

LANE Order

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October 15, 2002

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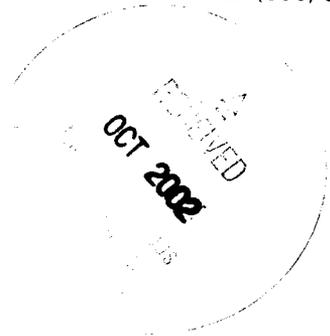
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Revised

Mr. Paul R. Ritzma  
Attorney at Law  
Office of General Counsel  
New Mexico Environment Department  
1190 South St. Francis Drive, Fourth Floor  
Santa Fe, New Mexico 87505

**Re: The Regents of the University of California v. John R. D'Antonio,  
USDC, New Mexico, Cause No. CIV-02-637-MV-DJS**

Dear Mr. Ritzma:

Enclosed please find the following documents for your signature:

- (1) Stipulation and Agreement,
- (2) Joint Motion for Entry of Second Stipulation and Order, Ct. App. No. 23,172,
- (3) Stipulation and Order, Ct. App. No. 23,172,
- (4) Joint Motion for Entry of Stipulation and Order, Ct. App. No. 23,496,
- (5) Stipulation and Order, Ct. App. No. 23,496,
- (6) Joint Motion for Entry of Second Stipulation and Order, Ct. App. No. 23,173,
- (7) Stipulation and Order, Ct. App. No. 23,173,
- (8) Joint Motion for Entry of Stipulation and Order, Ct. App. No. 23,348,
- (9) Stipulation and Order, Ct. App. No. 23,348.

Please sign where indicated. Once you have signed these documents, please call my secretary Jackie Roberson at 986-2652 and she will make arrangements to have the documents picked up. Documents (2) through (9) will be filed with the court, and we will send conformed copies to all parties. We will also distribute executed copies of document (1) to all parties.



16111

Mr. Paul R. Ritzma  
October 15, 2002  
Page 2

If you have any questions, please do not hesitate to contact me or, in my absence, Lou Rose.

Sincerely,



Sarah M. Singleton

Enclosure

cc (w/o enc.): Wendy Blake  
Paul P. Spaulding, III

## STIPULATION AND AGREEMENT

This Stipulation is made, as of the effective date of this Agreement, among the State of New Mexico Environment Department and John R. D'Antonio, Cabinet Secretary of NMED (collectively "NMED"), the United States of America, acting on behalf of the United States Department of Energy and its National Nuclear Security Administration (collectively "DOE"), and The Regents of the University of California ("The Regents"), collectively referred to herein as the "Parties."

### RECITALS

WHEREAS, DOE owns the Los Alamos National Laboratory ("LANL") and The Regents operates LANL pursuant to a contract with DOE;

WHEREAS, on May 2, 2002, NMED released a Determination of an Imminent and Substantial Endangerment to Health and the Environment ("Determination") concerning certain alleged environmental conditions at LANL;

WHEREAS, on May 2, 2002, NMED also sent DOE and The Regents a Draft Order based on the Determination ("Draft Order");

WHEREAS, the Draft Order contains a set of proposed investigative, monitoring and corrective action tasks for LANL;

WHEREAS, The Regents and DOE have submitted comments on the Draft Order to NMED, and the comment period on that Draft Order is now closed;

WHEREAS, on June 3, 2002, The Regents filed a Complaint for Declaratory and Injunctive Relief and for Review of Agency Action with the United States District Court for the District of New Mexico, Civil No. CIV 02-637-MV-DJS, regarding the Determination ("The Regents' Federal Lawsuit");

WHEREAS, later on June 3, 2002, The Regents and DOE each filed a Notice of Appeal with the New Mexico Court of Appeals regarding the Determination (collectively "State Court Appeals Nos. 23,172 and 23,173");

WHEREAS, on September 9, 2002, NMED issued the 2002 Installation Work Plan Schedule ("IWP Work Schedule") for LANL;

WHEREAS, on September 30, 2002, The Regents filed an Amended Complaint in The Regents' Federal Lawsuit, which added legal challenges to the 2002 IWP Work Schedule and other related regulatory actions;

WHEREAS, later on September 30, 2002, The Regents filed a Notice of Appeal with the New Mexico Court of Appeals regarding the 2002 IWP Work Schedule ("State Court Appeals No. 23,348");

WHEREAS, on October 9, 2002, the United States filed a Complaint with the United States District Court for the District of New Mexico, Civil No. 02-1273 LH/WWD, and later that day a Notice of Appeal with the New Mexico Court of Appeals ("State Court Appeals No. 23,496"), both of which challenge the 2002 IWP Work Schedule;

WHEREAS, the Parties agree that many of the requirements in the 2002 IWP Work Schedule are contained in the Draft Order issued by NMED on May 2, 2002;

WHEREAS, NMED currently plans to issue a revised imminent and substantial endangerment determination and final order on or about October 31, 2002;

WHEREAS, in light of NMED's intent to issue a revised imminent and substantial endangerment determination and final order, the Parties believe it is appropriate to stay State Court Appeals Nos. 23,172 and 23,173, and any enforcement, administrative or judicial actions by NMED or the State of New Mexico based on the Determination, except the administrative action of issuing the revised imminent substantial endangerment determination and final order, until such time as NMED issues the revised determination and final order;

WHEREAS, the Parties further believe that in light of NMED's intent to issue a final order, it is appropriate to stay State Court Appeals Nos. 23,348 and 23,496, and any enforcement, administrative or judicial action by NMED or the State of New Mexico based on the 2002 IWP Work Schedule until such time as NMED issues the final order; and

WHEREAS, in recognition of the foregoing, the Parties enter into this Stipulation on the terms set forth below.

### STIPULATION

Based on these Recitals, each of which is incorporated herein by reference, NMED, DOE and The Regents agree as follows:

1. There shall be a stay through October 31, 2002, on any litigation in State Court Appeals Nos. 23,172, 23,173, 23,348, and 23,496 (collectively "the Four State Court Appeals"), and any enforcement, administrative or judicial action by NMED or the State of New Mexico based on the Determination or 2002 IWP Work Schedule, except the administrative action of issuing the revised imminent and substantial endangerment determination and final order.

The stay of the Four State Court Appeals shall expire on October 31, 2002, unless one of the following events occurs earlier, in which case the stay would expire automatically upon the date of the triggering event:

- (A) NMED issues a revised imminent and substantial endangerment determination to DOE or The Regents relating to LANL;
- (B) NMED issues any final order to DOE or The Regents relating to LANL;
- (C) NMED or any other state agency or office takes any enforcement or other administrative or judicial action based on the Determination or the 2002 IWP Work Schedule;
- (D) DOE or The Regents receives notice of a citizen suit under the Resource Conservation and Recovery Act or any other legal action by any person allegedly based on endangerment to, or adverse impacts on, public health or the environment at LANL, or on the 2002 IWP Work Schedule for LANL; or

(E) The New Mexico Court of Appeals declines to enter the proposed Stipulation and Order in any one of the Four State Court Appeals.

2. The Parties shall negotiate separately stipulations and orders staying the Four State Court Appeals for the period identified in Paragraph 1, and shall file such stipulations in the New Mexico Court of Appeals no later than October 16, 2002.

