

DUPLICATE ORIGINAL

DOCKETED
February 6, 1991

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'91 FEB -8 P4:04

In the Matter of)

ARIZONA PUBLIC SERVICE)
COMPANY, et al.)

(Palo Verde Nuclear Generating)
Station, Units 1, 2 and 3))

Nos. 50-528-OLA, 50-529-OLA,
and 50-530-OLA

(Shutdown Cooling Flowrate)

ASLBP No. 91-632-04-OLA

LICENSEES' ANSWER IN OPPOSITION
TO PETITIONS FOR LEAVE TO
INTERVENE AND REQUESTS FOR HEARING

Arizona Public Service Company, et al. ("APS" or "Licensees") 1/ file this Answer in opposition to both a "Petition for Leave to Intervene and Request for Hearing" submitted by Myron L. Scott, Barbara S. Bush and the Coalition for Responsible Energy Education ("CREE") and bearing the date January 22, 1991 ("Petition No. 1"), and also to a similarly entitled document submitted by Allan L. Mitchell and Linda E. Mitchell bearing the date January 21, 1991 ("Petition No. 2"). Both Petitions relate to a proposed amendment to each of the

- 1/ This Answer is being filed by APS on its own behalf and on behalf of the other licensees of the Palo Verde Nuclear Generating Station ("PVNGS"), Units 1, 2 and 3: Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power and Southern California Public Power Authority.

operating licenses 2/ for the three Palo Verde units which was noticed in the Federal Register at 55 Fed. Reg. 52,337 (Dec. 21, 1990). 3/ Each

proposed amendment would revise the technical specifications relating to the minimum required shutdown cooling flowrate. The amendment would reduce the required flowrate from 4000 gpm to 3780 gpm to provide additional margin for preventing air entrainment while the reactor coolant system is partially drained.

Id.

2/ For PVNGS Unit 1, Facility Operating License No. NPF-41; for PVNGS Unit 2, Facility Operating License No. NPF-51; and for PVNGS Unit 3, Facility Operating License No. NPF-74.

3/ The two sets of petitioners have each also filed a Petition for Leave to Intervene and Request for Hearing with respect to an entirely different operating license amendment requested for each of the Palo Verde Units which was noticed at 55 Fed. Reg. 53,220 (Dec. 27, 1990). Except for the references to different Federal Register Notices, the two Petitions filed by Mr. Scott, Ms. Bush and CREE are identical. The two petitions filed by Mr. and Mrs. Mitchell are also identical in language except for the references to different Federal Register Notices and one additional sentence in paragraph numbered 6 of their second Petition which, in our view, is substantively insignificant. By orders dated January 29, 1991, one Atomic Safety and Licensing Board was established to rule on the Petitions relating to the amendment noticed on December 21, 1990, and to preside over the proceeding in the event that a hearing is ordered and another Licensing Board was established for the same purposes with respect to the amendment noticed on December 27, 1990. Consequently, Licensees are filing separate answers to the Petitions. This Answer responds to the Petitions filed with respect to the amendment request noticed on December 21, 1990. The other Answer responds to the Petitions filed with respect to the amendment request noticed on December 27, 1990. However, because of the identical and rote nature of each set of petitioners' pleadings, both answers are also substantially similar in language.

The Federal Register Notice clearly explains that 30 CFR § 2.714 (1990) requires that a petition for leave to intervene

shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

55 Fed. Reg. at 52,338. As demonstrated below, both Petitions fail to meet these requirements.

Petitioners who have submitted Petition No. 1 have not set forth, as required, their interest in the proceeding, nor have they demonstrated how the results of the proceeding will affect that interest, *i.e.*, their standing. Petitioners on whose behalf Petition No. 2 has been submitted may have shown the plausibility of their having an affected interest by virtue of residence in proximity to PVNGS and employment at the plant. However, they have failed to establish standing because they have not demonstrated how the proposed amendment will affect their interests. Additionally, both Petitions have failed to meet the requirement to set forth the specific aspect or aspects of the

proceeding as to which Petitioners wish to intervene.

