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UNITED STATE COURT OF APPEALS
FOR THE NINTH CIRCUIT

KENNETH O. EIKENBERRY,
ATTORNEY GENERAL OF THE
STATE OF WASHINGTON ON
BEHALF OF THE
STATE OF WASHINGTON,
AND THE WASHINGTON STATE
NUCLEAR WASTE BOARD,

Petitioners,

v.

JOHN HERRINGTON, SECRETARY
OF THE UNITED STATES DEPART-
MENT OF ENERGY; THE
UNITED STATES DEPARTMENT
OF ENERGY, AND RONALD REAGAN
PRESIDENT OF THE UNITED
STATES,

Respondents.

NO. 86-7325

PETITION FOR REVIEW
(INITIATING A CIVIL
ACTION UNDER
42 U.S.C. § 10139)

NATURE OF ACTION

1. This is a civil action initiated pursuant to section 119 of the Nuclear Waste Policy Act, 42 U.S.C. § 10139 (NWP). Petitioners challenge the validity of decisions of the United States Department of Energy (USDOE) and other respondents made public on May 28, 1986, relating to the selection of Hanford, Washington, as an approved site for characterization as the

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Docket No. _____
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Assistant Attorney General

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1 nation's first repository for high-level nuclear waste. These
2 actions culminated in Hanford being approved as one of three
3 finalist sites for characterization despite the fact that it was
4 ranked last among five nominated sites according to USDOE's rank-
5 ing methodology. Apparently, the elevation of Hanford to the
6 approved list of three was made because it was the only site
7 located in the geologic medium of basalt. Concurrent with the
8 approval of Hanford was the decision to discontinue a search for a
9 second repository in a number of midwestern and eastern states in
10 the geologic medium of granite.

11 These and other bases for the appeals will be set forth in
12 subsequent pleadings and in briefs to be submitted to the Court.

13 DECISIONS FROM WHICH REVIEW IS SOUGHT

14 2. The State of Washington and the Washington State Nuclear
15 Waste Board initiate this "civil action" by petitioning this Court
16 to review six decisions or actions taken by the respondents on
17 May 28, 1986. These six decisions or actions are:

18 a. The nomination by respondent John Herrington, Secretary
19 of the United States Department of Energy, of five sites,
20 including a site on the federal Hanford Reservation in Washington
21 State, as suitable for site characterization as a high-level
22 nuclear waste repository pursuant to section 112(b)(1)(A) of the
23 Nuclear Waste Policy Act, 42 U.S.C. § 10132(b)(1)(A).

24 b. The recommendation by respondent John Herrington,
25 Secretary of the United States Department of Energy to the
26

1 President of the United States of three of the nominated sites,
2 including the Hanford Reservation site in Washington, for
3 characterization as candidate sites for a high-level nuclear waste
4 repository pursuant to section 112(b)(1)(B) of NHPA, 42 U.S.C. §
5 10132(b)(1)(B);

6 c. The issuance by the respondent John Herrington, Secretary
7 of the United States Department of Energy, of environmental assess-
8 ments, relating to the aforementioned nominations as described in
9 subsection 1.a. above, pursuant to section 112(b)(1)(E) of NHPA,
10 42 U.S.C. § 10132(b)(1)(E);

11 d. The preliminary determination by the respondent John
12 Herrington, Secretary of the United States Department of Energy,
13 that the aforementioned three recommended sites, as described in sub-
14 section 2.b. above, are suitable for development as repositories
15 pursuant to section 114(f) of NHPA, 42 U.S.C. § 10134(f);

16 e. The approval by respondent Ronald Reagan, President of
17 the United States, of the three recommended sites as described in
18 subsection 2b above pursuant to section 112(c) of NHPA, 42
19 U.S.C. § 10132(c); and

20 f. The action taken on May 28, 1986 by respondents, United
21 States Department of Energy and John Herrington, Secretary of the
22 United States Department of Energy, indefinitely postponing all
23 site-specific work leading to nomination and recommendation of
24 sites for characterization for selection of a second round reposi-
25 tory as mandated by the section 112(b) of the Nuclear Waste Policy
26 Act, 42 U.S.C. § 10132(b).

- 1 a. Rules of discovery;
2 b. Rules of evidence; and
3 c. Rules for rulings on requests for interim relief.

4 It is further requested that the Court consider the appointment
5 of a special master for the purpose of processing this civil action.

6 6. The petitioner requests that the Court set a pre-briefing
7 conference at the earliest appropriate time.

