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STATE OF NEW MEXICO, ex rel.
 JEFF BINGAMAN, Attorney General
 of the State of New Mexico,
 Plaintiff,
 v.
 THE UNITED STATES DEPARTMENT
 OF ENERGY, et al.,
 Defendants.

CIVIL ACTION NO. 81-0363 JB

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JUL 01 1981

JOINT MOTION TO STAY ALL PROCEEDINGS

Come now Plaintiff and Defendants and move this Honorable Court for an Order granting a stay of all proceedings in this action in accordance with their Stipulated Agreement.

In Support of this Motion the parties state as follows:

1. That they have entered into the attached Stipulated Agreement dated July 1/1981, according to which they have agreed to abide by the provisions therein in lieu of going forward with this litigation at the present time.
2. That the Stipulated Agreement makes any further proceedings before this Court prior to February 1, 1982 unnecessary; and,
3. That the parties will advise the Court on February 1, 1982, on the status of the case.

Dated: July 1/1981, 1981.

Respectfully submitted,

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 Deputy Attorney General
 JEFF BINGAMAN
 Attorney General
 State of New Mexico

Raymond Hamilton
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 Assistant U.S. Attorney
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
NEW MEXICO STATE DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JUL 03 1981

J. Burciaga

STATE OF NEW MEXICO, ex rel.
JEFF BINGAMAN, Attorney General
of the State of New Mexico,

Plaintiff,

vs.

CIVIL ACTION NO.
81-0363 JB

THE UNITED STATES DEPARTMENT
OF ENERGY, et al.,

Defendants.

ORDER

Upon consideration of the Joint Motion To Stay All
Proceedings filed this day with the Court;

And, considering the Stipulated Agreement dated July 1,
1981, to which the parties hereto have agreed, it is on this
1st day of July, 1981:

ORDERED that these proceedings are stayed until February
1, 1982, in accordance with the agreement of the parties as
stated in their Stipulated Agreement; and the parties shall
in good faith comply with the provisions of the Stipulated
Agreement, and further, that the parties advise this Court
on that date on the status of the case.

JUAN G. BURCIAGA

UNITED STATES DISTRICT JUDGE

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RECEIVED
WIPP PROJECT

JUL - 1 1981 *JB*

SAFETY & ENVIRONMENTAL
ASSESSMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, ex rel.
JEFF BINGAMAN, Attorney General
of the State of New Mexico,

Plaintiff,

v.

THE UNITED STATES DEPARTMENT
OF ENERGY, et al.,

Defendants.

CIVIL ACTION NO.
81-0363 JB

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JUL 01 1981

STIPULATED AGREEMENT

Whereas, the plaintiff, State of New Mexico, *Jeff Bingaman* ex rel. Jeff Bingaman, Attorney General, has brought this action to address four major concerns of the State of New Mexico; and,

Whereas, these concerns include: (1) that the final decision point for commencing construction of a permanent WIPP repository and its operation should not be reached until all interested parties including the State of New Mexico know the results of actual site and design validation tests and the SPDV program in general; and (2) that the State of New Mexico be given the opportunity to have a final resolution of all essential and integral off-site state government concerns involving health, safety, and public welfare issues prior to a final decision to commence construction of permanent WIPP facilities; and (3) that the State of New Mexico be entitled to a binding and enforceable consultation and cooperation agreement that does not waive any right by the State to judicial review of any federal agency action with respect to the WIPP project; and (4) the concern that the withdrawal provisions of the Federal Land Policy and Management Act be complied with, including public hearings to be held before a decision is made to withdraw federal lands from the public domain for the WIPP project; and

Whereas, defendants do not acknowledge the validity of any of plaintiffs' claims nor admit that any of defendants' actions to date in carrying out the WIPP program have been in violation of the United States Constitution or any law or regulation of the United States or the State of New Mexico; and

Whereas, the scheduled, phased construction of the WIPP project, subject to Congressional approval, entails the excavation of the SPDV portion of the project and the completion, or substantial completion, of site and design validation tests prior to the commencement of the construction of, and excavation for, the permanent WIPP project; and

Whereas, under the present schedule between September of 1983 and the fall of 1988 construction will continue and further excavation of the waste experimental rooms are to be completed as well as the completion, or substantial completion, of the simulated waste experiments; and

Whereas, plaintiff and defendants waive no rights hereby to litigate any issues which they will attempt to dispose of by negotiation between now and the trial on the merits should those negotiations fail to achieve the desired results; and

Whereas, the parties agree to carry out in good faith the mandatory terms of this Stipulated Agreement as fully set out in this document.

