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NSC/RMO PROFILE

RECORD ID: 9507055
RECEIVED: 25 SEP 95 10

TO: BROWNER, C
WIDNALL, S

DECLASSIFIED
E.O. 12958, As Amended,
White House Guidelines, August 28, 1997
By Dms NARA, Date 5/11/07

FROM: PRESIDENT

DOC DATE: 29 SEP 95
SOURCE REF: PD95-45

KEYWORDS: LEGAL ISSUES
ENVIRONMENT

PD

PERSONS:

SUBJECT: PD 95 45 CONCERNING AIR FORCE OPERATIONS AT GROOM LAKE

ACTION: PRES SGD PD 95-45

DUE DATE: 28 SEP 95 STATUS: C

STAFF OFFICER: KRECKO

LOGREF:

FILES: PA

NSCP:

CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION

FOR CONCURRENCE

FOR INFO
KRECKO
NSC CHRON

COMMENTS: _____

DISPATCHED BY ZMB DATE 9/29 BY HAND W/ATTCH

OPENED BY: NSASK

CLOSED BY: NSJWF

DOC 3 OF 3

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ACTION DATA SUMMARY REPORT

DOC ACTION OFFICER

CAO ASSIGNED ACTION REQUIRED

001 LAKE
002 PRESIDENT
003

Z 95092618 FWD TO PRESIDENT FOR DECISION
Z 95092715 FOR SIGNATURE
X 95092916 PRES SGD PD 95-45

DISPATCH DATA SUMMARY REPORT

DOC DATE DISPATCH FOR ACTION

DISPATCH FOR INFO

002 950927
002 950927
003 950929 BROWNER, C
003 950929 WIDNALL, S

VICE PRESIDENT
WH CHIEF OF STAFF
DUSAULT, P
SAUNDERS, T

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Attachment

~~TOP SECRET~~

THE WHITE HOUSE
WASHINGTON

DECLASSIFIED 7055
E.O. 12958, As Amended,
White House Guidelines, August 28, 1997
By DM NARA, Date 5/11/07

September 27, 1995

ACTION

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK

FROM: ANTHONY LAKE

SUBJECT: RCRA Exemption for the Operating Location at Groom Lake

Purpose

To exempt the Air Force from public disclosure requirements concerning the inspection and inventory of hazardous waste at the "operating location near Groom Lake, Nevada."

Background

Lawsuits have been brought against EPA, the Air Force and other government officials for failure to enforce the requirements of the Resource Conservation and Recovery Act (RCRA) at a classified AF operating location near Groom Dry Lake Bed, Nevada (the operating location). Plaintiffs allege EPA failed to (1) conduct a RCRA inspection; (2) compile an inventory of wastes and (3) publicly disclose the inspection and inventory.

Subsequent to this suit, the EPA, in agreement with the Air Force, conducted a RCRA inspection and compiled a RCRA inventory. The Air Force has committed to conducting its activities at the operating location in accordance with RCRA requirements. EPA agrees that annual RCRA inspections will be conducted at the operating location. On this basis, the district court has granted summary judgment for the Government regarding plaintiffs' inspection and inventory claims.

The only remaining issue is RCRA's requirement of public disclosure of the inspection and inventory. The Secretary of the Air Force presented a classified affidavit to the Court explaining that public disclosure would compromise sensitive national security information. She explained that the presence of certain chemicals or chemical compounds could reveal military operational capabilities or the nature and scope of classified operations and could provide critical information on the makeup

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Attachment

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CC: Vice President
Chief of Staff

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DECLASSIFIED
E.O. 12958, As Amended,
White House Guidelines, August 28, 1997
By PHS NARA, Date 5/11/07

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and vulnerability of materials analyzed. The court agreed the information was appropriately classified but found that it could only be protected from disclosure if you invoked authority under RCRA to exempt the location from RCRA's disclosure requirements.

The Justice Department and Air Force believe the RCRA statute should be read to include an implicit exception for classified information, and they are appealing the judge's decision on that basis. However, given the uncertainties of an appeal and the sensitivity of the information at stake, Deputy Secretary of Defense White and the Secretary of the Air Force have recommended that you provide a statutory exemption to the operating location. EPA Administrator Browner has concurred on the basis of the Air Force's determination that the information must remain classified.

The proposed exemption is worded narrowly, to exempt the location only from disclosure requirements and not from applicable environmental standards. It needs to be filed with the court by October 2.

I concur in the recommendation, as do Ab Mikva and Katie McGinty. The classified declaration of Air Force Secretary Widnall at Tab C elaborates on the need to keep the information concerning the operating location at Groom Lake classified.