Consequently, both Petitions should be denied. 4/

-
- 4/ Should the Atomic Safety and Licensing Board which has been designated to act on the Petitions decide, nevertheless, not to deny the Petitions forthwith and to conduct a prehearing conference, Licensees respectfully request that the Board promptly issue an order (i) scheduling that conference, not later than 30 days after the issuance of the order, to consider and rule upon the adequacy of the Petitions and (ii) directing the Petitioners to file not later than fifteen days prior to the prehearing conference any appropriate amendments and supplements to their respective Petitions to establish the adequacy of those petitions and to set forth the contentions that they seek to have litigated and the bases therefor, as required by 10 CFR § 2.714(b) (1990).

This request is based upon a number of considerations. First, a petitioner seeking intervention must not only satisfy the standing and aspect requirements of 10 CFR § 2.714(a)(2), but must also advance at least one acceptable contention before he or she may be admitted as a party to the proceeding. 10 CFR § 2.714(b); Philadelphia Electric Co. (Limerick Generating Station), LBP-86-6A, 23 NRC 165, 171 (1986). 10 CFR § 2.714(b) requires that the contentions which the petitioners seek to have litigated must be set forth in a supplement to their respective petitions not later than fifteen days prior to the holding of the first prehearing conference in this proceeding.

Second, the Licensees' application for amendment of the licenses for the Palo Verde units is complete in all respects. The description, purpose and need for the amendments, together with the supporting safety analysis and environmental considerations, have been set forth fully in the application. All the notice and other procedural requirements of 10 CFR §§ 50.91 and 50.92 have been satisfied. Accordingly, there is no impediment that hinders the petitioners in formulating their respective contentions in a timely manner nor reason that the issues of interest, aspect and contentions should not be dealt with concurrently. Finally, the request for rulings on the acceptability of the contentions is in keeping with the established practices of Licensing Boards in dealing with interventions in applications for operating license amendments. Vermont Yankee Nuclear Power Corp. (Vermont
(continued...))

INTEREST AND STANDING

Petition No. 1. Petition No. 1 merely states (p. 2, para. 1) that Petitioners Scott and Bush and the members of CREE 5/ "are domiciled in the City of Tempe, County of Maricopa, State of Arizona;" 6/ are property owners within that County; 7/ are "customers of utility members of the Palo Verde ownership consortium;" are citizens of Arizona and the United States; and have an interest in their own public health and safety and that of the public. They also state:

10. Petitioners' health, safety, property, and utility rates, and those of the public, could also be affected by an order granting the requested amendment.

4/ (...continued)

Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85 (1990); Limerick, LBP-86-6A, 23 NRC 165. Those rulings, whether they be in favor of either the petitioners or the Licensees, will expedite the resolution of this proceeding and constitute sound adjudicatory practice.

- 5/ The legal or organizational status of CREE is unclear. Petition No. 1 describes CREE merely as "a project of Arizonans for a Better Environment ('ABE'), a not-for-profit organization incorporated under the laws of the State of Arizona." (p. 1, para. 2).
- 6/ Petition No. 1 also states that the majority of CREE's Board of Directors and members reside in that county "at varying distances from the Palo Verde Nuclear Generating Station (which is also located in the County of Maricopa, State of Arizona)." (p. 1, para. 2).
- 7/ In a footnote it is stated that "Mr. Scott and Ms. Bush are husband and wife and that Tempe, Arizona, is their permanent home. Mr. Scott is temporarily employed on a one-year academic fellowship in Portland, Oregon, and temporarily resides in Portland."

These assertions are insufficient to meet Petitioners' affirmative burden to fulfill the requirements of 10 CFR § 2.714. 10 CFR § 2.732; Metropolitan Edison Co., et al. (Three Mile Island Nuclear Station, Unit No. 1), CLI-83-25, 18 NRC 327, 331 (1983).

