



CASE NO: NRC-2019-000132
DATE REC'D: 11/23/2018

Aaron M. Paul
Staff Attorney
Grand Canyon Trust
4404 Alcott Street
Denver, Colorado 80211
303-477-1486

November 21, 2018

By Electronic Mail

David J. Nelson
Chief Information and FOIA Officer
Office of the Chief Information Officer
U.S. Nuclear Regulatory Commission
Mail Stop T-2 F43
Washington, DC 20555-0001
FOIA.resource@nrc.gov

Re: Freedom of Information Act Request for Documents Concerning Reclamation Plans for the White Mesa Mill

Dear Mr. Nelson:

The Grand Canyon Trust requests copies of the following records under the Freedom of Information Act (FOIA); 5 U.S.C. § 552, from the U.S. Nuclear Regulatory Commission and asks that the records be furnished without charge, as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 10 C.F.R. § 9.41.

1. All documents dated, created, or modified on or after January 1, 1995, relating to the development, submission, review, analysis, revision, or approval of reclamation plans for the White Mesa uranium mill near Blanding, Utah, Docket No. 40-8681.

By way of example, but not limitation, the documents requested include draft and final reclamation plans submitted by the licensee under source materials license SUA-1358 (the "Licensee") and comments, reports, modeling, cost estimates, interrogatories, correspondence, minutes of meetings, and any other documents concerning the Licensee's reclamation plans.

Production Specifications

Please produce the records to us in electronic format if possible delivered to the following mailing address (via DVD, compact disc, or other media):

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Denver, CO 80211
(303) 477-1486

We request that you not combine electronically stored files into a single PDF when producing them to us but instead produce the individual files as they are maintained by NRC so that we can discern document breaks and families.

If any part of any record we have requested is withheld, please justify each instance in which information is withheld with reference to specific exemptions in FOIA. *See* 5 U.S.C. § 552(b); 10 C.F.R. §§ 9.17, 9.19.

Fee-Waiver Request

We request that NRC waive all fees for responding to this request under 5 U.S.C. § 552(a)(4)(A)(iii) and 10 C.F.R. § 9.41. FOIA provides that documents shall be provided without any charge or at a reduced charge if disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” *See* 5 U.S.C. § 552 (a)(4)(A)(iii); 10 C.F.R. §9.41(c).

FOIA carries a presumption of disclosure and was amended in 1986 specifically to promote access to government documents by non-profit, public interest groups, such as the Trust, without paying fees. *See McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (holding that FOIA “is to be liberally construed in favor of waivers for noncommercial requesters”); *Better Gov’t Ass’n v. Dep’t of State*, 780 F.2d 86, 93-94 (D.C. Cir. 1986) (FOIA’s waiver is “an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests”).

A fee waiver is justified here. The Trust is a non-profit corporation organized under Arizona law that is tax exempt under section 501(c)(3) of the Internal Revenue Code. The organization’s mission is to protect and restore the Colorado Plateau – its spectacular landscapes, flowing rivers, clean air, diversity of plants and animals, and areas of beauty and solitude.

The records the Trust requests concern the federal government’s operations and activities because they will reveal NRC’s analysis of and decisions about the technical, legal, and environmental adequacy of the plans for reclaiming the White Mesa mill. Disclosure of that information will significantly contribute to the public’s understanding of whether the plans that NRC approved are adequate to protect the public’s health and the environment and whether the final plan approved by NRC remains up to date. The series of reclamation plans that the Licensee began developing in the mid-1990s, and which NRC evaluated and

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approved, continues to serve as an officially approved plan for reclaiming the mill while a pilot test of an updated tailings cover design is being conducted. If that pilot test fails, the State of Utah has retained the authority to order the NRC-approved plans to be carried out.

The Trust intends to use the requested documents to study and evaluate the NRC's approval process for the mill's reclamation plans and distill for public consumption the relevant technical and other information that will enable a comparison with the State's ongoing evaluation of other reclamation options for the mill. In particular, we seek to better understand what information was submitted to NRC for the purposes of forecasting how the tailings cover presented in the reclamation plans would perform. The Trust's staff includes attorneys and policy analysts who have the ability to assess and digest the technical nature of the documents we are requesting. Trust staff have spent years scrutinizing the operations of the White Mesa mill, and we regularly provide members of the public, especially those who live near the mill, with information about the mill and its operations. No information is presently available to us or the public about how NRC evaluated and approved the mill's past reclamation plans, and as a result, our analysis of that information will contribute substantially to the public's understanding of the subject.

The Trust is able to and plans to disseminate the requested information in a coherent fashion and free of charge to a broad audience via our web site, publications, or other means of communication, such as distribution to the media. The Trust's publications supply information not only to its membership, but also to the memberships of several other conservation organizations, regionally as well as nationally. In addition, our publications are disseminated to the media and are available on our website to the general public.

As part of the Trust's work to inform the public and promote the public's interests relating to environmental issues, the Trust has participated significantly in policymaking and other activities of numerous government agencies for years. In addition to analyzing and synthesizing for the public's consumption the information we are requesting, we plan to use that information in our efforts to influence policy decisions about the reclamation of the White Mesa mill.

Finally, the requested information will not result in a direct financial benefit to the Trust, its members, or staff. The Trust is a non-profit organization, acting in the public interest. Access to government documents and similar materials through FOIA requests is essential to the Trust's mission and its ability to press our mission through education of the public about federal agency decisions affecting the Colorado Plateau. The Trust has no commercial interest in the release or use of the requested information.

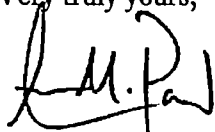
In the past, federal agencies have routinely granted the Trust's fee waivers for other FOIA requests, which we believe further supports our assertion that we qualify in this case. While we expect that a fee waiver will be granted, should NRC decide not to waive fees, please contact me before incurring any costs in excess of \$50.

David J. Nelson, U.S. Nuclear Regulatory Commission
FOIA Request for Reclamation Documents

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Should you have any questions at all about what records we are requesting, how our request can be narrowed if necessary, or our request for a fee waiver, please call me at (303) 477-1486 or e-mail me at apaul@grandcanyontrust.org.

Very truly yours,

A handwritten signature in black ink, appearing to read "A.M. Paul". The signature is written in a cursive style with a large initial "A" and "P".

Aaron M. Paul