STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION

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WQCC

In the matter of a petition appealing	)	
The Secretary of the Environment's	)	
Denial of a Hearing on DP-1793	)	WQCC-15-07(A)
	)	
Communities for Clean Water,	)	
Petitioner	)	

COMMUNITIES FOR CLEAN WATER'S
CONSOLIDATED REPLY TO NEW MEXICO ENVIRONMENT DEPARTMENT'S, UNITED STATES DEPARTMENT OF ENERGY'S, AND LOS ALAMOS NATIONAL SECURITY, LLC'S RESPONSES TO MOTION TO STAY DISCHARGE PERMIT 1793

Communities for Clean Water ("CCW"), pursuant to 20.1.3.15(E) NMAC, submits this consolidated reply to the New Mexico Environment Department's, the United States Department of Energy's, and Los Alamos National Security, LLC's responses to CCW's Motion to Stay Discharge Permit 1793 ("DP-1793"). The Water Quality Control Commission ("WQCC") should grant a hearing on CCW's Motion to Stay DP-1793 because a stay is appropriate during a permit review proceeding and there is good cause to grant a stay of DP-1793.

Not only is CCW likely to prevail on the merits of its Petition for Review of DP-1793, but CCW will suffer irreparable harm if a stay is not granted. Allowing DP-1793 to go into effect while CCW's Petition for Review is pending denies Petitioners their right to a meaningful hearing under the Water Quality Act and renders such a hearing moot. Finally, no substantial harm will result to other interested persons in this matter if a stay is granted, and there will be no harm to the public interest if a stay is granted.

For the reasons set forth below, the WQCC should grant a hearing on this Motion to Stay DP-1793, and issue a stay pending its decision on CCW's Petition for Review.

I. BACKGROUND.

The following is a sequential account of events in the matter of DP-1793:

- The United States Department of Energy ("DOE") and Los Alamos National Security, LLC ("LANS") (collectively, "Permittees") submitted an initial application for a discharge permit to New Mexico Environment Department ("NMED") in December of 2011. *See* Administrative Record No. 11.
- Nearly three years later, Permittees submitted a revised application on January 8, 2014, for discharges related to groundwater remediation activities at Los Alamos National Laboratory ("LANL"). *See* Administrative Record No. 102.
- A determination of administrative completeness was made December 3, 2014 (*See* Administrative Record No. 128) and Public Notice for the revised application was issued January 2015 (*See* Administrative Record No. 143).
- NMED received a total of four requests for a public hearing.[1] The Permittees requested a public hearing on DP-1793, later withdrawing its request on July 9, 2015 (*See* Administrative Record No. 140). CCW requested a public hearing on March 2, 2015 (*See* Administrative Record No. 134); a second time on April 29, 2015 (*See* Administrative Record No. 135), after a technical meeting was held on April 15, 2015 (*See* Administrative Record No. 146); and a third time on June 15, 2015 (*See* Administrative Record No. 138), after the final draft of DP-1793 was made available on May 28, 2015 (*See* Administrative Record No. 148).

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[1] Contrary to information provided by NMED and the Permittees in their Responses to CCW's Motion to Stay DP-1793, *see* NMED's Response to Motion to Stay P. 1 (September 8, 2015), *see also* the Petitioner's Response to Motion to Stay P. 2- 3,CCW did not merely submit comments to NMED on DP-1793. CCW submitted comments <u>and</u> a request for public hearing on three occasions.

- NMED only responded to CCW's third request for a public hearing. *See* Administrative Record No. 139 and No. 141.
- The Secretary of NMED failed to make a determination regarding substantial public interest in his denial of CCW's third request for a public hearing on DP-1793.[2] *See* Administrative Record No. 139 and No. 140. The Secretary of NMED, through Michelle Hunter, Acting Chief of the Ground Water Quality Bureau, determined the following:

  > It is the opinion of the Department that NMED has drafted a Discharge Permit that provides transparency and opportunity for community involvement at an unprecedented level. The proposed activity by LANL is intended to address historic impacts to groundwater and protect water resources and communities, and issuance of this Discharge Permit is in the public interest.