Petitioners have failed to state with particularity the location of their residence and therefore have failed to establish any standing on the basis of residence within close geographic proximity to Palo Verde. So far as Licensees are aware, "standing based on residence alone has never been extended beyond fifty miles." Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1433 (1982). The mailing address listed for Petitioner Bush and/or ABE is in Tempe, Arizona, approximately fifty-two miles from Palo Verde. If this address is the residence of Petitioners Bush and Scott and/or ABE's headquarters, it is, nevertheless, beyond the distance ordinarily considered within close proximity for purposes of establishing standing. Id. §/

Petitioners attempt to bolster their argument for standing by virtue of their status as owners of property located

§/ Even if Petitioners had shown that they resided within fifty miles of Palo Verde, this fact alone would be insufficient to confer standing in a license amendment proceeding. See Boston Edison Co. (Pilgrim Nuclear Power Station), LBP-85-24, 22 NRC 97, 98-99, aff'd on other grounds, ALAB-816, 22 NRC 461 (1985). For example, in Pilgrim the Board held that residence forty-three miles from the power plant was insufficient to confer standing in that license amendment proceeding without a further showing. Id.

at an unspecified distance from Palo Verde. However, mere ownership of land--even if within close proximity to a licensee's facility--is not sufficient to establish an interest in proceedings affecting the facility. See Washington Public Power Supply System (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 333, 337-38 (1979). In WPPSS, the board determined that an individual who owned--and leased to tenants--land and two residences within ten to fifteen miles of the facility, did not establish an interest in the proceeding even though he alleged potential adverse effects to the value of his property. Id.

Petitioners Bush and Scott also allege an interest as ratepayers and as citizens of Arizona and the United States. It is well-established that the economic interests of ratepayers do not confer standing. Three Mile Island, CLI-83-25, 18 NRC at 332 n.4. Further, citizenship itself confers no standing, since the Atomic Energy Act only confers a right to participate in hearings based upon an "interest [that] may be affected by the proceeding" and not upon citizenship. 42 U.S.C. § 2239(a)(1) (1988).

Nor has Petition No. 1 established any basis for standing to be granted to CREE. We are aware of no basis for granting standing to a "project" of an organization, as differentiated from the organization itself. And even an organization seeking standing on the basis of injury to the interests of its members must identify at least one member whose interests are to be protected, provide a description of the harm

to those interests, and show authorization for the organization to represent the individual. Limerick, LBP-82-43A, 15 NRC at 1437 (citing Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390-96 (1976)). The only members of CREE identified in Petition No. 1 are Ms. Bush and Mr. Scott, neither of whom meet the necessary interest and injury requirements to establish standing.

In addition to failing to allege an interest sufficient to confer standing, Petition No. 1 fails to articulate, as required, any palpable harm or specific "injury in fact" to Petitioners' interests. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976). To be sure, as indicated above, Petition No. 1 states that the Petitioners' "health, safety, property, and utility rates," as well as those of the public, "could be affected by an order granting the requested amendment." However, it does not indicate what Petitioners think the impact upon them will be, and this conditional recitation obviously fails to meet the requirements, imposed by 10 CFR § 2.714(a)(2) that a petition for leave to intervene "set forth with particularity the interest of the petitioner in the proceeding, [and] how that interest may be affected by the results of the proceeding." (emphasis supplied).

Further, 10 CFR § 2.714(a)(2) also requires that the petition shall include "the reasons why petitioner should be permitted to intervene, with particular reference to the factors

in paragraph (d)(1) of this section." The latter provision requires a licensing board or other body ruling on petitions to intervene to consider, among other factors,

- (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

Obviously, the bare assertion that Petitioners' interests "could be affected" makes it impossible to consider that factor. Moreover, that bare assertion wholly fails to meet the Commission's recent admonition that, except in situations involving an obvious potential for offsite consequences, "a petitioner must allege some specific 'injury in fact' that will result from the action taken." Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 330 (1989). That requirement is particularly applicable here, where, after describing the change in the required shutdown cooling flowrate that the amendment would effect, the Federal Register Notice states that the proposed change "actually enhances the safety of operation of the shutdown cooling system." 55 Fed. Reg. at 52,337.

