

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Raymond P. Moore**

Civil Action No. 1:19-cv-00076-RM-KLM

ALLIANCE OF NUCLEAR WORKERS ADVOCACY GROUPS,  
ROCKY FLATS DOWNWINDERS,  
CANDELAS GLOWS/ROCKY FLATS GLOWS,  
ENVIRONMENTAL INFORMATION NETWORK (EIN) INC.,  
ROCKY FLATS NEIGHBORHOOD ASSOCIATION,  
ROCKY FLATS RIGHT TO KNOW, and  
ROCKY MOUNTAIN PEACE & JUSTICE CENTER,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

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**AMENDED ORDER**

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This matter is before the Court *sua sponte* upon review of this matter and finding that a question is raised as to whether this action may be moot.

**I. BACKGROUND**

Petitioners Alliance of Nuclear Workers Advocacy Groups (“ANWAG”), Rocky Flats Downwinders (“Downwinders”), Candelas Glows/Rocky Flats Glows, Environmental Information Network (EIN) Inc., Rocky Flats Neighborhood Association (“RFNA”), Rocky Flats Right To Know (“RFR2K”), and Rocky Mountain Peace & Justice Center (“RMPJC”) (collectively, “Petitioners”) brought a petition (the “Petition”) seeking certain public and business records allegedly submitted to Special Federal Grand Jury 89-2 (“SFGJ89-2”) during its investigation of the actions of Rockwell International Corporation at the Department of Energy’s

former weapons-grade plutonium-239 processing facility, Rocky Flats Nuclear Weapons Plant (“Rocky Flats”). (ECF No. 1.) Petitioners surmise that between June 1989 and March 26, 1992, SFGJ89-2 collected over 760 boxes of documents and information – about three and one half million pages of documents – from various sources, including: (1) a raid on Rocky Flats; (2) a raid at the DOE offices in Albuquerque; and (3) at least nine subpoenas. (ECF No. 1, at 23–24.)

## **II. ANALYSIS**

Petitioners seek documents from Respondent which were collected about thirty years ago. During a Status Conference before Magistrate Judge Mix, Respondent raised an issue about its ability to find the documents requested in the Petition. Further, given the time that has passed, an issue is raised as to whether Respondent still possess the documents Petitioners request. *See U.S. ex rel. Woodard v. Tynan*, 757 F.2d 1085, 1087 (10th Cir. 1985) (“Both federal and Colorado law appear to allow a party’s business records held by a grand jury to be withdrawn either upon the consent of the documents’ owner or pursuant to a court order after the grand jury has completed its work.”).

Thus, the Petition may be moot. Mootness is a matter of jurisdiction that a court may raise *sua sponte*. *See McClendon v. City of Albuquerque*, 100 F.3d 863, 867 (10th Cir. 1996); *see also In re Overland Park Fin. Corp.*, 236 F.3d 1246, 1254 (10th Cir. 2001) (“A case is moot when it is impossible for the court to grant any effectual relief whatever to a prevailing party.”). Consequently, the Court directs Respondent to advise whether it is still in possession of the documents which Petitioners seek.

## **III. CONCLUSION**

Based on the foregoing, it is ORDERED

- (1) Respondent shall within sixty (60) days of the date of this Order, on or before May 5, 2020, file a report, including any necessary affidavits or exhibits, advising whether it is in possession of any of the documents which are the subject the Petition; and
- (2) That, pending such report, pursuant to D.C.COLO.L.CivR 41.2 the Clerk shall administratively close this case subject to reopening for good cause.

DATED this 6th day of March, 2020.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Raymond P. Moore', written over a horizontal line.

RAYMOND P. MOORE  
United States District Judge