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Re: *Los Alamos Study Group v. United States Department of Energy, et al.*,
No. 1:10-CV-0760-JH-ACT

Dear Counsel:

This is written to advise you about erroneous statements submitted to the Court in the captioned litigation and to seek your voluntary cooperation in correcting those statements. In various submittals to the Court, including the Declaration of Donald L. Cook, the Department of Justice has represented that no decision has been made relative to the planning and construction of the proposed CMRR-NF in Los Alamos and that no such decisions will be made "until the SEIS is finished and a new ROD is issued." *See, e.g., Defendant's Motion to Dismiss*, p. 13. According to declarant Donald Cook, there has been no decision to construct the CMRR-NF and such a decision will be made "once the SEIS is completed, ***if*** NNSA decides to proceed with construction of the proposed CMRR-NF . . . ." (Cook Declaration at ¶ 23 (emphasis added)).

The evidence is overwhelming that defendants are proceeding unabated with the CMRR-NF project. According to the most recent *Nuclear Weapons and Materials Monitor*, DOE dispatched NNSA Principal Deputy Administrator Neile Miller, Deputy under Secretary of Defense for Policy James Miller, and retiring Strategic Command Chief General Kevin Chilton to Arizona to unveil plans and funding for the CMRR-NF to Senator Jon Kyl. The report confirmed that representatives of the federal government had committed an additional $4.1 billion expenditure for major new construction projects, including the CMRR-NF plan for the Los Alamos National Laboratory.

Moreover, the same publication reported that executive branch officials, in an attempt to shore up votes for passage of the New Strategic Arms Reduction Treaty with Russia, pledged $84.1 billion over the next ten years for NNSA weapons modernization programs, specifically including the presently-planned CMRR-NF in Los Alamos. According to NNSA, the presently-

proposed CMRR-NF is a "linchpin" of NNSA's efforts to modernize the weapons complex and the CMRR-NF is likely to cost in excess of $5 billion under the present design proposals.

Given the plain evidence demonstrating a commitment to build the CMRR-NF as presently proposed, counsel for the defendants has an obligation to correct the misstatements as soon as possible. Mr. Cook's declaration concerning NNSA's purported indecision to build the CMRR-NF is facially implausible. Likewise, the statements in your briefs, which are consistent with the erroneous statements in Mr. Cook's declaration, appear to deviate significantly from the duty of candor we expect from the Department of Justice.

We recognize that your response to the motion for preliminary injunction is due Friday, December 3, 2010. This would be an ideal time for you to correct the record, acknowledge that your clients are proceeding forthwith with the CMRR-NF, and correct previous statements to the contrary. This also appears to be an appropriate time for defendants to stipulate to the entry of the preliminary injunction and bar any further commitments in any context to the continued design, funding, and construction of the CMRR-NF project until compliance with NEPA has been achieved.

Thank you for your consideration and for your anticipated principled response.

Sincerely,

Thomas M. Hnasko

TMH:js