RECOMMENDATION

That you sign the exemption at Tab A.

Attachments

- Tab A Draft Presidential Determination
- Tab B Unclassified Declaration of Secretary Widnall to the Court
- Tab C Classified Declaration of Secretary Widnall
- Tab D Incoming Recommendation from Deputy Secretary White

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Attachment

~~TOP SECRET~~

OSD RECEIPT FOR CLASSIFIED MATERIAL					
TO: (Title of Office or Organization)				Number	
Secretary of the Air Force				K 169418	
FROM: (Office and Telephone)		Classification		Date of Transfer	
Description of Material being Transferred (Do Not Enter Classified Info)					
DD-95-45					
(Copy Info (For Copy Numbered Items, Use Inclusive Copy Nos. With # Sign))					
No. of Originals	No. of Carbons	No. of Repro Cys	No. of Encls	No. Cys of each Encl	
1	0	0	0	0	
Date Received	Typed Or Printed Name and Signature of Recipient				
9/29/95	ROBERTSON SA RBT				

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Original
for
USAF

THE WHITE HOUSE

WASHINGTON

September 29, 1995

Presidential Determination
No. 95-45

MEMORANDUM FOR THE ADMINISTRATOR OF THE ENVIRONMENTAL
PROTECTION AGENCY
THE SECRETARY OF THE AIR FORCE

SUBJECT: Presidential Determination on Classified
Information Concerning the Air Force's Operating
Location Near Groom Lake, Nevada

I find that it is in the paramount interest of the United States to exempt the United States Air Force's operating location near Groom Lake, Nevada (the subject of litigation in Kasza v. Browner (D. Nev. CV-S-94-795-PMP) and Frost v. Perry (D. Nev. CV-S-94-714-PMP)) from any applicable requirement for the disclosure to unauthorized persons of classified information concerning that operating location. Therefore, pursuant to 42 U.S.C. § 6961(a), I hereby exempt the Air Force's operating location near Groom Lake, Nevada from any Federal, State, interstate or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning that operating location to any unauthorized person. This exemption shall be effective for the full one-year statutory period.

Nothing herein is intended to: (a) imply that in the absence of such a Presidential exemption, the Resource Conservation and Recovery Act (RCRA) or any other provision of law permits or requires disclosure of classified information to unauthorized persons; or (b) limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake, Nevada, except those provisions, if any, that would require the disclosure of classified information.

The Secretary of the Air Force is authorized and directed to publish this Determination in the Federal Register.

William J. Clinton

copy for
EPA

THE WHITE HOUSE

WASHINGTON

September 29, 1995

Presidential Determination
No. 95-45

MEMORANDUM FOR THE ADMINISTRATOR OF THE ENVIRONMENTAL
PROTECTION AGENCY
THE SECRETARY OF THE AIR FORCE

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The Secretary of the Air Force is authorized and directed to publish this Determination in the Federal Register.

William J. Clinton

**SECAF
UNCLASSIFIED
DECLARATION**

DR. WIDNALL

21 FEB 1995

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

John Doe I, John Doe II, John Doe III,
John Doe IV, John Doe V, and John Doe VI,

Plaintiffs,

v.

Carol M. Browner, Administrator,
Environmental Protection Agency,

Defendant.

Civil: CV-S- 94-795-PMP

and

Helen Frost, John Doe I, John Doe II, John Doe III,
John Doe IV, John Doe V, and John Doe VI,

Plaintiffs,

v.

William Perry, Secretary of Defense,
Anthony Lake, National Security Adviser, and
Sheila Widnall, Secretary of the Air Force,

Defendants.

Civil: CV-S-94-714-PMP

UNCLASSIFIED DECLARATION AND CLAIM OF MILITARY AND STATE
SECRETS PRIVILEGE OF SHEILA E. WIDNALL, SECRETARY OF THE AIR FORCE

I, SHEILA E. WIDNALL, HEREBY DECLARE THE FOLLOWING TO BE TRUE AND CORRECT:

1. Official Duties: I am the Secretary of the United States Air Force and the head of the Department of the Air Force. In that capacity, I exercise the statutory functions specified in section 8013 of Title 10, U.S. Code. I am responsible for the formulation of Air Force policies and programs that are fully consistent with the national security directives of the President and the Secretary of Defense, including those that protect national security information relating to the defense and foreign relations of the United States. As the Secretary of the Air Force, I exercise authority over the operating location near Groom Lake, Nevada, and the information associated with that operating location. As the head of an agency with control over the information associated with the operating location near Groom Lake, I am the proper person to assert the military and state secrets privilege with regard to that information. Under Executive Order 12356, I exercise original TOP SECRET classification authority, which permits me to determine the proper classification of national security information on behalf of the United States. Executive Order No. 12356, Sec. 1.2, 47 Fed. Reg. 20,105 (1982), reprinted in 50 U.S. Code Section 401 (1991); Presidential Order of May 7, 1982, Officials Designated to Classify National Security Information, reprinted in 50 U.S. Code Section 401 (1991).