3. NMED shall not require DOE or The Regents to post any notice of imminent and substantial endangerment at LANL pursuant to the Determination until after the stay in the Four State Court Appeals expires.

4. NMED shall not require DOE or the Regents to meet the schedule for deliverables in the 2002 IWP Work Schedule until after the stay in the Four State Court Appeals expires. Any deliverables due under the 2002 IWP Work Schedule from September 30, 2002, through the end of the stay, shall be due within thirty (30) days of the date the stay expires in the Four State Court Appeals, unless otherwise agreed to by the Parties.

5. NMED and the State shall not take any other enforcement, administrative or judicial action based on the Determination, except the administrative actions of issuing the revised imminent and substantial endangerment determination and final order, until after the stay in the Four State Court Appeals expires.

6. NMED and the State shall not take any enforcement, administrative or judicial action based on the 2002 IWP Work Schedule until after the stay in the State Court Appeals expires and the thirty-day period described in Paragraph 4 above has run.

7. If NMED anticipates that it will be unable to issue the revised imminent and substantial endangerment determination and final order by October 31, 2002, it shall so notify DOE and The Regents of this fact by October 21, 2002. The Parties shall meet and confer immediately thereafter to determine if they can agree on the terms of a further stay of the Four State Court Appeals. NMED shall also provide DOE and the Regents with at least ten (10) days advance written notice if NMED anticipates issuing the final order before October 31, 2002.

8. The Parties shall jointly take the position that the Determination is not entitled to collateral estoppel effect in any other administrative or judicial proceeding during the period of the stay of the Four State Court Appeals.

9. By entering into this Stipulation, the United States has not waived or, in any way, affected its right to file a separate action in federal court concerning the Determination and the United States expressly reserves its right to file such an action in federal court and to seek a stay of its State Court Appeal pending disposition of such federal court action.

10. The stays embodied in this Stipulation shall in no way affect the right of The Regents to pursue, in any manner it deems appropriate, the Regents' Federal Lawsuit, styled The Regents of the University of California v. John R. D'Antonio, Civil No. 02-637 MV/DJS (D.N.M.).

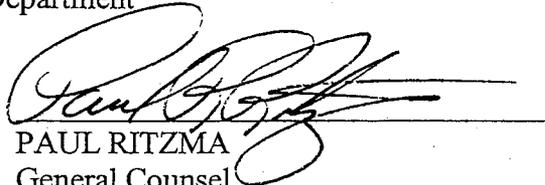
11. NMED expressly reserves the right to take any enforcement action it deems appropriate against DOE, The Regents, or both prior to the expiration of the stay in the State Court Appeals, provided such action is not based in any way on the Determination or the revised determination, or on the 2002 IWP Work Schedule.

12. The United States shall not serve the complaint in United States v. John R. D'Antonio et al., Civil No. 02-1273 LH/WWD (D.N.M.), during the period of the stay in the State Court Appeals.

13. The Regents offered, and agreed to grant, NMED a thirty-day extension of time in which to answer the Regents' Amended Complaint in The Regents of the University of California v. John R. D'Antonio, Civil No. 02-637 MV/DJS (D.N.M.). This extension will make Defendant's answer due on November 19, 2002. Counsel for The Regents will memorialize this time extension in a letter to NMED.

SO STIPULATED:

FOR THE STATE OF NEW MEXICO, THE NEW MEXICO  
ENVIRONMENT DEPARTMENT, AND  
JOHN R. D'ANTONIO in his official capacity as Secretary of the  
New Mexico Environment Department

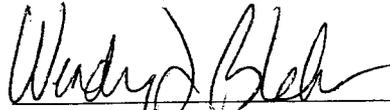


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Special Assistant Attorney General

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FOR THE UNITED STATES DEPARTMENT OF ENERGY ("DOE") AND THE  
NATIONAL NUCLEAR SECURITY ADMINISTRATION OF DOE

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WENDY L. BLAKE, Attorney  
Environmental Defense Section  
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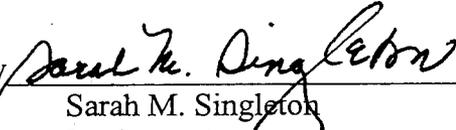
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FOR THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

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

**U.S. DEPARTMENT OF ENERGY,  
NATIONAL NUCLEAR SECURITY  
ADMINISTRATION,**

**Appellant,**

v.

**Ct. App. No. 23,172**

**JOHN R. D'ANTONIO, JR.,<sup>1/</sup> Cabinet Secretary of  
the New Mexico Environment Department,  
and the NEW MEXICO ENVIRONMENT  
DEPARTMENT,**

**Appellees.**

**APPELLANT'S AND APPELLEES' JOINT MOTION  
FOR ENTRY OF SECOND STIPULATION AND ORDER  
STAYING ALL PROCEEDINGS IN THIS CASE**

Pursuant to Rule 12-309 of the New Mexico Rules of Appellate Procedure, Appellant the United States of America, acting on behalf of the United States Department of Energy ("DOE") and the National Nuclear Security Administration of DOE (collectively "DOE"), and Appellees the New Mexico Environment Department ("NMED") and John D'Antonio, Cabinet Secretary of NMED, hereby move this Court to enter the enclosed Stipulation and Order, which has been signed by all parties to this appeal. The Stipulation and Order seeks to stay all proceedings in this case for a short period of time to allow NMED the opportunity to complete certain ongoing administrative proceedings concerning the Los Alamos National Laboratory ("LANL"), which is

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<sup>1/</sup> Pursuant to NMRA 12-301(C), current Cabinet Secretary of the New Mexico Environment Department -- John R. D'Antonio -- is hereby substituted for the former secretary, Peter Maggiore.

a facility in Los Alamos, New Mexico, owned by DOE and operated by DOE's contractor -- the Regents of the University of California ("The Regents").

The Parties previously filed a virtually identical Stipulation and Order in this case on July 16, 2002, which this Court entered on July 22, 2002. That Order, as the Parties requested, stayed all proceedings in this litigation through September 30, 2002, and called for the Parties to file a procedural motion to govern further proceedings by October 15, 2002.

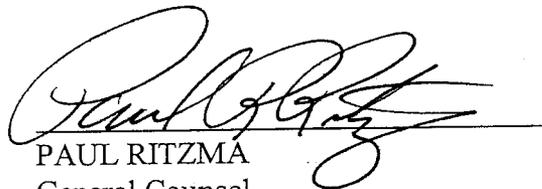
In lieu of filing a motion to govern further proceedings, the Parties hereby request that the Court enter the enclosed Stipulation and Order, which is similar to the one previously entered in July, 2002. Specifically, the enclosed Stipulation provides that all proceedings in this case shall be stayed through October 31, 2002, unless one of the following events occurs earlier, in which case the stay would expire automatically upon the date of the triggering event: (1) NMED issues a revised Determination of an Imminent and Substantial Endangerment to Health and the Environment to DOE or the Regents relating to LANL;<sup>2/</sup> (2) NMED issues any final administrative order to DOE or the Regents relating to LANL; (3) DOE or The Regents receives notice of a citizen suit under the Resource Conservation and Recovery Act or any other legal authority allegedly based on endangerment to, or adverse impacts on, public health or the environment at LANL, or on the 2002 Installation Work Plan Work Schedule (the "TWP Work Schedule") for LANL; (4) this Court declines to enter the proposed Stipulations and Orders staying Case Nos. 23,173, 23,348 and 23,496, which are similar to the enclosed agreement; or (5)

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<sup>2/</sup> This litigation concerns NMED's May 2, 2002, "Determination of an Imminent and Substantial Endangerment to Health and the Environment," which makes certain allegations regarding conditions at LANL. NMED has indicated that it currently intends to issue a revised determination on or about October 31, 2002.

