

FOIA/PA REQUEST

Case No. 2007-0290Date Rec'd: 8-10-07Specialist: Brown

Related Case. _____



CENTER for BIOLOGICAL DIVERSITY

Because life is good.

August 3, 2007

Sent Via Certified Mail

U.S. Nuclear Regulatory Commission
 Attn: FOIA/PA Officer
 Mail Stop T5-F11
 Washington, DC 20555-0001

FREEDOM OF INFORMATION ACT REQUEST

Dear FOIA/PA Officer,

On July 24, 2007, the Nuclear Regulatory Commission ("NRC") published a Notice of Intent ("NOI") to prepare a Generic Environmental Impact Statement ("GEIS") for uranium mining facilities in the Western United States. The Center for Biological Diversity ("the Center") is a non-profit, public interest, conservation organization whose mission is to conserve imperiled native species and their threatened habitat and to fulfill the continuing educational goals of its membership and the general public in the process. Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, I respectfully request the following documents and information on behalf of the Center:

All documents and information that led the NRC to expect "numerous license applications for in-situ leach (ISL) uranium milling facilities in the coming 2-3 years," as stated in the July 24, 2007, NOI. Such documents and information should include, but are not limited to, all correspondence and/or other documents prepared by or received by the NRC that resulted in the NRC's decision to prepare the GEIS for uranium mining facilities.

This request is not meant to be exclusive of any other records, which though not specifically requested, would have a reasonable relationship to the subject matter of this request. This request is being sent to the Washington, DC office of NRC with the understanding that it will be forwarded to any other offices within NRC that may contain the requested documents.

The requested documents can be sent to me at the following address:

Marc D. Fink
 Center for Biological Diversity
 4515 Robinson Street
 Duluth, Minnesota 55804

REQUEST FOR FEE-WAIVER

The Center seeks a fee waiver for this request. Specifically, the Center requests that you waive all copy, clerical and other fees associated with providing the information responsive to this request. FOIA requires the federal government to furnish documents to public interest groups free of charge, or at a reduced rate, "if disclosure of the information is in the public interest." 5 U.S.C. § 552(a)(4)(A)(iii). The Center is a non-profit organization that is comprised of thousands of concerned citizens who have a significant interest in potential and proposed uranium mining in the western United States.

In considering whether the Center meets FOIA's fee-waiver criteria, it is imperative that NRC remember that FOIA carries a presumption of disclosure and that the fee-waiver amendments of 1986 were designed specifically to allow non-profit, public interest groups such as the Center access to government documents without the payment of fees. As stated by one Senator, "[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information . . ." 132 Cong. Rec. S. 14298 (statement of Sen. Leahy). FOIA "is to be liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy). The main legislative purpose of the FOIA amendments was to facilitate access to agency records by "watchdog" organizations, such as environmental groups, which use FOIA to monitor and challenge government activities. As a District of Columbia Circuit Court has stated, this waiver provision was added to FOIA "in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests," in clear reference to requests from journalists, scholars, and, most importantly for our purposes, non-profit public interest groups. *Better Gov't Ass'n v. Department of State*, 780 F.2d 86, 93-94 (D.C. Cir. 1986), quoting *Ettlinger v. FBI*, 596 F. Supp. 867, 876 (D. Mass. 1984).

A fee waiver is appropriate because the Center is engaged in a non-profit activity designed for the public safety, health, or welfare, and because this request is likely to contribute significantly to the public understanding of the operations or activities of the government. The Center's staff is well qualified to review and summarize the requested documents and information for its thousands of members, as well as the general public. The Center will make the disclosed information and our analysis of it available to any interested party upon request. The Center also maintains an active website that receives upwards of 225,000 hits per week and over 2600 individual visitors per day – representing a significant public interest in our work and the ability to disseminate information to a broad public audience. In addition, the Center publishes a regular newsletter where it also disseminates important information to concerned citizens. By fulfilling this request, NRC will be contributing significantly to the public's understanding of potential and proposed uranium mining in the western United States.

The requested information and documents are not currently in the public domain. The information is of unquestioned interest to the Center's evaluation of the impacts of potential uranium mining on public lands and its potential effects on human health and the environment. As such, the information requested will contribute to the Center's and general public's understanding and oversight of NRC operations and their relation to the public's wishes concerning public lands management and protection of air, water and other common trust resources. The Center requests this information in order to evaluate the management activities of

NRC in the context of sound science and applicable laws and regulations. This information will be used in our ongoing efforts to promote and participate in environmentally sound management of our nation's public lands and to assure a healthy environment, and to inform the public on these issues.

We are aware of no other organization, individual, or other entity that has already compiled the above requested information and made it available to the public. We collaborate with a large number of individuals, organizations, and institutions throughout the region, state, and nation, and will share this information with them.

Access to government documents and similar materials through FOIA requests is essential to the Center's role of educating the general public. The Center, a non-profit organization, has no commercial interest and will realize no commercial benefit from the release of the requested information.

None of the statutory exceptions from FOIA's mandatory disclosure provisions apply, and the requested records should therefore be provided within twenty working days. If this request is denied in whole or in part, I ask that you justify the denial with reference to specific exemptions in the Act and that you release any segregable or otherwise exempt material. I further request that you describe the deleted material in detail. Please separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest.

If you have any questions regarding this request, please contact me at 218-525-3884. I look forward to your reply within the time frame provided by the FOIA. Thank you for your consideration.

Sincerely,



Marc D. Fink, Attorney
Center for Biological Diversity