2. Purpose: This Declaration is made for the purpose of advising the court of the national security interests in and the security classification of information that may be relevant to the above captioned lawsuits. The statements made herein are based on (a) my personal consideration of the matter; (b) my personal knowledge; and (c) my evaluation of information made available to me in my official capacity. I have concluded that release of certain information relevant to these lawsuits would necessitate disclosure of properly classified information about the Air Force

operating location near Groom Lake, Nevada. I am satisfied that the information described in the classified Declaration is properly classified. I have further determined that the information described in the classified Declaration, if released to the public, could reasonably be expected to cause exceptionally grave damage to the national security. It is not possible to discuss publicly the majority of information at issue without risking the very harm to the national security that protection of the information is intended to prevent.

3. Security Classification: Under Information Security Oversight Office guidance, “[c]ertain information that would otherwise be unclassified may require classification when combined or associated with other unclassified information.” (32 CFR 2001.3(a)) Protection through classification is required if the combination of unclassified items of information provides an added factor that warrants protection of the information taken as a whole. This theory of classification is commonly known as the mosaic or compilation theory. The mosaic theory of classification applies to some of the information associated with the operating location near Groom Lake. Although the operating location near Groom Lake has no official name, it is sometimes referred to by the name or names of programs that have been conducted there. The names of some programs are classified; all program names are classified when they are associated with the specific location or with other classified programs. Consequently, the release of any such names would disclose classified information.

4. National Security Information: As the head of the agency responsible for information regarding the operating location near Groom Lake, I have determined that information that concerns this operating location and that falls into any of the following categories, is validly classified:

- a. Program(s) name(s)
- b. Mission(s);
- c. Capabilities;
- d. Military plans, weapons, or operations;
- e. Intelligence sources and methods;
- f. Scientific or technological matters;
- g. Certain physical characteristics;
- h. Budget, finance, and contracting relationships;
- i. Personnel matters; and,

j. Security sensitive environmental data. The following are examples of why certain environmental data is sensitive to the national security. Collection of information regarding the air, water, and soil is a classic foreign intelligence practice, because analysis of these samples can result in the identification of military operations and capabilities. The presence of certain chemicals or chemical compounds, either alone or in conjunction with other chemicals and compounds, can reveal military operational capabilities or the nature and scope of classified operations. Similarly, the absence of certain chemicals or chemical compounds can be used to rule out operations and capabilities. Revealing the composition of the chemical waste stream provides the same kind of exploitable information as does publishing a list of the chemicals used and consumed. Analysis of waste material can provide critical information on the makeup as well as the vulnerabilities of the material analyzed. Disclosure of such information increases the risk to the lives of United States personnel and decreases the probability of successful mission accomplishment.

5. Role of State and Federal Environmental Agencies: Since 1990, appropriately cleared representatives of Nevada's Department of Conservation and Natural Resources have been

authorized access to the operating location near Groom Lake. The state representative's role is and has been to monitor and enforce compliance with environmental laws and regulations and to advise on remedial efforts, if required. Appropriately cleared officers of the U.S. Environmental Protection Agency were recently granted access to the operating location near Groom Lake for inspection and enforcement of environmental laws. Federal inspectors from the Environmental Protection Agency commenced an inspection pursuant to the Solid Waste Disposal Act, commonly referred to as a "RCRA inspection," at the operating location near Groom Lake, Nevada on December 6, 1994. The Air Force has taken these steps to ensure full compliance with all applicable environmental laws. At the same time that the operating location near Groom Lake is being inspected for environmental compliance, it is essential to the national security that steps also be taken to prevent the disclosure of classified information.

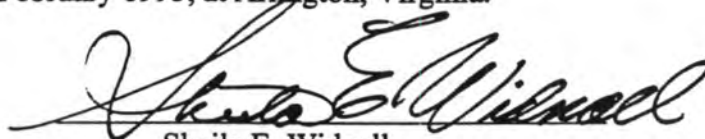
6. Invoking Military and State Secrets Privilege: It is my judgment, after personal consideration of the matter, that the national security information described in this Declaration and in the classified Declaration, concerning activities at the U.S. Air Force operating location near Groom Lake, Nevada, constitutes military and state secrets. As a result, disclosure of this information in documentary or testimonial evidence must be barred in the interests of national security of the United States. Pursuant to the authority vested in me as Secretary of the Air Force, I hereby invoke a formal claim of military and state secrets privilege with respect to the disclosure of the national security information listed in paragraph four of this Declaration and more fully discussed in the classified Declaration, whether through documentary or testimonial evidence.

