FILED

02 JUN -3 PM 3:54

COURT OF APPEALS
STATE OF NEW MEXICO
P.R. WALLACE, CLERK

IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

General

U.S. DEPARTMENT OF ENERGY,
NATIONAL NUCLEAR SECURITY
ADMINISTRATION,

Appellant,

vs. Case No. _____

PETER MAGGIORE, Cabinet Secretary
of the New Mexico Environment
Department, and the NEW MEXICO
ENVIRONMENT DEPARTMENT,

Appellees.

NOTICE OF APPEAL

Pursuant to NMRA 2002, Rule 12-601, Appellant United States Department of Energy, National Nuclear Security Administration, hereby files a notice of appeal of the Determination Of An Imminent And Substantial Endangerment to Health And The Environment ("Determination"), which was signed by Peter Maggiore, Cabinet Secretary of the New Mexico Environment Department ("NMED"), on May 2, 2002, a copy of which is attached. This appeal is taken against the Secretary and NMED and is directly to the Court of Appeals. NMED may believe that this Determination constitutes "final administrative action" that is reviewable in, and appealable to, this Court, pursuant to NMSA 1978, Section 74-4-14(A) (1992) of the New Mexico Hazardous Waste Act.

Appellant does not believe that this Determination is a

"final administrative action" within the meaning of the law. However, in the event that the Court deems the Determination to be "final administrative action" and solely to protect its rights, Appellant is making this protective filing in the New Mexico Court of Appeals to preserve its right to challenge the basis, findings, and effect of the Determination. Moreover, by this filing, the Appellant does not intend to waive and is not waiving its sovereign immunity or its right to file a legal action challenging any or all of the Determination in any federal court of competent jurisdiction. Furthermore, by this filing, Appellant is not consenting to the jurisdiction of any New Mexico state court or of NMED.

Respectfully submitted,

DAVID C. IGLESIAS
United States Attorney

PHYLLIS A. DOW
Assistant U.S. Attorney
P.O. Box 607
Albuquerque, New Mexico 87103
(505) 346-7274

Of Counsel:

Elizabeth L. Osheim
Counsel for Office of Los Alamos Site Operations
United States Department of Energy, National Nuclear Security
528 W. 35th Street
Los Alamos, New Mexico 87544
(505) 667-4667

I HEREBY CERTIFY that on June 3, 2002, a true copy of the foregoing pleading was hand-delivered to Peter Maggiore, Cabinet Secretary of the New Mexico Environment Department, and Paul R. Ritzma, General Counsel, New Mexico Environment Department, 1190 St. Francis Dr., Santa Fe, New Mexico 87501.

PHYLLIS A. DOW
Assistant U.S. Attorney

General

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CIV 02 637 WWD DJS

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, Plaintiff, v. PETER MAGGIORE, Cabinet Secretary of the New Mexico Environment Department, Defendant.	Civil No. _____ COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR REVIEW OF ADMINISTRATIVE ACTION

Plaintiff The Regents of the University of California complains as follows:

NATURE OF THE CASE

1. This is a civil action for declaratory and injunctive relief brought by the Regents of the University of California ("Regents") challenging an action by the Cabinet Secretary ("Secretary") of the New Mexico Environment Department ("NMED") which is preempted by federal law, exceeds the applicable sovereign immunity waiver and is otherwise in violation of federal due process principles and other federal laws. This lawsuit arises from a unilateral Determination of Imminent and Substantial Endangerment to Health and the Environment ("Determination") released by the Secretary on May 2, 2002. This Determination is based primarily on the alleged presence, releases and potential dangers of radioactive materials, discharges authorized by federal Clean Water Act and chemicals regulated by the Toxic Substances Control Act such as polychlorinated biphenyls, all of which are beyond the Secretary's regulatory power. Accordingly, Plaintiff requests that the Court declare that the Determination is invalid, in whole and in part, because it contravenes a multitude of federal laws, and to issue all appropriate temporary, preliminary and permanent injunctive relief. In addition,

Plaintiff requests that the Court exercise its supplemental jurisdiction to undertake judicial review of the Determination.

