

NO. 19-72670

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

In re PUBLIC WATCHDOGS

PUBLIC WATCHDOGS,

Petitioners,

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION,

Respondent.

**SECOND SUPPLEMENTAL DECLARATION IN SUPPORT OF
EMERGENCY PETITION FOR WRIT OF MANDAMUS TO THE
NUCLEAR REGULATORY COMMISSION**

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Attorneys for Public Watchdogs

COMES NOW Petitioner Public Watchdogs and hereby submits this Second Supplemental Declaration in Support of Emergency Petition for Writ of Mandamus (“Emergency Petition”). This Supplemental Declaration provides updated information about the status of the

administrative proceeding before the Nuclear Regulatory Commission (“NRC”), which is the subject of the Emergency Petition. Specifically, on November 18, 2019—four weeks after the Emergency Petition was filed with this Court, and 26 days after the NRC determined that Petitioner’s request did not warrant immediate action—the NRC provided Petitioner with a status update. Specifically, the NRC emailed Petitioner to advise that NRC staff has assembled a “Petition Review Board” to perform an “initial assessment” of Public Watchdog’s petition filed under 10 C.F.R. § 2.206.¹ Petitioner was not provided with any timetable or deadline for when the Petition Review Board would complete its “initial assessment.” A copy of the email communication from the NRC is attached as Exhibit A to the Second Supplemental Declaration.

Although the NRC is content to proceed at its own pace, the events giving rise to the Emergency Petition continue unabated. Unless the Court grants Petitioner’s request for mandamus relief and requires the

¹ The NRC refers to its ongoing review of the § 2.206 Petition as an “initial assessment,” despite acknowledging nearly a month ago that it had already performed an “initial screening” of the same petition. *See* Supplemental Declaration [Dkt 7] at p. 11–12.

NRC to suspend burial operations at San Onofre, this Court's jurisdiction over this dispute will be supplanted by the NRC's inaction.

Dated: November 18, 2019

Respectfully submitted,
BARNES & THORNBURG LLP

By: /s/ Eric J. Beste
Charles G. La Bella
Eric J. Beste
Attorneys for Plaintiff
PUBLIC WATCHDOGS

DECLARATION OF ERIC J. BESTE

I, Eric J. Beste, do hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct:

1. I am an attorney licensed in the State of California and admitted to practice before the United States Court of Appeals for the Ninth Circuit. I am one of the attorneys at Barnes & Thornburg LLP representing Petitioner Public Watchdogs in connection with the Emergency Petition for Writ of Mandamus filed in *In Re Public Watchdogs*, Case No. 19-72670 (9th Cir. Oct. 21, 2019).

2. On November 18, 2019, the NRC sent counsel for Public Watchdogs an email indicating that a Petition Review Board had been assembled and that the board had begun its initial assessment. The email did not provide a deadline or timetable for when the initial assessment would be completed. A true and correct copy of the email is attached as Exhibit A.

Executed on November 18, 2019

s/ *Eric J. Beste*
Eric J. Beste
Attorney for Petitioner
Public Watchdogs

EXHIBIT A

Beste, Eric

From: Cruz Perez, Zahira <Zahira.CruzPerez@nrc.gov>
Sent: Monday, November 18, 2019 9:02 AM
To: La Bella, Chuck; Heller, Zachary; Gordon, Randy; Wohlford, Luke; Beste, Eric
Cc: Averbach, Andrew
Subject: [EXTERNAL]2.206 Petition status

Good Morning,

This email is to inform you that the NRC staff has assembled a Petition Review Board to evaluate the petition you submitted on September 24, 2019 related to decommissioning operations at San Onofre Nuclear Generating Station. The Petition Review Board is performing its initial assessment of your petition using the evaluation criteria in Management Directive 8.11 (ML18296A043) Section III.C, "Criteria for Petition Evaluation." I will contact you with the results of this assessment. In moving forward with the 10 CFR 2.206 petition process, please be informed that this process is a public process and information related to the petition is made public available, including your identity.

Thank You,

Zahira Cruz

Zahira Cruz

Project Manager
U.S. Nuclear Regulatory Commission
Office of Nuclear Material Safety and Safeguards
Reactor Decommissioning Branch
Rockville, MD 20852