7. Environmental Compliance: Although I have found it necessary to invoke the military and state secrets privilege, I believe it important to comment on the Air Force's commitment to full compliance with the environmental laws of the United States. Our goal is to be the best possible

environmental steward of the lands comprising the Nellis Range. To meet that goal we are cooperating and will continue to cooperate with both federal and state environmental agencies.

8. Under penalty of perjury, and pursuant to section 1746 of Title 28, U.S. Code, I certify and declare that the foregoing statements are true and correct.

Executed this 21 day of February 1995, at Arlington, Virginia.

A handwritten signature in cursive script, reading "Sheila E. Widnall", written over a horizontal line.

Sheila E. Widnall
Secretary of the Air Force

MEMORANDUM FOR THE SECRETARY OF THE AIR FORCE AND
THE ADMINISTRATOR OF THE ENVIRONMENTAL
PROTECTION AGENCY

SUBJECT: Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

I find that it is in the paramount interest of the United States to exempt the United States Air Force's operating location near Groom Lake, Nevada (the subject of litigation in Kasza v. Browner (D. Nev. CV-S-94-795-PMP) and Frost v. Perry (D. Nev. CV-S-94-714-PMP)) from any applicable requirement for the disclosure to unauthorized persons of classified information concerning that operating location. Therefore, pursuant to 42 U.S.C. § 6961(a), I hereby exempt the Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate, or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning that operating location to any unauthorized person. This exemption shall be effective for the full one-year statutory period.

Nothing herein is intended to: (a) imply that, in the absence of such a Presidential exemption, RCRA or any other provision of law permits or requires disclosure of classified information to unauthorized persons; or (b) limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake, Nevada, except those provisions, if any, that would require the disclosure of classified information.



SECRETARY OF THE AIR FORCE
WASHINGTON

SEP 25 1995

MEMORANDUM FOR THE DEPUTY SECRETARY OF DEFENSE

SUBJECT: Request to Seek Presidential Exemption for Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

I recommend and request that you seek from the President an exemption from disclosure of classified information concerning an Air Force operating location near Groom Lake in the Nellis Range Complex in Nevada. This request is necessitated by a judicial decision in a lawsuit against the Environmental Protection Agency, Kasza v. Browner, No. CV-S-94-795-PMP. Administrator Browner concurs in this request, as does the Department of Justice Environment and Natural Resources Division, which is defending EPA in the lawsuit.

The Kasza case is one of two citizen environmental suits pending in federal district court in Nevada concerning the operating location near Groom Lake. The activities undertaken at the operating location are crucial to national security. The nature of the activities requires that virtually all information about the location be classified. Indeed, until recently the Air Force had never publicly acknowledged that it had an operating location there; as of today, that is virtually the only information about the location we have made public. To protect national security in the pending litigation, I have made a formal claim of the military and state secrets privilege. My unclassified declaration invoking the privilege is attached. My classified declaration, which provides detailed information about the operating location and its national security significance, can be made available to you on request and is available to the President through NSC staff.

Plaintiffs in the Kasza case sought to compel EPA to inspect the operating location and to obtain from the Air Force (or prepare itself) an inventory concerning the operating location and then to make public the report of inspection and the inventory under the Resource Conservation and Recovery Act (RCRA). In the second related suit against the Department of Defense, the Air Force, and the National Security Advisor, plaintiffs have alleged that the Air Force violated RCRA at the operating location, and they seek declaratory and injunctive relief and civil monetary penalties. Although it is not the subject of either lawsuit or related to this request for a Presidential exemption, plaintiffs' counsel has also claimed (a) his clients have knowledge of criminal violations at the operating location and (b) his clients suffered personal injury due to environmental violations. EPA and the Justice Department are investigating the claims of criminal conduct.

Earlier this year, the government moved to dismiss the Kasza case as moot because EPA had conducted the inspection and the Air Force had delivered the inventory to EPA. The report of the inspection and the inventory are classified. The government has also sought dismissal of the second suit based on the military and state secrets privilege; under a well-established line of precedent, where as here the suit cannot be prosecuted or defended without disclosing classified information that would cause serious harm to national security, it must be dismissed.