Petition No. 2. Petition No. 2 states that Mr. and Mrs. Mitchell are "residents of the City of Buckeye, County of Maricopa, State of Arizona;" that they reside and own property within five miles of Palo Verde; that Mrs. Mitchell is employed as an associate electrical engineer at Palo Verde; that in the past Mr. Mitchell had oversight responsibilities relating to the

operation of Palo Verde as a former staff engineer for the Arizona Corporation Commission; and that they have an interest in the proceedings because of where they live and own property.

"Also, as a Palo Verde employee, Mrs. Mitchell has a financial interest in the operation of the plant." (p. 2, para. 7). They assert:

Petitioners' health and safety as well as the value of their property could be affected by an order granting the request for amendment, particularly in the event of an accident during plant shutdown.

(p. 2, para. 9).

As recognized above, these Petitioners may have demonstrated the plausibility of their interest in the current proceedings by virtue of geographic proximity to the plant because of their residence near Palo Verde and Mrs. Mitchell's employment at the plant. Nevertheless, they have not met the burden to identify specific injury in fact or harm to their interests as a result of this proceeding. The nearest they come to this are the assertions contained in paragraph 9. However, all that is said there is that their health and safety and the value of their property "could be affected . . ., particularly in the event of an accident during plant shutdown." (emphasis added). These generalized health and safety concerns do not provide any linkage between those concerns and potential harm that might be caused by the proposed amendments. As such, they are inadequate.

Similarly, Petition No. 2 fails to demonstrate any nexus between the proposed amendment and how the value of their property might be affected. Their allegation concerning property values is also insufficient to confer standing, because such "interest is based primarily on speculative financial loss and does not have merit." WPPSS, LBP-79-7, 9 NRC at 337-38. Finally, like Petition No. 1, Petition No. 2 should be denied because it also has failed to meet the burden to "allege some specific 'injury in fact' which will result from the action taken" in the proposed amendments. St. Lucie, CLI-89-21, 30 NRC at 330.

THE ASPECT REQUIREMENT

Section 2.714(a)(2) requires a petition to intervene to set forth "the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene." The burden is on the petitioner to satisfy this requirement. 10 CFR § 2.732 (1990); Three Mile Island, CLI-83-25, 18 NRC at 331. Neither Petition meets these requirements.

Petition No. 1 merely refers, without describing the proposed amendment in any way or any change it would effect, to the fact that the proposal was noticed in the Federal Register. It is true that "[t]here is little guidance in NRC case law concerning the meaning of 'aspect' as the term is used in 10 CFR § 2.714." Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 89 (1990). It has

been suggested "that an 'aspect' is probably broader than a 'contention' but narrower than a general reference to our operating statutes." Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978). However, at a minimum, the requirement that the petitioner set forth a specific aspect or specific aspects of the proceeding must mean that the petitioner has an obligation to identify "general potential effects of the licensing action or areas of concern that are within the scope of matters that may be considered in the proceeding," e.g., aging of equipment, Vermont Yankee, LBP-90-6, 31 NRC at 89-90; the applicant's qualifications to construct a reactor, Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 633 (1973); or the effects of time extensions for testing instrumentation lines, Philadelphia Electric Co. (Limerick Generating Station, Unit 1), LBP-86-6A, 23 NRC 165, 169-70 (1986). Petition No. 1 wholly fails to meet this requirement. Nowhere from within the four corners of the document can the specific "aspect" or "aspects" of the proceeding be discerned, however liberally those phrases are defined.

