

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

THE LOS ALAMOS STUDY GROUP,

Plaintiff,

v.

Case No. 1:11-CV-0946-JEC-WDS

UNITED STATES DEPARTMENT OF
ENERGY; THE HONORABLE STEVEN
CHU, in his capacity as SECRETARY,
DEPARTMENT OF ENERGY;
NATIONAL NUCLEAR SECURITY
ADMINISTRATION; THE HONORABLE
THOMAS PAUL D'AGOSTINO, in his
Capacity as ADMINISTRATOR,
NATIONAL NUCLEAR SECURITY
ADMINISTRATION,

Defendants.

PLAINTIFF'S MOTION TO SUPPLEMENT THE ADMINISTRATIVE RECORD

Pursuant to the Court's January 30, 2012 Order [Doc. No. 22], plaintiff The Los Alamos Study Group ("plaintiff") moves the Court to enter an order requiring defendants to supplement the proffered administrative record (AR) (lodged with the Court on June 22, 2012) with all documentation relied upon by defendants for their new decision to implement an alternative other than the 2010/2011 version of the Chemistry, Metallurgy Research Replacement Nuclear Facility ("CMRR-NF") at Los Alamos, New Mexico.

The 2010/2011 version of the CMRR-NF, dramatically modified since the 2003 CMRR Environmental Impact Statement (EIS) and subsequent 2004 Record of Decision (ROD), was re-analyzed in 2011 in s Supplemental Environmental Impact Statement ("SEIS") without comparing it to reasonable alternatives or to a "no action" alternative. The decision to construct

this new version of CMRR-NF was recorded by the Amended Record of Decision (“AROD”) published on October 18, 2011 (76 FR 64344).

Defendants’ decision to indefinitely defer CMRR-NF in favor of another alternative was announced on February 13, 2012, in the President’s Budget Request to Congress (Exhibit 1). On that date and on many occasions thereafter, Defendants advised Congress that the sole reasonable alternative analyzed in the SEIS and allegedly chosen in the AROD would be deferred for at least five years and that plutonium requirements will now be met through an alternative course of action not previously analyzed or mentioned either in the SEIS or the underlying 2003 CMRR EIS – which the SEIS purportedly supplemented – or in any other analysis made pursuant to the National Environmental Policy Act (NEPA). Defendants’ new chosen alternative is to use facilities already existing in the nuclear weapons complex in lieu of the 2010/1011 version of CMRR-NF. Defendants’ present selection of this alternative to the CMRR-NF has been advocated by plaintiff for analyses under NEPA, but omitted from defendants’ NEPA analyses to date.

In their February 13, 2012 budget request, defendants explained that:

1. The Administration seeks no funding for constructing the CMRR-NF project in Fiscal Years (FY) 2013 through 2017. The Administration also seeks no funding for continuing the design of CMRR-NF in FY 2013 or any subsequent fiscal year.
2. Construction of the CMRR-NF project is therefore to be deferred for at least five years.
3. DOE/NNSA have now determined that their existing infrastructure has the inherent capacity to provide for the missions formerly assigned to the proposed CMRR-NF for at

least the next five years. This new alternative, which DOE/NNSA now intends to implement, was not considered in the 2003 EIS or 2011 SEIS, or in any other NEPA document, and was not chosen in the 2003 ROD or 2011 AROD or in any other record of decision pursuant to NEPA. Subsequently, this new alternative course of action was selected in a formal record of decision of the Nuclear Weapons Council, which includes the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Vice Chairman of the Joint Chiefs of Staff, the Under Secretary for Nuclear Security of the Department of Energy (currently, Defendant Thomas D'Agostino, representing DOE and NNSA), the Under Secretary of Defense for Policy, and the commander of the United States Strategic Command. (10 U.S.C. § 179).

4. DOE/NNSA will re-study the long-term mission requirements that originally justified the CMRR-NF project. The long-term purpose of and need for CMRR-NF are now under fresh review.

In short, the 2003 CMRR EIS, together with the 2011 SEIS which modifies it, no longer form any basis for the presently-proposed federal action.

