

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,)
)
)
 Plaintiff,)
)
 v.)
)
 UNITED STATES DEPARTMENT)
 OF ENERGY, et al.,)
)
 Defendants.)

Civil Action No. 01-0981 (PLF)

NATURAL RESOURCES DEFENSE)
 COUNCIL, INC.,)
)
 Plaintiff,)
)
 v.)
)
 UNITED STATES DEPARTMENT)
 OF ENERGY,)
)
 Defendant.)

Civil Action No. 01-2545 (PLF)

NATURAL RESOURCES DEFENSE)
 COUNCIL, INC.,)
)
 Plaintiff,)
)
 v.)
)
 DEPARTMENT OF INTERIOR, et al.,)
)
 Defendants.)

Civil Action No. 02-1330 (PLF)

ORDER

For the reasons set forth in the separate Opinion issued this same day, it is hereby ORDERED that defendant Office of Management and Budget's motion for summary judgment [24-1 in No. 01-0981] is DENIED as moot; it is

FURTHER ORDERED that defendant Department of the Treasury's motion for summary judgment [28-1 in No. 01-0981] is DENIED; Treasury is directed to grant Judicial Watch's request for a fee waiver and to begin processing Judicial Watch's FOIA request; it is

FURTHER ORDERED that defendant Federal Emergency Management Agency's motion for summary judgment [28-2 in No. 01-0981] is DENIED; FEMA is directed to grant Judicial Watch's request for a fee waiver and to begin processing Judicial Watch's FOIA request; it is

FURTHER ORDERED that defendant Department of the Interior and Defendant Bureau of Land Management's motion for summary judgment [16 in No. 02-1330] is GRANTED in part and DENIED in part; DOI is directed to grant NRDC's request for a fee waiver with respect to NRDC's May 6, 2002 FOIA request; it is

FURTHER ORDERED that defendant Department of Commerce's supplemental motion for summary judgment [78 in No. 01-0981] regarding its withholding of certain documents pursuant to Exemption 4 is GRANTED; it is

FURTHER ORDERED that plaintiff Natural Resources Defense Council's motion for summary judgment against DOI and BLM [20 in No. 02-1330] is GRANTED in part and DENIED in part; it is

FURTHER ORDERED that plaintiff Natural Resources Defense Council's motions for summary judgment against DOE [52 in No. 01-0981 and 34 in No. 01-2545] are GRANTED in part and DENIED in part; it is

FURTHER ORDERED that defendant United States Department of Agriculture's motion for summary judgment [24-2 in No. 01-0981] is GRANTED in part and DENIED in part; it is

FURTHER ORDERED that defendant Department of the Interior's motion for summary judgment [24-3 in No. 01-0981] is GRANTED in part and DENIED in part; it is

FURTHER ORDERED that defendant Environmental Protection Agency's motion for summary judgment [44-1 in No. 01-0981] is GRANTED in part and DENIED in part; it is

FURTHER ORDERED that defendant Department of Energy's motion for summary judgment [44-2 in No. 01-0981] is GRANTED in part and DENIED in part; it is

FURTHER ORDERED that defendant Department of Transportation's motion for summary judgment [56-1 in No. 01-0981] is GRANTED in part and DENIED in part; it is

FURTHER ORDERED that defendant Department of Commerce's motion for partial summary judgment [56-2 in No. 01-0981] is GRANTED in part and DENIED in part; it is

FURTHER ORDERED that defendant Department of Commerce's second supplemental motion for summary judgment [95 in No. 01-0981] is DENIED; it is

FURTHER ORDERED that DOE and DOI (or BLM) are directed to conduct the following searches:

- i. DOE is directed to search the records of Andrew Lundquist and the other DOE employees detailed to the Office of the Vice President, to examine those documents in a manner consistent with the Opinion, and to release all non-exempt documents to plaintiffs on or before June 1, 2004;
- ii. DOI and/or BLM are directed to search the records of Ronald Montagna, to examine those documents in a manner consistent with the Opinion, and to release all non-exempt documents to plaintiffs on or before June 1, 2004;
- iii. DOI is directed to conduct a supplemental search in response to NRDC's April 18, 2002 request, using as a cut-off date the date of the search, and to release all non-exempt documents to plaintiffs on or before June 1, 2004;
- iv. DOI is directed to conduct a supplemental search in response to NRDC's May 6, 2002 request using the exact language of NRDC's request, and using as a cut-off date the date of the search; DOI is directed not to limit the search to documents containing "the personal opinions of the authors" but rather to include all responsive documents; DOI shall release all non-exempt documents to plaintiffs on or before June 1, 2004; it is

