



U.S. Department of Justice

Environment and Natural Resources Division

90-8-6-04262

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Washington, DC 20044-7369*

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November 14, 2000

Markus B. Zimmer  
Clerk of the Court  
U.S. District Court for the  
Central District of Utah  
150 U.S. Courthouse  
350 South Main Street  
Salt Lake City, UT 84101-2180

Re: Grand Canyon Trust v. Bruce Babbitt  
Civil No. 2:98CV-0803 S (D. UT.)

Dear Mr. Zimmer:

I enclose for filing the original and one copy of the following documents:

1. Notice of Substitution of Counsel;
2. Notice of Enactment of Legislation Concerning Moab Uranium Milling Site; and
3. Certificates of Service.

Please let me know if you have any question regarding the filing of these documents.

Sincerely,

*Charles R. Shockey*

Charles R. Shockey  
Assistant Chief  
(202) 305-0211

Enclosures

cc (w/ encls.): Counsel of Record

Template 06C002

ERJDS 06C01

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Attorneys for Defendants

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

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GRAND CANYON TRUST, et al.,

Plaintiffs,

v.

BRUCE BABBITT, et al.,

Defendants.

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Civil No. 2:98CV 0803S

**NOTICE OF SUBSTITUTION OF  
COUNSEL**

To the Court, the parties, and their attorneys of record: PLEASE TAKE NOTICE that Jane P. Davenport has assumed lead responsibility as attorney for Defendants in this case. Ms. Davenport replaces Mr. Paul Boudreaux, who has left the U.S. Department of Justice. Charles R. Shockey also enters his appearance as an attorney for the Defendants. Please ensure that copies of any documents filed in this case are served on Ms. Davenport at the following addresses:

U.S. Mail

Wildlife and Marine Resources Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Benjamin Franklin Station, P.O. Box 7369  
Washington, DC 20044-7369

Overnight delivery

Wildlife and Marine Resources Section  
Environment and Natural Resources Div.  
U.S. Department of Justice  
601 Pennsylvania Avenue NW, Suite 5000  
Washington, DC 20004

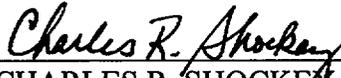
Her direct telephone number is (202) 305-0202. The facsimile number is (202) 305-0275.

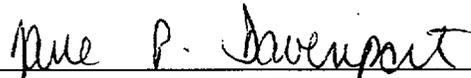
Respectfully submitted this 9<sup>th</sup> day of November, 2000.

PAUL M. WARNER, U.S. Attorney  
STEPHEN ROTH, Assistant U.S. Attorney  
District of Utah

LOIS J. SCHIFFER, Assistant Attorney General  
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JEAN E. WILLIAMS, Section Chief

  
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Attorneys for Defendants

OF COUNSEL:

GINA GUY

Regional Solicitor

U.S. Department of the Interior

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Department of Justice, and that a copy of the attached Notice of Substitution of Counsel was mailed, postage prepaid, on November 14, 2000, to the following persons:

Susan Daggett  
Robert Wiygul  
Marie Kirk  
Earthjustice Legal Defense Fund  
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U.S. Nuclear Regulatory Commission  
Mail Stop 015B18  
Washington, DC 20555

Gina Guy  
Department of the Interior  
Office of Regional Solicitor  
755 Parfet Street, Suite 151  
Lakewood, CO 80215

*Charles R. Shockey*

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Attorneys for Defendants

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

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GRAND CANYON TRUST, et al.,

Plaintiffs,

v.

BRUCE BABBITT, et al.,

Defendants.

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Civil No. 2:98CV 0803S

**NOTICE OF ENACTMENT OF  
LEGISLATION CONCERNING  
MOAB URANIUM MILLING SITE**

Defendants notify the court, the parties, and their attorneys that Congress has enacted and the President has signed legislation that affects the management and operations at the Moab, Utah, uranium milling site that is the subject of this litigation. A copy of the enrolled legislation is attached.

On September 11, 2000, the court convened a conference call with the parties that addressed the legislation then pending before Congress. At the defendants' suggestion, the court agreed to await legislative action by the end of the 106<sup>th</sup> Congress, which had been expected to conclude on or about October 6, 2000. Although Congress has not yet concluded the current legislative session, it did enact legislation signed on October 30, 2000, that will affect the Moab site. The relevant language of that legislation, H.R. 5408, the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, is contained in Title XXXIV of Public Law No. 106-398, 106<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2000).

