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APPEAL FROM INITIAL FOIA DECISION

TO : EXECUTIVE DIRECTOR FOR OPERATIONS  
U.S. NUCLEAR REGULATORY COMMISSION  
Washington, D.C. 20555

FROM: Requester MORTON L. FRIEDMAN

RE : Request number FOIA-89-2

SUBJECT OF REQUEST: SACRAMENTO METRO UTILITIES DISTRICT

DATE: February 9, 1989

APPEAL OF INITIAL FOIA DECISION  
**89-A-7E(P9-2)**  
**Rec'd 2-17-89**

PLEASE TAKE NOTICE that the undersigned hereby appeals, in accordance with the provisions of the Freedom of Information Act (Title 5, U.S.C. Section 552, et seq.) from the decision and determination dated November 3, 1988 of Donnie H. Grimsley, Director, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, and Ben B. Hayes, Director, Office of Investigations, denying the request for records. Copies of the request and of the decision and determination denying the request are attached hereto as Exhibits A and B, respectively.

Requester submits that the NRC's reliance on Exemption (7)(A) of the FOIA (5 U.S.C. 552(b)(7)(A)) is inappropriate in this instance. Requester initially sought records relating to an investigation conducted by the United States Attorney in the Eastern District of California relating to a criminal investigation into the conduct of the Rancho Seco Nuclear Power Plant operated by the Sacramento Metropolitan Utilities District surrounding the discharge of radioactive liquid effluent into creeks outside the plant's boundaries. The request was made after the United States Attorney had already decided not to pursue a criminal investigation. Since the Government's case has been dropped, there can be no interference with any enforcement proceeding insofar as the requested records are concerned.

In addition, Requester takes issue with the NRC conclusion that production or disclosure is contrary to public interest. The requested records relate to radiation exposure to persons living

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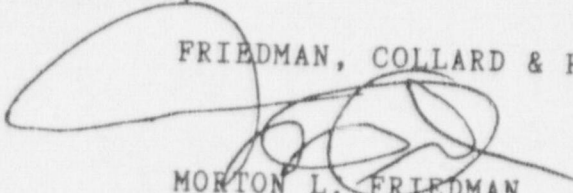
To : Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
From: Requester Morton L. Friedman  
Re : Request number FOIA-89-2  
Subject of Request: SACRAMENTO METRO UTILITIES DISTRICT  
Date: February 9, 1989  
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within the immediate vicinity of the Rancho Seco Nuclear Power Plant in Sacramento County, California, and the health and welfare of each of these individuals is dependent upon the information requested.

Based upon the foregoing, the requester urges the agency to grant his request. We are calendaring our request for twenty days plus time for mailing in which to receive a response. We trust that your response will meet the requirement of explaining the manner in which Section 552(b)(5) applies to any record which may be withheld.

Respectfully submitted,

FRIEDMAN, COLLARD & POSWALL



MORTON L. FRIEDMAN

MLF:rh



U.S. Department of Justice  
United States Attorney  
Eastern District of California

Room 3305 Federal Building  
United States Courthouse  
650 Capitol Mall  
Sacramento, California 95814

916/551-2700

November 22, 1988

Susan A. Nellor, Director  
Office of Legal Services  
Executive Office for U.S.  
Attorneys-FOIA  
Room 6320 Pat Building  
6th and D Streets N.W.  
Washington, D. C. 20530

Re: Freedom of Information Act Request  
SMUD (Sacramento Metropolitan Utilities District)

Dear Ms. Nellor:

We are forwarding to you a request from Morton Friedman, an attorney in a civil matter regarding SMUD in this district. The request was sent directly to Mr. Flynn, the attorney on the criminal matter mentioned in the letter. Mr. Flynn declined prosecution of the criminal matter and it is now closed.

I am also forwarding to you the documents which comply with this request which are the case report of the Nuclear Regulatory Commission. It is Mr. Flynn's understanding that, before any document is released, NRC will be allowed to review the documents for FOIA release. The District Director is Robert Marshal at PTS 463-3711.

Very truly yours,

DAVID F. LEVI  
United States Attorney

By: \_\_\_\_\_  
PATSY SILVA  
Paralegal Assistant

cc: Robert Marshal  
Director  
NRC-Investigations  
1450 Maria Lane, Suite 210  
Walnut Creek, CA 94596

EXHIBIT A



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November 3, 1988

U.S. Attorney David Levy  
U.S. Federal Courthouse Building  
650 Capitol Mall, Room 3305  
Sacramento, CA 95814

ATTN: Tom Flynn  
Assistant U.S. Attorney

Re: Freedom of Information Act Request

Dear Mr. Flynn:

Pursuant to Title 28 C.F.R. 16.1, et seq, and Title 5 U.S.C., Section 552, request is hereby made for all non-exempt and non-privileged documents, letters, interviews, statements, and any other tangible things or effects regarding the United States Attorney's investigation into the possible criminal indictments of employees of the Sacramento Metropolitan Utilities District following the discharge of radioactive liquid effluents at the Rancho Seco Nuclear Power Plant into Clay, Hadselville and Laguna Creeks in Sacramento County, California since 1980. This investigation was conducted by the U.S. Attorney's Office for the Eastern District of California and was concluded without the filing of criminal indictments in or about August, 1988. Request is also made for all reports supplied by any governmental agency including, but not limited to, the Nuclear Regulatory Commission, Lawrence Livermore National Laboratory and Oakridge National Laboratory, which were obtained in the course of the United States Attorney's investigation.

Application is also hereby made for a waiver of fees in connection with this request on the ground that the information primarily benefits the general public. In addition, many people who are claiming personal injuries and property damage as a result of the discharge of radioactive materials in a civil

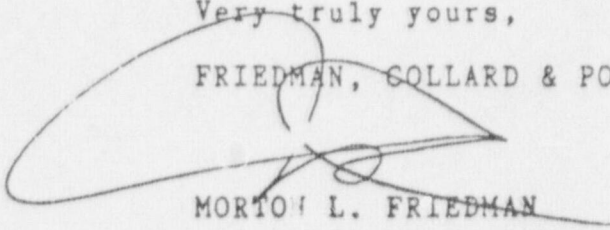
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U.S. Attorney David Levy  
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lawsuit filed in the Sacramento County Superior Court bearing case number 333603, are persons who qualify for in forma pauperis protections under California law. Our firm is the attorney for these claimants in said Superior Court action.

Thank you for your prompt attention and cooperation.

Very truly yours,

FRIEDMAN, COLLARD & POSWALL



MORTON L. FRIEDMAN

BAZ:rh