On August 30, the court decided the Kasza motion, dismissing plaintiffs' inspection and inventory claims as moot. After reviewing the inspection report and inventory, the court concluded that EPA, with the Air Force's full cooperation, "has conducted a thorough inspection of the operating location near Groom Lake . . . in full compliance with the requirements of RCRA" and that "the Air Force is adequately providing information to EPA . . . in compliance with RCRA." The court also found that the inspection report and inventory are properly classified and fall within the scope of the military and state secrets privilege I invoked. Nevertheless, the court held that the documents are subject to public disclosure under RCRA section 3007(b), 42 U.S.C. § 6927(b). The judge recognized that disclosure would conflict with 18 U.S.C. § 793, which makes it a felony to disclose national security information to unauthorized people, and with E.O. 12356, which provides for the classification of information and restricts access to classified information. He concluded, however, that the only alternatives were (1) declassify and disclose the documents or (2) obtain a Presidential exemption from disclosure, pursuant to section 6001(a) of RCRA, 42 U.S.C. § 6961(a), which authorizes the President to exempt federal facilities from compliance with certain obligations if he determines that it is "in the paramount interest of the United States" to do so. An exemption under section 6001(a) can last for one year, subject to renewal. The court gave EPA until October 2, 1995, to report which course it would pursue.

I am advised that the court's order is legally tenuous from several perspectives. First, there are grounds for believing that the court interpreted the statute incorrectly. Second, the order, which appears to require either that the Air Force declassify a document or that the President exercise his discretion to grant an exemption, raises separation of powers concerns. Third, there is a question whether the exemption provision, which on its face concerns the obligations of federal waste management facilities, may properly be invoked to relieve EPA of any of its statutory obligations. Moreover, if extended to other comparable statutory requirements and to other classified activities, the opinion is of concern.

If the Kasza case were standing alone, review of the court's order through reconsideration and the appellate process would be the likely strategy. However, delay attendant to judicial review poses risks to national security because of the second suit against the Air Force. The court will not dismiss the case against the Air Force as long as there is an open question whether the inspection report and inventory will be made public. Because the pendency of the case against the Air Force and attendant leaks by plaintiffs have created significant national security risks, it is important that we pursue the most protective course. We believe that course is obtaining Presidential affirmation of the protected status of these documents while at the same time seeking legal review of the order. The Department of Justice, which is defending both cases, and EPA agree with this recommendation.

The decision memorandum we propose to have the President sign exempts the Air Force's operating location near Groom Lake from any provision of hazardous waste law that might require disclosure of classified information concerning the operating location. The memorandum makes clear that other environmental obligations are not diminished. It also reserves the question whether the court was correct in ruling that an exemption is actually needed, which will be the subject of further litigation. We ask that it be returned in time for EPA to be able to report to the court that it has been granted by the October 2 deadline.

We believe that the action requested here is consistent with protecting the environment and national security. The Air Force is fully committed to complying with the environmental laws and being a good steward of the land entrusted to its care, including classified locations. The Air Force also is, and must be, committed to protecting national security and, necessarily, sensitive classified information. We do not believe these goals are mutually exclusive. We are working in cooperation with the EPA to ensure that both goals are fulfilled.

1 Attachment
a/s

A handwritten signature in black ink, reading "Santa E. Widner". The signature is written in a cursive, flowing style with a large initial 'S'.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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John Doe IV, John Doe V, and John Doe VI.

Plaintiffs.

v.

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Defendant.

Civil: CV-S-94-795-PMP

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Plaintiffs.

v.

William Perry, Secretary of Defense,
Anthony Lake, National Security Adviser, and
Sheila Widnall, Secretary of the Air Force.

Defendants.

Civil: CV-S-94-714-PMP

UNCLASSIFIED DECLARATION AND CLAIM OF MILITARY AND STATE
SECRETS PRIVILEGE OF SHEILA E. WIDNALL, SECRETARY OF THE AIR FORCE

I, SHEILA E. WIDNALL, HEREBY DECLARE THE FOLLOWING TO BE TRUE AND CORRECT:

1. Official Duties: I am the Secretary of the United States Air Force and the head of the Department of the Air Force. In that capacity, I exercise the statutory functions specified in section 8013 of Title 10, U.S. Code. I am responsible for the formulation of Air Force policies and programs that are fully consistent with the national security directives of the President and the Secretary of Defense, including those that protect national security information relating to the defense and foreign relations of the United States. As the Secretary of the Air Force, I exercise authority over the operating location near Groom Lake, Nevada, and the information associated with that operating location. As the head of an agency with control over the information associated with the operating location near Groom Lake, I am the proper person to assert the military and state secrets privilege with regard to that information. Under Executive Order 12356, I exercise original TOP SECRET classification authority, which permits me to determine the proper classification of national security information on behalf of the United States. Executive Order No. 12356, Sec. 1.2, 47 Fed. Reg. 20,105 (1982), reprinted in 50 U.S. Code Section 401 (1991), Presidential Order of May 7, 1982, Officials Designated to Classify National Security Information, reprinted in 50 U.S. Code Section 401 (1991).

