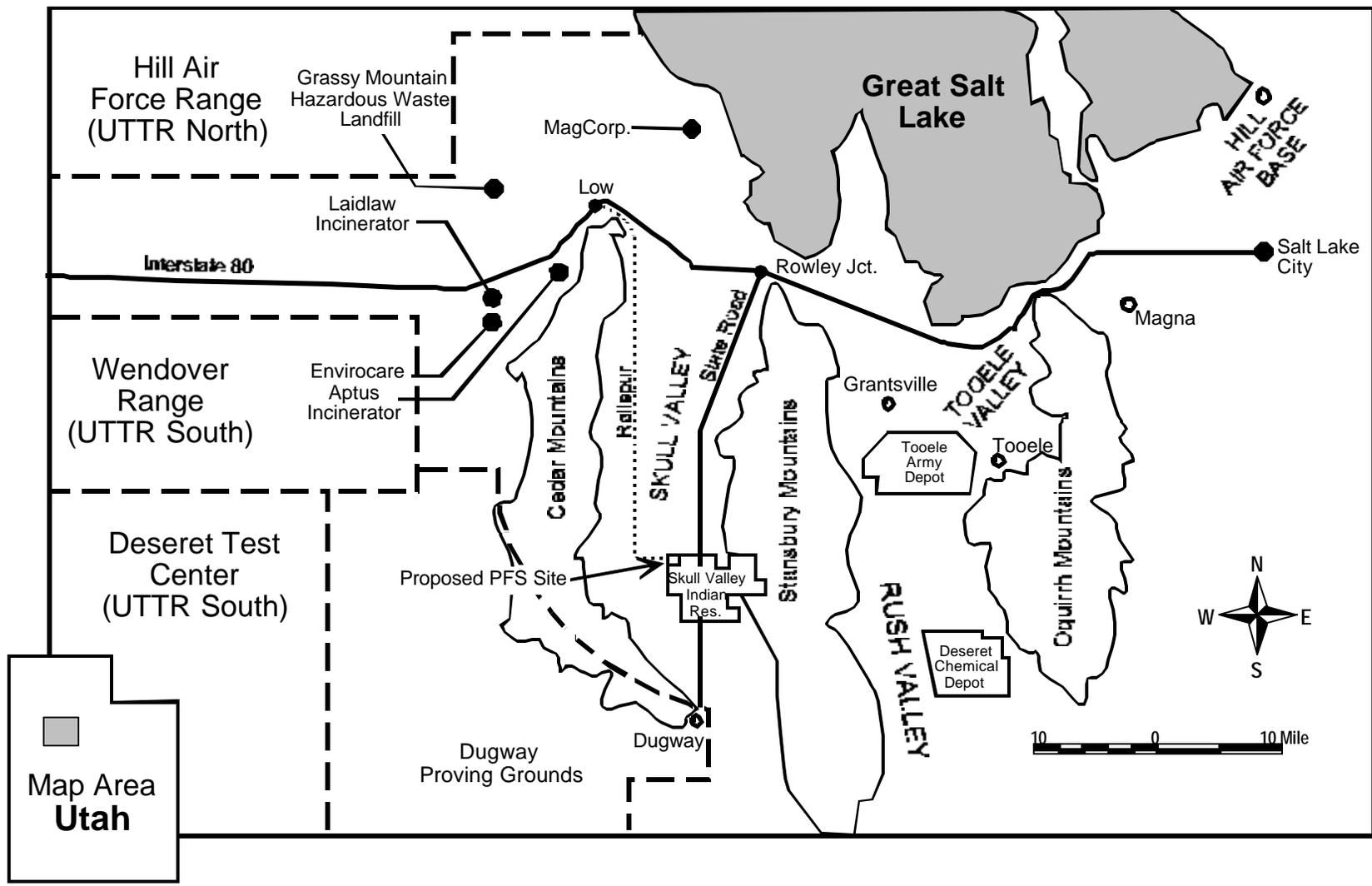
