



U.S. Department of Justice

Environment and Natural Resources Division

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VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

September 17, 2010

Thomas M. Hnasko
P.O. Box 2068
Santa Fe, NM 87504-2068

Re: The Los Alamos Study Group v. United States Department of Energy, et al.
(No. CV 10-760 JH/ACT)

Dear Mr. Hnasko:

Pursuant to our conversation on September 9, 2010, I am writing to inform you that the Department of Energy, National Nuclear Security Administration (NNSA) has determined to prepare a Supplemental Environmental Impact Statement (SEIS) for the Chemistry Metallurgy Research Building Replacement (CMRR) Project. This decision was based, in part, upon a draft supplemental analysis that the NNSA informed you of in a letter dated July 30, 2010. In accordance with 10 C.F.R. § 1021.311, the NNSA expects to publish a Notice of Intent to prepare the SEIS in the Federal Register in the near future.

As you are aware, judicial review of actions brought under the Administrative Procedure Act is available only for final agency actions. 5 U.S.C. § 704; Bennett v. Spear, 520 U.S. 154, 177-78 (1997); Utahns for Better Trans. v. U.S. Dept. of Transp., 305 F.3d 1152, (10th Cir. 2002). The July 30 letter advised you that the NNSA had not completed its review of the CMRR Project under the National Environmental Policy Act (NEPA), yet nevertheless your client elected to file the complaint in this action on August 16, 2010. Because the NNSA has not completed its NEPA analysis of the CMRR Project, it is the Defendants' position that your client's complaint is not ripe for judicial review.

Defendants requested on September 9 that your client voluntarily dismiss this action without prejudice. We reiterate that request here. The Defendants believe that voluntary dismissal of this action is in the interest of all involved as it will conserve the scarce resources of the Court and parties. Defendants request a response by September 24, 2010. In the event that

we do not hear from you by this date or that you decline to voluntarily dismiss the lawsuit, we will proceed with a motion to dismiss.

Should you have any questions or wish to discuss this matter, please do not hesitate to call me at (202) 305-3022.

Sincerely,

/s/ John P. Tustin

John P. Tustin
Trial Attorney

Cc: Diane Albert
Andrew Smith
Janet Masters
Matt Rotman
Matt Urie