NMED or any other state agency or office takes any enforcement or other administrative or judicial action against DOE or the Regents relating to NMED's May 2, 2002 Determination of an Imminent and Substantial Endangerment to Health and the Environment concerning LANL or the 2002 IWP Work Schedule, the former of which is at issue in this lawsuit.

WHEREFORE, Appellant and Appellees respectfully request that the Court enter the attached Stipulation and Order Staying All Proceedings through October 31, 2002, subject to the specific exceptions noted in the enclosed Stipulation and Order.



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Special Assistant Attorney General

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***ATTORNEY FOR APPELLEES***

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**ATTORNEY FOR APPELLANT**

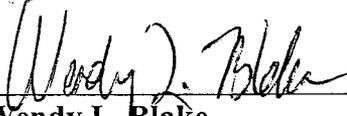
Dated: October 15, 2002

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of October, 2002, I caused a true and correct copy of the foregoing Joint Motion and Stipulation and Order to be served by first class mail, postage pre-paid, on the following:

JOHN R. D'ANTONIO, JR.  
Cabinet Secretary of the New Mexico  
Environment Department  
1190 St. Francis Drive  
Santa Fe, NM 87501

The NEW MEXICO ENVIRONMENT  
DEPARTMENT  
c/o Paul Ritzma, General Counsel, NMED  
1190 St. Francis Drive  
Santa Fe, NM 87501

  
\_\_\_\_\_  
Wendy L. Blake

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

**U.S. DEPARTMENT OF ENERGY,  
NATIONAL NUCLEAR SECURITY  
ADMINISTRATION,**

**Appellant,**

v.

**Ct. App. No. 23,172**

**JOHN R. D'ANTONIO, JR., Cabinet Secretary of  
the New Mexico Environment Department,  
and the NEW MEXICO ENVIRONMENT  
DEPARTMENT,<sup>1/</sup>**

**Appellees.**

**STIPULATION AND ORDER STAYING ALL PROCEEDINGS**

This Stipulation and Order is made, as of the effective date of this Agreement, between Appellees the New Mexico Environment Department ("NMED") and John R. D'Antonio, Secretary of NMED, and Appellant the United States of America, acting on behalf of the United States Department of Energy ("DOE") and its National Nuclear Security Administration (collectively "DOE").

WHEREAS, on June 3, 2002, the United States of America, acting on behalf of DOE, filed an appeal in this Court seeking review of a Determination of an Imminent and Substantial Endangerment to Health and the Environment ("Determination") released by the Secretary of NMED on May 2, 2002, concerning certain alleged environmental conditions at the Los Alamos National Laboratory ("LANL") in Los Alamos, New Mexico;

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<sup>1/</sup> Pursuant to NMRA 12-301(C), current Cabinet Secretary of the New Mexico Environment Department -- John R. D'Antonio -- is hereby substituted for the former secretary, Peter Maggiore.

WHEREAS, DOE owns LANL and the Regents of California (“The Regents”) operates LANL pursuant to a contract with DOE;

WHEREAS, on June 3, 2002, The Regents filed a Complaint in the United States District Court for the District of New Mexico, Civil No. CIV 02-637-MV-DJS, and a Notice of Appeal in this Court (Ct. App. No. 23,173), challenging the Determination;

WHEREAS, in addition to issuing the Determination on May 2, 2002, NMED also sent DOE and The Regents a Draft Order based on the Determination pursuant to New Mexico Hazardous Waste Act sections 74-4-10.1 and 74-4-13 (the “Draft Order”);

WHEREAS, the Draft Order contains a set of proposed investigative, monitoring and corrective action tasks relating to LANL;

WHEREAS, The Regents and DOE have submitted comments on the Draft Order to NMED, and the comment period on that Order is now closed;

WHEREAS, NMED, DOE and The Regents agree that there is a close connection between the Determination and the Draft Order;

WHEREAS, DOE understands that NMED intends to issue shortly a revised imminent and substantial endangerment determination and a final order;

WHEREAS, in light of NMED’s stated intent to issue a revised imminent and substantial endangerment determination and final order, the Parties believe that judicial economy would be best served if this litigation were stayed until such actions are taken by NMED;

WHEREAS, DOE enters into this Stipulation based on the commitment from NMED that no enforcement or other administrative or judicial action based on the Determination, except the administrative action of issuing a revised imminent and substantial endangerment determination

and final order, shall be taken against DOE or The Regents by the State until after the stay of this litigation expires, and that DOE and The Regents have no obligation to post any notice of imminent and substantial endangerment at LANL pursuant to the Determination, until after the stay expires;

WHEREAS, in recognition of the foregoing, the Parties enter into this stipulation, which stays all proceedings relating to this appeal for a finite period of time, as described below;

WHEREAS, The Regents are filing today in this Court a similar stipulation seeking to stay the proceedings in Ct. App. No. 23,173, on the same terms; and

WHEREAS, the Parties agree that by entering into the Stipulation, the United States has not waived or, in any way, affected its right to file a separate action in federal court concerning the Determination and that the United States expressly reserves its right to file such an action in federal court and to seek a stay of this action pending disposition of such federal court action.

NOW, THEREFORE, the Parties agree and the Court orders as follows:

1. All proceedings in this appeal shall be stayed through October 31, 2002, subject to the provisions of Paragraph 2.
2. The stay shall expire automatically on October 31, 2002, unless one of the following events occurs earlier, in which case the stay would expire automatically upon the date of the triggering event:
  - (A) NMED issues a revised imminent and substantial endangerment determination to DOE or The Regents relating to LANL;
  - (B) NMED issues any final order to DOE or The Regents relating to LANL;

(C) NMED or any other state agency or office takes any enforcement or other administrative or judicial action based on the Determination or the 2002 Installation Work Schedule for LANL (“the IWP Work Schedule”);

(D) DOE or The Regents receives notice of a citizen suit under the Resource Conservation and Recovery Act or any other legal action by any person allegedly based on endangerment to, or adverse impacts on, public health or the environment at LANL, or on the 2002 IWP Work Schedule; or

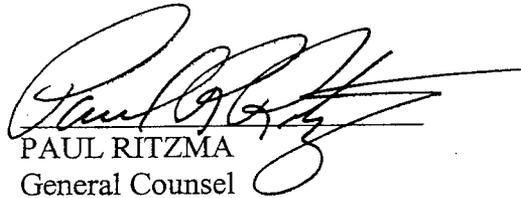
(E) The New Mexico Court of Appeals declines to enter any of the proposed Stipulations and Orders filed on October 15, 2002, in State Court Appeals Nos. 23,173, 23,348, and 23,496.

