

Rocky Mountain Peace and Justice Center

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To: Mr. Sean A. Lev
Deputy General Counsel for Environment
and Nuclear Programs
DOE Office of the General Counsel
From: LeRoy Moore, Ph.D.
Re.: Rocky Flats Stewardship Council and FACA

The Rocky Flats Stewardship Council (SC) was created to provide "local oversight of activities occurring at the Rocky Flats site, to ensure that local government and community interests are met with regards to long-term stewardship of residual contamination and refuge management." In fulfilling this oversight role the SC provides advice regarding activities at Rocky Flats of two federal agencies, the Department of Energy's Legacy Management program (LM) and the U.S. Fish & Wildlife Service (FWS). LM funds the SC to do this work.

FACA requirement: The Federal Advisory Committee Act requires that the membership of a body created to advise an agency of the federal government must "be fairly balanced in terms of the points of view represented" within the advisory committee. This requirement ensures that all points of view within the community are equitably represented within an advisory body so that no single viewpoint dominates to the exclusion of others.

Creation and structure of the Stewardship Council:

- Though the SC advises two federal agencies, it was chartered not under FACA but under a Colorado "Intergovernmental Agreement" that makes no requirement for balanced representation within the advisory body.
- The SC was created to continue the work of the previously existing non-FACA Rocky Flats Coalition of Local Governments rather than the Rocky Flats Citizens Advisory Board, a FACA body that advised DOE on the cleanup of Rocky Flats. CAB membership was divided equally among several categories, including local governments, educational, Rocky Flats workers, health professions, environmental groups, local business, and the like.
- As initially conceived, the membership of the SC would be limited solely to local government representatives. In response to opposition within the community, the membership was changed to provide a minority of seats to entities other than local governments.
- As finally constituted, the SC has twelve seats, eight of which are held permanently by one class of stakeholder groups, namely, local governments.
- Each of the other four seats on the SC is held for a one-year term by a party that applies to become a member of the SC and is selected by the eight permanent members of the SC to occupy a seat.

- The SC was established in a way that bypasses the FACA legal requirement of “fairly balanced” representation.

Is the Stewardship Council an advisory body?

- Is this only a rhetorical question, one about the difference between “oversight” and “advisory”?
- LM from the start has called the SC a “local stakeholder organization.” But this, like, all else LM has done looks like a way of avoiding FACA requirements.
- The SC appears to operate in a way that closely resembles the way the former Citizens Advisory Board, a FACA body, operated, in that, as a review of the SC minutes shows, it receives reports from LM and FWS and issues comments and recommendations.
- An example of the latter is the issue of signage at entry points to the Rocky Flats National Wildlife Refuge managed by FWS. The SC minutes include numerous references to the fact that the SC has made and expects to continue to make recommendations re. the content of signs at the refuge. This is done to the exclusion of alternate viewpoints, most notably those of Colorado Representative Wes McKinley, who, on the basis of his knowledge as foreman of the Special Grand Jury created in 1989 to review evidence of environmental lawbreaking at Rocky Flats, wants signs at refuge entry points that inform potential visitors to the wildlife refuge that such visits entail some risk.

Request: I request that the DOE Office of the General Counsel evaluate the evident violation of FACA by the Rocky Flats Stewardship Council.

Possible remedies:

- Either abolish the SC as a DOE-funded advisory body that violates federal law (FACA), or
- Require the SC to reconstitute itself in conformity with FACA’s requirement of “fairly balanced” representation.

Concluding comment: There may be other alternatives to those suggested. In any case, the “local stakeholder organization” that advises federal agencies on activities related to Rocky Flats should be “fairly balanced in terms of the points of view represented,” as FACA requires, because of the wide range of viewpoints regarding conditions at the site.