



BRUCE KING
GOVERNOR

State of New Mexico

ENVIRONMENT DEPARTMENT

JUDITH M. ESPINOSA
SECRETARY

RON CURRY
DEPUTY SECRETARY

TRANSMITTAL MEMORANDUM

TO: Elizabeth Gordon
Hazardous & Radioactive Bureau

DATE: November 18, 1991

RE: Regents of the University of California v. The EID of the NMHED et al., No. 12190; and USA v. State of NM; and HED, Environmental Improvement Division, No. 12233

The following documents are enclosed: **Joint Status Report copies in the above-referenced matter.**

PLEASE:

- File
- Record
- Serve, complete Return of Service and return to us
- Per your request
- For your information
- Approve and sign
- Return conformed copies
- Check for \$ _____ enclosed for proper fee
- Self-addressed, stamped envelope(s) enclosed
- Other:

Thank you very much,

Judi M. Romero
GINI NELSON
Assistant General Counsel

Enclosures

lmr



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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,)	
)	
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, 1992. On October 4, 1991, the parties filed a Stipulated Motion to Amend the Pre-Trial Report and Vacate Trial Setting. The parties believe that because the issues to be resolved are purely legal, the matter is appropriately to be resolved on summary judgment. The Court has not ruled on the motion.

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: November 4, 1991.

Respectfully submitted,

BARRY M. HARTMAN
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Environment & Natural Resources Division

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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 4th day of November 1991, by first class mail, postage pre-paid, on the following:

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Karen L. Egbert
KAREN L. EGBERT

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Appellant,)	
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Dated: November 1, 1991.

Respectfully submitted,

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

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University of California

OF COUNSEL:

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