3. The Parties shall jointly, if possible, file a motion to govern further proceedings thirty (30) days after the stay of proceedings expires or is lifted by court order, and no docketing statement will be due prior to sixty (60) days after expiration of the stay.

SO STIPULATED:

FOR THE APPELLEES THE STATE OF NEW MEXICO,  
THE NEW MEXICO ENVIRONMENT DEPARTMENT, AND  
JOHN R. D'ANTONIO, in his official capacity as Cabinet Secretary of the  
New Mexico Environment Department

10/5/2002  
Date



PAUL RITZMA  
General Counsel

Special Assistant Attorney General

New Mexico Environment Department  
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FOR APPELLANTS THE UNITED STATES DEPARTMENT OF ENERGY ("DOE") AND  
THE NATIONAL NUCLEAR SECURITY ADMINISTRATION OF DOE

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United States Attorney

JAN ELIZABETH MITCHELL  
Assistant United States Attorney  
District of New Mexico  
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SO ORDERED:

Dated: This \_\_\_\_\_ day of October, 2002

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

**U.S. DEPARTMENT OF ENERGY,  
NATIONAL NUCLEAR SECURITY  
ADMINISTRATION,**

**Appellant,**

v.

**Ct. App. No. 23,496**

**JOHN R. D'ANTONIO, JR., Cabinet Secretary of  
the New Mexico Environment Department,  
and the NEW MEXICO ENVIRONMENT  
DEPARTMENT,**

**Appellees.**

**APPELLANT'S AND APPELLEES' JOINT MOTION  
FOR ENTRY OF STIPULATION AND ORDER  
STAYING ALL PROCEEDINGS IN THIS CASE**

Pursuant to Rule 12-309 of the New Mexico Rules of Appellate Procedure, Appellant the United States of America, acting on behalf of the United States Department of Energy ("DOE") and the National Nuclear Security Administration of DOE (collectively "DOE"), and Appellees the New Mexico Environment Department ("NMED") and John D'Antonio, Cabinet Secretary of NMED, hereby move this Court to enter the enclosed Stipulation and Order, which has been signed by all parties to this appeal. The Stipulation and Order seeks to stay all proceedings in this case for a short period of time to allow NMED the opportunity to complete certain ongoing administrative proceedings concerning the Los Alamos National Laboratory ("LANL"), which is a facility in Los Alamos, New Mexico, owned by DOE and operated by DOE's contractor -- the Regents of the University of California ("The Regents").

Specifically, the enclosed Stipulation provides that all proceedings in this case shall be stayed through October 31, 2002, unless one of the following events occurs earlier, in which case the stay would expire automatically upon the date of the triggering event: (1) NMED issues a revised Determination of an Imminent and Substantial Endangerment to Health and the Environment to DOE or the Regents relating to LANL; (2) NMED issues any final administrative order to DOE or the Regents relating to LANL;<sup>1/</sup> (3) DOE or The Regents receives notice of a citizen suit under the Resource Conservation and Recovery Act or any other legal authority allegedly based on endangerment to, or adverse impacts on, public health or the environment at LANL, or on the 2002 IWP Work Schedule; (4) this Court declines to enter the proposed Stipulations and Orders staying Case Nos. 23,172, 23,173, and 23,348, which are similar to the enclosed agreement; or (5) NMED or any other state agency or office takes any enforcement or other administrative or judicial action against DOE or the Regents relating to NMED's May 2, 2002 Determination of an Imminent and Substantial Endangerment to Health and the Environment concerning LANL or the 2002 IWP Work Schedule, the latter of which is at issue in this lawsuit.

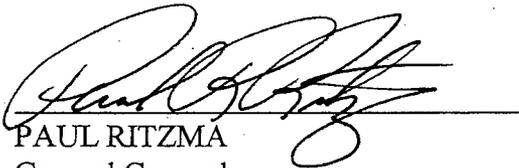
On July 22, 2002, this Court entered a virtually identical Stipulation and Order in United States v. D'Antonio, Court of Appeals No. 23,172. This Court also entered a similar stipulation about two years ago in United States v. New Mexico, Court of Appeals No. 20,877. In both cases, the United States and the State of New Mexico, including NMED, agreed to stay all

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<sup>1/</sup> This litigation concerns NMED's September 9, 2002 Installation Work Plan Schedule (the "IWP Work Schedule"), which contains many of the requirements in NMED's May 2, 2002 draft administrative order. NMED anticipates finalizing the administrative order on or about October 31, 2002.

proceedings in this Court for a period of time to allow NMED to undertake certain administrative proceedings.

WHEREFORE, Appellant and Appellees respectfully request that the Court enter the attached Stipulation and Order Staying All Proceedings through October 31, 2002, subject to the specific exceptions noted in the enclosed Stipulation and Order.



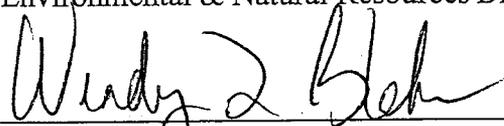
PAUL RITZMA  
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Special Assistant Attorney General

New Mexico Environment Department  
P.O. Box 1190  
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Santa Fe, NM 87502

***ATTORNEY FOR APPELLEES***

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Environmental & Natural Resources Division

By:

  
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United States Attorney

JAN ELIZABETH MITCHELL  
Assistant United States Attorney  
District of New Mexico  
P.O. Box 607  
Albuquerque, NM 87103

***ATTORNEY FOR APPELLANT***

Dated: October 15, 2002

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of October, 2002, I caused a true and correct copy of the foregoing Joint Motion and Stipulation and Order to be served by first class mail, postage pre-paid, on the following:

JOHN R. D'ANTONIO, JR.  
Cabinet Secretary of the New Mexico  
Environment Department  
1190 St. Francis Drive  
Santa Fe, NM 87501

The NEW MEXICO ENVIRONMENT  
DEPARTMENT  
c/o Paul Ritzma, General Counsel, NMED  
1190 St. Francis Drive  
Santa Fe, NM 87501

  
\_\_\_\_\_  
Wendy L. Blake

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

**U.S. DEPARTMENT OF ENERGY,  
NATIONAL NUCLEAR SECURITY  
ADMINISTRATION,**

**Appellant,**

**v.**

**Ct. App. No. 23,496**

**JOHN R. D'ANTONIO, JR., Cabinet Secretary of  
the New Mexico Environment Department,  
and the NEW MEXICO ENVIRONMENT  
DEPARTMENT,**

**Appellees.**

**STIPULATION AND ORDER STAYING ALL PROCEEDINGS**

This Stipulation and Order is made, as of the effective date of this Agreement, between Appellees the New Mexico Environment Department ("NMED") and John R. D'Antonio, Secretary of NMED, and Appellant the United States of America, acting on behalf of the United States Department of Energy ("DOE") and its National Nuclear Security Administration (collectively "DOE").