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operating location near Groom Lake, Nevada. I am satisfied that the information described in the classified Declaration is properly classified. I have further determined that the information described in the classified Declaration, if released to the public, could reasonably be expected to cause exceptionally grave damage to the national security. It is not possible to discuss publicly the majority of information at issue without risking the very harm to the national security that protection of the information is intended to prevent.

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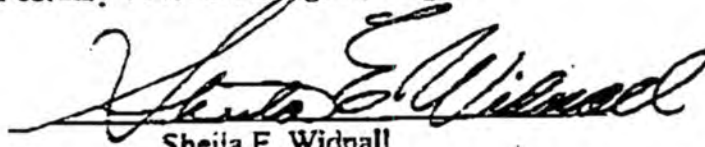
6. Invoking Military and State Secrets Privilege: It is my judgment, after personal consideration of the matter, that the national security information described in this Declaration and in the classified Declaration, concerning activities at the U.S. Air Force operating location near Groom Lake, Nevada, constitutes military and state secrets. As a result, disclosure of this information in documentary or testimonial evidence must be barred in the interests of national security of the United States. Pursuant to the authority vested in me as Secretary of the Air Force, I hereby invoke a formal claim of military and state secrets privilege with respect to the disclosure of the national security information listed in paragraph four of this Declaration and more fully discussed in the classified Declaration, whether through documentary or testimonial evidence.

7. Environmental Compliance: Although I have found it necessary to invoke the military and state secrets privilege, I believe it important to comment on the Air Force's commitment to full compliance with the environmental laws of the United States. Our goal is to be the best possible

environmental steward of the lands comprising the Nellis Range. To meet that goal we are cooperating and will continue to cooperate with both federal and state environmental agencies.

8. Under penalty of perjury, and pursuant to section 1746 of Title 28, U.S. Code, I certify and declare that the foregoing statements are true and correct.

Executed this 21 day of February 1995, at Arlington, Virginia.

A handwritten signature in dark ink, appearing to read 'Sheila E. Widnall', is written over a horizontal line.

Sheila E. Widnall
Secretary of the Air Force

I, SHEILA E. WIDNALL, HEREBY DECLARE THE FOLLOWING TO BE TRUE AND CORRECT:

1. Official Duties: I am the Secretary of the United States Air Force and the head of the Department of the Air Force. In that capacity, I exercise the statutory functions specified in section 8013 of Title 10, U.S. Code. I am responsible for the formulation of Air Force policies and programs that are fully consistent with the national security directives of the President and the Secretary of Defense, including those that protect national security information relating to the defense and foreign relations of the United States. As the Secretary of the Air Force, I exercise authority over the operating location near Groom Lake, Nevada, and the information associated with that operating location. As the head of an agency with control over the information associated with the operating location near Groom Lake, I am the proper person to assert the military and state secrets privilege with regard to that information. Under Executive Order 12356, I exercise original TOP SECRET classification authority, which permits me to determine the proper classification of national security information on behalf of the United States. Executive Order No. 12356, Sec. 1.2, 47 Fed. Reg. 20,105 (1982), reprinted in 50 U.S. Code Section 401 (1991); Presidential Order of May 7, 1982, Officials Designated to Classify National Security Information, reprinted in 50 U.S. Code Section 401 (1991).

2. Purpose: This Declaration is made for the purpose of advising the court of the national security interests in and the security classification of information that may be relevant to the above captioned lawsuits. The statements made herein are based on (a) my personal consideration of the matter; (b) my personal knowledge; and (c) my evaluation of information made available to me in my official capacity. I have concluded that release of certain information relevant to these lawsuits would necessitate disclosure of properly classified information about the Air Force

operating location near Groom Lake, Nevada. I am satisfied that the information described in the classified Declaration is properly classified. I have further determined that the information described in the classified Declaration, if released to the public, could reasonably be expected to cause exceptionally grave damage to the national security. It is not possible to discuss publicly the majority of information at issue without risking the very harm to the national security that protection of the information is intended to prevent.

