

LANL rec (appeal file) 1992
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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
Marquez Building - Suite 3

DATE: March 2, 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.**

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Thank you very much,

Linda M. Borneo
 per _____
 GINI NELSON
 Assistant General Counsel

Enclosure

lmr



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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO
COURT OF APPEALS OF NEW MEXICO

FILED

SEP 21 1992

Patricia C. Morgan

REGENTS OF THE UNIVERSITY OF CALIFORNIA,

Appellant,

v.

No. 12190

THE ENVIRONMENTAL IMPROVEMENT DIVISION OF THE NEW MEXICO HEALTH AND ENVIRONMENT DEPT. et al.,

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 ("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. A joint initial pre-trial report was filed by the parties on July 10, 1991 and trial was scheduled for April 6, 1992 by Order of Court dated July 18, 1991.

5. 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. By Order dated February 11, 1992, the district court amended the pre-trial report providing a moratorium on all deadlines until 90 days after a ruling on the pending motions for summary judgment and vacating the April 6, 1992 trial setting.

6. 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.

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

8. 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: February 26, 1992.

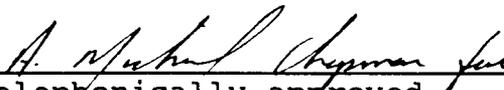
Respectfully submitted,



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CERTIFICATE OF SERVICE

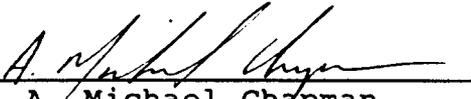
I hereby certify that one copy of the foregoing Joint Status Report was served this 26th day of February 1992, by first class mail, postage pre-paid, on the following:

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