State of New Mexico

ENVIRONMENT DEPARTMENT

BRUCE KING
GOVERNOR

JUDITH M. ESPINOSA
SECRETARY

RON CURRY
DEPUTY SECRETARY

TRANSMITTAL MEMORANDUM

TO: Elizabeth Gordon
Hazardous & Radioactive Bureau
Marquez Building - Suite 3

DATE: February 5, 1992

RE: **Regents of the University of California v. the Environmental Improvement Division of the New Mexico Health and Environment Dept., et al., No. 12190; and United States of America v. State of New Mexico; and Health and Environment Department, Environmental Improvement Division, No. 12233**

The following documents are enclosed: **Copy of Joint Status Report in the above-referenced case.**

PLEASE:

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_____ Serve, complete Return of Service and return to us

_____ Per your request

__X__ 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,

for Linda M. Ranew
GINI NELSON
Assistant General Counsel

Enclosure

lmr

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COURT OF APPEALS OF NEW MEXICO
FILED
JAN 30 1992
Patricia C. Manzanares

IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

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

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 ("University") 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 University 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. On December 6, 1991, the University filed an involuntary complaint in the federal district court proceeding raising issues of federal and state law. The parties stipulated that the state defendants may have an extension of time until after the pending motions for summary judgment have been decided to answer or otherwise respond to the state law issues alleged in the involuntary complaint. The stipulation and joint motion to extend the time in which the state defendants may have to answer the state law claims were filed on December 26, 1991 and an Order granting the joint motion was entered on January 2, 1992.

6. The state defendants filed an answer to the federal law issue raised in the involuntary complaint on December 26, 1991.

7. 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: January 30, 1992.

Respectfully submitted,

JOHN A. BANNERMAN
A. MICHAEL CHAPMAN
Sutin, Thayer & Browne
6565 Americas Parkway, N.E.,
Suite 1000
Albuquerque, New Mexico 87110

Attorneys for Appellant
Regents of the
University of California

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

Telephonically approved
KAREN L. EGBERT, Attorney
Environmental Defense Section
P.O. Box 23986
Washington, D.C. 20026-3986
(202) 514 0996

Attorneys for Appellant
United States of America

OF COUNSEL:

MARC JOHNSTON
Deputy General Counsel
ROBIN HENDERSON
Office of General Counsel
Department of Energy
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing Joint Status Report was served this 30th day of January 1992, by first class mail, postage pre-paid, on the following:

RANDALL VAN VLECK
Assistant Attorney General
P.O. Drawer 1508
Santa Fe, New Mexico 87504

GINI NELSON
Special Assistant Attorney General
Health and Environment Department
1190 St. Francis Drive
Santa Fe, New Mexico 87503

KAREN L. EGBERT, Attorney
Environmental Defense Section
P.O. Box 23986
Washington, D.C. 20026-3986

SUTIN, THAYER & BROWNE
A Professional Corporation

By _____
A. Michael Chapman
Attorneys for Appellant
Regents of the
University of California
300 First Interstate Plaza
P. O. Box 2187
Santa Fe, New Mexico 87504
(505) 988-5521
406AMC