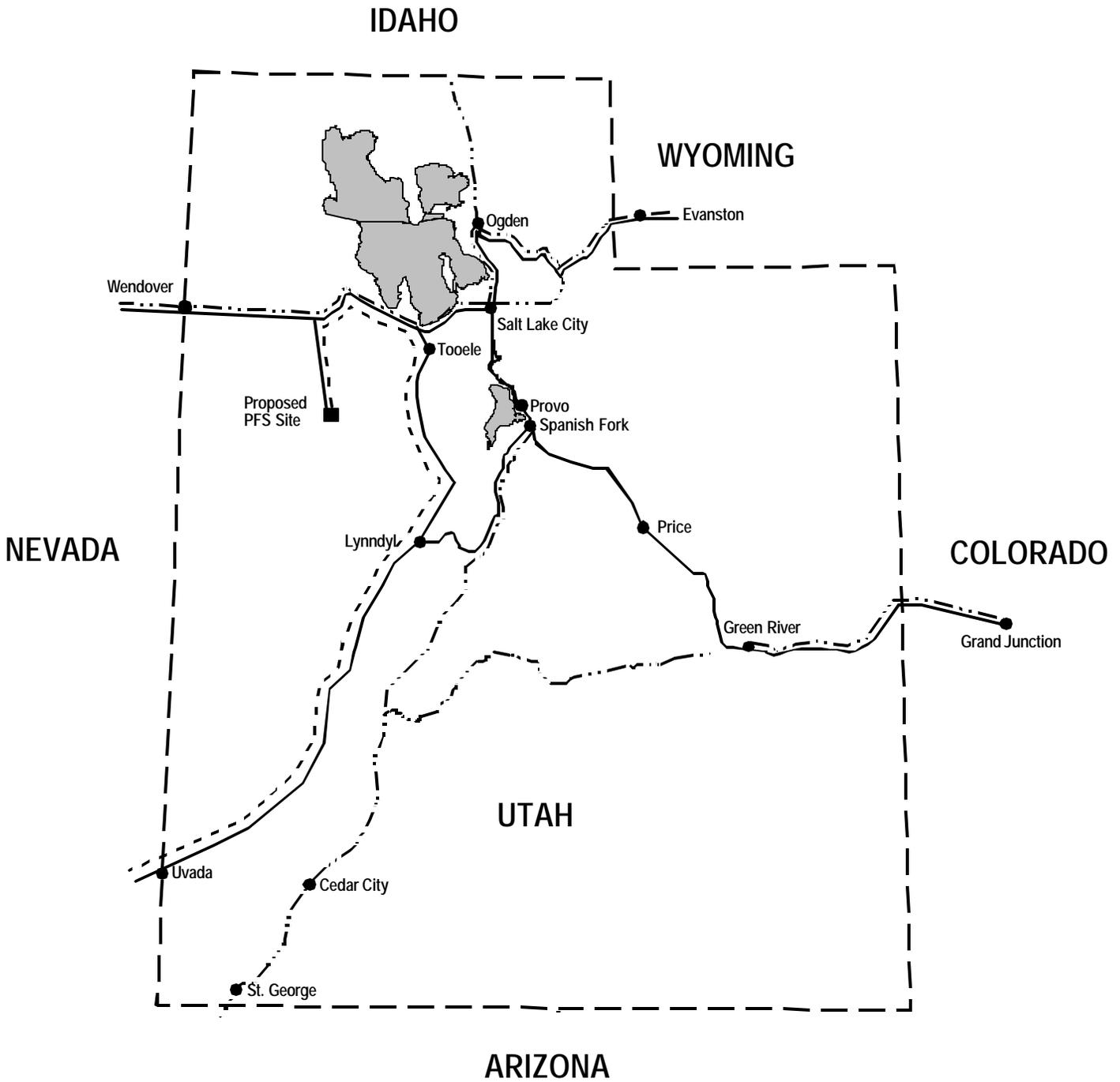


