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Series/Staff Member: Kathleen (Katie) McGinty
Subseries:

OA/ID Number: 2572
FolderID:

Folder Title:
NAFTA [North American Free Trade Agreement]/NEPA [National Environmental Policy Act]

Stack:	Row:	Section:	Shelf:	Position:
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NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

July 23, 1993

MEMORANDUM FOR KATHLEEN MCGINTY,
DINAH BEAR
EILEEN CLAUSSEN
MICHAEL PUNKE

FROM: ALAN KRECZKO *AK*

SUBJECT: NAFTA/NEPA

Attached is DOJ's draft response to plaintiff in the NAFTA/NEPA case. Steve Neuwirth and I have reviewed and believe it is consistent with the outcome of our meeting Tuesday, although a little dense in style.

Please provide me your comments, if possible, by the end of the day.

Attachment

*Call to give
my sign-off*

*Deroh & I have
agreed this is ok, then
call Alan &*



U.S. Department of Justice

Environment and Natural Resources Division

Policy, Legislation & Special Litigation

Washington, D.C. 20530

*****PRIVILEGED ATTORNEY-CLIENT WORK PRODUCT*****
*****JULY 22, 1993 DRAFT*****

July 22, 1993

Patti A. Goldman, Esquire
Public Citizen Litigation Group
Suite 700
2000 P Street, Northwest
Washington, D.C. 20036

Re: No. 93-5212 (D.C. Cir.)
Public Citizen v. USTR

Dear Patti:

I am writing in response to your letter of July 19, 1993, in which you inquire about the steps that the United States Trade Representative (USTR) is taking toward compliance with Judge Richey's opinion and order of June 30, 1993. As you are aware, the United States has appealed this order and the Court of Appeals for the District of Columbia Circuit has expedited the appeal, with argument scheduled for August 24, 1993. USTR expects to prevail in this appeal.

In the interim, however, USTR is taking substantial steps to begin the preparation of additional environmental documentation that could be presented in a form that satisfies the district court's order. USTR has a substantial effort underway to provide Congress and the public with complete information about the North American Free Trade Agreement (NAFTA) upon transmittal of the agreement to Congress for consideration, including information about environmental issues related to NAFTA. In response to the district court's order, USTR is now integrating, to the extent possible, the requirements of the order with this effort. There is no basis for your assertion that "no steps have been taken" toward compliance with that order, and your inference to this

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effect is simply erroneous. The following steps are now underway:

- o USTR currently is in the process of defining the scope of additional documentation that must be prepared and the issues that must be addressed, and is undertaking this effort in consultation with the Council on Environmental Quality and other agencies with pertinent experience under the National Environmental Policy Act (NEPA).
- o USTR is in the process of identifying and collecting existing analyses, studies, and other materials that should be considered in, or incorporated as part of, any additional environmental documentation on NAFTA.
- o USTR is leading an interagency effort to prepare information for Congress that responds to public and congressional concerns about NAFTA in particular areas. In response to the district court's order, USTR has directed that this effort include, for each aspect of NAFTA examined, information about environmental aspects of NAFTA. This information can then be incorporated into any documentation ultimately required to meet the requirements of the order.

This information will be useful and accurate, however, only if it incorporates the results of all of the Administration initiatives that bear on these issues.

The most significant of these initiatives is President Clinton's commitment to the completion of additional agreements with Canada and Mexico prior to Congress' consideration of NAFTA. These agreements will greatly enhance the protection of the environment and natural resources that indirectly could be affected by the North American Free Trade Agreement (NAFTA). As you are aware, the Administration currently is negotiating these additional agreements, which will include provisions for improved enforcement of, and compliance with, the environmental protection laws of each country. These pending negotiations require the attention of the very officials who have the greatest familiarity with NAFTA. The expertise of these officials is essential for the preparation of satisfactory information about environmental aspects of NAFTA.

In light of the substantial benefits to the environment that these agreements will bring to the NAFTA "package" that President

Judge Richey
dislikes claims that
gov't doesn't
have enough

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resources to do its
work

Clinton expects to present to Congress, USTR has concluded that a substantial part of any additional environmental documentation should be prepared once the particulars of these additional agreements is known. Accordingly, a substantial part of any effort to try to comply with the district court's order must await completion of the pending negotiations.

In addition, many of the purported "environmental effects" that Public Citizen has asked USTR to identify, as reflected in speculation about preemption of state and local regulation, cannot be analyzed at all prior to completion of the implementing legislation, or at least a preliminary draft thereof. You indicated in our telephone conversation that Public Citizen may not consider it necessary for USTR to address these and possibly other issues, despite the district court's express reliance on the asserted legal effects of NAFTA as the basis for its conclusion that Public Citizen had established standing. If Public Citizen now believes there should be a narrower scope to the documentation than is contemplated by the district court's order, we would encourage you to submit your views on this as soon as possible.

These factors mean that much of the work of complying with the district court's order cannot be completed, or even substantially initiated, immediately. Nonetheless, USTR is proceeding with the steps I have outlined to ensure that adequate environmental information will be available at the time the President asks Congress to consider NAFTA, and to ensure that this information could be presented in a form that USTR believes could satisfy the district court's order should the United States not prevail in its appeal.

The uncertainty that attends international negotiations and the diplomatic process makes it impossible for USTR to state when the negotiations on additional agreements will conclude, and therefore it is not possible for USTR to set a precise timetable for the completion of the process at this time. We are aware, however, that the terms of the district court's opinion seem to require the completion of additional environmental documentation by the time Congress considers the agreement, and it is for this reason that the United States has maintained that the order imposes an impermissible burden on the President's authority. Please be assured that the President will not ask Congress to consider the agreement until the additional agreements are complete. USTR is consulting with the Department of Justice throughout this process, to make sure that USTR meets its obligations under the order and under the law.

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If Public Citizen believes it can contribute to this initial phase of USTR's effort, we would urge you to present any ideas you may have on these issues to USTR in writing on a timely basis. Otherwise, I trust this will satisfy your inquiry.

Best regards,

Bradley M. Campbell

cc: Ira S. Shapiro
Daniel E. Brinza
Dinah Bear

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

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Eileen, (Katie)

Here are my comments on Justice's draft. Actually, it seems quite moderate in proposing to do "environmental documentation" that would functionally be equivalent to an EIS. But I'd urge a meeting between Pub. Cit. and Justice/USTIA to see if they can agree on narrow scope. I think there's an opportunity here that Justice is not open enough to.

(I did not submit these comments to Kreczko, but am working through you two.)

David D.



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The only part of Richey's opinion that says "by the time" is a single argument heading.

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*offer a
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