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August 7, 2008

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Nuclear Watch NM Forces the Department of Energy to Comply with the Freedom of Information Act

Santa Fe, NM – In a sweeping victory Nuclear Watch New Mexico has settled its multi-year lawsuit against the U. S. Department of Energy’s National Nuclear Security Administration (NNSA) under the Freedom of Information Act (FOIA). Judge Bruce Black of the Federal District of New Mexico recently signed a court order requiring the NNSA to post on the internet all of its annual “Ten Year Site Plans” for its eight nuclear weapons research, testing and production sites within 60 days after each Plan is approved by NNSA Headquarters. The agency itself has described these Plans as the foundation of its strategic planning for the future nuclear weapons complex.

Nuclear Watch began filing FOIA requests for those Plans in December 2004, but began to partially receive them only after filing suit in March 2006. Given the excessive delays (in some cases up to 17 months), Nuclear Watch expanded its lawsuit to pursue a claim of a “pattern and practice of unlawfully withholding agency records” by the NNSA.

In November 2007 Judge Black ruled, “The purpose of FOIA is to allow citizens to learn what their government is doing and how it is being done... A bona fide request for production of documents under FOIA must be honored in a timely fashion or the purpose of the Act is vitiated... Information is often useful only if it is timely. Thus, excessive delay by the agency in its response is often tantamount to denial... This makes a mockery of the 20-day target set by the Act and violates congressional intent. Indeed, the [NNSA’s] argument [why delays are merited] is contrary to both logic and law...”

Nuclear Watch also had to fight against excessive redactions made to the Plans by NNSA once they were finally released. We argued that redactions should only be narrowly made to protect national security (such as the locations of sensitive facilities) but otherwise avoided. NNSA yielded to our argument in court, ultimately supplying the previously deleted texts of hundreds of redactions.

The new court order requiring NNSA to post Site Plans on its website should be a significant boon to the public, researchers and activists. NNSA itself states that its fiscal year 2009 Plans will begin to reflect the agency’s current and controversial proposal for “transformation” of its nuclear weapons complex. Another stated aim of the order is that the Plans will be posted without redactions. If some narrow redactions are necessary the order further requires that they be done uniformly from site-to-site and year-to-year, in a manner consistent with FOIA requirements and under the increased oversight of the NNSA Office of Chief Counsel.

Jay Coghlan, Nuclear Watch Executive Director, commented, “The people’s right to know under FOIA has to be continually exercised so that citizens have the information they need to hold the government accountable. U.S. nuclear weapons policies and NNSA’s so-called “Complex Transformation” are becoming increasingly controversial. We hope that public access to the annual Plans for the eight NNSA nuclear weapons sites will help to better inform that important debate.”

Attorney Richard Mietz of Glorieta, NM represented Nuclear Watch from the initial filing of the case to its successful conclusion.

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The court order is available at: http://www.nukewatch.org/facts/nwd/FOIA_stipulatedorder7-30-08.pdf