

Declaration of Joseph J. Holonich

1. I am employed at the U. S. Nuclear Regulatory Commission (NRC), where I serve as Deputy Director of the Division of Waste Management in the Office of Nuclear Material Safety and Safeguards. From October 1993 through November, 1998, I was Chief of the Uranium Recovery Branch in the Division of Waste Management, Office of Nuclear Material Safety and Safeguards. In that capacity, I had direct and personal responsibility for any NRC licensing action for the Atlas Corporation's defunct uranium mining site in Moab, Utah. During the five years I was Chief of the Uranium Recovery Branch, I worked directly and supervised the work of others on Atlas Corporation's application for the license amendment which plaintiffs challenge. My current duties as Deputy Director of the Division of Waste Management require me to oversee the NRC licensing program at the Moab site.

2. I was among those at the NRC who consulted with the Fish and Wildlife Service (FWS) during the preparation of the Final Biological Opinion at issue in this lawsuit. Those involved in that process were aware of the precarious financial position of the Atlas Corporation, the NRC licensee for the Moab site. Since issuance of the Final Biological Opinion in July 1998, the Atlas Corporation filed for Chapter 11 bankruptcy protection. Although this bankruptcy could have the potential to affect securing adequate funds for the completion of reclamation activities, the NRC does not have any information to date that would show the FWS recommendations in the Final Biological Opinion are unattainable. In fact, at present, the NRC has aggressively taken a number of steps to ensure complete implementation of the Final Biological Opinion. I discuss these steps in the next 6 paragraphs of this Declaration (paragraphs 3-8).

3. Following receipt of the Final Biological Opinion, the NRC conducted additional independent analyses needed to support publication of the Final Environmental Impact Statement (FEIS), including whether the proposed reclamation could be found acceptable. This work was started in August 1998, and was completed in December 1998.

4. After completing the analysis discussed above, the NRC moved forward on issuing the FEIS. The FEIS was published in March 1999, and incorporated discussion of the reasonable and prudent alternative and reasonable and prudent measures' requirements.

5. After waiting the mandatory 30 days for the U.S. Environmental Protection Agency to review the FEIS, the NRC issued the final agency action on the proposal on May 28, 1999. This action was an amendment to the Atlas license approving the surface reclamation work consistent with the application submitted by Atlas but with several additional requirements imposed. Included are several requirements from the Final Biological Opinion related to the cleanup of existing ground-water contamination and other issues relevant to endangered species. These additional requirements include: (a) dewatering of the tailings, with a plan to be submitted by December 1999; (b) submission of a revised ground-water corrective action program by May 2000; (c) submission of an analysis showing that the Colorado River standard for ammonia will be met, (the submittal to be completed before the start of placement of the final radon barrier which will not occur for several years); (d) submission of a design, for NRC approval after consultation with FWS, for the reconfiguration of Moab Wash; and (e) compliance

with Final Biological Opinion requirements related to protection of the southwestern willow flycatcher.

6. In parallel to the technical work described above, the NRC has been cooperating with the Assistant U.S. Attorney in Denver, Colorado on the Atlas bankruptcy. As part of this effort, the NRC and the Assistant U.S. Attorney negotiated a settlement that brings \$5.25 million of cash and additional assets that could amount to several million dollars into a reclamation trust fund. This fund will be used by a trustee, selected by NRC and concurred upon by the State of Utah. The trustee will become responsible for site reclamation and will be able to receive reimbursement funds from the U.S. Department of Energy for work completed to accomplish this goal.

7. Early this summer, the NRC accepted proposals from organizations desiring to become the trustee for the Atlas site. On August 5, 1999, after consultation with the State of Utah, the NRC determined that Dames & Moore, Inc., would be the appropriate choice for trustee -- and the NRC has moved expeditiously to finalize appointment of that trustee. Recently, the NRC received formal concurrence from the State of Utah on the selection of the trustee and has notified Dames & Moore of its selection. Once approval of the bankruptcy court is obtained, the trustee can begin work on the most important near term activity to protect the endangered species, tailings dewatering, with the aim of completing it by July 2002, as required in the license.

8. Because the NRC is an independent agency that regulates the handling of nuclear materials, but does not itself operate nuclear facilities, it does not have authority or funding to undertake direct cleanup actions at this site. See generally Energy Reorganization Act of 1974, § 201 et seq., 42 U.S.C. § 5841 et seq. However, if another Federal agency obtains funding to undertake work or provide resources for necessary work at the site, the NRC will work closely with that agency.