  Administrative Record No. 141.
- Following the denial of CCW's third request for a public hearing, NMED issued DP-1793 on July 27, 2015. *See* Administrative Record No. 142. DP-1793 is now in effect.

II. A STAY IS APPROPRIATE DURING A PERMIT REVIEW PROCEEDING.

A. The Standard For Granting A Stay of Proceedings.

Since the sole indication of the WQCC's requirements for issuance of a stay is in a guidance document relating to stays of administrative regulations, CCW is respectfully asking the WQCC to look to that document for guidance in this matter. *See generally*, "Guidelines for Water Quality Control Commission Regulation Hearings" at Section 502 (Approved November

[2] This is contrary to both NMED's and DOE/LANS' assertion that the Secretary of NMED determined there was no substantial public interest in DP-1793 (*see* NMED's Response to Motion to Stay P. 2; *see also* Permittees' Response in Opposition to Motion to Stay P. 8 (September 8, 2015).

10, 1992; Amended June 8, 1993) ("Section 502"). CCW agrees that Section 502 of the WQCC's Guidelines for WQCC Regulation Hearings is specific to stays of regulations that have been appealed to the New Mexico Court of Appeals, yet the WQCC can look to Section 502 for guidance in this matter. *See* NMED's Response to Motion to Stay P. 2.

Under 20.1.3.8 NMAC the WQCC may look to New Mexico Rules of Civil Procedure and New Mexico Rules of Evidence for guidance in the absence of a specific provision in Part 20.1.3 (adjudicatory procedures of WQCC) that governs a particular action.[3] Since there is no specific provision for the use of a stay in permit reviews, CCW respectfully requests that the WQCC look to its own guidance documents, and to New Mexico Rules of Civil Procedure and New Mexico case law regarding application of such a mechanism.

Section 502 requires that there be a written motion and that the Commission will only grant a stay if a hearing is held on the motion and good cause for granting the stay is shown. "Guidelines for Water Quality Control Commission Regulation Hearings" at Section 502(A) (Approved November 10, 1992; Amended June 8, 1993). "Good cause" is defined under Section 502 in a manner consistent with the requirements under the New Mexico Rules of Civil Procedure, which CCW is also asking the Commission to look to for guidance in this matter. Compare *Id.* at 502(B) and Rules of Civil Procedure at 1-066(A).[4]

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[3] Permittees, however, acknowledge the WQCC's ability to look beyond its own regulations and procedures for guidance in the absence of a specific provision in its adjudicatory procedures. *See* Permittees' Response to Motion to Stay P. 4-5 (September 8, 2015).

[4] To obtain a preliminary injunction under Rule 1-066 NMRA, a plaintiff must show that plaintiff will suffer irreparable injury unless the injunction is granted; the threatened injury outweighs any damage the injunction might cause a defendant; the issuance of the injunction will not be adverse to the public's interest; and there is a substantial likelihood plaintiff will prevail on the merits. *LaBalbo v. Hymes*, 1993-NMCA-010 , ¶ 11, 115 N.M. 314, 850 *cert. denied*, 115 N.M. 359 (1993).

These requirements for "good cause" are:

(1) the likelihood that the movant will prevail on the merits of the appeal;

(2) whether the moving party will suffer irreparable harm if a stay is not granted;

(3) whether substantial harm will result to other interested persons; and

(4) whether harm will ensue to the public interest.

"Guidelines for Water Quality Control Commission Regulation Hearings" at Section 502 (Approved November 10, 1992; Amended June 8, 1993). CCW meets each of these criteria, as demonstrated below.[5]

III. THERE IS GOOD CAUSE TO GRANT A STAY OF DP-1793.

A stay of the effectiveness of DP-1793 should be granted pending the resolution of CCW's Petition for Review for the following reasons:

A. It is likely that CCW will prevail on the merits of the Petition for Review.

1. CCW is not required to challenge the merits of the final permit issued in order to challenge the Secretary's decisions denying CCW's request for a public hearing on DP-1793 and approving DP-1793.

