



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 8, 2020

IN RESPONSE REFER TO:
NRC-2020-000076
(NRC-2019-000132)

Aaron M. Paul, Esq.
Grand Canyon Trust
4404 Alcott Street
Denver, CO 80211

Dear Mr. Paul:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated December 10, 2019, in which you appealed the agency's September 12, 2019 response related to your November 21, 2018 Freedom of Information Act (FOIA) request, NRC-2019-000132. In that request, you sought copies of documents dated, created, or modified 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.

Your appeal letter raises three distinct concerns: [1] four of the records identified in our Form 464 response as publicly available are not, in fact, public; [2] a July 7, 2000 letter referenced in one of the publicly available records was not included among the records identified as responsive; and [3] the failure of the agency to provide you with copies of the documents maintained in the ADAMS Public Legacy Library that you identified as responsive.

Acting on your appeal, I am granting your appeal in part. Upon receipt of your appeal, the FOIA Office checked ADAMS to verify the profile of the four records (ML010160258, ML020670497, ML021430415, and ML022070273) you were unable to locate in public ADAMS. Apparently, the last step necessary to replicate these four documents for public availability was overlooked. This oversight has been remedied and the FOIA Office has confirmed that these four documents are now available to you in public ADAMS.

With respect to a letter, dated July 7, 2000, from International Uranium USA Corp (IUSA) to the NRC, in which IUSA "submit[ted] additional detail" about its request to modify the reclamation plan (see ML010160222), which was not among the publicly available documents listed in the FOIA Office's response, we asked staff in the Office of Nuclear Material Safety & Safeguards (NMSS) to conduct a new search for such a record. NMSS staff acknowledge that ML010160222 alludes to IUSA submitting additional information on July 7, 2000; however, their search of the docket did not locate the letter. NMSS staff did find four documents dated July 7, 2000 in the docket. Three of these documents are NRC-generated. While the fourth document (ML003733808) is from IUSA, it does not have any information related to the reclamation plan. Reading deeper into the ML010160222 document (page 18 of the pdf, section 1, description of licensee's proposal), NMSS states that it references additional information

submitted by IUSA on both July 7th and July 17th. The license condition (9.11) related to the review also includes both dates. Although it appears that there were two separate licensee submissions, neither a search of the docket nor a broader search of ADAMS located the July 7th letter. From a reading of the July 17th submission (ML003737414), it appears that it was intended to capture all the changes that resulted from recent discussions, presumably to include what IUSA included in that July 7th letter. Due to the age of the document, NMSS staff was unable to locate the letter elsewhere. I conclude that a search reasonably calculated to locate the July 7, 2000 letter has been done, even though the search did not locate the letter.¹

We note that the FOIA Office also conducted a search of ADAMS to try to find the July 7th letter. Although the FOIA Office did not find the letter as part of its search effort, it identified a prior FOIA request, FOIA/PA-2003-0334, seeking records relating to White Mesa. The FOIA Office has asked NMSS staff to review the records to determine whether any of them are responsive to your request, and, if not already identified as responsive to your request, to provide their disclosure recommendations to the FOIA Office. Accordingly, I am remanding this matter to the FOIA Office, which will be in touch with you shortly.

As to your concern that the 35 documents listed on Attachment A to your appeal letter, which are in the NRC's Public Legacy Library, were not produced to you, the NRC's FOIA regulation, at 10 CFR 9.23(d)(2), provides that whenever records responsive to a FOIA request have been placed on the NRC's public website and/or at the NRC Public Document Room, the requester should request access to such records directly from the NRC Public Document Room in accordance with 10 CFR 9.23(a). As a courtesy to you, a CD containing these documents is enclosed.

This is the final agency decision with regards to this request. As set forth in the FOIA (5 U.S.C. 552(a)(4)(B)), you may seek judicial review of this decision in the district court of the United States in the district in which you reside, in which you have principal place of business. You may also seek judicial review in the district in which the agency's records are situated or in the District of Columbia.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

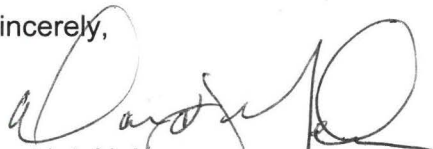
¹ Since Utah is an Agreement State, if you have not already done so, you may wish to request access to records Utah maintains (including records that the NRC transferred to them when Utah became an Agreement State on April 1, 1984). Here is the salient contact information: Ty L. Howard is the Director, Division of Waste Management and Radiation Control, Dept. of Environmental Quality, P.O. Box 144880, Salt Lake City, UT 84114-4880; PH: (801) 536-0203; email: tyhoward@utah.gov.

Paul, A.

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Toll-free: 1-877-684-6448
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Sincerely,

A handwritten signature in black ink, appearing to read "David J. Nelson", with a large, stylized flourish at the end.

David J. Nelson
Chief Information Officer
Office of the Chief Information Officer