IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 99-70922

Grand Canyon Trust, et al.

Petitioners,

v.

United States Nuclear Regulatory Commission

Respondents.

Petitioners' Status Report and Motion to Dismiss Without Prejudice

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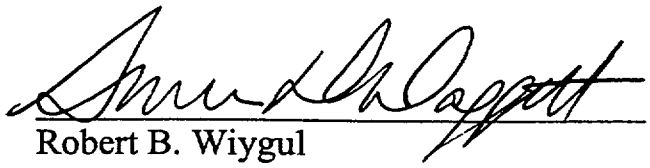
This case involves a request by the Petitioners that the Nuclear Regulatory Commission ("NRC") reinitiate consultation with the United States Fish and Wildlife Service ("FWS") regarding effects of the Atlas Uranium Mill Tailings Pile on endangered species of fish in the Colorado River. The case has been fully briefed and was set for oral argument on February 9, 2001. However, on January 19, 2001, the Petitioners requested that the case be stayed temporarily in order to determine whether the case had been mooted by recent events. The Court granted the motion for stay and ordered the parties to submit a status report by May 15, 2001.

Since the completion of briefing in this case, Congress enacted legislation that will result in the transfer of this pile from the jurisdiction of the NRC to that of the Department of Energy. Thereafter, the FWS withdrew its biological opinion because the plan it addressed was obsolete and the biological opinion had not considered interim measures. In addition, the NRC has obtained a concurrence from the FWS that the NRC's remaining regulatory activities at the site will not result in jeopardy to the fish. As a result of these factual developments, the parties are in agreement that the Petitioners' request for relief – that the NRC reinitiate consultation – is moot. Therefore, the Petitioners respectfully request that the Court dismiss this case without prejudice and order each party to pay its own fees

and costs. Counsel for Respondents has reviewed this Motion, concurs in the report of the case's status, and does not oppose the Petitioners' request.

Dated this 11th day of May, 2001.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May, 2001, I served a true and accurate copy of the PETITIONERS' STATUS REPORT AND MOTION TO DISMISS upon the following individuals by U.S. mail, postage prepaid:

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