The Petitioners are challenging the Secretary's decisions denying their request for a public hearing on DP-1793 and approving the final permit. In so doing, Petitioners are not required to challenge the merits of the final permit issued by NMED on July 27, 2015. Petitioners are required to make a showing that the Secretary's decision not to hold a public hearing was arbitrary, capricious or an abuse of discretion, (2) not supported by substantial evidence in the record; or (3) otherwise not in accordance with law. *Southwest Research & Info.*

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[5] CCW is also in agreement with Permittees that *Tenneco Oil Co. v. New Mexico Water Quality Control Commission* applies the appropriate standard for injunctive relief, and asks the WQCC to look to this New Mexico case as guidance in determining whether to grant CCW's motion to stay DP-1793. *See* Permittee's Response to Motion to Stay P. 4-5, citing to 1986-NMCA-033 at ¶ 10.

Ctr. v. N.M. Env't Dep't, 2014-NMCA-098 at 21 (citing to NMSA 1978, § 74-4-14(C).[6] Limiting their Petition for Review to the issues of the Secretary's decisions denying Petitioners' request for a public hearing and approving the final DP-1793, rather than challenging the merits of the final permit itself, does not render moot their claim that a public hearing was required on DP-1793. *See* Permittees' Response to Motion to Stay P. 6.

On May 28, 2015, NMED issued a final draft DP-1793. *See* Administrative Record No. 148. On June 15, 2015, CCW submitted a third set of comments specifically pertaining to the final draft DP-1793, identifying concerns and objections to specific provisions of the final draft permit. CCW also submitted a third request for a public hearing so that these concerns and objections could be addressed, and maybe even resolved. *See* Administrative Record No. 138.

The administrative record reflects that no further revisions were made to the final draft DP-1793 released on May 28, 2015 for public comment before its final issuance on July 27, 2015.[7] Since NMED denied CCW's third request for a public hearing and made no further revisions to the final draft DP-1793 after such request and denial of request were made, CCW's June 15, 2015 comments on DP-1793 identified what concerns remain unresolved and what provisions in the final discharge permit now in effect CCW find objectionable. CCW has therefore demonstrated what "could have or should have been raised and addressed in a public

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[6] Permittees cite to the wrong statute, NMSA 1978 § 74-6-7(B). That statute pertains to actions by the Commission, not by the Secretary. Permittees' Response to Motion to Stay P. 8.

[7] The permit now in effect does have some minor language changes from the final draft version released on May 28, 2015 for public comment. However, the permit in effect does not address the significant concerns and objections raised by CCW, such as: issues regarding the discharge limit calculation and application, and the technical basis of treatment standards. If a public hearing had been held, CCW would have had the reasonable opportunity to present evidence and testimony, and to cross-examine experts, on these substantive issues. *See* Administrative Record No. 148 and *compare with* Administrative Record No. 137 and No. 138.

hearing that was not raised and addressed in the permit development and drafting process." *See* Permittees' Response to Motion to Stay P. 10.

Contrary to Permittees' argument in their Response to Motion to Stay (page 6), CCW's Petition for Review is sufficiently anchored by the three sets of substantive comments and requests for a public hearing on DP-1793 that it timely filed with NMED. *See* Administrative Record No. 134, No. 136, No. 138, and *see* CCW's First Amended Verified Petition for Review of New Mexico Environment Department Secretary's Denial of Public Hearing and Final Approval of Discharge Permit 1793 (August 24, 2015). CCW's complaint that it was improperly denied a public hearing on DP-1793 need not also be anchored by a challenge to the merits of the permit now in effect. It is improper to attempt to draw the WQCC into an adjudication on the merits of a permit for which a public hearing was never held and the substance of which is not before the Commission at this time.

2. Denial of CCW's request for a public hearing was an abuse of the Secretary's discretion, not supported by substantial evidence in the record, and not otherwise in accordance with law.

a. The Secretary failed to make a determination regarding substantial public interest when denying CCW's request for a public hearing.

