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ENTERED

**Simons,  
Cuddy  
&  
Friedman**

Attorneys at Law

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Of Counsel  
Charles D. Noland  
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November 20, 1990

VIA FACSIMILE - 846-5700

Major Marcia Kurtz  
Staff Judge Advocate  
HQ 1606 ABW/JA  
Kirtland Air Force Base, New Mexico 87117-5000

HAND DELIVERED

Tracy M. Hughes, Esq.  
Assistant General Counsel  
HED-EID  
1190 St. Francis Drive  
Santa Fe, New Mexico 87503

Re: United States of America, Department of The Air Force, Appellant v. State of New Mexico Health and Environment Department, Environmental Improvement Division, Appellee, Ct. App. No. 12,500

Dear Counsel:

This will confirm November 27, 1990 at 9:00 a.m. as the date and time and the offices of Simons, Cuddy & Friedman, 1660 Old Pecos Trail, Suite A, as the location of the settlement conference ordered by the Court of Appeals in the above-referenced appeal. Please note that the Order referring this case for settlement conference also indicates that the parties should have present not only the lead counsel but also each party or party's representative having actual and realistic authority to settle the issues raised in the appeal.

As the settlement facilitator assigned to this appeal it will not be my role to pass judgment on the merits of the appeal, nor can I make any decision as to the outcome of the settlement process or make any recommendation to the Court about the outcome of the appeal. Rather, my role will be to act as a sounding board for both parties, to provide alternative suggestions for resolution, to explore the viability of alternatives for resolution.

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*Attorneys at Law*

I have reviewed the Docketing Statement filed in the Court of Appeals but have not yet reviewed the record. If there are particular authorities or cases, not cited in the Docketing Statement, which either of you believe would be helpful to me I would appreciate receiving copies of them by Monday, November 26, 1990.

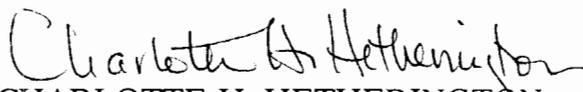
I would like to begin the conference at 9:00 a.m. and work until 1:00 if the parties think that would be useful. I have a short hearing scheduled in District Court at 1:00 p.m. and would like to have our lunch break set then if possible. We would reconvene at 2:30 and I could be available for the remainder of the day.

Tracy Hughes has informed me that she has been contacted by a public interest group which was not a party at the administrative level but is contemplating intervention, amicus status or would otherwise like to take part in any settlement discussions. I indicated to Tracy that this Court ordered settlement process does not contemplate participation by non-parties. If both the Appellant and Appellee believe participation by non-parties would be useful, then I will allow it, but I certainly will not allow it over the objection of a party.

During the settlement conference, I expect that I will be talking to both parties individually as well as jointly. The matters which are discussed separately will not be disclosed to the other party unless you have authorized me to make the disclosure.

If either of you have questions concerning the settlement process or my role, please feel free to call me. As I indicated earlier, it is not my role to make a decision for either the Appellate Court or for you, and I would not consider such discussion to be ex parte communications.

Sincerely,

  
CHARLOTTE H. HETHERINGTON

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cc: John W. Zavitz, Esq.

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