9. Future actions the NRC has planned will continue to show our commitment to fulfilling the recommendations in the Final Biological Opinion. First, now that we have received formal concurrence from the State of Utah on our trustee selection, we will finalize the trust agreement. In addition, we will issue an order to the trustee outlining what must be done at the site. This order will impose those conditions from the Atlas license that the NRC concludes should be required to ensure acceptable site reclamation. The conditions imposed through the order will include the recommendations adopted from the Final Biological Opinion. Second, upon receiving the tailings dewatering plan from the trustee, the NRC will evaluate that to determine if it is acceptable. Consistent with the Final Biological Opinion, the NRC staff recognizes the need to complete dewatering in 30 months.

10. Upon receiving the revised ground water corrective action plan from the trustee (expected next spring), the NRC will review that revised plan to determine if it is acceptable in terms of both NRC regulations and the reasonable and prudent alternative and reasonable and prudent measures. Because the ground water protection plan will represent a new federal action, the NRC expects to consult with the FWS on that plan pursuant to the Endangered Species Act. Once the revised ground water plan is received, the NRC will have a better understanding of the situation related to ground water cleanup. This includes a determination of

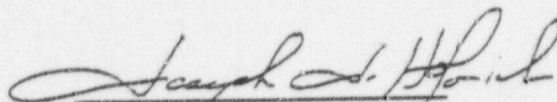


whether sufficient financial resources will be available to achieve cleanup consistent with the time frames in the Final Biological Opinion.

11. The availability of sufficient financial resources depends on the outcome of the additional analysis. In particular, the analysis could show one of three things: 1) the ground-water system will flush itself naturally to acceptable concentration limits within the time frame specified in the FBO, i.e. in seven years, and no additional funds would be needed; 2) the ground-water system will not flush naturally, within seven years, to acceptable concentration levels, but remedial actions are possible that will expedite ground-water cleanup. These remedial actions may or may not be able to achieve acceptable concentration limits in seven years; or 3) there are no reasonable remedial actions that will significantly reduce the time for ground water to reach acceptable concentration limits. However, until NRC sees what one of the three options is the case, it does not have a basis for saying the FBO cannot be met, especially given the fact that only option 2 would involve obtaining additional, reasonable funding.

12. Thus, until we receive the revised plan, the NRC has no basis to conclude that the reasonable and prudent alternative and reasonable and prudent measures cannot be met, and thus concludes that a reinitiation of consultation is unnecessary at this time and may be counterproductive in that it will divert scarce resources from other needed activities with no beneficial outcome likely.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 29, 1999.



Joseph J. Holonich  
Deputy Director  
Division of Waste Management, NMSS  
U.S. Nuclear Regulatory Commission

## EXHIBIT 2

PAUL M. WARNER, United States Attorney (USB #3389)  
STEPHEN ROTH, Assistant United States Attorney (USB #2808)  
185 South State Street, #400  
Salt Lake City, Utah 84111-1538  
Telephone: (801) 524-5682  
Facsimile: (801) 524-6924  
LOIS J. SCHIFFER, Assistant Attorney General  
Environment and Natural Resources Division  
JEAN E. WILLIAMS, Chief  
PAUL BOUDREAUX, Trial Attorney  
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  
Telephone: (202) 305-0216  
Attorneys for the Defendants

---

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

---

GRAND CANYON TRUST, a non-profit corporation;  
GRAND COUNTY, UTAH, a political subdivision of the  
State of Utah; DAVE BODNER; KEN SLEIGHT;  
COLORADO PLATEAU RIVER GUIDES, and  
unincorporated association; 3-D RIVER VISIONS, a Utah  
corporation; JOSEPH KNIGHTON; SIERRA CLUB, a  
non-profit corporation,

Plaintiffs,

vs.

BRUCE BABBITT, in his official capacity as Secretary of  
the Interior of the United States; UNITED STATES FISH  
AND WILDLIFE SERVICE; and RALPH  
MORGENWECK, in his official capacity as Regional  
Director (Region 6), Denver, United States Fish and  
Wildlife Service, and the U.S. NUCLEAR  
REGULATORY COMMISSION,

Defendants.

---

Civil No. 2:98CV 0803S

**DEFENDANT FISH AND  
WILDLIFE SERVICE'S  
MEMORANDUM  
IN SUPPORT OF ITS CROSS-  
MOTION FOR SUMMARY  
JUDGMENT OR MOTION  
FOR AFFIRMANCE OF  
AGENCY ACTION AND IN  
OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT**



Colorado squawfish and the razorback chub. BO at 84.<sup>2</sup> The plan would not have jeopardized the southwestern willow flycatcher. BO at 84.