WHEREAS, on September 9, 2002, NMED issued the 2002 Installation Work Plan ("IWP") Work Schedule for the Los Alamos National Laboratory ("LANL"), which is a federal facility;

WHEREAS, on October 9, 2002, the United States of America filed a Complaint with the United States District Court for the District of New Mexico, Civil No. 02-1273 LH/WWD, and later that day a Notice of Appeal with the New Mexico Court of Appeals ("State Court Appeals No. 23,496"), both of which challenge the 2002 IWP Work Schedule for LANL;

WHEREAS, DOE owns LANL and the Regents of California (“The Regents”) operates LANL pursuant to a contract with DOE;

WHEREAS, on September 30, 2002, the Regents filed an Amended Complaint in the federal lawsuit that it filed on June 3, 2002, and such Amended Complaint challenges NMED’s May 2, 2002 imminent and substantial endangerment determination (“the Determination”) concerning LANL, the 2002 IWP Work Schedule for LANL and other related regulatory actions;

WHEREAS, later on September 30, 2002, The Regents filed a Notice of Appeal with the New Mexico Court of Appeals regarding the 2002 IWP Work Schedule (“State Court Appeals No. 23,348”);

WHEREAS, NMED has also issued to DOE and The Regents a Draft Order based on the Determination pursuant to New Mexico Hazardous Waste Act sections 74-4-10.1 and 74-4-13 (the “Draft Order”), and that Draft Order contains a set of proposed investigative, monitoring and corrective action tasks relating to LANL;

WHEREAS, the Parties agree that many of the requirements in the 2002 IWP Work Schedule are contained in the Draft Order;

WHEREAS, DOE understands that NMED intends to issue shortly a revised imminent and substantial endangerment determination and a final order;

WHEREAS, NMED, DOE and The Regents agree that there is a close connection between the Draft Order and the 2002 IWP Work Schedule;

WHEREAS, in light of NMED’s expressed intent to issue a final order, the Parties believe that judicial economy would be best served if this litigation were stayed until such actions are taken by NMED;

WHEREAS, DOE enters into this Stipulation based on the commitment from NMED that no enforcement, administrative or judicial action based on the 2002 IWP Work Schedule shall be taken against DOE or The Regents by NMED or the State of New Mexico until after the stay of this litigation expires, and that DOE and The Regents have no obligation to make any deliverables under the IWP Work Schedule from September 30, 2002, through the expiration of the stay, and that any deliverables due between September 30, 2002, and the end date of the stay shall be due within thirty (30) days of the expiration of the stay;

WHEREAS, in recognition of the foregoing, the Parties enter into this stipulation, which stays all proceedings relating to this appeal for a finite period of time, as described below; and

WHEREAS, The Regents are filing today in this Court a similar stipulation seeking to stay the proceedings in Ct. App. No. 23,348 on the same terms.

NOW, THEREFORE, the Parties agree and the Court orders as follows:

1. All proceedings in this appeal shall be stayed through October 31, 2002, subject to the provisions of Paragraph 2.

2. The stay shall expire automatically on October 31, 2002, unless one of the following events occurs earlier, in which case the stay would expire automatically upon the date of the triggering event:

(A) NMED issues a revised imminent and substantial endangerment determination to DOE or The Regents relating to LANL;

(B) NMED issues any final order to DOE or The Regents relating to LANL;

(C) NMED or any other state agency or office takes any enforcement or other

administrative or judicial action based on the Determination or the 2002 IWP Work Schedule;

(D) DOE or The Regents receives notice of a citizen suit under the Resource Conservation and Recovery Act or any other legal action by any person allegedly based on endangerment to, or adverse impacts on, public health or the environment at LANL, or on the 2002 IWP Work Schedule; or

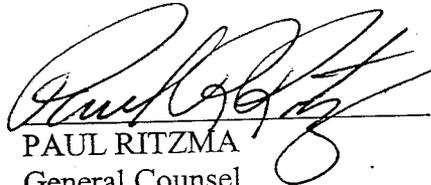
(E) The New Mexico Court of Appeals declines to enter any of the proposed Stipulations and Orders filed on October 15, 2002, in State Court Appeals Nos. 23,172, 23,173, and 23,348.

3. The Parties shall jointly, if possible, file a motion to govern further proceedings thirty (30) days after the stay of proceedings expires or is lifted by court order, and no docketing statement will be due prior to sixty (60) days after expiration of the stay.

SO STIPULATED:

FOR THE APPELLEES THE STATE OF NEW MEXICO,  
THE NEW MEXICO ENVIRONMENT DEPARTMENT, AND  
JOHN R. D'ANTONIO, in his official capacity as Cabinet Secretary of the  
New Mexico Environment Department

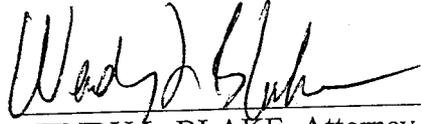
10/15/2002  
Date

  
PAUL RITZMA  
General Counsel  
Special Assistant Attorney General

New Mexico Environment Department  
P.O. Box 26110  
1190 St. Francis Drive  
Santa Fe, NM 87502

FOR APPELLANTS THE UNITED STATES DEPARTMENT OF ENERGY ("DOE") AND  
THE NATIONAL NUCLEAR SECURITY ADMINISTRATION OF DOE

THOMAS L. SANSONETTI  
Assistant Attorney General  
Environmental & Natural Resources  
Division



WENDY L. BLAKE, Attorney  
Environmental Defense Section  
U.S. Department of Justice  
P.O. Box 23986  
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Washington, DC 20004  
Voice: (202) 305-0851  
Telecopier: (202) 514-8865

DAVID C. IGLESIAS  
United States Attorney

JAN ELIZABETH MITCHELL  
Assistant United States Attorney  
District of New Mexico  
P.O. Box 607  
Albuquerque, NM 87103

SO ORDERED:

Dated: This \_\_\_\_\_ day of October, 2002

---

---

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

**U.S. DEPARTMENT OF ENERGY,  
NATIONAL NUCLEAR SECURITY  
ADMINISTRATION,**

**Appellant,**

v.

**Ct. App. No. 23,173**

**JOHN R. D'ANTONIO, JR.,<sup>1</sup> Cabinet Secretary of  
the New Mexico Environment Department,  
and the NEW MEXICO ENVIRONMENT  
DEPARTMENT,**

**Appellees.**

**APPELLANT'S AND APPELLEES' JOINT MOTION  
FOR ENTRY OF SECOND STIPULATION AND ORDER  
STAYING ALL PROCEEDINGS IN THIS CASE**

Pursuant to Rule 12-309 of the New Mexico Rules of Appellate Procedure, Appellant The Regents of the University of California ("The Regents"), and Appellees the New Mexico Environment Department ("NMED") and John D'Antonio, Cabinet Secretary of NMED, hereby move this Court to enter the attached Stipulation and Order, which has been signed by all parties to this appeal. The Stipulation and Order seeks to stay all proceedings in this case for a short period of time to allow NMED the opportunity to complete certain ongoing administrative proceedings concerning the Los Alamos National Laboratory ("LANL"), which is a facility in Los Alamos, New Mexico, owned by the United States Department of Energy ("DOE") and operated by The Regents pursuant to a contract with DOE.

