

**NO. 19-72670**

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

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**In re PUBLIC WATCHDOGS**

**PUBLIC WATCHDOGS,**

*Petitioner,*

v.

**UNITED STATES NUCLEAR REGULATORY COMMISSION,**

*Respondent.*

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**PETITIONER PUBLIC WATCHDOGS'S OPPOSITION TO  
NUCLEAR REGULATORY COMMISSION'S MOTION FOR  
EXTENSION OF TIME TO RESPOND TO MANDAMUS  
PETITION**

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CHARLES G. LA BELLA  
ERIC J. BESTE  
**BARNES & THORNBURG LLP**  
655 WEST BROADWAY, SUITE 900  
SAN DIEGO, CA 92101  
TELEPHONE: 619-321-5000  
FACSIMILE: 310-284-3894  
*Attorneys for Public Watchdogs*

Petitioner Public Watchdogs ("Petitioner") filed its emergency petition for writ of mandamus on October 21, 2019, and served a copy on the Nuclear Regulatory Commission ("NRC"), the U.S. Department of

Justice (“DOJ”), and the U.S. Attorney’s Office for the Southern District of California. Petitioner was forced to file the emergency petition because the NRC had failed to act upon a separate petition filed on September 24, 2019, pursuant to 10 C.F.R. § 2.206 (“2.206 Petition”). Thus, the NRC and the United States Department of Justice have had almost a month to evaluate the emergency petition, almost two months to evaluate the 2.206 Petition, and that same time to take whatever steps they now claim cannot be undertaken because of the upcoming holiday.<sup>1</sup> It is precisely because the NRC had a month-long head start—coupled with the emergency nature of the relief requested by Petitioner—that this Court was justified in requiring a response within ten (10) days.

Meanwhile, the irreversible activities challenged in the emergency petition and the 2.206 Petition have continued unabated. The NRC has permitted the owners, operators, and subcontractors at the San Onofre Nuclear Generating Station to continue moving spent nuclear fuel from the relative safety of wet storage, transferring it into thin-walled

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<sup>1</sup> Indeed, given the gravity of the issues and the emergency nature of Petitioner’s petitions, it is highly unlikely that only yesterday the NRC and the DOJ began collecting information from employees and coordinating their responses.

canisters, and burying the canisters in a location poorly suited for the storage of radioactive, toxic materials. Every day that the NRC postpones action on the 2.206 Petition, and delays this Court's resolution of the emergency petition, is another day that Petitioner and the residents of Southern California face irreparable harm.

In light of these exigencies, Petitioner's counsel informed counsel for the NRC that it would agree to an extension of time to respond only if the NRC and/or Southern California Edison agreed to halt the burial and transfer of the spent nuclear fuel during the pendency of proceedings in this Court. *See* Exhibit A (Declaration of Eric J. Beste) ¶ 2. The NRC's unwillingness to even temporarily pause the transfer of spent nuclear fuel—effectively supplanting this Court's ability to provide the requested relief over the canisters buried during the additional delay—leaves Petitioner no choice but to oppose the NRC's request for more time to answer the emergency petition.

Dated: November 22, 2019

Respectfully submitted,  
BARNES & THORNBURG LLP

By: /s/ Eric J. Beste

Charles G. La Bella  
Eric J. Beste  
Attorneys for Plaintiff  
PUBLIC WATCHDOGS

# EXHIBIT A

## 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 22, 2019, counsel for the NRC contacted counsel for Petitioner requesting an extension of time to respond to the emergency petition. Petitioner's counsel responded by email, noting that Petitioner "is focused on the irreparable harm caused every time one of the [spent nuclear fuel] canisters is buried at SONGS. So if the NRC [or Southern California Edison] agrees to halt the movement and burial of [spent nuclear fuel] during the pendency of the proceeding in the 9th Circuit, we would join your request to extend the deadline to file an answer." The NRC declined this offer, prompting Petitioner to file this

written opposition to what under normal circumstances would be a reasonable request.

Executed on November 22, 2019

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