

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

LOS ALAMOS STUDY GROUP,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:10-CV-0760-JH-ACT
)	
UNITED STATES DEPARTMENT OF)	
ENERGY, et al.)	
)	
Federal Defendants.)	
_____)	
)	
THE LOS ALAMOS STUDY GROUP,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:11-CV-0946-RHS-WDS
)	
UNITED STATES DEPARTMENT OF)	
ENERGY, et al.)	
)	
Federal Defendants.)	
_____)	

FEDERAL DEFENDANTS' REPLY IN SUPPORT OF
UNOPPOSED MOTION TO TRANSFER RELATED CASE [ECF No. 5]

On November 10, 2011, Federal Defendants in the above captioned cases moved the Court to transfer *Los Alamos Study Group v. U.S. Department of Energy*, Case 1:11-CV-0946-RHS-WDS (“*LASG II*”) to the Court of the Honorable Judith C. Herrera, United States District Judge for the District of New Mexico, who considered Plaintiff’s earlier related action, *Los Alamos Study Group v. U.S. Department of Energy*, Case 1:10-CV-0760-JH-ACT (“*LASG I*”). ECF No. 5 (“Mot.”). In accordance with D.N.M.LR-Civ 7.1(a), the undersigned determined that the motion to transfer was unopposed. ECF No. 5 at 1. Although Plaintiff did not and does not oppose the requested transfer, it nonetheless filed a response. ECF No. 6 (“Resp.”). Federal Defendants submit this reply to address several statements in Plaintiff’s response.

Plaintiff first contends that Federal Defendants should have “circulat[ed] a simple, proposed motion” in support of the request to transfer *LASG II* to the Court that considered *LASG I*. Resp. at 2. Plaintiff’s contention overlooks the fact that it is the Court, not the Parties, that decides whether a motion to transfer a related case is in the best interest of justice and judicial economy. Indeed, D.N.M.LR-Civ 7.3(a) *requires* a motion to “cite authority in support of the legal positions advanced.” Federal Defendants’ motion presented the relevant factual background, all of which was supported by citations to the dockets in *LASG I* and *LASG II* at the District Court level and *LASG I* in the Tenth Circuit. *See* Mot. at 3-7. Merely because Plaintiff did not oppose the motion does not mean the Federal Defendants did not have an obligation to explain the justification for seeking transfer.

Plaintiff next contends that the memorandum in support of the motion to transfer “resembl[es] a motion to dismiss.” Resp. at 2. There is no basis for this assertion. At no point does

the motion seek relief under Federal Rule of Civil Procedure 12(b). Federal Defendants clearly moved to transfer *LASG II* based on Judge Herrera's prior consideration of *LASG I* and on the common issues of law and fact present in both cases. There is no other relief requested, or implied.

Finally, Plaintiff alleges that it was an "improper strategy" for Federal Defendants to file the motion in both *LASG I* and *LASG II*. Resp. at 3. As stated in the motion, "Federal Defendants are filing this Motion in both *LASG I* and *LASG II* because Federal Defendants are uncertain in which case the Motion should be decided and defer to the Court on that issue." Mot. at 1. Plaintiff's attempt to characterize the motion as a request to transfer *LASG I* to the Court that is considering *LASG II* is without merit as the motion, which is identical and was filed in both cases, clearly seeks only the transfer of *LASG II* to the Court that considered *LASG I*. It is unclear what Plaintiff sees as the issue with captioning and filing the same motion in both cases so that all judges in both cases are aware of the motion and can address it accordingly. Although Federal Defendants do not seek consolidation at this time, motions to transfer for purposes of consolidation are typically decided by the court in the lower number (earlier-filed) case. It is not clear why a motion to transfer a related case should not be addressed in the same manner but, again, Federal Defendants defer to the Court on that procedure.

The remainder of the statements in Plaintiff's response are unnecessarily argumentative and attempt to address the merits of *LASG II*. See ECF No. 6 at 3-7. These statements are not relevant to whether *LASG I* and *LASG II* present common questions of law and fact and whether *LASG II* should be transferred to Judge Herrera in the interests of justice, to promote judicial economy and efficiency, and to facilitate this litigation in a manner beneficial to the Court, the Parties, and the

public. As Plaintiff itself acknowledges, “*LASG II* must include consideration of the defendants’ previous actions and decisions challenged in *LASG I*” (Resp. at 5) and “in light of Judge Herrera’s prior work in *LASG I*, it is likely that transfer would promote judicial efficiency.” Resp. at 7.

In the interests of justice, for the reasons stated in the motion and in this reply, Federal Defendants respectfully request that the Court transfer *Los Alamos Study Group v. U.S. Department of Energy*, Case 1:11-CV-0946-RHS-WDS, to the Court of the Honorable Judith C. Herrera, United States District Judge for the District of New Mexico, who considered Plaintiff’s earlier related action, *Los Alamos Study Group v. U.S. Department of Energy*, Case 1:10-CV-0760-JH-ACT, for all purposes.

Respectfully submitted on this 18th day of November, 2011.

IGNACIA S. MORENO
Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

/s/ John P. Tustin
JOHN P. TUSTIN, Trial Attorney
Natural Resources Section
P.O. Box 663
Washington, D.C. 20044-0663
Phone: (202) 305-3022/Fax: (202) 305-0506
john.tustin@usdoj.gov

ANDREW A. SMITH, Trial Attorney
Natural Resources Section
c/o U.S. Attorney’s Office
P.O. Box 607

Albuquerque, NM 87103
Phone: (505) 224-1468/Fax: (505) 346-7205
andrew.smith6@usdoj.gov

Attorneys for Federal Defendants

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2011, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing, which transmitted a Notice of Electronic Filing to the following CM/ECF registrants:

THOMAS M. HNASKO
DULCINEA Z. HANUSCHAK
Hinkle Hensley, Shanor & Martin, L.L.P.
P.O. Box 2068
Santa Fe, NM 87504
Phone: (505) 982-4554/Fax: (505) 982-8623
thnasko@hinklelawfirm.com
dhanuschak@hinklelawfirm.com

LINDSAY A. LOVEJOY, JR.
Law Office of Lindsay A. Lovejoy, Jr.
3600 Cerrillos Road #1001A
Santa Fe, NM 87507
Phone: (505) 983-1800/Fax: (505) 983-4508
lindsay@lindsaylovejoy.com

Attorneys for Plaintiff

/s/ John P. Tustin
JOHN P. TUSTIN
Attorney for Federal Defendants