The plain language of both NMED's internal memorandum[8] and its denial letter reveal that the Secretary failed to make a determination regarding substantial public interest when denying CCW's request for a public hearing. Both NMED and Permittees go to great lengths discussing the Secretary's determination of substantial public interest in DP-1793, when in fact no such determination was ever made. The Secretary only made determinations as to the alleged

[8] NMED never sent to Petitioners its responses to their concerns and objections contained within this memorandum.

transparency of the permit, the level of community involvement allowed by NMED in the permit process, the purpose of the permit, and issuance of the permit being in the public interest. *See* Administrative Record No. 139 and No. 141.

b. In the Alternative, the Secretary's denial of CCW's request for a public hearing, based on his determination as to a lack of substantial public interest in DP-1793, was an abuse of discretion, not supported by substantial evidence in the record, and not in accordance with the law.

The NMED internal memorandum and letter of denial contain the following language:

> It is the opinion of the Department that NMED has drafted a Discharge Permit that provides transparency and opportunity for community involvement at an unprecedented level. The proposed activity by LANL is intended to address historic impacts to groundwater and protect water resources and communities, and issuance of this Discharge Permit is in the public interest.

Id. If the WQCC finds that the Secretary did make a determination regarding substantial public interest in DP-1793, CCW argues that determination was an abuse of discretion, not supported by substantial evidence in the record, and not otherwise in accordance with the law.[9]

First, neither the Water Quality Act nor its implementing regulations provides factors to be considered by the Secretary when determining whether substantial public interest exists in a permit. NMED and the Permittees rely upon *Southwest Research & Info Ctr. v. New Mexico Env't Dept.* ("*Southwest Research*"), yet that case also fails to provide guidance for the WQCC in reviewing the instant matter. *See* NMED Response to Motion to Stay P. 4-5 and *see* Permittees' Response to Motion to Stay P. 8-10. If the Secretary did in fact take into

[9] Both NMED and Permittees argue that this language demonstrates that the Secretary did in fact make a determination whether the requisite substantial public interest exists in DP-1793 to justify holding a public hearing on the permit, and the determination of the Secretary was that substantial public interest did not exist in DP-1793. *See* NMED Response to Motion to Stay P. 4 and *see* Permittees' Response to Motion to Stay P. 7.

consideration the factors of transparency and the level of community involvement allowed by NMED in the permit process when determining whether substantial public interest exists in DP-1793, an analysis of those factors can only lead to the conclusion that substantial public interest does indeed exist in DP-1793.

There is a direct correlation between the transparency of a permit and the existence of substantial public interest in a permit. There is also a direct correlation between the level of community involvement in a permit and the existence of substantial public interest in the permit. There is no need for the former without the latter. Providing transparency and allowing community involvement through the submission of public comments and participation in an attempt to resolve public issues with the permit highlights rather than dispels the existence of continued substantial public interest in DP-1793.[10]

Second, the Secretary's determinations as to the purpose of the permit and whether its issuance is in the public interest are not only abuses of discretion, but they are not in accordance with law. The Water Quality Act and its implementing regulations do not allow the Secretary to exercise his discretion in this manner. *See* generally NMSA 1978 § 74-6-5 and 20.6.2.3108.K NMAC. The regulation states, in pertinent part, that:

> Requests for a hearing shall be in writing and shall set forth the reasons why a hearing should be held. *A public hearing shall be held if the secretary determines there is substantial public interest.* The department shall notify the applicant and any person requesting a hearing of the decision whether to hold a hearing and the reasons therefore in writing.

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[10] It is unclear by NMED's internal memorandum and letter of denial exactly how DP-1793 provides transparency. It is also unclear exactly how DP-1793 provided "opportunity for community involvement at an unprecedented level." *See* Administrative Record No. 139 and No. 141. NMED held exactly one technical meeting and refused to hold at least one public hearing on DP-1793, a highly complex discharge permit for remediating contaminated groundwater.

20.6.2.3108.K NMAC (emphasis added).

The absence of substantial public interest is the sole exception to the statutory requirement favoring the holding of a public hearing.[11] This sole exception is a limitation on the exercise of the Secretary's discretion. The sole criterion for denying a request for a public hearing is a lack of substantial public interest. The regulation does not state that the Secretary's discretion in denying a request for a public hearing may be based on the purpose of the permit itself, or whether issuing the permit is in the public interest. More importantly, substantial public interest can and does exist for permits whose purpose is the remediation of contaminated groundwater, and it exists for permits whose issuance is in the public interest.[12]

c. *Southwest Research* is distinguishable from this matter.