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<sup>1</sup> Pursuant to NMRA 12-301(C), current Cabinet Secretary of the New Mexico Environment Department -- John R. D'Antonio -- is hereby substituted for the former secretary, Peter Maggiore.

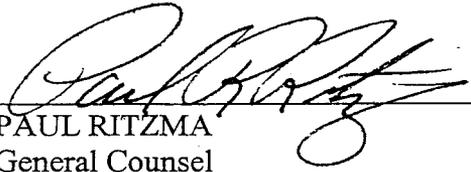
The Parties previously filed a virtually identical Stipulation and Order in this case on July 16, 2002, which this Court entered on July 22, 2002. That Order, as the Parties requested, stayed all proceedings in this litigation through September 30, 2002, and called for the Parties to file a procedural motion to govern further proceedings by October 15, 2002.

In lieu of filing a motion to govern further proceedings, the Parties hereby request that the Court enter the enclosed Stipulation and Order, which is similar to the one previously entered on July 22, 2002. Specifically, the enclosed Stipulation provides that all proceedings in this case shall be stayed through October 31, 2002, unless one of the following events occurs earlier, in which case the stay would expire automatically upon the date of the triggering event: (1) NMED issues a revised Determination of an Imminent and Substantial Endangerment to Health and the Environment to DOE or the Regents relating to LANL;<sup>2</sup> (2) NMED issues any final administrative order to DOE or the Regents relating to LANL; (3) DOE or The Regents receives notice of a citizen suit under the Resource Conservation and Recovery Act or any other legal authority allegedly based on endangerment to, or adverse impacts on, public health or the environment at LANL, or on the 2002 Installation Work Plan Schedule (the "IWP Work Schedule") for LANL; (4) this Court declines to enter the proposed Stipulation and Order staying Case Nos. 23,172, 23,348, or 23,496, which are similar to the enclosed agreement; or (5) NMED or any other state agency or office takes any enforcement or other administrative or judicial action against DOE or the Regents relating to NMED's May 2, 2002 Determination of an Imminent and Substantial Endangerment to Health and the Environment concerning LANL or the 2002 IWP Work Schedule, the former of which is at issue in this lawsuit.

---

<sup>2</sup> This litigation concerns NMED's May 2, 2002 "Determination of an Imminent and Substantial Endangerment to Health and the Environment" concerning LANL. NMED has indicated that it currently intends to issue a revised determination on or about October 31, 2002.

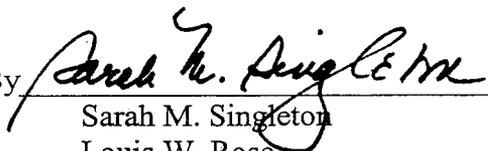
WHEREFORE, Appellant and Appellees respectfully request that the Court enter the attached Stipulation and Order Staying All Proceedings through October 31, 2002, subject to the specific exceptions noted in the attached Stipulation and Order.

  
PAUL RITZMA  
General Counsel  
Special Assistant Attorney General

New Mexico Environment Department  
P.O. Box 1190  
St. Francis Drive  
Santa Fe, NM 87502

***ATTORNEY FOR APPELLEES***

MONTGOMERY & ANDREWS, P.A.

By   
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(505) 982-3873

FARELLA BRAUN & MARTEL, L.L.P.  
Paul P. Spaulding, III  
Deborah J. Schmall  
David Lazerwitz  
Russ Building, 30<sup>th</sup> Floor  
235 Montgomery Street  
San Francisco, California 94104

***ATTORNEYS FOR APPELLANT***

**CERTIFICATE OF SERVICE**

I hereby certify that on October 15, 2002, I caused a true and correct copy of the foregoing Joint Motion and Stipulation and Order to be served by first class mail, postage pre-paid, on the following:

JOHN R. D'ANTONIO, JR.  
Cabinet Secretary of the New Mexico  
Environment Department  
1190 St. Francis Drive  
Santa Fe, NM 87501

The NEW MEXICO ENVIRONMENT  
DEPARTMENT  
c/o Paul Ritzma, General Counsel, NMED  
1190 St. Francis Drive  
Santa Fe, NM 87501

  
Sarah M. Singleton

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

**THE REGENTS OF THE UNIVERSITY  
OF CALIFORNIA,**

**Appellant,**

v.

**Ct. App. No. 23,173**

**JOHN R. D'ANTONIO, JR., Cabinet Secretary of  
the New Mexico Environment Department,  
and the NEW MEXICO ENVIRONMENT  
DEPARTMENT,<sup>1</sup>**

**Appellees.**

**STIPULATION AND ORDER STAYING ALL PROCEEDINGS**

This Stipulation and Order is made, as of the effective date of this Agreement, between Appellees the New Mexico Environment Department ("NMED") and John R. D'Antonio, Secretary of NMED, and Appellant The Regents of the University of California ("The Regents").

WHEREAS, on June 3, 2002, The Regents filed a Notice of Appeal in this Court (Ct. App. No. 23,173), and Complaint in the United States District Court for the District of New Mexico, Civil No. CIV 02-637-MV-DJS, challenging a Determination of an Imminent and Substantial Endangerment to Health and the Environment ("Determination") released by the Secretary of NMED on May 2, 2002, concerning certain alleged environmental conditions at the Los Alamos National Laboratory ("LANL") in Los Alamos, New Mexico;

WHEREAS, the Department of Energy ("DOE") owns LANL and The Regents operates LANL pursuant to a contract with DOE;

---

<sup>1</sup> Pursuant to NMRA 12-301(C), current Cabinet Secretary of the New Mexico Environment Department -- John R. D'Antonio -- is hereby substituted for the former secretary, Peter Maggiore.

WHEREAS, on June 3, 2002, the United States of America, acting on behalf of DOE, filed an appeal in this Court (Ct. App. No. 23,172) challenging the Determination.;

WHEREAS, in addition to issuing the Determination on May 2, 2002, NMED also sent DOE and The Regents a Draft Order based on the Determination pursuant to New Mexico Hazardous Waste Act sections 74-4-10.1 and 74-4-13 (the "Draft Order");

WHEREAS, the Draft Order contains a set of proposed investigative, monitoring and corrective action tasks relating to LANL;

WHEREAS, The Regents and DOE have submitted comments on the Draft Order to NMED, and the comment period on that Order is now closed;

WHEREAS, NMED, DOE and The Regents agree that there is a close connection between the Determination and the Draft Order;

WHEREAS, The Regents understands that NMED intends to issue a revised imminent and substantial endangerment determination and a final order on or about October 31, 2002;

WHEREAS, in light of NMED's stated intent to issue a revised imminent and substantial endangerment determination and final order, the Parties believe that judicial economy would be best served if this litigation were stayed until such actions are taken by NMED;

WHEREAS, The Regents enters into this Stipulation based on the commitment from NMED that no enforcement or other administrative or judicial action based on the Determination, except the administrative action of issuing a revised imminent and substantial endangerment determination and final order, shall be taken against DOE or The Regents by the State until after the stay of this litigation expires, and that DOE and The Regents have no obligation to post any notice of imminent and substantial endangerment at LANL pursuant to the Determination until after the stay expires;

WHEREAS, in recognition of the foregoing, the Parties enter into this stipulation, which stays all proceedings relating to this appeal for a finite period of time, as described below;

WHEREAS, DOE is filing today in this Court a similar stipulation seeking to stay the proceedings in Ct. App. No. 23,172, on the same terms; and

WHEREAS, the Parties agree that by entering into the Stipulation, The Regents is not waiving its right to pursue, in any manner it deems appropriate, its federal court action challenging the Determination in The Regents of the University of California v. John R. D'Antonio, No. 02-637-MV-DJS (D.N.M.).