PARTIES

2. Plaintiff The Regents of the University of California ("Regents" or "Plaintiff") is a constitutional agency and an arm of the State of California. The Regents operates the Los Alamos National Laboratory ("LANL") under a contract with the United States Department of Energy ("DOE").

3. Defendant Peter Maggiore ("Defendant") is the Cabinet Secretary of the New Mexico Environment Department ("NMED"), an agency of the State of New Mexico, and he is sued herein in his official capacity.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction of the claims for relief set forth herein pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), 42 U.S.C. § 1983 (deprivation of rights, privileges or immunities), 28 U.S.C. § 1367 (supplemental jurisdiction) and 5 U.S.C. §§ 702-706 (judicial review of administrative action).

5. Venue is properly laid in this judicial district pursuant to 28 U.S.C. § 1391(b) because this civil action is not founded on diversity of citizenship and Defendant resides in this judicial district, a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district, and the property relating to the claims is located in this judicial district.

BACKGROUND FACTS

6. Los Alamos National Laboratory is a federal facility located in northern New Mexico. It is one of several national laboratories that support DOE's responsibilities for national security, energy resources, environmental quality and science. Since its inception in 1943, LANL's primary mission has been nuclear weapons research and development.

7. On May 2, 2002, Defendant released a Determination of Imminent and Substantial Endangerment to Health and the Environment ("Determination") relating to LANL. The Determination purports to find that radioactive, hazardous and solid wastes have been released into the environment at LANL and "may present an imminent and substantial endangerment to human health and the environment" (sometimes hereinafter referred to as the "Endangerment Finding"). The Regents were not given an opportunity to review or comment upon the Determination before it was released. A true and correct copy of the Determination is attached hereto as Exhibit "A."

8. Defendant also released, on May 2, 2002, a 254-page "Draft LANL Order" that proposes to impose a series of prescribed investigative, monitoring and corrective action obligations on the Regents at LANL. Defendant states that he will issue the final version of the Draft LANL Order after the close of a 60-day public comment period.

9. The Determination and the Draft LANL Order are inextricably connected because the remedial requirements contained in the Draft LANL Order are allegedly based upon, and justified by, the Endangerment Finding in the Determination. The Draft LANL Order expressly cites the Endangerment Finding in both Findings of Fact and Conclusions of Law.

10. The Determination purports to make a legal Endangerment Finding regarding LANL that is based primarily on the alleged presence, releases and potential dangers posed by materials, substances and wastes that federal law has placed beyond Defendant's regulatory authority, such as radionuclides, the radioactive components of hazardous wastes, polychlorinated biphenyls ("PCBs") and permitted discharges from point sources. Defendant identifies this Endangerment Finding as the purported legal basis for the proposed Draft LANL Order.

11. The Determination specifically identifies 15 total Material Disposal Areas ("MDAs") or areas in four Technical Areas ("TAs") in reaching its Endangerment Finding.

(Determination, ¶¶ 27-52.) According to the Determination, every one of these areas allegedly contains radionuclides and/or mixed waste with radionuclide components.

12. The Determination identifies eight specific TAs where "releases" allegedly occurred that are the basis of the Endangerment Finding. (Determination, ¶¶ 53-111.) It is specified in the Determination itself that seven of the eight TAs involved nuclear research, testing, operation or other activities that utilize or produce radionuclides: TA-2 (nuclear reactors); TA-16 (releases of uranium during machining of high explosives); TA-21 (production of metals and alloys of plutonium and other transuranic elements); TA-45 (nuclear material research); TA-50 (wastewater treatment plant for radioactive wastewater); TA-54 (waste disposal area for radioactive materials); and an unidentified TA in paragraph 110 of the Determination where there allegedly was dynamic testing at firing sites in which 100,000 kilograms of depleted and natural uranium was used.

13. The Determination also identifies five alleged detections of contaminants in water wells to support its Endangerment Finding. (Determination, ¶¶ 112-119.) Two of the alleged detections were solely of strontium-90, one was solely of tritium, and one identified tritium as one of three contaminants detected.