NOW, THEREFORE, the parties hereby stipulate and agree as follows:

1. Simultaneous with the entry of this Stipulated Agreement, the United States Department of Energy and the State of New Mexico shall execute a consultation and cooperation agreement which shall provide for the timely exchange of information about the WIPP project and procedures for them to follow to attempt to resolve conflicts between them relating to the public health, safety or welfare of the citizens of the State should any such conflicts arise during

the course of that project. This consultation and cooperation agreement shall be a binding, enforceable agreement between the Department of Energy and the State of New Mexico and shall expressly provide that it does not constitute a waiver by the State of any right it may have to judicial review of federal agency actions with respect to the WIPP project. The consultation and cooperation agreement is attached to and incorporated herein as Appendix A hereto. The provisions and mandates of this Stipulated Agreement are in addition to the provisions and obligations of that consultation and cooperation agreement and to the extent that they are inconsistent, if at all, this Stipulated Agreement controls.

2. The United States Department of Energy shall prepare and provide to the State of New Mexico and the public a formal, public document containing a summation of the results of all experiments and studies conducted during the SPDV phase and site validation phase of the WIPP project at least sixty (60) days prior to any decision as to whether the information obtained from the SPDV program and site and design validation tests warrants the commencement of construction of the permanent facility for the full WIPP repository which decision is now estimated to be no earlier than September of 1983. Within such 60-day period the State of New Mexico and interested members of the public shall have an opportunity to comment on that document as it relates to the decision to commence construction of the permanent facility for the full WIPP project. After receiving, reviewing, considering and responding to any comments made by the State and interested members of the public, the Department of Energy shall enter a final decision on whether the information obtained from the SPDV program and site and design validation tests warrants the commencement of permanent facility construction for the WIPP project. The State of New Mexico is not barred from seeking or obtaining judicial review of that decision by

this Stipulated Agreement. Permanent facility construction shall be deemed to commence for purposes of this paragraph with excavation of the third shaft.

3. The Department of Energy shall prepare the comprehensive topical reports and conduct the site and design validation experiments and other preliminary experiments and studies set forth and attached hereto as Appendix B of this Stipulated Agreement and shall provide the State and the public with final or interim reports on the results of those experiments prior to the 60-day review period ordered in paragraph 2 above.

4. To the extent that additional funding becomes available, the Department of Energy shall also conduct the studies and experiments set forth and attached hereto as Appendix C of this Stipulated Agreement and provide the State and the public with final or interim reports on the results of those experiments and studies prior to the 60-day review period mentioned in paragraph 2 above. The Department of Energy shall make a good faith effort to arrange for such funding prior to February 1, 1982. The Department of Energy shall prepare and provide to the State of New Mexico by September 1, 1981, a report assessing the merits and costs of their experiments and studies set forth in Appendix C. Inability of DOE to arrange for funding for the studies listed in Appendix C will not preclude the State from raising the need for such studies as an issue in any trial on the merits.

5. The Department of Energy will prepare and provide to the State of New Mexico a formal, public document containing a summation of the results of all final or interim experiments and studies related to (1) the examination of the so called "disturbed zone or zone of anomalous seismic reflection data", the southern boundary of which lies in an East-West direction bisecting sections 16 and 17 in Township

225, Range 31E, N.M.P.M., in Zone 3 of WIPP site, starting approximately 1-1/2 miles north of ERDA #9, and (2) all simulated wasted experiments, prior to the transportation of any waste into the State of New Mexico for emplacement at the WIPP site. The Department of Energy shall afford the State of New Mexico and interested members of the public a 45-day review and comment period and shall consider and respond to such comments prior to the decision to transport any waste into the State for emplacement at the WIPP site. This Stipulated Agreement shall not bar the State of New Mexico from seeking or obtaining judicial review of any Department of Energy actions and final decisions in that respect.