The New Mexico Appellate Court in *Southwest Research* unfortunately does not address what in fact is a "substantive" request for a public hearing.[13] The Court does state, in pertinent part, "Appellants' argument…is supported exclusively by the number of letters sent to NMED during the comment period," and, "Appellants do not demonstrate that NMED failed to adequately address the public's specific concerns here by NMED's written responses to the public comments." *Southwest Research & Info Ctr. v. New Mexico Env't Dep't*, 2014-NMCA-

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[11] *See* NMSA 1978 § 74-6-5(G).

[12] Finally, it is unclear by NMED's internal memorandum and letter of denial exactly how DP-1793's issuance is in the public interest. See AR 139 and 141.

[13] NMED and the Permittees both cite to *Southwest Research* when claiming that the Secretary may deny a request for a public hearing when such requests are not "substantive in nature" and/or when the concerns of such requests are addressed during the notice and comment period. 2014-NMCA-098; 336 P.3d 404. *See* NMED Response to Motion to Stay P. 4-5, and *See* Permittees' Response to Motion to Stay P. 8-10. Contrary to what NMED purports, *Southwest Research* does not provide guidance as to when a request is "substantive in nature."

098, 76, 78; 336 P.3d 404, 422. The Court in *Southwest Research* never analyzed whether appellants' requests were substantive in nature since appellants' argument was supported exclusively by the number of letters sent to NMED. *Id.* at 76. That is not the case here.

In the matter at issue, CCW's argument that substantial public interest exists in DP-1793 is supported by more than just the number of comments or requests for a public hearing submitted to NMED. CCW argues that substantial public interest is evidenced by the substantive concerns expressed in those three sets of comments and requests for a public hearing - matters that were not resolved by the final permit. *See* Administrative Record No. 148 and *compare with* Administrative Record No. 138.

The *Southwest Research* Court, however, did analyze whether NMED, in that matter, adequately addressed the public's specific concerns through NMED's written responses to submitted public comments, so as to negate the need for a public hearing to be held. *Id.* at 76. The Court looked to the administrative record to determine whether NMED held public meetings, *Id.*, and to determine the extent of NMED's responses to submitted public comments. *Id.* at 78. The Court found that NMED had responded adequately to submitted public comments through NMED's own written responses. *Id.*

In this matter, NMED has held no public meetings. NMED did hold a "technical meeting" on April 15, 2015. *See* Administrative Record No. 146. Since only Petitioners, NMED and the Permittees were in attendance at this technical meeting, and no other members of the public or "interested persons"[14] were in attendance, it would be disingenuous at best to call this technical meeting a public meeting. *See* Administrative Record No. 144.

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[14] It is unclear how NMED generated its "Interested Persons List" submitted to the WQCC as Administrative Record No. 144.

NMED also failed to reply, in writing, to CCW's three sets of comments and requests for public hearings. A technical meeting was held after CCW submitted its first set of comments and request for a public hearing, but this meeting resulted in even more confusion and concern, hence CCW submitted a second set of comments and request for public hearing, which also went unanswered by NMED. *See* Administrative Record No. 136.

Though both NMED and Permittees cite to NMED's internal memorandum dated July 8, 2015 to demonstrate that NMED responded to CCW's concerns in a manner which would negate the need for a public hearing, NMED never sent this document to Petitioners. The responses contained in this document were also not provided in NMED's denial letter to Petitioners. Therefore, NMED never adequately addressed CCW's concerns in its own written responses to CCW's comments, thereby failing to negate the need for a public hearing. *See* Permittees' Response to Motion to Stay P. 7 and *see* NMED's Response to Motion to Stay P. 4.