3. Security Classification: Under Information Security Oversight Office guidance, “[c]ertain information that would otherwise be unclassified may require classification when combined or associated with other unclassified information.” (32 CFR 2001.3(a)) Protection through classification is required if the combination of unclassified items of information provides an added factor that warrants protection of the information taken as a whole. This theory of classification is commonly known as the mosaic or compilation theory. The mosaic theory of classification applies to some of the information associated with the operating location near Groom Lake. Although the operating location near Groom Lake has no official name, it is sometimes referred to by the name or names of programs that have been conducted there. The names of some programs are classified; all program names are classified when they are associated with the specific location or with other classified programs. Consequently, the release of any such names would disclose classified information.

4. National Security Information: As the head of the agency responsible for information regarding the operating location near Groom Lake, I have determined that information that concerns this operating location and that falls into any of the following categories, is validly classified:

- a. Program(s) name(s)
- b. Mission(s);
- c. Capabilities;
- d. Military plans, weapons, or operations;
- e. Intelligence sources and methods;
- f. Scientific or technological matters;
- g. Certain physical characteristics;
- h. Budget, finance, and contracting relationships;
- i. Personnel matters; and,

j. Security sensitive environmental data. The following are examples of why certain environmental data is sensitive to the national security. Collection of information regarding the air, water, and soil is a classic foreign intelligence practice, because analysis of these samples can result in the identification of military operations and capabilities. The presence of certain chemicals or chemical compounds, either alone or in conjunction with other chemicals and compounds, can reveal military operational capabilities or the nature and scope of classified operations. Similarly, the absence of certain chemicals or chemical compounds can be used to rule out operations and capabilities. Revealing the composition of the chemical waste stream provides the same kind of exploitable information as does publishing a list of the chemicals used and consumed. Analysis of waste material can provide critical information on the makeup as well as the vulnerabilities of the material analyzed. Disclosure of such information increases the risk to the lives of United States personnel and decreases the probability of successful mission accomplishment.

5. Role of State and Federal Environmental Agencies: Since 1990, appropriately cleared representatives of Nevada's Department of Conservation and Natural Resources have been

authorized access to the operating location near Groom Lake. The state representative's role is and has been to monitor and enforce compliance with environmental laws and regulations and to advise on remedial efforts, if required. Appropriately cleared officers of the U.S. Environmental Protection Agency were recently granted access to the operating location near Groom Lake for inspection and enforcement of environmental laws. Federal inspectors from the Environmental Protection Agency commenced an inspection pursuant to the Solid Waste Disposal Act, commonly referred to as a "RCRA inspection," at the operating location near Groom Lake, Nevada on December 6, 1994. The Air Force has taken these steps to ensure full compliance with all applicable environmental laws. At the same time that the operating location near Groom Lake is being inspected for environmental compliance, it is essential to the national security that steps also be taken to prevent the disclosure of classified information.

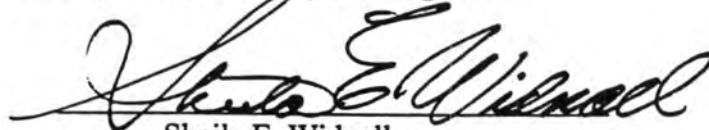
6. Invoking Military and State Secrets Privilege: It is my judgment, after personal consideration of the matter, that the national security information described in this Declaration and in the classified Declaration, concerning activities at the U.S. Air Force operating location near Groom Lake, Nevada, constitutes military and state secrets. As a result, disclosure of this information in documentary or testimonial evidence must be barred in the interests of national security of the United States. Pursuant to the authority vested in me as Secretary of the Air Force, I hereby invoke a formal claim of military and state secrets privilege with respect to the disclosure of the national security information listed in paragraph four of this Declaration and more fully discussed in the classified Declaration, whether through documentary or testimonial evidence.

7. Environmental Compliance: Although I have found it necessary to invoke the military and state secrets privilege, I believe it important to comment on the Air Force's commitment to full compliance with the environmental laws of the United States. Our goal is to be the best possible

environmental steward of the lands comprising the Nellis Range. To meet that goal we are cooperating and will continue to cooperate with both federal and state environmental agencies.

8. Under penalty of perjury, and pursuant to section 1746 of Title 28, U.S. Code, I certify and declare that the foregoing statements are true and correct.

Executed this 21 day of February 1995, at Arlington, Virginia.

A handwritten signature in cursive script, reading "Sheila E. Widnall", written over a horizontal line.