In light of defendants' new decision, the voluminous record submitted supporting the SEIS and AROD is grossly incomplete and largely irrelevant. Documents pertinent to defendants' new selected alternative include, but are not limited to, the following:

- NNSA, FY2013 [Congressional Budget Request](#) (CBR) (pdf), p. 8;
- Office of Management and Budget (OMB), FY2013 [Cuts, Consolidation, and Savings](#) (pdf), p. 26;
- NNSA, [Revised Plutonium Strategy – Supplemental Information for the President's FY 2013 Budget Request](#) (pdf);

- [NNSA, FY2013 Budget Guidance on the CMRR-NF](#) – Memorandum from Donald Cook, Deputy Administrator for Defense Programs, to Kevin Smith, Manager, Los Alamos Site Office, and Dr. Charles McMillan, Director, Los Alamos National Laboratory (LANL), Feb 13, 2012 (pdf).
- [Joint Department of Energy/National Nuclear Security Administration and Department of Defense Programmatic Realignments](#), Memorandum for members of the Nuclear Weapons Council from Frank Kendall, Under Secretary of Defense for Acquisition, Technology and Logistics, Mar 27, 2012 (pdf)
- The so-called "60-day study" resulting from the February 13, Donald memorandum above, redacted if required. "Uranium Processing Facility (UPF) Project, Total Project Cost, Cost Estimate and Cost Range," U.S. Army Corps of Engineers, Feb. 2011. This document is pertinent and important because it explains, in its words as quoted in a trade publication, that "Significant cost growth of either project [UPF and CMRR-NF] may result in a situation where constructing both projects with currently anticipated scopes is not feasible due to NNSA funding constraints. Significant delays to reaching full production capacity, construction phasing, or reduced functional capabilities may result if UPF is considered a lower priority than CMRR" . Defendants have repeatedly mentioned this fiscal conflict in congressional testimony in support of their new decision. The missing decision documents listed in the [GAO letter of June 7, 2012 re: absence of FY13 NNSA planning & budgeting documents](#), (pdf).
- All other documents and records from January 1, 2010 or after supporting the decision to defer CMRR-NF instead of continuing the project as allegedly decided in the AROD.

- All documents and records concerning the potential use of other of Defendants' sites and facilities as alternative locations for plutonium missions assigned to CMRR-NF.
- All documents and records from January 1, 2010 or after concerning potential changes to the uses of, and allowable Material at Risk (MAR) in the CMRR Radiological Laboratory, Utility, and Office Building (RLUOB) specifically.
- All documents and records from January 1, 2010 or after concerning transfers of future budget authority from the Department of Defense to Defendants for fiscal years (FYs) 2011 and after for the purposes including NNSA infrastructure modernization.
- All documents and records concerning studies of or proposals for any changes to the electrical supply for the Los Alamos County power pool, to LANL, and within LANL, as relating to the CMRR Project.
- All documents and records from January 1, 2010 or after concerning future mission assignments and personnel in the Chemistry and Metallurgy Research (CMR) Building.
- All studies of CMRR-NF project costs from January 1, 2010 or after by Defendants, their contractors and subcontractors, and federal agencies including the Department of Defense.
- Any and all communications between Defendant Chu and individual members of the formal or informal advisory group he convened in early 2010, and subsequently disbanded, to study the CMRR project and another project.
- All documents and records from January 1, 2011 or after concerning unspent appropriations in the CMRR project.

- All documents and records from January 1, 2012 or after concerning orderly cessation of work on CMRR-NF and disbanding of the CMRR-NF project teams.
- All documents and records from January 1, 2007 or after concerning excavation undertaken at the CMRR-NF site after 2006.
- All cost projections by any agency or agency contractor for all NNSA infrastructure projects in Defendants' "Readiness in Technical Base and Facilities" account from January 1, 2011. All such projects compete directly for funding.

In addition, upon information and belief, the following specific and highly pertinent documents are missing from the AR as proffered:

- Office of Defense Programs, Chemistry and Metallurgy Research Replacement Nuclear Facility Study, National Nuclear Security Administration, December 31, 2008.
- Options for Plutonium-Related and Associated Facilities Between 2007 and 2022 (Los Alamos, N.M.: Oct. 10, 2006). LA-CP-06-0957. This document is Unclassified Controlled Nuclear Information (UCNI) and may be redacted as necessary.
- Alternatives for Increasing Pit Production Capacity at the Los Alamos Plutonium Facility (U) (Los Alamos, N.M.: Apr. 10, 2006). LA-CP-06-0289 This document is Secret Restricted Data (SRD) and may be redacted as necessary.

WHEREFORE, plaintiff respectfully requests that the Court enter an order requiring the defendants to supplement the administrative record with the documents listed above, as well as any other documents on which the defendants relied in deciding to deviate from the alternative selected in the SEIS and AROD.

Respectfully submitted,
[*Electronically Filed*]

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Certificate of Service

I hereby certify that on this 13th day of July, 2012, I filed the foregoing *Plaintiff's Motion to Supplement the Administrative Record* electronically through the CM/ECF System, which caused the following parties or counsel of record to be served by electronic means as more fully reflected in the Notice of Electronic Filing.

John P. Tustin

Andrew A. Smith

/s/ Thomas M. Hnasko

Thomas M. Hnasko