

Sierra Club Glen Canyon Group

P.O. Box 622
Moab, Utah 84532

November 26, 2002

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STP

Mr. Paul H. Lohaus, Director
Office of State and Tribal Programs
Mail Stop O-3 C10
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555-0001

RE: Utah Division of Radiation Control Agreement State Status: Proposal to Substitute
Utah Ground Water Quality Protection Rules for Nuclear Regulatory Commission
Ground Water Protection Criteria

Dear Mr. Lohaus:

As part of the Utah Division of Radiation Control's (UDRC's) application to become a Nuclear Regulatory Commission (NRC) Agreement State for the regulation of uranium mills and tailings (and related facilities) in the State of Utah, the UDRC intends to substitute Utah ground water regulations for NRC ground water regulations. The UDRC has proposed to substitute the Utah Administrative Rules for Ground Water Quality Protection (R317-6) for NRC Ground Water Protection Criteria in 10 C.F.R. Part 40, Appendix A.

It is the Sierra Club's understanding that this substitution will require NRC hearings, pursuant 42 U.S.C. Chapter 23, Section 2021(o). Section 2021(o) provides for the adoption of alternative requirements by Agreement States, after notice and opportunity for public hearing.

It is our understanding that, as "alternative requirements," the substitution of Utah ground water regulations for NRC ground water regulations should only be accomplished through a public process. It is also our understanding that the public hearing described in Section 2021(o), will be an opportunity for the public to provide oral and written comment on the proposal. Section 2021(o) might also require notice of an opportunity for an adjudicatory proceeding.

It is imperative that the public hearing process is open and fair, with ample opportunity for the citizens in the vicinity of the White Mesa Uranium Mill, near Blanding, Utah, to comment on the proposed substitution. Ample opportunity for public participation should also be provided to other impacted communities.

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Thus far, the decision making process for the substitution of state ground-water rules for federal ground-water rules has not been an open, fair, and public process.

In the UDRC October 23, 2002, letter to the Office of State and Tribal Programs (OSTP), the UDRC provided the OSTP with a description of the decision-making process used by the UDRC in determining (among other things) how to "best address the 'groundwater authority' issue." The UDRC described a "stakeholder" task force process. However, this stakeholder process was not open, fair, or public.

The White Mesa Uranium Mill, the only active uranium mill in Utah, is next to Ute Mountain Ute Tribe land. It is the Ute Mountain Tribe, particularly, that uses the ground water from an aquifer under the White Mesa Uranium Mill. Yet, no tribal representatives were included in the UDRC "stakeholder" task force. Apparently, neither individuals living in the vicinity of the White Mesa Uranium Mill, nor their tribal representatives, were given an opportunity to participate in this closed "stakeholder" task force process.

Citizen and environmental groups were excluded, as were interested and impacted individuals who live, work, and recreate near White Mesa and other affected uranium facilities.

The Plateau Resources Limited Shooting Canyon Mill is in Garfield County, yet no individuals or representatives from Garfield County were part of the "stakeholder" task force.

Moreover, the "stakeholder" group made other policy determinations that would affect the citizens of Grand County, Utah. But, no Grand County representatives, citizen and environmental groups, or individuals were given an opportunity to participate in the "stakeholder" task force process.

We are not aware of any local public notice of the task force process and a notice opportunity to participate in that process. The "stakeholder" task force was convened and its work accomplished over two years ago, even before the State of Utah made its official decision on whether to seek Agreement State status for uranium milling and mills. This "extra" policy-making process was not discussed by the UDRC during 1999 hearings in Grand County on the Agreement State proposal, or mentioned in the handouts. It was out of sight and out of mind.

In consideration of the above, the Sierra Club requests:

1. That public hearings (with an opportunity for written and oral comment) on the substitution of Utah Administrative Rules on Ground Water Quality Protection (R317-6) for NRC Ground Water Protection Criteria in 10 C.F.R. Part 40, Appendix A take place prior to the approval of this proposal by the NRC; and

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2. That one of the public ground water hearings take place as near as possible to the White Mesa Uranium Mill; the first choice being on White Mesa Ute tribal land.

Sincerely,

A handwritten signature in black ink, appearing to read "John Weisheit". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

John Weisheit, Chair
Glen Canyon Group/Sierra Club

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Mr Paul Lohaus, Director
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