



GARY E. JOHNSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT

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JOHN R. D'ANTONIO, Jr.
SECRETARY

October 2, 2002

Ralph Erickson
Area Manager
Office of Los Alamos Site Operations
U.S. Department of Energy
Los Alamos, New Mexico 87544

RE: COVENANT DEFERRAL REQUESTS DATED APRIL 4, 2002

Dear Mr. Erickson:

Governor Johnson has asked me to respond to Cory Cruz's letter of April 4, 2002, in which the U.S. Department of Energy (DOE) requests that the Governor concur in a covenant deferral with respect to properties that the DOE intends to transfer from the Los Alamos National Laboratory to the Department of Interior (DOI) to be placed in trust for the Pueblo of San Ildefonso. DOE has asserted that the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120(h)(3)(C) applies in this case, and that concurrence by the Governor of the affected state is thus required to implement the covenant deferral.

The State of New Mexico appreciates the opportunity to comment on the transfer process. However, because the subject of the request concerns parcels slated to be transferred to another federal entity, CERCLA Section 120(h)(3)(C) does not apply. The Governor therefore need not consider this covenant deferral request.

We note that CERCLA Sections 120(h)(1) and (2) do apply to federal-to-federal property transfers, and that notice pursuant to those sections with respect to the transfers at issue is therefore required. Additionally, the requirements of Section 632 of Public Law 105-119 must be met, including the requirement that the properties be remediated, if necessary, prior to transfer.

The State of New Mexico believes that DOE has yet to comply with this provision of the public law. For the parcel in Technical Area (TA) 74, the Bayo Canyon portion has not been adequately characterized down-canyon of former TA-10 to determine if remediation is necessary. Additionally, potential ground water contamination emanating from former TA-10 has not been investigated. This point is crucial, given that drinking water supplies for Los Alamos County are derived in part from a well field in Guaje Canyon proximal to the proposed parcel. For the White



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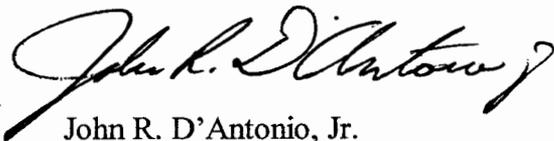
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Rock "Y" parcel, the presence of contamination up-canyon of the parcel in Pueblo Canyon has been well documented. The risk posed by the contaminants has not been determined, nor has the degree to which these contaminants may need to be remediated.

The State of New Mexico is very interested in the final disposition of these and other DOE-owned parcels slated for transfer. The State appreciates the input DOE has afforded to it to date, and would encourage DOE to facilitate discussion of all intended transfers, seeking out the participation of interested stakeholders, including the State of New Mexico.

Please do not hesitate to contact me should you wish to discuss this further.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. D'Antonio, Jr.", written in a cursive style.

John R. D'Antonio, Jr.
Cabinet Secretary

cc: David McCumber, Chief of Staff