B. CCW will suffer irreparable harm if a stay is not granted.

To allow DP-1793 to go into effect while CCW's Petition for Review is pending denies Petitioners their right to a meaningful hearing under the Water Quality Act. NMSA 1978, § 74-6-5(G). The irreparable harm suffered by CCW is patent: giving Petitioner a hearing on the permit at issue after allowing the permit to go into effect is to grant a hearing on a matter that is moot. This cannot be what the Legislature intended in providing the public with a broad opportunity for hearings on permits under the Act. *Id.*

Petitioners will suffer irreparable harm if the stay of DP-1793 is not granted, for Petitioners have been improperly denied a "reasonable chance to submit evidence, data, views or arguments orally or in writing and to examine witnesses" pertaining to their concerns and objections raised in their "Comments About May 28, 2015 DP-1793 for Los Alamos National

Laboratory Groundwater Projects" submitted to NMED on June 15, 2015. *See* Administrative Record No. 138.

Petitioners are not required to "raise any objection to the substantive terms of the Permit as issued" in order to support their claim of suffering irreparable harm in the absence of a stay of DP-1793. Permittees' Response to Motion to Stay P. 10. Moreover, contrary to what NMED claims, the irreparable harm CCW will suffer stems not only from the decisions of the Secretary denying CCW's request for a public hearing and approving DP-1793, but from the final permit itself, as explained above. *See* NMED Response to Motion to Stay P. 5.

C. No substantial harm will result to other persons interested in this matter if a stay is granted.

NMED argues "NMED and the Permittees are not 'Interested Persons' but are, instead, the permitting agency and the applicants/permittees. Interested persons in this context of permit issuance are those who have submitted notice to NMED that they are interested in the permit in question." NMED Response to Motion to Stay P. 6. Following NMED's logic, it is therefore irrelevant whether NMED or the Permittees may experience any harm as a result of such a stay being granted.

If the WQCC determines that both NMED and the Permittees are "other interested persons," CCW argues, in the alternative, that no substantial harm will result to NMED and the Permittees if a stay is granted. CCW agrees with Permittees that the projects to be carried out under DP-1793 are of critical importance. However, the delay by Permittees and NMED in carrying out such critical projects calls into question the Permittees' credibility when asserting that granting a stay of DP-1793 will "most certainly cause substantial harm...by delaying and disrupting the near-term implementation and progression of critical remediation activities at

LANL." Permittees' Response to Motion to Stay P. 11.[15] Permittees have also been working under temporary permits issued by NMED since their initial permit application was submitted back in December of 2011. *See* Administrative Record No. 11 and *compare with* Administrative Record Nos. 12- 13, 49, 54- 55, 57- 58, 63- 64, 66- 67, 70- 71, 78, 80, 85, 89- 90, 92- 95, 105, 107-110, 112, 113-116, 122-127. Permittees would most likely be allowed to continue operating under temporary permits while DP-1793 is stayed.

Following the issuance of DP-1793 on July 27, 2015, Permittees submitted two work plans. Permittees, however, fail to mention that their first work plan was denied by NMED because it did not meet permit requirements.[16] *Id.* An additional, and foreseen, delay for the WQCC to determine whether there has been a violation of the Water Quality Act in denying CCW a hearing on DP-1793 and the subsequent approval of DP-1793 will not harm the Applicants or NMED, given the amount of time they have had to resolve this issue without doing so.

D. There will be no harm to the public interest if a stay is granted.

CCW is in agreement that groundwater remediation projects are highly beneficial to the public interest, but discharge permits issued in violation of the Water Quality Act and its implementing regulations are not highly beneficial to the public interest – they are extremely harmful to the public interest. To stay DP-1793 does not mean that remediation, in its current state, would slow or cease completely. To stay DP-1793 means that remediation would finally occur in compliance with the Water Quality Act and its implementing regulations. *See* NMED Response to Motion to Stay P. 7.

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[15] See Administrative Record No. 1, No. 11, No. 102, No. 128, and No. 143.

[16] Denial of Permittees' Work Plan by NMED is attached as Exhibit 1.

The public does have a significant interest in "the expeditious implementation of DP-1793," as the Permittees point out, but the public also has a significant interest in ensuring that DP-1793 does not violate the Water Quality Act and its implementing regulations. Permittees' Response to Motion to Stay P. 12. CCW maintains that the WQCC should not sacrifice the legality of a discharge permit for the sake of expeditious implementation, for to do so would harm the public interest in DP-1793.