Sheila E. Widnall
Secretary of the Air Force



DEPUTY SECRETARY OF DEFENSE

1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

7095



25 SEP 1995

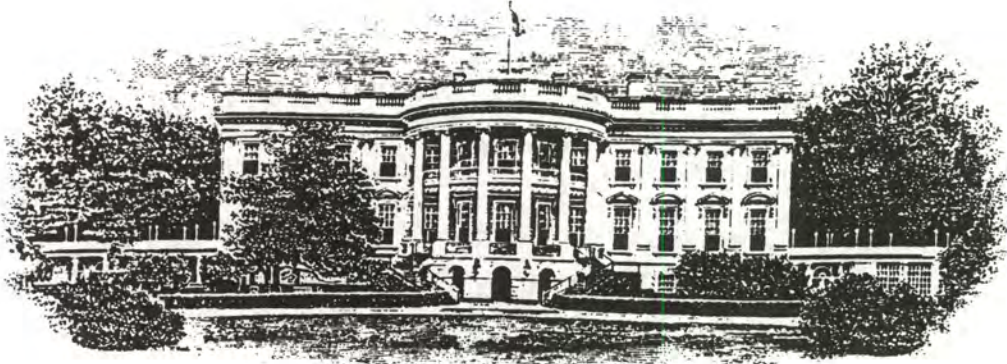
MEMORANDUM FOR PRESIDENT CLINTON
THROUGH MR. LAKE

SUBJECT: Classified Information Concerning the Air Force's Operating Location near Groom Lake, Nevada

A recent Federal district court decision has raised a question whether certain documents, even though properly classified, must nonetheless be disclosed pursuant to an environmental statute, the Resource Conservation and Recovery Act (RCRA). The documents concern an Air Force operating location near Groom Lake, Nevada. Although this legal ruling will be challenged, it is important that the continued protection for this classified information be clearly and promptly affirmed. Accordingly, for reasons addressed in the attached memorandum from Secretary Widnall, I concur in her request and recommendation that you issue the proposed exemption under RCRA for the operating location near Groom Lake from any requirement to disclose classified information to unauthorized persons. I note that EPA Administrator Browner and the Justice Department's Environment and Natural Resources Division concur in this recommendation.

Attachment
a/s

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506



DATE: 9/29/95

FAX #: 703-693-9355

TO: MATT SLATER

PHONE: 703-697-4406

FROM: NATIONAL SECURITY COUNCIL
VICKI DARNES

PHONE: 202-456-9218

SUBJECT: PD-95-45

COMMENTS: _____

copy faxed per request from Slater
me 9/29/95

THE WHITE HOUSE

WASHINGTON

September 29, 1995

Presidential Determination
No. 95-45

MEMORANDUM FOR THE ADMINISTRATOR OF THE ENVIRONMENTAL
PROTECTION AGENCY
THE SECRETARY OF THE AIR FORCE

SUBJECT: Presidential Determination on Classified
Information Concerning the Air Force's Operating
Location Near Groom Lake, Nevada

I find that it is in the paramount interest of the United States to exempt the United States Air Force's operating location near Groom Lake, Nevada (the subject of litigation in Kasza v. Browner (D. Nev. CV-S-94-795-PMP) and Frost v. Perry (D. Nev. CV-S-94-714-PMP)) from any applicable requirement for the disclosure to unauthorized persons of classified information concerning that operating location. Therefore, pursuant to 42 U.S.C. § 6961(a), I hereby exempt the Air Force's operating location near Groom Lake, Nevada from any Federal, State, interstate or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning that operating location to any unauthorized person. This exemption shall be effective for the full one-year statutory period.

Nothing herein is intended to: (a) imply that in the absence of such a Presidential exemption, the Resource Conservation and Recovery Act (RCRA) or any other provision of law permits or requires disclosure of classified information to unauthorized persons; or (b) limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake, Nevada, except those provisions, if any, that would require the disclosure of classified information.

The Secretary of the Air Force is authorized and directed to publish this Determination in the Federal Register.

William J. Clinton

OSD RECEIPT FOR CLASSIFIED MATERIAL				
TO: (Title of Office or Organization)			Number	
Secretary of the Air Force			K 169418	
FROM: (Office and Telephone)		Classification	Date of Transfer	
Description of Material being Transferred (Do Not Enter Classified Info)				
DD-95-45				
(Copy Info (For Copy Numbered Items, Use Inclusive Copy Nos. With # Sign)				
No. of Originals	No. of Carbons	No. of Repro Cys	No. of Encls	No. Cys of each Encl
1	2	2	2	2
Date Received	Typed Or Printed Name and Signature of Recipient			
9/29/95	ROBERTSON SA 1267			

SD Form 120, JUL 85

Custodian Copy, to be retained by Originator / Custodian