6. If not required by federal laws or regulations existing at the time, the Department of Energy shall, nevertheless, provide to the State of New Mexico and the public, a reasonable review period prior to any decision to change the nature or scope of the WIPP project to that of a permanent, high level waste repository, or a decision not to retrieve the high level waste placed in the repository on a temporary basis which high level waste the Department of Energy intends to remove at the conclusion of the experimental period of approximately thirty (30) years in duration.

7. The defendant, DOE, shall make a good faith effort to assist the State of New Mexico in resolving the State's off-site state governmental concerns. In order to carry out its obligations under this paragraph, the defendant, DOE, shall prior to February 1, 1982, seek to establish and participate in a State-Federal task force comprised of all federal governmental agencies with jurisdiction over or responsibility for activities related to WIPP and shall join with the State, where appropriate, in seeking and recommending federal or Congressional resolution of the following State concerns related to the WIPP project:

- (a) the question of state liability arising from accidents;
- (b) funding for necessary road upgrading;
- (c) funding and training for ongoing emergency preparedness and emergency response;
- (d) monitoring of transportation of waste through the State;
- (e) funding for, and assistance in, conducting baseline health studies of inhabitants in neighboring communities near the WIPP site and reasonable periodic monitoring thereafter;
- (f) funding for, and assistance in, post-operation monitoring of the WIPP site.

In the event that the State of New Mexico is not satisfied by February 1, 1982 (or a mutually agreed upon date thereafter), that such concerns will be resolved prior to the completion of the SPDV phase of the WIPP project and any decision to authorize the commencement of permanent facility construction for the WIPP project, the State of New Mexico may raise those issues in any trial on the merits.

8. The SPDV phase of the WIPP project currently underway shall not exceed, before the decision as to whether the information obtained from the SPDV program and site and design validation tests warrants the commencement of construction of the full permanent WIPP repository, the excavation of approximately 113,000 tons of salt and four acres of excavated areas as set forth in the Department of Energy's TME 1063 document on SPDV published in October of 1980.

9. The defendants, Bureau of Land Management and Department of Interior, shall, in accordance with DOI withdrawal regulations, conduct public hearings on July 14 and 15 of this year on DOE's pending withdrawal application relating to the proposed public land site for the WIPP project. That application, notice of which was published in

45 Fed. Reg. 75768-69 (November 17, 1980) seeks to reserve the land for the exclusive use of DOE for the purpose of protecting the geological integrity of the site for the research and development of a WIPP project and performing SPDV.

10. This Stipulated Agreement does not affect the validity of the Record of Decision entered by the Department of Energy for the WIPP project on January 22, 1981, nor does it obligate DOE to undertake any additional steps in the NEPA process with respect to the WIPP project beyond that required by law. Notwithstanding such Record of Decision, the Department of Energy shall comply with all of the terms and conditions contained in the provisions of this Stipulated Agreement.

11. The Department of Energy shall cooperate with County Commissions of Lea and Eddy Counties to permit the Counties to provide optimum road access to the WIPP site from population centers of both counties.

12. The application of plaintiff, State of New Mexico, for preliminary injunction is withdrawn by the plaintiff without prejudice to any of the claims in its Complaint.

13. By entering into this Stipulated Agreement, defendants do not waive any defenses they may have to this action.

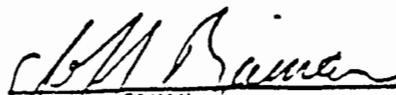
14. All proceedings in this action should be stayed until February 1, 1982, at which time the parties agree to report to the Court on the status of the case. Any such subsequent trial on the merits shall be limited to the issues of State concern addressed in paragraphs 4, 7, and 9 of this Stipulated Agreement.

Signature:

Signature:

For the Plaintiff State of
New Mexico

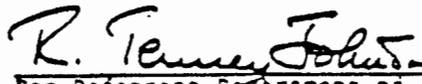
For the Defendants

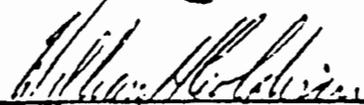

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