IV. CONCLUSION

For the reasons set forth above, the Commission should hear this motion in oral argument and enter a stay in this matter.

Submitted:

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BY: _____

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CERTIFICATE OF SERVICE

I, Jaimie Park, certify that the below listed persons were served digitally via email on this 18th day of September, 2015, U.S. Postal Service First Class Mail, postage pre-paid, and that the Administrator for the Water Quality Control Commission was provided with the original of this Reply and the requisite number of copies on this day:

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

August 18, 2015

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RE: Discharge Permit DP-1793, Rejection of Workplan for Treatment and Land Application of Groundwater - Los Alamos National Laboratory

Dear Ms. Dorries and Ms. Gelles:

On July 27, 2015 the New Mexico Environment Department (NMED) issued Discharge Permit DP-1793 to Los Alamos National Laboratory for the land application of treated groundwater derived from aquifer testing, well development, tracer studies and other activities associated with groundwater remediation activities at the laboratory. On August 13, 2015 the NMED Ground Water Quality Bureau (GWQB) received a workplan as required by Condition 3 of DP-1793, for activities regulated under this Discharge Permit.

The workplan proposes treatment and land application of groundwater derived from wells and piezometers, include aquifer testing, purging and sampling of groundwater, aquifer tracer studies and well back flushing of proposed injection wells, with the discharges to be conducted over a five year period (term of the Discharge Permit).

EXHIBIT
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The workplan, as submitted, fails to meet the requirements of Condition 3, which states:

> *Prior to initiating discharge from an individual project, pumping test, aquifer test or tracer study, the permittee shall submit a workplan to NMED for approval...*

The August 12, 2015 workplan provides only general information on the proposed discharges, including generalized locations of discharge, estimated annual volume of discharge from fourteen (14) one-time well and piezometer actions for the period of 2015 and 2016 and discharges from twenty-two (22) ongoing well and piezometer activities over the term of the permit (5 years).

Discharge Permit DP-1793 clearly requires that each **individual** activity (aquifer testing, tracer study, well purging and sampling, etc.) must be described in a workplan that provides specific information related to that discharge including:

- a detailed description of the proposed activity, including a statement of purpose;
- a description of water conservation and reuse options considered;
- a topographic map showing the proposed land application sites and the location of all monitoring wells, Site Monitoring Areas (SMA), Solid Waste Management Units (SWMU), National Pollution Discharge Elimination System (NPDES) outfalls, groundwater discharge permits, Areas of Concern (AOC) identified in the 2005 NMED Order on Consent, drinking water wells, surface impoundments and surface drainage features in the vicinity;
- existing data showing the depth to and general groundwater quality at the proposed discharge location including concentrations of contaminants exceeding regulatory standards;
- estimated groundwater flow direction;
- a detailed description of the on-site treatment system to remove contaminants of concern from the effluent;
- a schematic of treatment system and treatment unit specifications;
- a detailed descriptions of the storage/containment systems associated with the treatment;
- Safety Data Sheets for tracer constituents;
- a maximum estimated daily discharge volume;
- total estimated volume of the proposed discharge;
- a proposed sampling plan to demonstrate treatment efficiency and compliance with regulatory standards; proposed method(s) of land application, application rates and area of application; and
- a project schedule including the date the discharge is to commence and anticipated duration.

The work plan submitted is hereby rejected. Los Alamos National Laboratory must submit a revised workplan fulfilling the requirements of Condition #3 of DP-1793 and post on the electronic public reading room (EPRR, Condition #12) within 7 days. The Department will

accept public comments for a period of 30 days following posting to the EPRR prior to approving the workplan.

If you have any questions, please contact Steven Huddleson at (505) 827-2936. Thank you for your cooperation.

Sincerely,

Michelle Hunter, Chief
Ground Water Quality Bureau

MH:SMH

CC: James Hogan, NMED/SWQB (E-file)
John E. Kieling, NMED/HWB (E-file)
Stephen Yanicak, NMED/DOE/OB (E-file)
Gene Turner, NA-LA (E-file)
Bob Beers, EM-LA (E-file)
Joni Arends, CCNS (E-file)