Figure 1. Location of the proposed PFS high-level nuclear waste storage facility. Modified from Draft EIS.<sup>44</sup>



- Rail Routes Bringing Nuclear Waste to PFS Site
- - - - Rail Routes between PFS Site and Proposed Permanent Storage at Yucca Mountain, Nevada
- · - · Interstate Highways

Figure 2. Rail routes in Utah for transportation of high-level nuclear waste. Based on Draft EIS.<sup>45</sup>



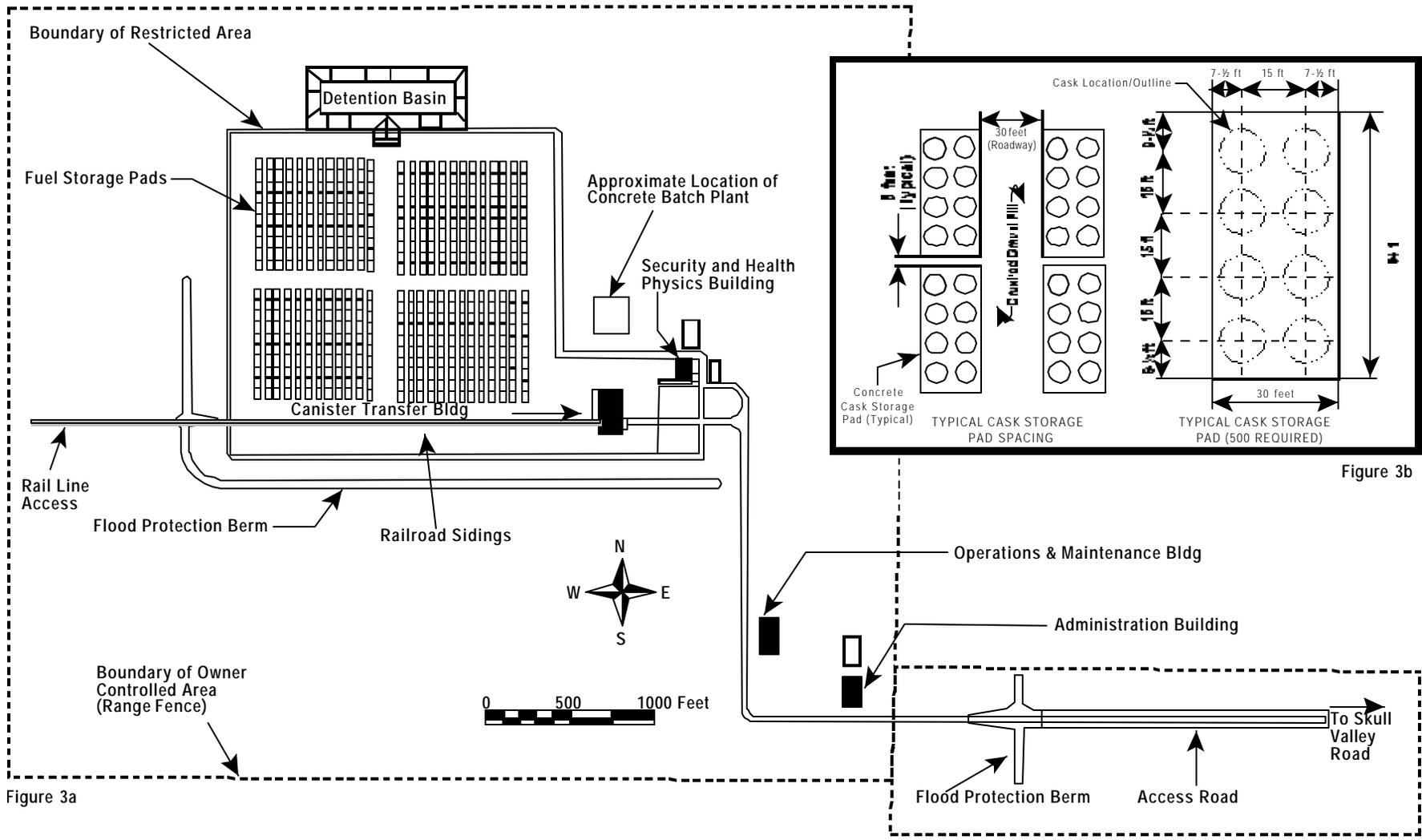


Figure 3a. Basic site plan and layout of structures and facilities at the proposed PFS facility. From Draft EIS.<sup>46</sup>  
 Figure 3b. Typical cask storage pad spacing. From Draft EIS.<sup>47</sup>

