

*RMH*  
*Kirk*

Title

UNITED STATES OF AMERICA,  
Plaintiff-Appellant,  
vs.  
STATE OF NEW MEXICO: and  
HEALTH AND ENVIRONMENT  
DEPARTMENT, Environmental  
Improvement Division,  
Defendant-Appellees.

JUL 18 1990

Appeal From: ADMINISTRATIVE APPEAL

Judge: *J. Beck*

Attorneys for Plaintiff:

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CITATIONS

N.M.

P. 2d

1990 DATE

Category 5(a)

PROCEEDINGS

CALENDAR NOTICE

NO. 12,190, REGENTS OF THE UNIV. OF CAL. v. THE ENVTL. IMPROVEMENT DIV. OF THE NEW MEXICO HEALTH AND EDUC. DEP'T and  
NO. 12,233, UNITED STATES OF AMERICA v. STATE OF NEW MEXICO

You are hereby notified that the:

Appellee's Responses in Opposition to Appellants' Motions to Delay Filing of Record on Appeal;

Motions to Delay Filing of Record on Appeal;

Replies to Appellee's Opposition to Motions to Stay;

Appellee's Responses in Opposition to Appellants' Motions to Stay

Appellants' Motions to Stay Proceeding and Supporting Memoranda

Appellants' Docketing Statements; and

Appellants' Notices of Appeal

were filed in the above-entitled cause.

COURT OF APPEALS  
STATE OF NEW MEXICO  
H.C. HANZANAH S. C.F.F.K

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These cases have been assigned to the SUMMARY CALENDAR.

On the court's own motion, these cases are consolidated for appeal.

The Motions to Stay the appeals are held in abeyance pending resolution of the proposed disposition.

The Motions to Delay Filing the Record Proper are granted until further order of this court.

Summary affirmance is proposed as to the Environmental Improvement Board's (EIB) General Order of dismissal.

Summary dismissal is proposed as to the issues raised in the docketing statements.

Appeal from EIB's Order of Dismissal

We propose to affirm the EIB's order of dismissal based on its lack of jurisdiction to entertain the appeal. See NMSA 1978, § 74-4-4.2(G) (Repl. Pamph. 1989). We recognize the United States explicitly does not challenge the EIB's decision that HWMR-S, Section 902(G) is ultra vires. (U.S. Memo in Support of Motion to Stay Proceeding at 9, fn. 6)

Appeal from Hazardous Waste Permit

Insofar as the issues raised in the docketing statement seek to challenge the substance of the permit, we propose to dismiss the appeal for lack of jurisdiction based on the untimely filing of the notices of appeal in this court. See, e.g., James v. New Mexico Human Services Dep't, Income Support Div., 106 N.M. 318, 742 P.2d 530 (Ct. App. 1987).

It appears the director of the Environmental Improvement Division (EID) issued a corrected permit on November 20, 1989, having signed the initial permit on November 8, 1989. The University of California filed its notice of appeal in this court on March 12, 1990, and the Department of Energy filed its notice of appeal in this court on March 20, 1990. These appeals were untimely filed and this court has no jurisdiction to address the merits of the appeal. See SCRA 1986, 12-601(A); James v. New Mexico Human Services Dep't, Income Support Div.

Although it appears that appellants filed their appeals with the EIB on December 20, 1989, and appellee had notice of the appeals, this failed to substantially comply with the appellate rules. See Lowe v. Bloom, \_\_\_ N.M. \_\_\_, \_\_\_ P.2d \_\_\_ (1990) (copy attached).

  
JUDGE