The principal relevant provisions of Pub. L. 106-398, Title XXXIV, specify that the Nuclear Regulatory Commission's (NRC) licence for materials at the Moab site shall terminate within one year of enactment (by October 30, 2001), and responsibility and title for site management will be transferred to the Department of Energy (DOE). DOE shall prepare a plan for remediation, including ground water restoration, of the Moab site. DOE also shall arrange with the National Academy of Sciences

to obtain technical advice, assistance, and recommendations . . . in objectively evaluating the costs, benefits, and risks associated with various remediation alternatives, including removal or treatment of radioactive or other hazardous materials at the site, ground water restoration, and long-term management of residual contaminants.<sup>1/</sup>

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<sup>1/</sup> This quoted language appears in the attached Public Law on p. 507 at ¶ (i), titled "REMEDIAL ACTION AT MOAB SITE." The interwoven statutory citations of the

Subject to the availability of appropriations, DOE shall

conduct remediation of the Moab site in a safe and environmentally sound manner . . . including (A) groundwater restoration; and (B) the removal to a site in the State of Utah, for permanent disposition and any necessary stabilization, of residual radioactive material and other contaminated material from the floodplain of the Colorado River.<sup>2</sup>

The new congressional authorization for DOE to remediate the Moab site, including restoring the ground water and removing the tailings pile, presents a markedly different statutory framework surrounding the future of this litigation that deserves careful consideration.

Accordingly, defendants suggest that the court elicit a single supplemental brief from each party, not to exceed 10 pages, to present that party's views on (1) how the new legislation affects this litigation and (2) how the court should proceed in light of this legislation.

Defendants respectfully request that the court enter a minute order to invite supplemental briefing. Defendants propose that, if the court agrees with this approach, the supplemental briefs be filed on Tuesday, November 28. The court also may find it helpful to convene another telephone status conference or hearing in early December.

Respectfully submitted this 14<sup>th</sup> day of November, 2000.

PAUL M. WARNER, U.S. Attorney  
STEPHEN ROTH, Assistant U.S. Attorney  
District of Utah

LOIS J. SCHIFFER, Assistant Attorney General  
Environment and Natural Resources Division

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appropriations bill make it exceedingly difficult to refer with ease and accuracy to the exact sections and subsections of the various inter-connected statutes, so defendants respectfully refer the court and parties to page number 507 in the attached exhibit.

<sup>2</sup> This language appears at page 509 under paragraph (f)(3), titled "REMEDIATION."

JEAN E. WILLIAMS, Section Chief

*Charles R. Shockey*

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CHARLES R. SHOCKEY, Assistant Chief  
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Attorneys for Defendants

OF COUNSEL:

GINA GUY  
Regional Solicitor  
U.S. Department of the Interior

(d) *RELATIONSHIP TO OTHER DISPOSAL AUTHORITY.*—The disposal authority provided in subsection (a) is new disposal authority and is in addition to, and shall not affect, any other disposal authority provided by law regarding materials in the National Defense Stockpile.

### TITLE XXXIV—NAVAL PETROLEUM RESERVES

Sec. 3401. Minimum price of petroleum sold from certain naval petroleum reserves.  
 Sec. 3402. Repeal of authority to contract for cooperative or unit plans affecting naval petroleum reserve numbered 1.  
 Sec. 3403. Disposal of Oil Shale Reserve Numbered 2.

#### SEC. 3401. MINIMUM PRICE OF PETROLEUM SOLD FROM CERTAIN NAVAL PETROLEUM RESERVES.

Section 7430(b)(2) of title 10, United States Code, is amended—

- (1) in the matter before subparagraph (A), by striking "Naval Petroleum Reserves Numbered 1, 2, and 3" and inserting "Naval Petroleum Reserves Numbered 2 and 3"; and  
 (2) in subparagraph (A), by striking "90 percent of".

#### SEC. 3402. REPEAL OF AUTHORITY TO CONTRACT FOR COOPERATIVE OR UNIT PLANS AFFECTING NAVAL PETROLEUM RESERVE NUMBERED 1.

(a) *REPEAL.*—Section 7426 of title 10, United States Code, is repealed.

(b) *CONFORMING AND CLERICAL AMENDMENTS.*—(1) Section 7425 of such title is amended by striking "for—" and all that follows through "he may acquire" and inserting "for exchanges of land or agreements for conservation authorized by section 7424 of this title, the Secretary may acquire".

(2) Section 7428 of such title is amended by striking ", except a plan authorized by section 7426 of this title,".

(3) The table of sections at the beginning of chapter 641 of such title is amended by striking the item relating to section 7426.

