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TRANSMITTAL MEMORANDUM

TO: Elizabeth Gordon
Hazardous and Radioactive Waste Bureau

DATE: August 8, 1991

RE: United States v. State of New Mexico and New Mexico
Health and Environment Department, No. 12233

The following documents are enclosed: Copy of letter Patricia Manzanares dated August 2, 1991; and copy of Joint Status Report in the above-referenced case.

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Thank you very much,

Jor Linda M. Romero
Gini Nelson
Assistant General Counsel

Enclosures



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U.S. Department of Justice

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90-7-1-565

LEGAL

Washington, D.C. 20530

August 2, 1991

VIA OVERNIGHT MAIL

Patricia Manzanares, Clerk
New Mexico Court of Appeals
237 Don Gaspar, Room 116
Santa Fe, New Mexico 87503

Re: United States v. State of New Mexico and
New Mexico Health and Environment Department,
No. 12233

Dear Ms. Manzanares:

Please find enclosed for filing in the above-captioned matter one copy of appellants' Joint Status Report. As indicated by the Certificate of Service, a copy has been served today on all counsel of record.

Sincerely,

Acting Assistant Attorney General
Environment and Natural Resources Division

Karen L. Egbert

By: Karen L. Egbert, Attorney
Environmental Defense Section

Enclosure

cc: Jan Mitchell, AUSA
Benjamin Underwood, DOE

IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

REGENTS OF THE UNIVERSITY OF CALIFORNIA,)	
)	
Appellant,)	
)	
v.)	No. 12190
)	
THE ENVIRONMENTAL IMPROVEMENT DIVISION OF THE NEW MEXICO HEALTH AND ENVIRONMENT DEPT. <u>et al.</u> ,)	
)	
Appellees,)	
)	
<hr/>		
UNITED STATES OF AMERICA,)	
)	
Appellant,)	
)	
v.)	No. 12233
)	
STATE OF NEW MEXICO; and HEALTH AND ENVIRONMENT DEPARTMENT, Environmental Improvement Division,)	
)	
Appellees.)	
)	

JOINT STATUS REPORT

Appellants, United States of America and the Regents of the University of California, in accordance with the Court's Order, dated September 17, 1990, hereby file the following status report:

1. On September 17, 1990, this Court stayed the appeals in No. 12233 and No. 12190, pending resolution of the United States' complaint against the State of New Mexico and Health and Environment Department, Environmental Improvement Division, in the United States District Court for the District of New Mexico.

United States v. New Mexico, CIV 90-0276 SC. This Court further directed appellants to file monthly reports on the status of the federal district court proceeding.

2. The United States filed its federal district court complaint against the state defendants on March 19, 1990. A motion by the State of New Mexico to dismiss the complaint was denied by the United States district court by Order dated March 22, 1991. By that same Order, the Court joined the Regents of the University of California as a plaintiff in the federal action.

3. On October 4, 1990, the United States filed a motion for summary judgment on its complaint in the federal district court. On April 26, 1991, New Mexico filed its opposition and cross-motion for summary judgment. Both the United States and the Regents of the University of California have opposed New Mexico's cross-motion for summary judgment. Briefing on these motions is complete and the parties are awaiting a decision by the Court.

4. On July 10, 1991, the parties filed their joint initial pre-trial report, as directed by the Court. By Order dated July 18, 1991, the district court scheduled trial for April 6, 1991. The plaintiffs believe, however, that because the issues to be resolved are purely legal, the matter is appropriately to be resolved on summary judgment.

5. Because the federal district court has determined it properly has jurisdiction over the United States' complaint, the

United States may file a motion to voluntarily dismiss its appeal in this matter.

Dated: August 2, 1991.

Respectfully submitted,

BARRY M. HARTMAN
Acting Assistant Attorney General
Environment & Natural Resources Division

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University of California

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Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing Joint Status Report was served this 2nd day of August 1991, by first class mail, postage pre-paid, on the following:

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