Petition No. 2 does little more to meet the aspect requirement than does Petition No. 1. Petition No. 2 also refers only to the Federal Register Notice of the proposed amendment without describing any change that would be made. It does express a general concern related to "the event of a plant

accident during shutdown." However, no effort is made to indicate in what respects the amendment will affect the likelihood or impact of accidents "during plant shutdown." 9/ Indeed, it is unclear whether or not the Mitchells' concern is with plant shutdown as a generic issue rather than with this particular amendment or any pending amendment. This is particularly so since exactly the same language as is used in Paragraph 7 of Petition No. 2, including concern about "the event of an accident during plant shutdown," is employed in the Petition for Leave to Intervene and Request for a Hearing submitted on behalf of the Mitchells with respect to the wholly unrelated amendment request noticed in the Federal Register on December 27, 1990. 10/ Consequently, Petition No. 2 also fails to meet the requirements of the regulation.

CONCLUSION

The failure of each Petition to meet the basic minimum requirements of 10 CFR § 2.714 is not merely technical. Those requirements are not burdensome. To the contrary, they are liberal and permissive and do not operate as obstacles to

9/ The Technical Specifications sought to be amended are all applicable only during plant shutdown (i.e., Modes 5 and 6); therefore, "a plant accident during shutdown" identifies the entire proceeding and not a specific aspect of the proceeding.

10/ The amendment there involved relates to, among other things, allowable setpoint tolerances for the pressurizer safety valves and the main steam safety valves.

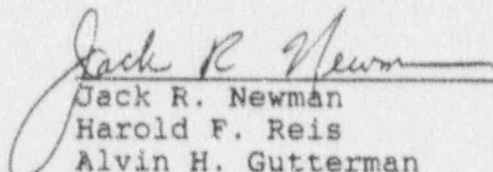
participation in the licensing process by truly interested members of the public with legally cognizable concerns. Correlatively, however, the objective of the regulation is, at a minimum, to prevent the unnecessary initiation of expensive, time-consuming and diversionary burdens both upon licensees and the Commission.

Here, Licensees have requested two operating license amendments involving significantly different technical subjects. Yet each set of Petitioners has wholly ignored the subject matter of the requested amendments. Instead, they have employed identical, rote language in their Petitions in an attempt to initiate hearings without advising either the Commission or the Licensees in even the most general way of the nature of their concerns or interest.

Accordingly, both Petitions should be denied.

Respectfully submitted,

February 6, 1991



Jack R. Newman
Harold F. Reis
Alvin H. Gutterman
John E. Matthews

Newman & Holtzinger, P.C.
1615 L Street, N.W., Suite 1000
Washington, D.C. 20036

Attorneys for Licensees

DUPLICATE ORIGINAL

February 6, 1991

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

FEB -8 P4:05

In the Matter of)

ARIZONA PUBLIC SERVICE)
COMPANY, et al.)

(Palo Verde Nuclear Generating)
Station, Units 1, 2 and 3))

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Nos. 50-528-OLA, 50-529-OLA,
and 50-530-OLA

(Shutdown Cooling Flowrate)

ASLEP No. 91-632-04-OLA

NOTICE OF APPEARANCE OF COUNSEL

Notice is hereby given that Harold F. Reis enters an appearance as counsel for Arizona Public Service Company, et al. in the above-captioned proceeding.

Name: Harold F. Reis
Address: Newman & Holtzinger, P.C.
1615 L Street, N.W.
Suite 1000
Washington, D.C. 20036
Telephone: (202) 955-6600
Admissions: United States Court of Appeals for
the District of Columbia Circuit
Name of Party: Arizona Public Service
Company, et al.
P.O. 53999
Mail Station 9068
Phoenix, Arizona 85072-3999

Harold F. Reis

Harold F. Reis
Newman & Holtzinger, P.C.
1615 L Street, N.W.
Suite 1000
Washington, D.C. 20036

Date: February 5, 1991

DUPLICATE ORIGINAL

February 6, 1991

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

FEB -8 P4:05

In the Matter of
ARIZONA PUBLIC SERVICE
COMPANY, et al.