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Endnotes

<sup>1</sup> Except in the State of Utah, where PFS does not qualify for limited liability under State law, UCA §19-3-318 *et seq.*

<sup>2</sup> The terms Spent Nuclear Fuel (SNF) and High-Level Nuclear Waste (HLNW) are used synonymously in the paper.

<sup>3</sup> Maine, Vermont, New York, Pennsylvania, New Jersey, Massachusetts, Connecticut, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana, Texas, Arkansas, Tennessee, Ohio, Michigan, Illinois, Wisconsin, Minnesota, Iowa, Missouri, Kansas, Nebraska, Arizona, California, Oregon, and Washington.

<sup>4</sup> GAO/RCED-91-194, Nuclear Waste Operation of Monitored Retrievable Storage Facility is Unlikely by 1998, September 1991.

<sup>5</sup> Nuclear Waste Policy Act of 1982 (PL 97-425; 96 STAT 2201); amended 1987 (42 USC 10101 *et seq.*)

<sup>6</sup> Redacted copy of Amended and Restated Business Lease, dated May 20, 1997.

<sup>7</sup> Declaration of Sammy Blackbear, Sr., August 9, 1999, State of Utah and United States of America *Ex Rel.* Sammy Blackbear, Sr. *et al* (District of Utah, Consolidated Cases 2:98-CV-380K and 2:99-CV-156K).

<sup>8</sup> Complaint, United States of America *Ex Rel.* Sammy Blackbear, Sr. *et al*, March 10, 1999 (District of Utah 2:99-CV-0156).

Notice of Appeal of the decision of Superintendent Allison purportedly approving the Skull Valley-PFS Lease, filed by Duncan Steadman, Esq., on behalf of Sammy Blackbear, Sr., *et al*, September 22, 2000.

Letter to David L. Allison and Wayne Nordwall, U.S. Bureau of Indian Affairs, from John Paul Kennedy, Esq., *Re* Appeal of Blackbear *et al*. Regarding decision to approve PFS Lease Agreement at Skull Valley, September 29, 2000.

<sup>9</sup> Consolidated Edison (Con. Ed.) has two reactors in New York but is actively marketing the sale of Indian Point 1. Con. Ed. plans to merge with Northeastern Utilities. After the merger Con. Ed. will be the nation's largest electric distribution utility. The combined company will have revenues of about \$12 billion and total assets of about \$28 billion.

Mailing address: 4 Irving Place, 16th Floor, New York, NY 10003.

Web site: [www.coned.com](http://www.coned.com)

<sup>10</sup> After recently selling three reactors, GPU no longer owns any reactors. GPU Nuclear Inc. is a subsidiary of GPU Inc. which provides energy-related infrastructure and services internationally. Domestically, its three electric utility subsidiaries - doing business as GPU Energy - serve two million customers in Pennsylvania and New Jersey. Through the GPU International Group, GPU develops, owns and operates transmission and distribution facilities overseas.

Mailing address: One Upper Pond Road, Parsippany, NJ 07054-1095.

Web site: [www.gpu.com](http://www.gpu.com)

<sup>11</sup> Genoa FuelTech is a subsidiary of Dairyland Power Cooperative. The La Crosse reactor went into commercial operation in 1969 and voluntarily ceased operations in April 1987 for economic reasons. Genoa FuelTech has only 38.5 MTU of spent fuel.

Mailing address: Dairyland Power Cooperative, 3200 East Avenue South, La Crosse, WI 54602.

