

October 3, 2005

BY FEDERAL EXPRESS

Cathy A. Catterson, Clerk
United States Court of Appeals
95 Seventh Street
San Francisco, CA 94103-1526

Subject: *San Luis Obispo Mothers for Peace v. NRC,*
No. 03-74628

Dear Ms. Catterson,

Pursuant to FRAP 28j and Cir. R. 28-6, I am writing to inform the Court of relevant decisions that have been issued since the parties filed their last brief on June 28, 2004.

Ranchers Cattlemen Action League Fund United Stockgrowers of America v. U.S. Department of Agriculture, 415 F.3d 1078, 1003 (9th Cir. 2005) supports Petitioners' position that *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 (1983) is inapplicable to the instant case because it did not involve physical changes to the environment. See Petitioners' Reply Brief at 5-7.

Save Our Sonoran, Inc. v. Flowers, 408 F.2d 1113, 1122 (9th Cir. 2005); *Ocean Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846, 868 (9th Cir. 2005); and *City of Shoreacres v. Waterworth*, 420 F.3d 440, 452 (5th Cir. 2005), interpret *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004), which the U.S. Nuclear Regulatory Commission ("NRC") has cited in support of its position. See letter from NRC to the Court dated July 19, 2004; letter from Petitioners to the Court dated July 30, 2004.

These cases show that *DOT v. Public Citizen* does not provide NRC with the support it claims. *Save Our Sonoran* and *Ocean Advocates* both found a "reasonably close causal nexus" between federal action and environmental impacts, despite the involvement of causal factors independent of the federal action. In *City of Shoreacres*, the Court cited *DOT v. Public Citizen* for the

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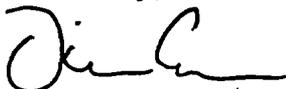
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proposition – not at issue here -- that one government agency may not be held responsible for environmental impacts that are controlled by another.

Finally, Petitioners wish to inform the Court that *Public Citizen and San Luis Obispo Mothers for Peace v. NRC*, No. 03-1181 (D.C. Cir.), which is cited at page 28 n.15 of Petitioners' Initial Brief, was held in abeyance on September 17, 2004, pending NRC's commencement of a rulemaking regarding the design basis threat. To Petitioners' knowledge, no rulemaking has been commenced.

Sincerely,



Diane Curran

cc: Service list

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SAN LUIS OBISPO MOTHERS FOR PEACE,)
SANTA LUCIA CHAPTER OF THE SIERRA)
CLUB, and PEG PINARD, Petitioners)
v.) No. 03-74628
UNITED STATES NUCLEAR REGULATORY)
COMMISSION and the UNITED STATES)
OF AMERICA, Respondents)

CERTIFICATE OF SERVICE

I certify that on October 3, 2005, copies of the foregoing letter from Diane Curran to Cathy Catterson were served on the following by Federal Express:

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