

M S M a i l

DATE-TIME 08 February 96 10:41
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT WSG Article on Groom Lake [UNCLASSIFIED]
TO Cullin, Brian P.
Fetig, James L.
Johnson, David T.
Naplan, Steven J.
Schuker, Jill A.
Wozniak, Natalie S.
CARBON_COPY Bass, Peter E.
Bell, Robert G.
Kreczko, Alan J.
Sestak, Joseph A.
TEXT_BODY

Heads Up

The WSJ on page one has a lengthy article about ongoing litigation against the Government at a classified Air Force facility in Nevada known as "the operating location near Groom Lake." The article incorrectly refers to "Area 51." We may get some inquiries, because as the article notes in the very last paragraph, consistent with the applicable statutes, President Clinton exempted the "operating location near Groom Lake" from any federal or state laws governing solid and hazardous waste that would require the disclosure of classified information. BUT NOTE: The President expressly stated in his exemption that it was not intended to "limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating lcoation near Groom Lake, Nevada, except thouse provisions, if any, that would require the disclosure of classified information."

The article is grossly inaccurate and appears to have been planted in response to recent rulings adverse to plaintiffs, including the dismissal of one of the two companion lawsuits. It will, however, be difficult for you to respond without knowing a great deal about the case, the Government's position, and the significant state secrets at stake. I recommend that you refer all press inquiries to DOJ press person Jim Sweeney, 514-2008. He is familiar with the case.

Please call if you need further background. I also have press briefing sheets (a few weeks old) from the USAF.

BACKGROUND FYI ONLY:

The two civil suits in question are "citizens suits" against the EPA and against Secretary Perry, the Secretary of the Air Force and Tony Lake. In essence, the suits challenge the Government's compliance with environmental laws involving the storage, treatment and disposal of hazardous waste.

The article presents the plaintiffs perspective of the case and is likely the result of the district court's rulings against the plaintiffs. Among other things the district court has ruled that the EPA has (subsequent to the litigation) completed an inspection of the location in question and the Air Force had conducted an inventory rendering at least one of the cases moot, i.e., the Government has done what plaintiffs asked. The court has also upheld the Air Force's assertion of the state secrets privilege over information plaintiffs sought to discover and disclose -- the third aspect of the suits.

Plaintiffs, have more recently sought to argue that the Government was hiding criminal conduct behind the state secrets privilege. The court on January 31 denied plaintiffs motion to conduct discovery on this allegation, without comment. While the applicable environmental law has criminal sanctions, I am at a loss as to the theory by which plaintiffs (driven by a local law school professor) can seek to undertake the Government's role as enforcement authority in the area of criminal sanctions. Moreover, as noted above, the court has ruled that the inventory and inspection requirements, (to the extent they are applicable), have been completed.

M S M a i l

DATE-TIME 18 March 96 09:41
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT 60 Minutes story on Groom Lake [UNCLASSIFIED]

TO Cullin, Brian P.
Fetig, James L.
Johnson, David T.
Naplan, Steven J.
Schuker, Jill A.
Wozniak, Natalie S.

CARBON_COPY Bass, Peter E.
Bell, Robert G.
Bendick, Gordon L.
Burrell, Christina L.
Danvers, William C.
Davis, William K.
Kreczko, Alan J.
Sestak, Joseph A.

TEXT_BODY

Heads Up

BACKGROUND: 60 Minutes ran a story last night on the "operating location near Groom Lake," erroneously referred to as Area 51. While the story was nominally about the facility, the focus was plaintiffs' attorney's version of a suit filed against Sec. Perry, the National Security Adviser and Sec. of the Air Force (previously described below). This suit, however, was dismissed by the district court of Nevada on March 6. Plaintiffs will appeal. As they say, this is an effort to try the case in the media.

[002a]

The most troublesome aspect of the story (from my perspective) was the discussion with Lee Hamilton, the only person interviewed for the story not associated with Jonathan Turley and plaintiffs. Hamilton criticized the Government's efforts, upheld by the court, to classify the results of the EPA inventory and inspection at the operating location. I believe he referred to the classification of "paint" as nonsense or silly. (Note: I asked Air Force/GC to consider whether it was appropriate to brief Hamilton on the operating location.)

We may receive calls because (1) Tony Lake's name was highlighted during a camera zoom on the Plaintiffs complaint to the court, and (2) the Presidential exemption described in an earlier e-mail, was discussed. You should also be aware that GAO is doing an inquiry on environmental

exemptions generally and has asked Air Force a number of questions about the operating location near Groom Lake.

GUIDANCE: As a general matter, and because this matter is under litigation, I recommend that you refer questions on this matter to Jim Sweeney at Justice 514-2008 or to the Air Force/PA.

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Re: Tony Lake as a defendant. I do not recommend that you engage on this point. Background: The case against Perry, Lake and Widnall was dismissed on March 6, when the court granted the Government's motion for summary judgment ruling that the Government had properly invoked the military and state secrets privilege and that plaintiffs had failed to establish a genuine issue of any material fact without running afoul of the privilege. The court found that disclosure of any further information or a trial on this matter risks significant harm to the national security. Additional Background: In addition to invoking the state secrets privilege, with respect to Tony, the Government argued that as a matter of law, he should be dismissed from the suit in any event because the National Security Adviser has no supervisory responsibility over the operating location. The court did not find it necessary to rule on this matter.

Please let me know if you need additional information. Thank you. Earlier guidance on a WSJ article, giving more information on the background to the suits, follows below.

From: Baker, James E.
To: @PRESS - Public Affairs
CC: /R, Record at A1; Bell, Robert G.; Sestak, Joseph A.; Kreczko, Alan J.; Bass, Peter E.
Subject: WSG Article on Groom Lake [UNCLASSIFIED]
Date: Thursday, February 08, 1996 10:41 AM

Heads Up

[0026]

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DATE-TIME 18 March 96 09:55
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: 60 Minutes story on Groom Lake [UNCLASSIFIED]
TO Fetig, James L.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

You are welcome.

From: Fetig, James L.
To: Baker, James E.
CC: /N, NonRecord at A1
Subject: RE: 60 Minutes story on Groom Lake [UNCLASSIFIED]
Date: Monday, March 18, 1996 09:47 AM

Thank you for being thorough as always.

From: Baker, James E.
To: @PRESS - Public Affairs
CC: /R, Record at A1; Bass, Peter E.; Bell, Robert G.; Kreczko, Alan J.; Sestak, Joseph A.; @LEGISLAT-Legislative Affairs
Subject: 60 Minutes story on Groom Lake [UNCLASSIFIED]
Date: Monday, March 18, 1996 09:41 AM

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TO Cullin, Brian P.
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From: Cullin, Brian P.
To: Baker, James E.
CC: @PRESS - Public Affairs
Subject: FW: 60 Minutes story on Groom Lake [UNCLASSIFIED]
Date: Monday, March 18, 1996 10:36 AM

Thanks, so far no interest but we'll use what you gave us.'Appreciate the heads up. Brian

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