UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
GENERAL COUNSEL

June 7, 2000

The Honorable James M. Inhofe, Chairman
Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

RE: Grand Canyon Trust v. Babbitt, No. 2:98CV0803S (D. Utah, decided April 19, 2000)

Dear Chairman:

This lawsuit, brought by Utah environmental groups and individuals, claims that the Secretary of the Interior and the NRC have violated the Endangered Species Act in allowing first the Atlas Corporation, and now a bankruptcy trustee, to continue to store radioactive mill tailings near the Colorado River in Moab, Utah, and in considering a reclamation plan that will leave the mill tailings in place.

Working with Department of Justice attorneys, we moved to dismiss the suit against the NRC on the ground that under the Hobbs Act exclusive jurisdiction for judicial review of NRC licensing-related activities lies in the courts of appeals. The district court (Sam, J.) agreed with our view and granted our motion to dismiss. The court rejected plaintiffs' "attempt to evade" the Hobbs Act's exclusive jurisdiction provision by challenging "ongoing" NRC activities rather than "final" NRC orders as specified in the Act. Citing precedent, the court concluded that the courts of appeals have exclusive jurisdiction to review not only final NRC licensing orders but also NRC actions "ancillary" to licensing. Finally, the court ruled that the Endangered Species Act's own jurisdictional provisions, which call for district court lawsuits, do not override the Hobbs Act's express provision for court of appeals jurisdiction in NRC licensing matters.

The remainder of the lawsuit -- i.e., the claim against the Secretary of the Interior for an allegedly invalid "biological opinion" -- remains pending on summary judgment motions. Plaintiffs also continue to seek relief against the NRC in the United States Court of Appeals for the Ninth Circuit (where all briefs are in and the case awaits argument). In addition, plaintiffs are pursuing a hearing before the NRC's Atomic Safety and Licensing Board Panel.

Sincerely,

John F. Cordes, Jr.
Solicitor

Senator Bob Graham

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