

Title: GROOM LAKE SUIT BOUNCED

Subtitle: A federal judge dismisses an action brought by former workers at a classified Air Force facility.

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A federal judge has thrown out a lawsuit brought by former workers at the Air Force operating location near Groom Lake, allowing the government to keep from disclosing any information on the classified base.

Ruling that a trial "risks significant harm to national security," U.S. District Judge Philip Pro on Wednesday dismissed the suit, which alleged the military committed and concealed environmental crimes at the Lincoln County base.

Workers' attorney Jonathan Turley said an appeal to the 9th U.S. Circuit Court of Appeals in San Francisco would be filed as soon as possible. In the meantime, he will ask Pro to reconsider his decision.

"This is simply the end of the first stage of litigation," said Turley, a George Washington University law professor. "From the very beginning of this case we anticipated an appellate fight over these questions."

The workers contend they contracted illnesses and injuries as a result of open pit burning of hazardous waste at the base, located 35 miles west of Alamo. Turley argued the waste disposal procedures violated the Resource Conservation and Recovery Act.

Perhaps the biggest blows to the lawsuit occurred last year when the government declared any release of information a threat to national security.

In February 1995, Air Force Secretary Sheila Widnall invoked the military and states secret privilege, citing the potential for "exceptionally grave" consequences to national security. When the workers challenged that decision, President Clinton in September signed an exemption allowing the secrecy to continue.

Because no information on the base is currently available to the workers, Pro ruled, no controversy can be shown and a lawsuit cannot be brought.

When properly invoked, the privilege is absolute," 23-page decision said.

It continued: "If mere allegations of criminal conduct were sufficient to overcome the privilege, the privilege would be eliminated."

Turley said he was not surprised at the outcome "given the court's prior rulings," saying the workers' claims would be appealed to the highest level possible.

"We have argued that the executive branch's authority cannot extend to the concealment of its own criminal conduct. We are confident that we will prevail on these questions because the Supreme Court has been clear that the executive branch powers are limited in this regard."

Turley pointed toward some aspects of the lawsuit he regarded as victories.

"These workers have already successfully litigated the first case against a black facility in history. Previously they were told they could not retain a lawyer and file a federal action," he said. "The government was unable to dismiss this lawsuit during discovery and was forced to perform an inspection and inventory on the facility and, against its will, it was forced to get a presidential exemption."

Turley also said that the government finally admitted the facility had to comply with federal law regarding inspections and that it had failed to do so in previous years.

In April, federal environmental investigators for the first time inspected the facility, but the results of that inspection are confidential.

"Effectively these changes will make it impossible for the government to argue in future cases that it can create a place that does not legally exist," Turley said.

The government, he said, struggled to dismiss all the counts in an effort to avoid a record "while we struggled to preserve a record." Pro's decision, he said, has ramifications only for Nevada while a reversal on appeal would have national ramifications."

The lawsuit was one of two brought by the workers. Pro dismissed another complaint in January.

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