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*Cy. 7/22/70
file*

Mr. Edward J. Bauser
Executive Director
Joint Committee on Atomic Energy
Congress of the United States

Dear Mr. Bauser:

This is to inform the Joint Committee that on October 20, 1970, the Sierra Club and Citizens for Clean Air and Water (an Ohio environmental group) filed suit in the United States District Court for the Northern District of Ohio against Secretary of the Interior Michel, Dr. Peter A. Horvitz of the AEC, the Toledo Edison Company and the Cleveland Electric Illuminating Company, seeking specified relief in regard to the proposed Davis-Besse Nuclear Power Station. The utility co-defendants are the applicants for a permit to construct the Davis-Besse facility, which is to be located on land bordering Lake Erie in Ottawa County, Ohio.

The complaint, a copy of which is enclosed, is directed primarily to the Secretary of the Interior and focuses on the validity of an agreement for exchange of land between the utilities and the Secretary of the Interior. The plaintiffs state that the marsh land decided to the utilities by Interior's Bureau of Sports Fisheries is a part of the Ottawa Federal Wildlife Refuge. According to the plaintiffs, the Secretary knew or should have known at the time of the deed that the defendant utilities intended to use the decided land in connection with their proposed construction of the Davis-Besse facility and that the "construction would cause serious and irreparable damage to the marsh area and ecology, thereby rendering the marsh largely unfit for migratory bird habitation". In addition, the plaintiffs contend that the Secretary knew or should have known that "the continuous liquid discharge of radioactive materials, such as tritium, will adversely affect aquatic life, and [that] high temperature water discharge will seriously damage walleye spawning ability in Lake Erie".

The plaintiffs ask the court to declare that the land exchange agreement was "an improper and unauthorized act in violation of the public interest" and in derogation of the statutory duties (enumerated in the complaint) of the Secretary of the Interior.

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Mr. Edward J. Bauser

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Insofar as Dr. Morris is concerned, the complaint refers to the exemption for preliminary construction which has been granted to the utilities under 10 CFR § 50.10(b) and to the expected hearing on the construction permit application. The complaint asserts that these actions "pose a real and substantial danger that irreparable damage... will occur to property that this court may declare to be still owned by the United States government". Accordingly, the plaintiffs ask the court for an order restraining Dr. Morris and the AEC "from holding hearings upon the issuance of a construction permit and ordering [them] to revoke the previously extended construction exemption granted by the Commission".

We plan to work closely with the Department of Justice in the defense of the aspects of this suit which concern AEC. We will keep the Joint Committee informed of significant developments.

Sincerely,

Signed:
Bertram H. Schur

Bertram H. Schur
Acting General Counsel

Enclosure
Cy. Complaint

bcc: Chairman (2)
Commissioners (1)
OCR (2)
Secretary (2)
GI (2)
Reg (1)

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W.Parler/cp	Rowden	Schur	
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