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<b>DOCKET</b>	
<b>08-IEP-1F</b>	
DATE	SEP 22 2008
RECD.	SEP 22 2008

RE: **docket number 07-AB-1632**  
08-IEP-1F

Below please find a request for rewording of the summary of San Luis Obispo Mothers for Peace's legal challenge of the Diablo Canyon ISFSI license. The current wording is on the page numbered 224, designated 228/326 of the DRAFT AB 1632 Assessment.

I will also mail a hard copy to California Energy Commission □ Dockets Office, MS-4 □ Re: Docket No.07-AB-1632 and 08-IEP-1F □ 1516 Ninth Street, MS-4 □ Sacramento, CA 95814-5512

### **Mothers for Peace Challenges Diablo Canyon ISFSI License**

In 2005 San Luis Obispo Mothers for Peace (MFP) filed a lawsuit contending that the Environmental Assessment (EA) for the Diablo Canyon ISFSI (dry cask storage facility) was incomplete because it did not address the environmental impacts of a terrorist attack at the facility, as required by the National Environmental Policy Act. In June, 2006 the Ninth Circuit of the U. S. Court of Appeals ruled in favor of MFP. In response, the NRC Staff produced an 8 page supplemental EA that concluded that the probability of a successful attack on the Diablo Canyon ISFSI was very low and that, in the event of a successful attack, the radiation dose to members of the public near the facility would be below the dose limit for workers in the nuclear industry. The NRC Staff therefore issued a Finding of No Significant Impact.

In response, MFP filed five contentions. MFP argued that NRC staff did not disclose supporting documentation, failed to adequately consider land contamination and latent human health effects from a terrorist attack, made improper assumptions, and failed to consider credible threat scenarios.

On July 1, 2008, the NRC Commissioners held a hearing on the second contention. Under questioning by the Commissioners, the NRC Staff admitted that the EA did not address the consequences of an attack-induced fire and airborne release of cesium gas. The Staff claimed to have assessed this possibility in secret, and to have dismissed it as "too remote and speculative" to consider. NRC Staff admitted that it had come to this conclusion based solely on its experience and judgment, without any quantitative analysis to justify the conclusions.

MFP Attorney Diane Curran, assisted by MFP's expert witness, Dr. Gordon Thompson, asserted that the NRC Staff's extreme secrecy was illegal. She argued that the NRC must publicly disclose the broad outlines of its environmental impact analysis of an attack on Diablo Canyon in order to ensure the agency's accountability to the public. MFP also pointed out that an attack on the ISFSI has implications for the nearby spent fuel pools and the two reactors.

The NRC has not announced a date for its decision.

Sources: San Luis Obispo Mothers for Peace; Santa Lucia Chapter of the Sierra Club; Peg Pinard v. Nuclear Regulatory Commission: Opinion by Judge Thomas On Petition for Review of an Order of the Nuclear Regulatory Commission. Page 6096. (U.S. Court of Appeals for the Ninth Circuit No. 03-74628 June 2, 2006). Accessed: October 3, 2006. <[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/2BFBC6088AF13AA98825718000723C79/\\$file/0374628.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/2BFBC6088AF13AA98825718000723C79/$file/0374628.pdf?openelement)>; Pacific Gas and Electric Company.Petitioner v. San Luis Obispo Mothers for Peace, et al. Docket 06-466 (U.S. Supreme Court October 3, 2006). Accessed: March 23, 2007. <<http://www.supremecourtus.gov/docket/06-466.htm>>; U.S. Nuclear Regulatory Commission. "NRC Seeks Public Comment on Supplemental Environmental Assessment for Diablo Canyon Spent Fuel Storage Facility." News Release. May 29, 2007; U.S. Nuclear

Regulatory Commission. Memorandum and Order. CLI-08-01. January 15, 2008; U.S. Nuclear Regulatory Commission – Atomic Safety and Licensing Board. “Order Granting NRC Staff’s Unopposed Motion For Summary Disposition Of San Luis Obispo Mothers For Peace’s Contention 1(B).” Docket No. 72-26-ISFSI. May 14, 2008; and U.S. Nuclear Regulatory Commission. “Hearing: Diablo Canyon Subpart K Proceeding, Oral Arguments.” July 1, 2008, page 4. Accessed: July 15, 2008. transcript viewable at <http://www.nrc.gov/reading-rm/doc-collections/commission/tr/2008/20080701.pdf>