14. In sum, Defendant's Determination is primarily based on alleged releases from federal facilities for the research, production, use, testing and/or operation of radionuclides which have allegedly resulted in the presence of radioactive materials in all 15 MDAs identified in the Determination and the alleged detection of radioactive substances in water wells. These are activities and materials, substances and wastes that are beyond Defendant's regulatory authority.

15. Plaintiff believes that the Determination does not constitute "final administrative action" pursuant to NMSA 1978, § 74-4-14(A) (1992) (the New Mexico Hazardous Waste Act). Plaintiff is informed and believes, and on that basis alleges, that Defendant believes that the Determination is final administrative action that it is now subject to judicial review. Plaintiff has

filed this action to protect its rights in the event that the Court finds that the Determination is final and appealable action by Defendant. Although Plaintiff chooses to have all of the claims in the Complaint adjudicated by this Court, it will be filing a protective appeal in the New Mexico Court of Appeals after filing this Complaint.

STATUTORY AND REGULATORY FRAMEWORK

16. The Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §§ 6961, *et seq.*, governs the treatment, storage and disposal of hazardous waste in the United States. Pursuant to RCRA, the U.S. Environmental Protection Agency ("EPA") has the authority to delegate to an individual state, upon meeting certain conditions, the administration of RCRA within its borders. EPA has approved NMED as the authorized agency to administer RCRA in the State of New Mexico.

17. The New Mexico legislature has adopted the New Mexico Hazardous Waste Act ("HWA"), which incorporates many provisions of RCRA and governs the treatment, storage and disposal of hazardous waste in New Mexico. NMSA 1978, §§ 77-4-1 to 74-4-14 (1992).

18. HWA § 74-4-10.1 provides authority to Defendant, upon finding that a "release" of hazardous waste from a defined facility or site "may present a substantial hazard to health or the environment," to issue an "order" which requires the owner or operator to "conduct such monitoring, testing, analysis and reporting with respect to such facility or site as the director deems reasonable to ascertain the nature and extent of contamination."

19. The Determination is solely and explicitly based on HWA § 74-4-10.1. However, contrary to the statutory requirement, Defendant makes no finding whatsoever in the Determination regarding any "substantial hazard" to health or the environment.

DECLARATORY JUDGMENT AUTHORITY

20. The Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, authorizes the Court to declare the rights or other legal relations of any interested party seeking such a declaration.

Any necessary or proper relief based on a declaratory judgment may be granted against any adverse party whose rights have been determined by such judgment.

FIRST CLAIM FOR RELIEF

(Federal Supremacy Clause — Preemption AEA Activities And Radioactive Materials)

21. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 20 of this Complaint.

22. Congress enacted the Atomic Energy Act ("AEA") in 1954 to promote the development of atomic energy for peaceful purposes under a program of federal regulation and licensing. The AEA comprehensively regulates radioactive materials. *See, e.g.*, 42 U.S.C. § 2014(e), (z), (aa). The AEA grants DOE and the Nuclear Regulatory Commission exclusive authority for regulating radioactive materials. *See, e.g.*, 42 U.S.C. § 2201(b), (i)(3). Pursuant to this authority, DOE has developed and implemented an extensive regulatory regime for managing radioactive materials.

23. The AEA provides DOE with the exclusive authority to regulate all pure radioactive waste and the radioactive portion of any waste mixtures.

24. RCRA directs EPA to identify and list those "solid wastes" that are "hazardous wastes." 42 U.S.C. § 6921. "Hazardous waste" is a subset of "solid waste." 42 U.S.C. § 6903(5). RCRA specifically provides that the term "solid waste" does not include source, special nuclear or byproduct material as defined by the AEA. 42 U.S.C. § 6903(27).

25. RCRA further provides that the Act does not "apply to (or authorize any State, interstate, or local authority to regulate) any activity or substance which is subject to . . . the Atomic Energy Act of 1954" except to the extent that such application or regulation is not inconsistent with the requirements of the Act. 42 U.S.C. § 6905. The HWA also contains this prohibition. HWA § 74-4-3.1.

26. The New Mexico HWA adopts RCRA's definition of "hazardous waste" as a subset of "solid waste." NMSA 1978, § 74-4-3(I) (1992). It also adopts RCRA's definition of "solid waste," thereby excepting from the definition of solid waste "source, special nuclear, or byproduct material" and other radioactive materials as defined by the AEA. NMSA 1978, § 74-4-3(M) (1992).