FURTHER ORDERED that for any records that DOE and DOI and/or BLM withhold after these additional searches have been conducted, DOE and DOI and/or BLM must explain clearly in supplemental declarations and/or supplemental Vaughn indexes provided to plaintiffs and to the Court on or before June 1, 2004, the contribution made by the withheld records to that agency's own deliberative process or any other basis for withholding under a recognized FOIA exemption; it is

FURTHER ORDERED that the following departments and agencies are directed to re-examine the following records currently withheld pursuant to Exemption 5 and to release all non-exempt documents to plaintiffs on or before June 1, 2004:

- i. DOI is directed to re-examine the documents contained within the following categories in a manner consistent with the scope of Exemption 5 as explained in the Opinion and to release all non-exempt documents to plaintiffs: (a) with respect to its response to the April 26, 2001 request, the documents contained in Category 5; (b) with respect to its supplemental response of March 6, 2002, Document 3; and (c) with respect to its response to the April 18, 2002 request, the documents contained within Categories 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, and 15;
- ii. DOE is directed to re-examine the documents contained within Categories 1, 2, 3, 4 and 8 in a manner consistent with the scope of Exemption 5 as explained in the Opinion and to release all non-exempt documents to plaintiffs;
- iii. USDA is directed to re-examine the documents contained within Categories 1, 2, 3, 4, 7, 8, 9 and 10 in a manner consistent with the scope of Exemption 5 as explained in the Opinion and to release all non-exempt documents to plaintiffs;
- iv. EPA is directed to re-examine the documents contained within all of its categories in a manner consistent with the scope of Exemption 5 as explained in the Opinion and to release all non-exempt documents to plaintiffs;

- v. DOT is directed to re-examine the documents contained within all of its categories in a manner consistent with the scope of Exemption 5 as explained in the Opinion and to release all non-exempt documents to plaintiffs;
- vi. DOC is directed to re-examine the documents contained within Categories 1, 2, 3, and 5 in a manner consistent with the scope of Exemption 5 as explained in the Opinion and to release all non-exempt documents to plaintiffs;
- vii. DOC is directed to re-examine the documents it referred to the Department of the Treasury, the U.S. Army Corps of Engineers, and the Department of State in a manner consistent with the scope of Exemption 5 as explained in the Opinion and to release all non-exempt documents to plaintiffs; it is

FURTHER ORDERED that to the extent that any agency continues to withhold documents pursuant to Exemption 5 after conducting the additional review, that agency is directed to explain clearly in a supplemental declaration and/or supplemental Vaughn index provided to plaintiffs and to the Court on or before June 1, 2004, the contribution made by the withheld records to that agency's deliberative process; it is

FURTHER ORDERED that DOE, USDA, EPA, DOT, and DOC are directed to re-examine any and all documents listed in their Vaughn indexes dated after the public release of the National Energy Report in a manner consistent with the scope of Exemption 5 as explained in the Opinion and to release all non-exempt documents to plaintiffs on or before June 1, 2004; to the extent that DOE, USDA, EPA, DOT, or DOC continues to withhold documents dated after

the release of the National Energy Report, that agency must explain clearly in a supplemental declaration and/or supplemental Vaughn index provided to plaintiffs and to the Court on or before June 1, 2004, the contribution made by the withheld records to that agency's deliberative processes; it is

FURTHER ORDERED that DOE is directed to re-examine the documents that it reclassified as "non-responsive" and release any responsive, non-exempt documents to plaintiffs on or before June 1, 2004; any documents that DOE continues to withhold must be explained clearly in a supplemental declaration and/or supplemental Vaughn index with sufficient detail to justify their withholding on or before June 1, 2004; and it is

FURTHER ORDERED that DOC is directed to release the document it referred to the Council on Environmental Quality and the document it referred to the Federal Energy Regulatory Commission on or before June 1, 2004.

SO ORDERED.

DATE:

PAUL L. FRIEDMAN
United States District Judge