(c) *SAVINGS PROVISION.*—The repeal of section 7426 of title 10, United States Code, shall not affect the validity of contracts that are in effect under such section on the day before the date of the enactment of this Act. No such contract may be extended or renewed on or after the date of the enactment of this Act.

#### SEC. 3403. DISPOSAL OF OIL SHALE RESERVE NUMBERED 2.

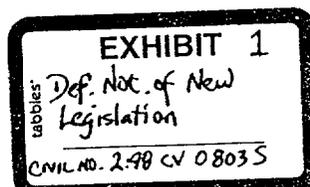
(a) *TRANSFER TO INDIAN TRIBE.*—Section 3405 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (10 U.S.C. 7420 note; Public Law 105-261) is amended to read as follows:

#### "SEC. 3405. DISPOSAL OF OIL SHALE RESERVE NUMBERED 2.

"(a) *DEFINITIONS.*—In this section:

"(1) *NOSR-2.*—The term "NOSR-2" means Oil Shale Reserve Numbered 2, as identified on a map on file in the Office of the Secretary of the Interior.

"(2) *MOAB SITE.*—The term "Moab site" means the Moab uranium milling site located approximately three miles northwest of Moab, Utah, and identified in the Final Environmental Impact Statement issued by the Nuclear Regulatory Commis-



sion in March 1996 in conjunction with Source Materials License No. SUA-917.

"(3) **MAP**.—The term "map" means the map depicting the boundaries of NOSR-2, to be kept on file and available for public inspection in the offices of the Department of the Interior.

"(4) **TRIBE**.—The term "Tribe" means the Ute Indian Tribe of the Uintah and Ouray Indian Reservation.

"(5) **TRUSTEE**.—The term "Trustee" means the Trustee of the Moab Mill Reclamation Trust.

"(b) **CONVEYANCE**.—(1) Except as provided in paragraph (2) and subsection (e), all right, title, and interest of the United States in and to all Federal lands within the exterior boundaries of NOSR-2 (including surface and mineral rights) are hereby conveyed to the Tribe in fee simple. The Secretary of Energy shall execute and file in the appropriate office a deed or other instrument effectuating the conveyance made by this section.

"(2) The conveyance under paragraph (1) does not include the following:

"(A) The portion of the bed of Green River contained entirely within NOSR-2, as depicted on the map.

"(B) The land (including surface and mineral rights) to the west of the Green River within NOSR-2, as depicted on the map.

"(C) A  $\frac{1}{4}$  mile scenic easement on the east side of the Green River within NOSR-2.

"(c) **CONDITIONS ON CONVEYANCE**.—(1) The conveyance under subsection (b) is subject to valid existing rights in effect on the day before the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001.

"(2) On completion of the conveyance under subsection (b), the United States relinquishes all management authority over the conveyed land, including tribal activities conducted on the land.

"(3) The land conveyed to the Tribe under subsection (b) shall not revert to the United States for management in trust status.

"(4) The reservation of the easement under subsection (b)(2)(C) shall not affect the right of the Tribe to use and maintain access to the Green River through the use of the road within the easement, as depicted on the map.

"(5) Each withdrawal that applies to NOSR-2 and that is in effect on the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 is revoked to the extent that the withdrawal applies to NOSR-2.

"(6) Notwithstanding that the land conveyed to the Tribe under subsection (b) shall not be part of the reservation of the Tribe, such land shall be deemed to be part of the reservation of the Tribe for the purposes of criminal and civil jurisdiction.

"(d) **ADMINISTRATION OF UNCONVEYED LAND AND INTERESTS IN LAND**.—(1) The land and interests in land excluded by subparagraphs (A) and (B) of subsection (b)(2) from conveyance under subsection (b) shall be administered by the Secretary of the Interior in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

"(2) Not later than three years after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fis-

cal Year 2001, the Secretary of the Interior shall submit to Congress a land use plan for the management of the land and interests in land referred to in paragraph (1).

"(3) There are authorized to be appropriated to the Secretary of the Interior such sums as are necessary to carry out this subsection.

"(e) **ROYALTY.**—(1) Notwithstanding the conveyance under subsection (b), the United States retains a nine percent royalty interest in the value of any oil, gas, other hydrocarbons, and all other minerals that are produced, saved, and sold from the conveyed land during the period beginning on the date of the conveyance and ending on the date the Secretary of Energy releases the royalty interest under subsection (i).

"(2) The royalty payments shall be made by the Tribe or its designee to the Secretary of Energy during the period that the oil, gas, hydrocarbons, or minerals are being produced, saved, sold, or extracted. The Secretary of Energy shall retain and use the payments in the manner provided in subsection (i)(3).