(Paio Verde Nuclear Generating
Station, Units 1, 2 and 3)

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Nos. 50-528-OLA, 50-529-OLA,
and 50-530-OLA

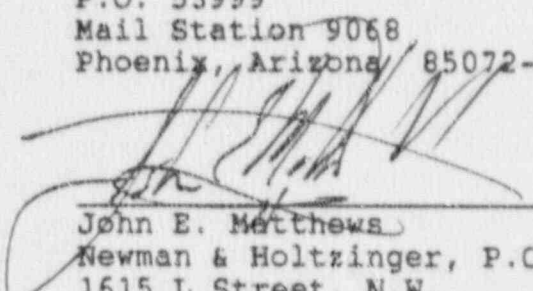
(Shutdown Cooling Flowrate)

ASLBP No. 91-632-04-OLA

NOTICE OF APPEARANCE OF COUNSEL

Notice is hereby given that John E. Matthews enters an appearance as counsel for Arizona Public Service Company, et al. in the above-captioned proceeding.

Name: John E. Matthews
Address: Newman & Holtzinger, P.C.
1615 L Street, N.W.
Suite 1000
Washington, D.C. 20036
Telephone: (202) 955-6600
Admissions: Supreme Court of the Commonwealth
of Pennsylvania
Name of Party: Arizona Public Service
Company, et al.
P.O. 53999
Mail Station 9068
Phoenix, Arizona 85072-3999



John E. Matthews
Newman & Holtzinger, P.C.
1615 L Street, N.W.
Suite 1000
Washington, D.C. 20036

Date: February 6, 1991

DUPLICATE ORIGINAL

DOCKETED
USNRC

February 6, 1991

UNITED STATES OF AMERICA '91
NUCLEAR REGULATORY COMMISSION

FEB -8 P4:05

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

ARIZONA PUBLIC SERVICE)
COMPANY, et al.)

(Palo Verde Nuclear Generating)
Station, Units 1, 2 and 3)

Nos. 50-528-OLA, 50-529-OLA,
and 50-530-OLA

(Shutdown Cooling Flowrate)

ASLEP No. 91-632-04-OLA

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensees' Answer in Opposition to Petition for Leave to Intervene and Requests for Hearing" in the above captioned proceeding, together with three "Notice[s] of Appearance of Counsel," were served on the following by deposit in the United States mail, first class, properly stamped and addressed, on the date shown below.

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Adjudicatory File
Washington, D.C. 20555
(two copies)

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Chief, Docketing and Service Section
(Original plus two copies)

Administrative Judge
Robert M. Lazo, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge
Peter A. Morris
Atomic Safety and Licensing Board
10825 South Glen Road
Potomac, MD 20854

Administrative Judge
Frank F. Hooper
Atomic Safety and Licensing Board
26993 McLaughlin Boulevard
Bonita Springs, FL 33923

Edwin J. Reis, Esq.
Lisa B. Clark, Esq.
Office of General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Arthur C. Gehr, Esq.
Snell and Wilmer
3100 Valley Center
Phoenix, AZ 85073

David K. Colapinto, Esq.
Counsel for Allen & Linda Mitchell
Kohn, Kohn & Colapinto, P.C.
517 Florida Avenue, N.W.
Washington, D.C. 20001

Myron L. Scott, Esq.
Lewis & Clark Northwestern School of Law
Natural Resources Law Institute
10015 S.W. Terwilliger Boulevard
Portland, OR 97219

Barbara S. Bush
Arizonans for a Better Environment
315 W. Riviera Dr.
Tempe, AZ 85282

February 6, 1991

Harold F. Reis

Harold F. Reis
Newman & Holtzinger, P.C.
1615 L Street, N.W.
Suite 1000
Washington, D.C. 20036