Web site: [www.dairynet.com](http://www.dairynet.com)

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<sup>12</sup> Florida Power and Light purchased Illinois Power's interest in PFS in approximately May 2000. FPL has a St. Lucie reactor in Fort Pierce, FL and 2 Turkey Point reactors in Miami, Florida.  
Mailing address: P.O. Box 025576, Miami, FL 33102  
Web site: [www.fpl.com](http://www.fpl.com)

<sup>13</sup> Indiana-Michigan Power is a subsidiary of American Electric Power (AEP) with two reactors in Michigan. Both reactors were shut down for years due to problems. AEP provides power to Ohio, Michigan, Indiana, Kentucky, West Virginia, Virginia, and Tennessee and operates a 1,900-mile natural gas pipeline and related facilities in Louisiana. In 1999, AEP had revenues of \$6.9 billion and net income of \$520 million. In 1997, AEP agreed to merge with Central and South West Corp., a public utility holding company based in Dallas, Texas, which has operations in Texas, Oklahoma, Arkansas and Louisiana.  
Mailing address: PO Box 60; OSS-26, Fort Wayne, IN 46801.  
Web site: [www.aep.com](http://www.aep.com)

<sup>14</sup> Northern States Power (NSP) recently merged with New Century Energy Inc. of Denver to form Xcel Energy Inc. Former NSP, CEO, James Howard will remain CEO of Xcel Energy for one year. NSP is the principle member of PFS. NSP provides electricity to about 1.5 million customers in portions of Minnesota, Wisconsin, North Dakota, Michigan and South Dakota. It distributes natural gas to about 500,000 customers in Minnesota, Wisconsin, North Dakota, Michigan and Arizona. Wholly-owned subsidiaries include NRG Energy, Inc., which operates and has ownership interests in non-regulated energy businesses around the world, with major projects in the United States, Germany and Australia. Other subsidiaries include Viking Gas Transmission Co., a natural gas transmission company; Energy Masters International, an energy service company; Seren Innovations, which is building communications networks to deliver telephone, cable TV and high-speed Internet and data services; and Eloigne Co., which has interests in affordable housing projects.  
Mailing address: 414 Nicollet Mall, Minneapolis, MN 55401.  
Web site: [www.nspco.com](http://www.nspco.com)

<sup>15</sup> Southern California Edison owns one shut down and two operating reactors in San Onofre, California.  
Mailing address: 2241 Walnut Grove, Rosemead, CA 91770.  
Web site: [www.sce.com](http://www.sce.com)

<sup>16</sup> Southern Nuclear Operating Company is a wholly-owned subsidiary of Southern Company. Southern Nuclear has 4 reactors in Georgia and 2 reactors in Alabama.  
Mailing address: 42 Inverness Center Parkway, Birmingham, AL 35242.  
Web site: [www.southernco.com/site/southernnuclear/home.asp](http://www.southernco.com/site/southernnuclear/home.asp)

<sup>17</sup> Complaint, United States of America *Ex Rel.* Sammy Blackbear, Sr. *et al*, March 10, 1999 (District of Utah 2:99-CV-0156).

Letter with enclosures, to Catherine L. Marco and Sherwin E. Turk, U.S. Nuclear Regulatory Commission, from John Paul Kennedy, Esq., *Re* Possibly false and misleading information regarding "host community," Docket No. 72-22-ISFSI, dated September 8, 1999.

<sup>18</sup> Complaint, United States of America *Ex Rel.* Sammy Blackbear, Sr. *et al*, March 10, 1999 (District of Utah 2:99-CV-0156).

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> 42 USC §100134(d).

<sup>22</sup> DEIS for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-level Radioactive Waste in Yucca Mountain, Nye County, Nevada, Vol. I – Impact Analyses, July 1999, at 1-23.