NOW, THEREFORE, the Parties agree and the Court orders as follows:

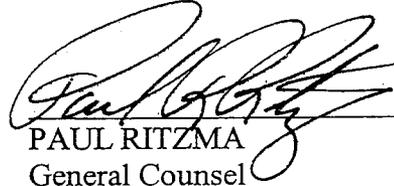
1. All proceedings in this appeal shall be stayed through October 31, 2002, subject to the provisions of Paragraph 2.
2. The stay shall expire automatically on October 31, 2002, unless one of the following events occurs earlier, in which case the stay would expire automatically upon the date of the triggering event:
  - (A) NMED issues a revised imminent and substantial endangerment determination to DOE or The Regents relating to LANL;
  - (B) NMED issues any final order to DOE or The Regents relating to LANL;
  - (C) NMED or any other state agency or office takes any enforcement or other administrative or judicial action based on the Determination or the 2002 Installation Work Schedule for LANL ("the IWP Work Schedule");
  - (D) DOE or The Regents receives notice of a citizen suit under the Resource Conservation and Recovery Act or any other legal action by any person allegedly based on endangerment to, or adverse impacts on, public health or the environment at LANL, or on the 2002 IWP Work Schedule; or

(E) The New Mexico Court of Appeals declines to enter any of the proposed Stipulations and Orders filed on October 15, 2002, in State Court Appeals Nos. 23,172, 23,348, and 23,496.

3. The Parties shall jointly, if possible, file a motion to govern further proceedings thirty (30) days after the stay of proceedings expires or is lifted by court order, and no docketing statement will be due prior to sixty (60) days after expiration of the stay.

SO STIPULATED:  
FOR THE APPELLEES THE STATE OF NEW MEXICO,  
THE NEW MEXICO ENVIRONMENT DEPARTMENT, AND  
JOHN R. D'ANTONIO, in his official capacity as Cabinet Secretary of the  
New Mexico Environment Department

\_\_\_\_\_  
Date



\_\_\_\_\_  
PAUL RITZMA  
General Counsel  
Special Assistant Attorney General

New Mexico Environment Department  
P.O. Box 26110  
1190 St. Francis Drive  
Santa Fe, NM 87502

FOR APPELLANTS THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Date: Oct. 15, 2002

MONTGOMERY & ANDREWS, P.A.

By *Sarah M. Singleton*  
Sarah M. Singleton  
Louis W. Rose  
Post Office Box 2307  
Santa Fe, New Mexico 87504-2307  
(505) 982-3873

FARELLA BRAUN & MARTEL, L.L.P.  
Paul P. Spaulding, III  
Deborah J. Schmall  
David J. Lazerwitz  
Russ Building, 30<sup>th</sup> Floor  
235 Montgomery Street  
San Francisco, California 94104

Attorneys for Appellants

SO ORDERED:

Dated: This \_\_\_\_\_ day of October 2002

---

---

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

**THE REGENTS OF THE UNIVERSITY  
OF CALIFORNIA,**

**Appellant,**

v.

**Ct. App. No. 23,348**

**JOHN R. D'ANTONIO, JR., Cabinet Secretary of  
the New Mexico Environment Department,  
and the NEW MEXICO ENVIRONMENT  
DEPARTMENT,**

**Appellees.**

**STIPULATION AND ORDER STAYING ALL PROCEEDINGS**

This Stipulation and Order is made, as of the effective date of this Agreement, between Appellees the New Mexico Environment Department ("NMED") and John R. D'Antonio, Secretary of NMED, and Appellant The Regents of the University of California ("The Regents").

WHEREAS, on September 9, 2002, NMED issued the 2002 Installation Work Plan Schedule ("IWP Work Schedule") for the Los Alamos National Laboratory ("LANL"), which is a federal facility owned by the Department of Energy ("DOE") and operated by The Regents pursuant to a contract with DOE;

WHEREAS, on September 30, 2002, the Regents filed a Notice of Appeal in this Court (Ct. App. No. 23,348), and an Amended Complaint in its federal lawsuit which originally challenged NMED's May 2, 2002 imminent and substantial endangerment determination ("Determination"), both of which challenge the 2002 IWP Work Schedule for LANL and other related regulatory actions;

WHEREAS, on October 9, 2002, the United States of America filed a Complaint with the United States District Court for the District of New Mexico, Civil No. 02-1273

LH/WWD, and later that day a Notice of Appeal with the New Mexico Court of Appeals (Ct. App. No. 23,496), both of which challenge the 2002 IWP Work Schedule for LANL;

WHEREAS, NMED has also issued to DOE and The Regents a Draft Order based on the Determination pursuant to New Mexico Hazardous Waste Act sections 74-4-10.1 and 74-4-13 (the "Draft Order"), and that Draft Order contains a set of proposed investigative, monitoring and corrective action tasks relating to LANL;

WHEREAS, the Parties agree that many of the requirements in the 2002 IWP Work Schedule are contained in the Draft Order;

WHEREAS, The Regents understands that NMED intends to issue a revised imminent and substantial endangerment determination and a final order on or about October 31, 2002;

WHEREAS, NMED, DOE and The Regents agree that there is a close connection between the Draft Order and the 2002 IWP Work Schedule;

WHEREAS, in light of NMED's expressed intent to issue a final order, the Parties believe that judicial economy would be best served if this litigation were stayed until such actions are taken by NMED;

WHEREAS, The Regents enters into this Stipulation based on the commitment from NMED that no enforcement, administrative or judicial action based on the 2002 IWP Work Schedule shall be taken against DOE or The Regents by NMED or the State of New Mexico until after the stay of this litigation expires, and that DOE and The Regents have no obligation to make any deliverables under the IWP Work Schedule from September 30, 2002, through the expiration of the stay, and that any deliverables due between September 30, 2002, and the end date of the stay shall be due within thirty (30) days of the expiration of the stay;

WHEREAS, in recognition of the foregoing, the Parties enter into this stipulation, which stays all proceedings relating to this appeal for a finite period of time, as described below;

WHEREAS, DOE is filing today in this Court a similar stipulation seeking to stay the proceedings in Ct. App. No. 23,496 on the same terms;

WHEREAS, the Parties agree that by entering into the Stipulation, The Regents is not waiving its right to pursue, in any manner it deems appropriate, its federal court action challenging the 2002 IWP Work Schedule in The Regents of the University of California v. John R. D'Antonio, No. 02-637-MV-DJS (D.N.M.).