27. Since the AEA occupies the field for regulation of radioactive materials, and since Defendant's purported regulation of radioactive materials otherwise conflicts with federal law, Defendant's Endangerment Finding in the Determination, which is based on the regulation of radioactive materials, including the alleged presence, releases and potential dangers of radioactive materials, is preempted by the AEA.

28. An actual controversy has arisen and now exists between Plaintiff and Defendant regarding Defendant's authority to predicate his Determination on the presence, alleged releases and potential dangers posed by radionuclides whether alone, in mixed waste or in the environment.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

SECOND CLAIM FOR RELIEF

(Federal Supremacy Clause - Preemption Other Activities And Substances)

29. Plaintiff realleges and incorporates herein by reference each and every allegation set forth in paragraphs 1 through 28 of the Complaint.

30. The Determination also purports to base the Endangerment Finding on the alleged presence, releases and potential dangers of permitted discharges from point sources and such chemicals as polychlorinated biphenyls ("PCBs").

31. The Federal Water Pollution Control Act, often referred to as the "Clean Water Act" or "CWA," 33 U.S.C. §§ 1251-1387, is a comprehensive federal regulatory scheme for the protection of water quality in the United States.

32. The CWA prohibits the discharge of pollutants from a point source into waters of the United States unless a person has received a National Pollutant Discharge Elimination System ("NPDES") permit to do so under the CWA. 33 U.S.C. §§ 1311 and 1342. NPDES permits are issued by EPA, unless EPA has delegated such permit authority to an individual state. Since the State of New Mexico has not been granted such permit authority, EPA is in charge of the NPDES permit program in New Mexico.

33. Section 1006(a) of RCRA and HWA § 74-4-3.1 exclude from hazardous waste regulation any activity or substance which is subject to the CWA. In addition, both the federal and state regulations and the HWA exclude from the definition of "solid waste" any industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the CWA, as amended. 40 C.F.R. § 261.4, HWA § 74-4-3 (M), and NMAC 20.4.1.2000. Therefore, Defendant does not have the authority to regulate under the HWA any such activities or substances.

34. The Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601-2692, regulates certain aspects of chemical substances and mixtures, including PCBs. Section 1006(b) of RCRA requires the integration of RCRA with other federal statutes, such as TSCA, to minimize overlapping and duplicative regulation. Any chemical substances or mixtures regulated by TSCA are thus exempt from regulation under RCRA or the HWA (whose regulation of hazardous and solid waste parallels RCRA). PCBs are regulated by EPA under TSCA. Therefore, Defendant does not have the legal authority under the HWA to regulate PCBs.

35. The Determination asserts that PCBs are present at LANL and that their alleged presence, release and potential dangers form a basis of the Determination.

36. Plaintiff is informed and believes, and on that basis alleges, that other materials, substances and wastes beyond Defendant's regulatory power form bases of the Determination.

37. The Determination is invalid, in whole or in part, because it purports to regulate, through the alleged presence, releases and potential dangers of, materials discharged under

NPDES permits, PCBs and other materials, substances and activities beyond Defendant's regulatory authority. Moreover, such regulation is preempted by the Federal Supremacy Clause because it is expressly preempted by and in conflict with other federal law.

WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

THIRD CLAIM FOR RELIEF

(Sovereign Immunity)

38. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 37 of this Complaint.

39. The federal government is immune from state regulation except to the extent that it waives such immunity. LANL is a federal facility owned by DOE, an agency of the federal government.

40. RCRA contains a limited waiver of sovereign immunity for federal facilities. 42 U.S.C. § 6961. It provides, among other things, that any executive agency having jurisdiction over any solid waste management facility or disposal site shall be subject to, and comply with, all Federal, State, interstate, and local "requirements," both substantive and procedural, respecting "control and abatement of solid waste or hazardous waste disposal, in the same manner and to the same extent, as any person is subject to such requirements . . . ." *Id.*

41. Neither the AEA nor other federal law waives federal sovereign immunity from regulation of DOE facilities by states with respect to activities and materials covered by the AEA. Both RCRA and the HWA expressly exclude regulation of activities and materials covered by the AEA.