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<sup>23</sup> Nuclear Waste Policy Act of 1982 ( PL 97-425; 96 STAT 2201); amended 1987 (42 USC 10101 *et seq.*)

<sup>24</sup> A surcharge on nuclear power generation has been collected and managed by the Federal government for the purpose of licensure, construction, and operation of a permanent storage repository and transportation by DOE of HLNW to the permanent repository.

<sup>25</sup> *Indiana-Michigan Company, et. al. v. DOE* 88 F.3d 1272.

<sup>26</sup> 55 Fed. Reg. 38474, Sept. 18, 1990. Iterations of the Waste Confidence Decision are scattered in Federal Register notices, but the rule itself is in 10 C.F.R. §51.23.

<sup>27</sup> Testimony of State Senator Ron Allen, Tooele County, during the ASLB Special Appearance Session, June 2000. See the State of Utah Response, September 20, 2000, to the DEIS for the ISFSI on the Skull Valley Band of Goshutes Reservation, Sec. B.23 at 51-52, [www.deq.state.ut.us/HLW\\_opp.htm](http://www.deq.state.ut.us/HLW_opp.htm)

<sup>28</sup> Telephone conversation between Connie Nakahara and Robert Spendlove, State of Utah, Office of Budget and Planning, and Hill Air Force Base, Public Affairs Office, July 21, 2000.

<sup>29</sup> Economic Report to the Governor, State of Utah Governor's Office of Budget and Planning, January 2000 at 153.

<sup>30</sup> Telephone conversation between Connie Nakahara, Mart Bushnell, and Hill AFB Public Affairs Office, September 21, 2000.

<sup>31</sup> SAR, Rev. 13 at 2.2-8.

<sup>32</sup> *Ibid.*

<sup>33</sup> Memorandum for Air Force Representative, Annual Military Operating Area Usage Report for the Sevier B Military Operating Area, November 30, 1998.

<sup>34</sup> Utah Defense Alliance, October 5, 2000.

<sup>35</sup> Located at [www.ncrp.com/sc46-14.pdf](http://www.ncrp.com/sc46-14.pdf)

<sup>36</sup> C. Kyler, Utah Association of Realtors.

<sup>37</sup> It should be noted that the State of Utah is challenging NRC's authority to issue a license to store HLNW at a private, away-from-reactor facility. The question of NRC's licensing authority is part of the administrative process and can be litigated by the State following the NRC licensing process. For a more detailed discussion of the legal issues, see Comments Submitted by the State of Utah, September 20, 2000, on the DEIS for the ISFSI on the Skull Valley Band of Goshutes Reservation, Sec. B.1 at 8-11, Web site: [www.deq.state.ut.us/HLW\\_opp.htm](http://www.deq.state.ut.us/HLW_opp.htm)

<sup>38</sup> Under Utah law, the Great Salt Lake and Southern Railroad does not enjoy limited liability in the State of Utah. UCA §19-3-318 *et seq.*

<sup>39</sup> See ASLB statement governing Limited Appearance Hearings in the State of Utah Response, September 20, 2000, to the DEIS for the ISFSI on the Skull Valley Band of Goshutes Reservation, Sec. A.3 at 6-7, [www.deq.state.ut.us/HLW\\_opp.htm](http://www.deq.state.ut.us/HLW_opp.htm)

<sup>40</sup> 1999 National Defense Authorization Act, §2815.

<sup>41</sup> *Ibid.*

<sup>42</sup> Letter from John D. Leshy, DOI Solicitor, to Representative James V. Hansen.

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<sup>43</sup> See the State of Utah Response, September 20, 2000, to the DEIS for the ISFSI on the Skull Valley Band of Goshutes Reservation, Sec. B.19. at 34-49, [www.deq.state.ut.us/HLW\\_opp.htm](http://www.deq.state.ut.us/HLW_opp.htm)

<sup>44</sup> Draft Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, Utah, U.S. Nuclear Regulatory Commission Docket No. 72-22, June 2000, at 1-2.

<sup>45</sup> *Ibid*, at 2-18.

<sup>46</sup> *Ibid*, at 2-4.

<sup>47</sup> *Ibid*, at 2-7.