8 Dated this 4th day of June, 1986.

9 KENNETH O. EIKENBERRY
10 Attorney General

11 CHRISTINE O. GREGOIRE
12 Deputy Attorney General

13 JEFFREY D. GOLTZ
14 Assistant Attorney General

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26 General of the State of Washington
27 on behalf of the State of Washington
and the Washington State Nuclear
Waste Board.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NUCLEAR WASTE BOARD OF THE)
STATE OF WASHINGTON, and the STATE)
OF WASHINGTON,)

Petitioners,)

v.)

UNITED STATES DEPARTMENT OF ENERGY,)
AND JOHN HERRINGTON, SECRETARY)
OF THE UNITED STATES DEPARTMENT)
OF ENERGY,)

Respondents.)

No. 86-7326

PETITION FOR REVIEW
(INITIATING A CIVIL
ACTION UNDER
42 U.S.C. § 10139)

NATURE OF ACTION

1. This is a civil action initiated pursuant to section 119 of the Nuclear Waste Policy Act, 42 U.S.C. § 10139. Petitioners seek review of a decision of the United States Department of Energy and its Secretary made public on May 28, 1986 that a site on the Hanford Reservation of Washington was preliminarily determined to be suitable for development as a high-level radioactive waste repository.

2. The respondent's decision conflicts with the requirement of the Nuclear Waste Policy Act that such a preliminary determination of suitability be made at the conclusion of the site characterization process.

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1 Nuclear Waste Policy Act, 42 U.S.C. § 10131 et seq. pending the
2 issuance of a ruling relating to the requested relief of
3 subsection 1, above.

4 Dated this 4th day of June, 1986.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STATE OF WASHINGTON, AND THE NUCLEAR WASTE BOARD OF THE STATE OF WASHINGTON,)
Petitioners,)
v.)
UNITED STATES DEPARTMENT OF ENERGY, AND JOHN HERRINGTON, SECRETARY OF THE UNITED STATES DEPARTMENT OF ENERGY,)
Respondents.)

No. 86-7327

PETITION FOR REVIEW
(INITIATING A CIVIL
ACTION UNDER
42 U.S.C. § 10139)

NATURE OF ACTION

1. This is a civil action initiated pursuant to section 119(f) of the Nuclear Waste Policy Act (NWPA), 42 U.S.C. § 10139, alleging the failure of the United States Department of Energy and its secretary to carry out statutory mandates vested in them by NWPA relating to the siting of a second high level waste repository of the NWPA. Petitioners seek a review of the action of the United States Department of Energy and its secretary made public on May 28, 1986, in which the federal agency postponed indefinitely site-specific work leading to the selection of a site for characterization of a secondary repository.

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1 2. Respondent's indefinite suspension of the site
2 selection process for the second round repository not only
3 violates the requirements of the Nuclear Waste Policy Act but
4 conflicts impermissibly with the Act's policy requiring the
5 establishment of two repositories.

6 DECISION FROM WHICH REVIEW IS SOUGHT

7 3. The State of Washington and the Nuclear Waste Board of,
8 the State of Washington hereby petition this Court to review the
9 action, taken by the respondent United States Department of
10 Energy, and John Herrington, Secretary of the Department of Energy
11 on May 28, 1986, indefinitely postponing all site-specific work
12 leading to nomination and recommendation of sites for characteri-
13 zation of a second round repository as mandated by section 112 of
14 the Nuclear Waste Policy Act, 42 U.S.C. § 10132(b).

15 JURISDICTION

16 4. This Court has jurisdiction to conduct the requested
17 review by section 119 of the Nuclear Waste Policy Act, 42 U.S.C.
18 § 10139.

19 RELIEF REQUESTED

20 The petitioners seek the following relief:

21 1. A declaration that the determination to postpone
22 indefinitely site-specific work, as described above, constitutes a
23 violation of Subtitle A of Title 1 of the Nuclear Waste Policy
24 Act;

1 2. Issuance of an order directing the respondents to
2 reactivate a program of site-specific work designed to meet the
3 requirements placed on the respondents by NWPA requiring the
4 submission of three candidate sites to the President by July 1,
5 1989 determined by respondents to be suitable for site characteri-
6 zation as a second round repository; alternatively, issuance of an
7 order enjoining respondents from proceeding further in the reposi-
8 tory site selection program of Subtitle A of Title 1 of the
9 Nuclear Waste Policy Act.

10 3. Such preliminary injunctive or other equitable relief
11 as is appropriate.

12 Dated this 4th day of June, 1986.

13 KENNETH O. EIKENBERRY
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