42. In addition, because the HWA imposes no "requirements" regulating radioactive materials, the Determination exceeds RCRA's limited waiver of sovereign immunity for federal facilities.

43. Any materials discharged under the authority of the CWA and any chemicals regulated by TSCA, such as PCBs, are also outside the limited waiver of sovereign immunity in RCRA for federal facilities.

44. An actual controversy has arisen and now exists between Plaintiff and Defendant regarding whether Defendant's Determination, in whole and in part, is invalid because it contravenes the federal government's sovereign immunity.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

FOURTH CLAIM FOR RELIEF

(Procedural Due Process)

45. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 44 of the Complaint.

46. The Fourteenth Amendment to the United States Constitution provides "[N]or shall any State deprive any person of life, liberty or property, without due process of law; . . ."

47. Procedural due process requires that an administrative agency provide reasonable notice of its actions and otherwise conduct its administrative decision-making in full accordance with the procedures set forth in applicable federal and state laws and regulations.

48. In formulating and releasing the Determination, Defendant has violated Plaintiff's procedural due process rights by, among other things:

(A) Disregarding the HWA by failing to base the Determination on the findings required by HWA § 74-4-10.1, which is the statute on which the Determination is explicitly based;

(B) Exceeding his statutory authority by attempting to issue and finalize the Determination separate and apart from any order authorized by HWA § 74-4-10.1 or any other section of the HWA;

(C) Taking the position that the Determination constitutes "final administrative action" under HWA § 74-4-14(A), when HWA and applicable principles of law do not authorize such a "final administrative action" finding;

(D) Issuing the Determination, which is an essential part of a disguised compliance order, under Section 74-4-10 without affording the procedural protections guaranteed to Plaintiff (including the right to a public hearing) under that Section;

(E) Issuing the Determination, that is tantamount to an HWA permit reissuance or major modification, while circumventing the procedural due process protections guaranteed to Plaintiff for HWA permit reissuance and major permit modifications; and

(F) Defendant has failed to otherwise provide Plaintiff with the procedural protections provided by federal and New Mexico law for any determinations such as the one Defendant purports to make here.

49. Defendant's violation of Plaintiff's due process rights invalidates Defendant's release or issuance of the Determination.

50. An actual controversy has arisen and now exists between Plaintiff and Defendant regarding whether Defendant's release or issuance of the Determination is invalid, in whole and in part, because it violates Plaintiff's procedural due process rights.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

FIFTH CLAIM FOR RELIEF

(Substantive Due Process)

51. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 50 of the Complaint.

52. Defendant has issued to Plaintiff and DOE a comprehensive permit under the HWA for LANL ("HWA Permit"). This permit contains the HWA obligations, rights and conditions under which Plaintiff shall operate LANL and undertake corrective action.

53. In order to reissue or undertake a major modification of LANL's HWA Permit, Defendant would be required to follow specified administrative procedures set forth in HWA § 74-4-4.2 and the New Mexico Administrative Code 20.4.1.901, which would afford Plaintiff the opportunity for notice and public comment on any proposed reissuance or major permit modification, as well as the right to a public hearing at which Plaintiff could attend, examine witnesses and present oral argument.

54. Defendant is attempting to utilize the Determination, together with the inextricably connected Draft LANL Order, to impose conditions in the HWA Permit through the enforcement mechanisms contained in the HWA. This constitutes an improper mixing of permitting and enforcement functions by Defendant that contravenes Plaintiff's substantive due process rights under federal law.

55. An actual controversy has arisen and now exists between Plaintiff and Defendant regarding whether Defendant's mixing of permitting and enforcement functions violates Plaintiff's substantive due process rights.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

SIXTH CLAIM FOR RELIEF

(Judicial Review of Administrative Action)

56. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 55 of this Complaint.

57. In this Claim for Relief, Plaintiff requests that this Court undertake judicial review of the legal adequacy of the Determination pursuant to its supplemental jurisdiction set forth in 28 U.S.C. § 1367. This claim arises out of the same common nucleus of operative facts as the federal question jurisdiction claims set forth in this Complaint, and they are so closely related so as to form part of the same case or controversy.