"(3) The royalty interest retained by the United States under this subsection does not include any development, production, marketing, and operating expenses.

"(4) The Tribe shall submit to the Secretary of Energy and to Congress an annual report on resource development and other activities of the Tribe concerning the conveyance under subsection (b).

"(5) Not later than five years after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, and every five years thereafter, the Tribe shall obtain an audit of all resource development activities of the Tribe concerning the conveyance under subsection (b), as provided under chapter 75 of title 31, United States Code. The results of each audit under this paragraph shall be included in the next annual report submitted under paragraph (4).

"(f) **RIVER MANAGEMENT.**—(1) The Tribe shall manage, under Tribal jurisdiction and in accordance with ordinances adopted by the Tribe, land of the Tribe that is adjacent to, and within  $\frac{1}{4}$  mile of, the Green River in a manner that—

"(A) maintains the protected status of the land; and

"(B) is consistent with the government-to-government agreement and in the memorandum of understanding dated February 11, 2000, as agreed to by the Tribe and the Secretary of the Interior.

"(2) An ordinance referred to in paragraph (1) shall not impair, limit, or otherwise restrict the management and use of any land that is not owned, controlled, or subject to the jurisdiction of the Tribe.

"(3) An ordinance adopted by the Tribe and referenced in the government-to-government agreement may not be repealed or amended without the written approval of both the Tribe and the Secretary of the Interior.

"(g) **PLANT SPECIES.**—(1) In accordance with a government-to-government agreement between the Tribe and the Secretary of the Interior, in a manner consistent with levels of legal protection in effect on the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, the Tribe shall pro-

fect, under ordinances adopted by the Tribe, any plant species that is—

“(A) listed as an endangered species or threatened species under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533); and

“(B) located or found on the NOSR-2 land conveyed to the Tribe.

“(2) The protection described in paragraph (1) shall be performed solely under tribal jurisdiction.

“(h) HORSES.—(1) The Tribe shall manage, protect, and assert control over any horse not owned by the Tribe or tribal members that is located or found on the NOSR-2 land conveyed to the Tribe in a manner that is consistent with Federal law governing the management, protection, and control of horses in effect on the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001.

“(2) The management, control, and protection of horses described in paragraph (1) shall be performed solely—

“(A) under tribal jurisdiction; and

“(B) in accordance with a government-to-government agreement between the Tribe and the Secretary of the Interior.

“(i) REMEDIAL ACTION AT MOAB SITE.—(1)(A) The Secretary of Energy shall prepare a plan for remediation, including ground water restoration, of the Moab site in accordance with title I of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7911 et seq.). The Secretary of Energy shall enter into arrangements with the National Academy of Sciences to obtain the technical advice, assistance, and recommendations of the National Academy of Sciences in objectively evaluating the costs, benefits, and risks associated with various remediation alternatives, including removal or treatment of radioactive or other hazardous materials at the site, ground water restoration, and long-term management of residual contaminants. If the Secretary prepares a remediation plan that is not consistent with the recommendations of the National Academy of Sciences, the Secretary shall submit to Congress a report explaining the reasons for deviation from the National Academy of Sciences' recommendations.

“(B) The remediation plan required by subparagraph (A) shall be completed not later than one year after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, and the Secretary of Energy shall commence remedial action at the Moab site as soon as practicable after the completion of the plan.

“(C) The license for the materials at the Moab site issued by the Nuclear Regulatory Commission shall terminate one year after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, unless the Secretary of Energy determines that the license may be terminated earlier. Until the license is terminated, the Trustee, subject to the availability of funds appropriated specifically for a purpose described in clauses (i) through (iii) or made available by the Trustee from the Moab Mill Reclamation Trust, may carry out—

“(i) interim measures to reduce or eliminate localized high ammonia concentrations in the Colorado River, identified by

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the United States Geological Survey in a report dated March 27, 2000;

"(ii) activities to dewater the mill tailings at the Moab site; and

"(iii) other activities related to the Moab site, subject to the authority of the Nuclear Regulatory Commission and in consultation with the Secretary of Energy.

"(D) As part of the remediation plan for the Moab site required by subparagraph (A), the Secretary of Energy shall develop, in consultation with the Trustee, the Nuclear Regulatory Commission, and the State of Utah, an efficient and legal means for transferring all responsibilities and title to the Moab site and all the materials therein from the Trustee to the Department of Energy.

"(2) The Secretary of Energy shall limit the amounts expended in carrying out the remedial action under paragraph (1) to—

"(A) amounts specifically appropriated for the remedial action in an appropriation Act; and

"(B) other amounts made available for the remedial action under this subsection.

