



Public Employees for Environmental Responsibility

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*Office of the General Counsel
Dan Meyer*

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August 28, 2001

FREEDOM OF INFORMATION REQUEST

Mr. John Reynolds, Regional Director
National Park Service (NPS)
1111 Jackson Street — Suite 700
Oakland, California 94607

BY FIRST CLASS MAIL

Re: *Mormon Peak and NHPA, Section 106 Compliance*
FCC Dkt. No. RM-9913

Dear Mr. Reynolds:

On July 11, 2000, Mr. Richard Martin—acting in his capacity as Superintendent of Death Valley National Park—signed a categorical exclusion for a decision to renew an expired right-of-way for a microwave facility on Mormon Peak in Death Valley National Park wilderness. In that same decision, Mr. Martin also authorized PacBell to land aircraft in wilderness in connection with that tower.

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It is not clear whether he requested consultation with the Federal Communications Commission (“FCC”), the State Historic Preservation Officer (“SHPO”), or appropriate Tribal Historic Preservation Officers (THPOs) prior to approving a federal action with which impacts a historically-sensitive site.

Public Employees for Environmental Responsibility (PEER) seeks to determine the nature and extent of Mr. Martin's compliance with environmental laws, in particular Section 106 of the National Historic Preservation Act (16 U.S.C. §470(f)).

Pursuant to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations at 43 CFR Part 2, Subpart B, PEER requests copies of all records (including but not limited to typewritten, handwritten, video-tape, and/or electronic records, including email) generated, modified or received by your office and Death Valley National Park that involve Section 106 compliance and consultation with the California State Historic Preservation Officer and the Federal Communications Commission about the Mormon Peak categorical exclusion decision. This information should include the public notice and hearing requirements and actions Mr. Martin took to comply with the law.

This request includes all documents that have ever been within your custody or control, whether they exist in agency “working,” investigative, retired, electronic mail, or other files currently or at any other time.

For any documents or portions of documents that you block due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions thereof, withheld. The index should—pursuant to the rule in *Vaughan v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974)—provide a detailed justification for claiming a particular exemption which explains why each exemption applies to the document or portion of a document withheld.

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PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor”. 5 U.S.C. § 552 (a)(4)(A). Disclosure of the above requested information is in the public interest because disclosure will significantly contribute to the public’s understanding of the manner which environmental laws are executed. Disclosure is in no way connected with any commercial interest of the requesters.

Waiver is appropriate because PEER is a non-profit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of the Nation’s resources and with supporting professional integrity within federal Agencies. To that end, PEER is designated as tax exempt under Section 501(c)3 of the Internal Revenue Code. With 11,000 members spread across the United States, PEER is the foremost service organization for federal, State and municipal employees concerned with the fact that their own agencies are engaging in the subversion of the environmental laws. PEER’s National Parks Program gathers information on the process used by all federal Agencies required to comply with the NHPA and the NEPA in their decision-making which impact National Parks such as the Death Valley National Park.

Once compiled, the information will be analyzed to compare the actual decision-making with the procedures required by law. In this manner, the public can verify compliance and take action against slovenly managerial habits or outright lawbreaking. Without PEER’s efforts, the comparison between ‘real’ and ‘required’ decision-making will not be made.

PEER possesses significant in-house expertise and can use this expertise to analyze this information. In addition to two (2) environmental lawyers, and (1) communications lawyer, PEER’s Board of Directors includes a number for former National Park Service professionals with property law experience.

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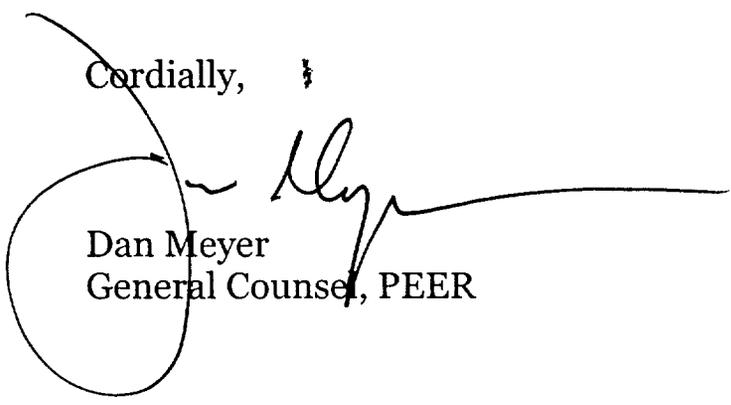
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*Mormon Peak FOIA Request - Section 106 Review and/or
Categorical Exclusion Analysis and Justification*

PEER will analyze the information, and it will then be disseminated in two ways: citizen activists on-site will work the issue locally, and PEER's national press operation will move the information into the larger public realm. The targeted population includes those users of the National Park Service most affected by this project, and the larger circle of environmentally-concerned Americans monitoring National Historic Preservation Act (NHPA) and National Environmental Policy Act (NEPA) compliance.

Cordially, 


Dan Meyer
General Counsel, PEER

cc: Attached Service list.

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National Jurisdictions

The Honorable Pauline Estes, Chairperson
Timbisha Shoshone Tribal Council
P.O. Box 206
Death Valley, CA 92328

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Federal jurisdictions

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission (FCC)
Portals II - Suite TW A325
445 12th Street, S.W.
Washington, D.C. 20554

Michael K. Powell, Chairman
Federal Communications Commission ("FCC")
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Gloria Tristani
Federal Communications Commission ("FCC")
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission ("FCC")
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Michael J. Capps
Federal Communications Commission ("FCC")
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Kevin J. Martin
Federal Communications Commission ("FCC")
445 12th Street, S.W.
Washington, D.C. 20554

Mr. Donald Abelson, Bureau Chief
International Bureau
Federal Communications Commission ("FCC")
445 12th Street, S.W.
Washington, D.C. 20554

Kathleen Collins, Esq.
Attorney Advisor IB-FCC
Federal Communications Commission
Washington, D.C. 20554

Thomas J. Sugrue, Bureau Chief
Federal Communications Commission ("FCC")
Wireless Telecommunications Bureau ("WTB")
445 12th Street, S.W.
Washington, D.C. 20554

Mr. Dan Abeyta
Commercial Wireless Division (WTB)
Federal Communications Bureau ("FCC")
445 12th Street, S.W. - Suite 4A-236
Washington, D.C. 20554

Mr. Frank Stillwell
Federal Communications Commission ("FCC")
Wireless Telecommunications Bureau - CWD
445 12th Street, S.W.
Washington, D.C. 20554

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Mr. J.T. Reynolds, Superintendent
Death Valley National Park.
PO Box 579
Death Valley, CA 92328

James Connaughton, Chair
Council on Environmental Quality ("CEQ")
722 Jackson Place, N.W.
Washington, D.C. 20503

Cathryn Buford Slater, Chair
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue - Suite 809
Old Post Office Building
Washington, D.C. 20004

State jurisdictions

Mr. Knox Mellon
California State Historic Preservation Officer
Office of Historic Preservation
P.O. Box 942896
Sacramento, CA 94296

Private parties

Mr. Frank Buono
Member, Board of Directors (PEER)
P.O. Box 562
Prineville, OR 97754

TinaMarie Ekker, Policy Director
Wilderness Watch
P.O. Box 9175
Missoula, Montana 59807

John Talberth, President
Forest Conservation Council
c/o Western Regional Office
P.O. Box 22488
Santa Fe, NM 87502-2486