58. New Mexico law provides for judicial review of the Determination, if it constitutes final administrative action, using three standards. Specifically, the Determination will be invalidated if it is arbitrary, capricious or an abuse of discretion, if it is not supported by substantial evidence, or if it is not in accordance with law. HWA Section 74-4-14(C).

59. The Determination issued by Defendant is arbitrary, capricious and an abuse of discretion because, among other things:

(A) It is not based on the "substantial hazard" finding prescribed by HWA § 74-4-10.1;

(B) It is inconsistent with and contradictory to LANL's existing RCRA and other permits;

(C) The Determination was issued without being promptly posted at the facility and without appropriately notifying local agencies pursuant to HWA § 74-4-13(c); and

(D) The Determination is otherwise deficient as set forth in this Complaint.

60. The Determination is not supported by substantial evidence in the administrative record.

61. The Determination is not in accordance with law for all of the reasons set forth in this Complaint.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff The Regents of the University of California prays for judgment against Defendant Peter Maggiore as follows:

1. On its First Claim for Relief, for a declaratory judgment that: (A) Defendant does not have the legal authority to regulate activities or radioactive materials governed by the AEA; (B) the Determination is based, in whole and in part, on the alleged presence, releases and potential dangers of radioactive materials; and (C) the Determination is invalid, in whole and in

part, because it constitutes prohibited regulation of activities and radioactive materials governed by the AEA;

2. On its Second Claim for Relief, for a declaratory judgment that: (A) Defendant does not have the legal authority to regulate activities under the CWA or material discharged pursuant to an NPDES permit; (B) Defendant does not have the legal authority to regulate PCBs; and (C) the Determination is based, in whole or in part, on the alleged presence, releases and potential dangers of materials discharged pursuant to NPDES permits, of PCBs and of other materials beyond Defendant's regulatory authority; and (D) the Determination is invalid, in whole and in part, because it constitutes a prohibited regulation of such activities and materials.

3. On its Third Claim for Relief, for a declaratory judgment that the Determination is invalid, in whole and in part, because it contravenes the federal government's sovereign immunity;

4. On its Fourth Claim for Relief, for a declaratory judgment that: (A) Defendant has failed to properly base the Determination on the factual and legal findings required by HWA § 74-4-10.1; (B) Defendant does not have the legal authority to release or issue the Determination separate and apart from the issuance of an order under HWA § 74-4-10.1 or any other section of the HWA; (C) the Determination does not constitute "final administrative action" under HWA § 74-4-14(A); (D) the Determination is invalid because it is part of a disguised compliance order under HWA § 74-4-10 which has not been issued in conformance with the procedural requirements of that section; and (E) the Determination is invalid, in whole and in part, because it has been issued in violation of Plaintiff's procedural due process rights.

5. On its Fifth Claim for Relief, for a declaratory judgment that the Determination is invalid, in whole and in part, because it has been issued in violation of Plaintiff's substantive due process rights.

6. On its Sixth Claim for Relief, for a judgment that the Determination is invalid because it is arbitrary, capricious and an abuse of discretion, it is not supported by substantial evidence in the administrative record, and it is otherwise not in accordance with law; and

7. On all Claims for Relief:

(A) For temporary, preliminary and permanent injunctive relief to enjoin Defendant from utilizing or taking action based upon the Determination until this Court has completed its judicial review;

(B) For temporary, preliminary and permanent injunctive relief against Defendant, and any person acting in concert with Defendant, to effectuate or enforce the Court's orders;

(C) For its costs in connection with this action;

(D) For its reasonable attorneys' fees, to the extent allowed by law; and

(E) For such other and further relief as may be just and proper.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By /Sarah M. Singleton/

Sarah M. Singleton
Louis W. Rose
Post Office Box 2307
Santa Fe, New Mexico 87504-2307

FARELLA, BRAUN & MARTEL, L.L.P.

Paul P. "Skip" Spaulding, III
Deborah J. Schmall
Julie E. Grey
235 Montgomery Street
San Francisco, California 94104
(415) 954-4400

Attorneys for The Regents of the University of California