"(3)(A) The royalty payments received by the Secretary of Energy under subsection (e) shall be available to the Secretary, without further appropriation, to carry out the remedial action under paragraph (1) until such time as the Secretary determines that all costs incurred by the United States to carry out the remedial action (other than costs associated with long-term monitoring) have been paid.

"(B) Upon making the determination referred to in subparagraph (A), the Secretary of Energy shall transfer all remaining royalty amounts to the general fund of the Treasury and release to the Tribe the royalty interest retained by the United States under subsection (e).

"(4)(A) Funds made available to the Department of Energy for national security activities shall not be used to carry out the remedial action under paragraph (1), except that the Secretary of Energy may use such funds for program direction directly related to the remedial action.

"(B) There are authorized to be appropriated to the Secretary of Energy to carry out the remedial action under paragraph (1) such sums as are necessary.

"(5) If the Moab site is sold after the date on which the Secretary of Energy completes the remedial action under paragraph (1), the seller shall pay to the Secretary of Energy, for deposit in the general fund of the Treasury, the portion of the sale price that the Secretary determines resulted from the enhancement of the value of the Moab site as a result of the remedial action. The enhanced value of the Moab site shall be equal to the difference between—

"(A) the fair market value of the Moab site on the date of enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, based on information available on that date; and

"(B) the fair market value of the Moab site, as appraised on completion of the remedial action."

(b) URANIUM MILL TAILINGS.—Section 102 of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7912) is amended by adding at the end the following new subsection:

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**"(f) DESIGNATION OF MOAB SITE AS PROCESSING SITE.—**

**"(1) DESIGNATION.—**Notwithstanding any other provision of law, the Moab uranium milling site (referred to in this subsection as the Moab site) located approximately three miles northwest of Moab, Utah, and identified in the Final Environmental Impact Statement issued by the Nuclear Regulatory Commission in March 1996 in conjunction with Source Materials License No. SUA-917, is designated as a processing site.

**"(2) APPLICABILITY.—**This title applies to the Moab site in the same manner and to the same extent as to other processing sites designated under subsection (a), except that—

**"(A)** sections 103, 104(b), 107(a), 112(a), and 115(a) of this title shall not apply; and

**"(B)** a reference in this title to the date of the enactment of this Act shall be treated as a reference to the date of the enactment of this subsection.

**"(3) REMEDIATION.—**Subject to the availability of appropriations for this purpose, the Secretary shall conduct remediation at the Moab site in a safe and environmentally sound manner that takes into consideration the remedial action plan prepared pursuant to section 3405(i) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (10 U.S.C. 7420 note; Public Law 105-261), including—

**"(A)** ground water restoration; and

**"(B)** the removal, to a site in the State of Utah, for permanent disposition and any necessary stabilization, of residual radioactive material and other contaminated material from the Moab site and the floodplain of the Colorado River."

**(c) CONFORMING AMENDMENT.—**Section 3406 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (10 U.S.C. 7420 note; Public Law 105-261) is amended by adding at the end the following new subsection:

**"(f) OIL SHALE RESERVE NUMBERED 2.—**This section does not apply to the transfer of Oil Shale Reserve Numbered 2 under section 3405."

**TITLE XXXV—MARITIME ADMINISTRATION**

Sec. 3501. Authorization of appropriations for fiscal year 2001.

Sec. 3502. Scrapping of National Defense Reserve Fleet vessels.

Sec. 3503. Authority to convey National Defense Reserve Fleet vessel, GLACIER.

Sec. 3504. Maritime intermodal research.

Sec. 3505. Maritime research and technology development.

Sec. 3506. Reporting of administered and oversight funds.

**SEC. 3501. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 2001.**

Funds are hereby authorized to be appropriated for fiscal year 2001, to be available without fiscal year limitation if so provided in appropriations Acts, for the use of the Department of Transportation for the Maritime Administration as follows:

(1) For expenses necessary for operations and training activities, \$94,260,000.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of the United States Department of Justice, and that a copy of the attached Notice of Enactment of Legislation Concerning Moab Uranium Milling Site was mailed by U.S. first class mail, postage prepaid, on November 14, 2000, to the following persons:

Susan Daggett  
Robert Wiygul  
Marie Kirk  
Earthjustice Legal Defense Fund  
1631 Glenarm Place, Suite 3000  
Denver, CO 80202

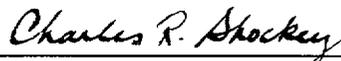
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JANE P. DAVENPORT  
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