The BO's Reasonable and Prudent Alternative (RPA)

16. Under the requirements of the ESA, the Fish and Wildlife Service set forth a "reasonable and prudent alternative" ("RPA") to Atlas's cleanup plan that would *not* jeopardize the fish or adversely modify their critical habitat. BO at 16, 84-94.

17. The Fish and Wildlife Service recognized that implementation of the RPA would require time to implement. BO at 85. The reasonable and prudent alternative for the Atlas site contains five parts. BO at 85. The most significant requirement of this alternative is the implementation of a revised, multi-year groundwater corrective action plan. BO at 86-94.

18. First, the groundwater cleanup plan would require actively "dewatering" the pile to the extent necessary to complete a "cap" that will prevent further water from entering the pile. BO at 86. Next, the cleanup plan would require Atlas to "clean up contaminated groundwater to the extent necessary to meet relevant standards within 7 years" from NRC's approval of the revised groundwater plan. BO at 86. The relevant standards include Utah water quality standards and additional standards for ammonia. BO at 86.

19. The RPA also requires that "Any accepted groundwater remediation plan must be designed to achieve cleanup in the shortest feasible period of time...." BO at 86. If the time frames are not met, the NRC is required to reinitiate consultation. BO at 93-94.

20. If the revised groundwater cleanup plan, when developed, includes portions that

---

<sup>2</sup> The common name of the "squawfish" has recently been changed to "pikeminnow."

Facts After the Date of the Completion of the Biological Opinion

32. Following the issuance of the BO on July 29, 1998, the Atlas Corporation filed for bankruptcy. See Decl. of Joseph J. Holonich, Nuclear Regulatory Commission, at ¶ 2, attached as Exhibit B to this motion. However, this does not mean that the reasonable and prudent alternative of the groundwater cleanup plan cannot be fulfilled. Since the date of the BO, the NRC has amended Atlas's license to require implementation of the RPA and the related terms and conditions. Id. ¶ 5. In conjunction with the bankruptcy proceeding, the NRC has selected a "reclamation trustee," in place of Atlas, to conduct the reclamation of the tailings pile site. Id. ¶¶ 6-7.

33. The trustee would receive proceeds from the Atlas bankruptcy estate. In addition, the Department of Energy is required to pay for a percentage of the cleanup costs. Id. ¶¶ 6-7.

34. The NRC's license requires submission by the trustee to the NRC of a groundwater corrective action plan by next year -- May 2000. Id. ¶¶ 5, 9. At that time, it will be more clear whether the funds available to the trustee are sufficient to finish the cleanup. It is not clear, at the present time, that there would be insufficient funds to complete the cleanup. Id. ¶¶ 5, 10-12.

35. In any event, the NRC expects to consult with the Fish and Wildlife Service under the ESA over the details of the proposed cleanup plan, when it is presented by the reclamation trustee. Id. ¶ 10.

36. The first step of the cleanup, before placement of the final "cap," is to "dewater" the pile. This dewatering process is expected to take up to 30 months to complete -- in other words, into the year 2002. Id. ¶¶ 7, 9.

consultation with regard to the groundwater cleanup. *Once the NRC receives a groundwater corrective action plan from its licensee at the site, the NRC intends on consulting again, under the ESA, on whether the specifics and details of the groundwater cleanup plan will meet the requirements for an effective cleanup.* See Holonich Decl. at ¶ 10, attached as Exh. B. The concerns raised by the plaintiffs in their summary judgment memoranda may be considered by the Fish and Wildlife Service during the next consultation process. If for some reason it is found next year that the groundwater cleanup required by the RPA cannot be achieved, the Fish and Wildlife Service will have a chance, *then*, to reconsider its RPA, before the "cap" is placed on the tailings pile.

The plaintiffs do not directly challenge the reasonable *approach* that the Fish and Wildlife Service has taken with regard to the cleanup of groundwater at the Moab site. First, through the 1998 Biological Opinion, the Fish and Wildlife Service instructed the NRC, through the BO's "reasonable and prudent alternative," to commission the licensee to create a groundwater corrective action plan that would achieve certain specified river water quality levels. The Fish and Wildlife Service required that the cleanup be done in the shortest possible time. In 1999, the NRC amended the license to require such work. Holonich Decl. at ¶ 5, Exhibit B. The NRC expects the trustee to present it with a detailed groundwater cleanup plan by May 2000. The NRC then expects to consult again with the Fish and Wildlife Service about the groundwater cleanup plan and its sufficiency to meet the RPA's requirements. Holonich Decl. at ¶ 10.

The Fish and Wildlife Service respectfully maintains that it is following an eminently reasonable approach to fulfilling the requirements of the ESA and to cleaning up the groundwater