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11  
12 UNITED STATES DISTRICT COURT  
13 DISTRICT OF NEVADA

14 STATE OF NEVADA,

15 Plaintiff,

16 v.

17 UNITED STATES DEPARTMENT OF  
ENERGY and ITS SECRETARY,  
18 SAMUEL BODMAN,

19 Defendants.

Case No.

**COMPLAINT**

20 1. This is an action brought under the Freedom of Information Act, 5 U.S.C. § 552,  
21 as amended, to enjoin Defendants from withholding from public disclosure certain records of  
22 the United States Department of Energy (DOE) within its possession and control.

23 2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).

24 3. Venue is proper in this district pursuant to Section 552(a)(4)(B), as this is the  
25 district in which the State of Nevada has its principal place of business.

26 4. Plaintiff is a sovereign state government interested in activities and planned  
27 activities within its borders by Defendant DOE affecting the health and safety of Nevada's  
28 citizens.

1           5. Defendant DOE is an agency of the United States, established by statute and  
2 charged with responsibility for, *inter alia*, the administration of federal programs on energy,  
3 including (pursuant to the provisions of the Nuclear Waste Policy Act of 1982, as amended)  
4 the disposal of spent nuclear fuel and high-level nuclear waste. The Defendant agency has  
5 possession of the records to which Plaintiff seeks access.

6           6. Defendant Samuel Bodman is Secretary of the United States Department of  
7 Energy and is responsible for final denial of Plaintiff's request for access to certain records of  
8 DOE.

9           7. W. John Arthur III, Deputy Director of the Office of Civilian Radioactive Waste  
10 Management (OCRWM) of DOE, was delegated authority for initial consideration of records-  
11 disclosure requests under the Freedom of Information Act and made the initial denial of  
12 access in response to Plaintiff's request for access to certain records of DOE, which is the  
13 subject of this action.

14           8. On November 28, 2005, Plaintiff filed with Defendant DOE a letter requesting  
15 access to certain documents, under the Freedom of Information Act (a copy of this letter is  
16 attached hereto as Exhibit A). Access was requested to records relating to DOE's proposed  
17 nuclear waste repository at Yucca Mountain, Nevada, specifically two versions of the Draft  
18 License Application produced by or on behalf of DOE in July and September 2004.

19           9. By letter dated December 28, 2005, OCRWM Deputy Director Arthur denied  
20 Plaintiff's request and alleged that the material was exempt from public disclosure pursuant to  
21 Exemption 5, 5 U.S.C. § 552(b), as subject to the deliberative process privilege and privileged  
22 work product prepared in anticipation of litigation (a copy of this refusal is attached hereto as  
23 Exhibit B).

24           10. Plaintiff filed an administrative appeal under the statutory rights accorded by  
25 5 U.S.C. § 552(a)(6)(A) on January 26, 2006 (a copy of this appeal is attached hereto as  
26 Exhibit C).

27           11. By letter of February 24, 2006, DOE's Office of Hearings and Appeals denied  
28 Plaintiff's administrative appeal, advised Plaintiff that this was a final order of DOE, and

1 advised Plaintiff of its right to pursue this judicial challenge pursuant to 5 U.S.C.  
2 § 552(a)(4)(B). This final denial of Plaintiff's request again asserted that the documents were  
3 protected from disclosure under 5 U.S.C. § 552(b) as privileged under Exemption 5 (a copy is  
4 attached hereto as Exhibit D).

5 12. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(3), Plaintiff has a  
6 right of access to the documents requested, and Defendants have no legal basis for their  
7 actions in withholding the right of access to such documents, as their reliance on Exemption 5  
8 has no justification in law or fact.

9 13. Plaintiff has exhausted its administrative remedies as provided in the Freedom  
10 of Information Act and agency regulations.

11 WHEREFORE, Plaintiff prays this Court:

- 12 1. To take jurisdiction of this cause;
- 13 2. To order Defendants to permit access to the requested documents;
- 14 3. To award Plaintiff its reasonable costs of litigation, including attorneys' fees; and
- 15 4. To grant such other and further relief as the Court may deem just and proper.

16 DATED this \_\_\_\_\_ day of March, 2006.

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