

May 18, 2000

FOIA REQUEST

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Related Case: _____

Ms. Carol Ann Reed
Freedom of Information Act and Privacy Act Officer
FOIA/Privacy Act Section
Mail Stop T-6 D8
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

FREEDOM OF INFORMATION ACT REQUEST

Pursuant 5 U.S.C. 552 and the Nuclear Regulatory Commission's (NRC's) implementing regulations at 10 C.F.R. Part 9, I would respectfully request the following NRC record:

Letter from Atlas Corporation (Docket No. 40-3453) to the Nuclear Regulatory Commission (probably to Mr. Joseph J. Holonich, Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards), dated April 1, 1998. This letter is referenced in "DEFENDENT U.S. FISH AND WILDLIFE SERVICE'S REPLY MEMORANDUM IN SUPPORT OF ITS CROSS MOTION FOR SUMMARY JUDGEMENT OR FOR AFFIRMANCE OF AGENCY ACTION", "IN THE UNITED STATES DISTRICT COURT DISTRICT OF UTAH, CENTRAL DIVISION", Civil No. 2:98CV 0803S, November 29, 1999, pages 5 and 6. (See enclosure.)

Thank you for your attention to this request.

Sarah M. Fields

Sarah M. Fields



Enclosure: As stated

11/29/99

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

GRAND CANYON TRUST, a non-profit corporation;
GRAND COUNTY, UTAH, a political subdivision of the
State of Utah; DAVE BODNER; KEN SLEIGHT;
COLORADO PLATEAU RIVER GUIDES, and
unincorporated association; 3-D RIVER VISIONS, a Utah
corporation; JOSEPH KNIGHTON; SIERRA CLUB, a
non-profit corporation,

Plaintiffs,

vs.

BRUCE BABBITT, in his official capacity as Secretary of
the Interior of the United States; UNITED STATES FISH
AND WILDLIFE SERVICE; and RALPH
MORGENWECK, in his official capacity as Regional
Director (Region 6), Denver, United States Fish and
Wildlife Service, and the U.S. NUCLEAR
REGULATORY COMMISSION,

Defendants.

Civil No. 2:98CV 0803S

**DEFENDANT U.S. FISH AND
WILDLIFE SERVICE'S
REPLY MEMORANDUM IN
SUPPORT OF ITS CROSS-
MOTION FOR SUMMARY
JUDGMENT OR FOR
AFFIRMANCE OF AGENCY
ACTION**

Enclosure to Mail 18 2000

the plaintiffs' argument is incorrect.⁴ The Administrative Record *does* provide evidence that a revised groundwater cleanup plan required by the RPA was indeed "feasible." The cleanup plan for the site originally proposed by Atlas included an extensive study of the groundwater cleanup situation and the presentation of various methods of groundwater cleanup, through methods such as hydraulic gradient control to extract groundwater for evaporation, use of a slurry wall to extract groundwater for evaporation, and a reverse osmosis technique for treating the groundwater. The study discussed in detail the feasibility of the various techniques and concluded that the three techniques were feasible methods of treating and improving the groundwater quality. See Atlas Corporation Ground Water Corrective Action Plan Uranium Mill and Tailings Disposal Area, July 1994, A.R. Vol. 2, No. 10, pp. 351, 356, 391-406.

Later, during the ESA consultation the Atlas Corporation presented a letter discussing a revision of the groundwater cleanup plan (or "CAP" for "corrective action plan"). The techniques that Atlas would evaluate include removal of the contaminated groundwater by

tailings dewatering by vertical band drains as well as horizontal and vertical walls to reduce drainage from the tailings pile to insignificant levels thus effectively removing the source of contaminants to groundwater. These dewatering

⁴ Here, the FWS did not attempt to create its own detailed groundwater cleanup plan and include it as part of the BO (which as it was ran to more than 100 pages). Rather, the FWS stated that the NRC should require the operator of the pile (then, the Atlas Corporation) to complete the revised groundwater cleanup plan. See FWS's Statement of Facts ¶¶ 17-18 (part of the FWS's Opening Memo.) The RPA includes a requirement that the pile be "dewatered" to slow the flow of contaminants from the pile to the Colorado River, to "cap" the pile to stop additional water from entering the pile, and, perhaps most significantly, that groundwater be cleaned up "in the shortest feasible period of time," so that the nearby Colorado River water meets water quality standards. See FWS's Statement of Facts ¶¶ 16-21. In fact, the NRC has since amended Atlas's license to require the completion of such a plan, and expects the plan to be presented in the year 2000. See FWS's Facts ¶ 34.

Techniques have been used successfully for many years to dewater tailings and other low permeability materials.

Letter also mentioned other techniques of cleaning up the groundwater. See Letter from Atlas Corp. to NRC, April 1, 1998, A.R. Vol. 10, No. 158, p. 3141. Finally, Atlas confirmed in a letter sent late in the consultation that it expected to complete the groundwater cleanup "to the extent necessary to meet relevant standards" set forth by the FWS and that it could do so within seven years from approval of the groundwater cleanup plan. The time frames "are professional estimates based upon available knowledge of the site, applicable regulations, best available technology and best professional judgment," Atlas stated. See Letter from Atlas Corp. to NRC, May 28, 1998, A.R. Vol. 12, No. 171, p. 3491. The plaintiffs cannot succeed by arguing science with the FWS; the FWS's decision to rely on certain scientific data is entitled to deference. See Village of Los Ranchos de Albuquerque v. Marsh, 956 F.2d 970, 972 (10th Cir. 1992).

Accordingly, despite the plaintiffs' exhortations, there was ample evidence in the record for the proposition that the RPA of a groundwater cleanup to specified water quality standards was a "feasible" approach for the FWS to take. The requirements of the ESA and APA were fully met.

III. Plaintiffs' Other Attacks to the RPA Similarly Fail

In addition to their "feasibility" and "reinitiation" arguments, the plaintiffs take a variety of shots at the FWS's BO, none of which hit their mark. One by one:

The plaintiffs argue incorrectly that there is no evidence that the RPA will avoid "jeopardy" to the fish, as required by the ESA. See Pls.' Opp. at 7. The RPA plainly requires that the groundwater be cleaned up so that the river water meets specified water quality