NOW, THEREFORE, the Parties agree and the Court orders as follows:

1. All proceedings in this appeal shall be stayed through October 31, 2002, subject to the provisions of Paragraph 2.

2. The stay shall expire automatically on October 31, 2002, unless one of the following events occurs earlier, in which case the stay would expire automatically upon the date of the triggering event:

(A) NMED issues a revised imminent and substantial endangerment determination to DOE or The Regents relating to LANL;

(B) NMED issues any final order to DOE or The Regents relating to LANL;

(C) NMED or any other state agency or office takes any enforcement or other administrative or judicial action based on the Determination or the 2002 IWP Work Schedule;

(D) DOE or The Regents receives notice of a citizen suit under the Resource Conservation and Recovery Act or any other legal action by any person allegedly based on endangerment to, or adverse impacts on, public health or the environment at LANL, or on the 2002 IWP Work Schedule; or

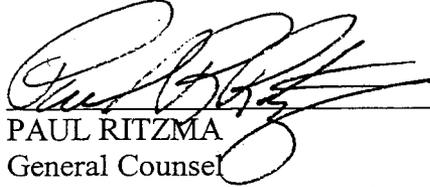
(E) The New Mexico Court of Appeals declines to enter any of the proposed Stipulations and Orders filed on October 15, 2002, in State Court Appeals Nos. 23,172, 23,173, and 23,496.

3. The Parties shall jointly, if possible, file a motion to govern further proceedings thirty (30) days after the stay of proceedings expires or is lifted by court

order, and no docketing statement will be due prior to sixty (60) days after expiration of the stay.

SO STIPULATED:  
FOR THE APPELLEES THE STATE OF NEW MEXICO,  
THE NEW MEXICO ENVIRONMENT DEPARTMENT, AND  
JOHN R. D'ANTONIO, in his official capacity as Cabinet Secretary of the  
New Mexico Environment Department

\_\_\_\_\_  
Date



\_\_\_\_\_  
PAUL RITZMA  
General Counsel

Special Assistant Attorney General

New Mexico Environment Department  
P.O. Box 26110  
1190 St. Francis Drive  
Santa Fe, NM 87502

FOR APPELLANTS THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Date: Oct. 15, 2002

MONTGOMERY & ANDREWS, P.A.

By Sarah M. Singleton  
Sarah M. Singleton  
Louis W. Rose  
Post Office Box 2307  
Santa Fe, New Mexico 87504-2307  
(505) 982-3873

FARELLA BRAUN & MARTEL, L.L.P.  
Paul P. Spaulding, III  
Deborah J. Schmall  
David Lazerwitz  
Russ Building, 30<sup>th</sup> Floor  
235 Montgomery Street  
San Francisco, California 94104

Attorneys for Appellants

SO ORDERED:

Dated: This \_\_\_\_\_ day of October 2002

---

---

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

**THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA,**

**Appellant,**

**v.**

**Ct. App. No. 23,348**

**JOHN R. D'ANTONIO, JR., Cabinet Secretary of  
the New Mexico Environment Department,  
and the NEW MEXICO ENVIRONMENT  
DEPARTMENT,**

**Appellees.**

**APPELLANT'S AND APPELLEES' JOINT MOTION  
FOR ENTRY OF STIPULATION AND ORDER  
STAYING ALL PROCEEDINGS IN THIS CASE**

Pursuant to Rule 12-309 of the New Mexico Rules of Appellate Procedure, Appellant The Regents of the University of California ("The Regents"), and Appellees the New Mexico Environment Department ("NMED") and John D'Antonio, Cabinet Secretary of NMED, hereby move this Court to enter the enclosed Stipulation and Order, which has been signed by all parties to this appeal. The Stipulation and Order seeks to stay all proceedings in this case for a short period of time to allow NMED the opportunity to complete certain ongoing administrative proceedings concerning the Los Alamos National Laboratory ("LANL"), which is a facility in Los Alamos, New Mexico, owned by the Department of Energy ("DOE") and operated by The Regents pursuant to a contract with DOE.

Specifically, the enclosed Stipulation provides that all proceedings in this case shall be stayed through October 31, 2002, unless one of the following events occurs earlier, in which case the stay would expire automatically upon the date of the triggering event: (1) NMED issues a revised Determination of an Imminent and Substantial

Endangerment to Health and the Environment to DOE or the Regents relating to LANL; (2) NMED issues any final administrative order to DOE or the Regents relating to LANL;<sup>1</sup> (3) DOE or The Regents receives notice of a citizen suit under the Resource Conservation and Recovery Act or any other legal authority allegedly based on endangerment to, or adverse impacts on, public health or the environment at LANL, or on the 2002 IWP Work Schedule; (4) this Court declines to enter the proposed Stipulations and Orders staying Case Nos. 23,172, 23,173, and 23,496, which are similar to the enclosed agreement; or (5) NMED or any other state agency or office takes any enforcement or other administrative or judicial action against DOE or the Regents relating to NMED's May 2, 2002 Determination of an Imminent and Substantial Endangerment to Health and the Environment concerning LANL or the 2002 IWP Work Schedule, the latter of which is at issue in this lawsuit.

On July 22, 2002, this Court entered a virtually identical Stipulation and Order in The Regents v. D'Antonio, Ct. App. No. 23,173. This Court also entered a similar stipulation about two years ago in United States v. New Mexico, Ct. App. No. 20,877, in which the United States and the State of New Mexico, including NMED, agreed to stay all proceedings in this Court for a period of time to allow NMED to undertake certain administrative proceedings.

WHEREFORE, Appellant and Appellees respectfully request that the Court enter the attached Stipulation and Order Staying All Proceedings through October 31, 2002, subject to the specific exceptions noted in the enclosed Stipulation and Order.

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<sup>1</sup> This litigation concerns NMED's September 9, 2002 Installation Work Plan Schedule (the "IWP Work Schedule"), which contains many of the requirements in NMED's May 2, 2002 draft administrative order. NMED anticipates finalizing the administrative order on or about October 31, 2002.

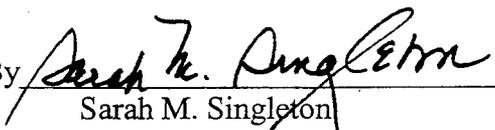


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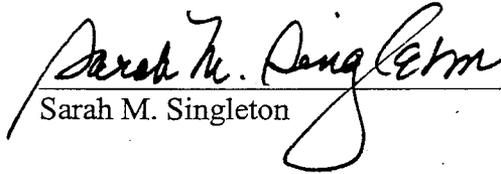
***ATTORNEYS FOR APPELLANT***

**CERTIFICATE OF SERVICE**

I hereby certify that on October 15, 2002, I caused a true and correct copy of the foregoing Joint Motion and Stipulation and Order to be served by first class mail, postage pre-paid, on the following:

JOHN R. D'ANTONIO, JR.  
Cabinet Secretary of the New Mexico  
Environment Department  
1190 St. Francis Drive  
Santa Fe, NM 87501

The NEW MEXICO ENVIRONMENT  
DEPARTMENT  
c/o Paul Ritzma, General Counsel, NMED  
1190 St. Francis Drive  
Santa Fe, NM 87501

  
Sarah M. Singleton