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9 Attorneys for Plaintiffs  
TRI-VALLEY CARES, NUCLEAR  
10 WATCH OF NEW MEXICO, MARYLIA KELLEY,  
JANIS KATE TURNER, TARA DORABJI,  
11 HENRY C. FINNEY and CATHERINE SULLIVAN

12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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15 TRI-VALLEY CARES, NUCLEAR ) Civ. No. C 03 3926  
WATCH OF NEW MEXICO, MARYLIA )  
16 KELLEY, JANIS KATE TURNER, ) STIPULATION SETTING BRIEFING  
TARA DORABJI, HENRY C. FINNEY ) AND HEARING SCHEDULE AND  
17 and CATHERINE SULLIVAN, ) STAYING OPERATION OF  
18 ) PROJECTS UNDER REVIEW  
19 )  
Plaintiffs, ) and  
20 )  
v. ) [~~PROPOSED~~] ORDER THEREON  
21 )  
22 UNITED STATES DEPARTMENT OF )  
ENERGY, NATIONAL NUCLEAR )  
23 SECURITY ADMINISTRATION, )  
LAWRENCE LIVERMORE NATIONAL )  
24 LABORATORY, and LOS ALAMOS )  
NATIONAL LABORATORY, )  
25 )  
26 Defendants. )  
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28 STIP SETTING BRFG. AND HRG. SCHD.  
AND STAYING OPERATION OF PROJECTS  
UNDER REVIEW/[PROPOSED] ORDER  
CASE NO. C 03 3936

1 THROUGH THEIR UNDERSIGNED COUNSEL, the parties hereby agree and stipulate  
2 as follows:

- 3 1. Defendants served plaintiffs with the Administrative Records for the two  
4 challenged decisions on November 5 and 6, 2003. Defendants lodged the  
5 Administrative Records with the Court on November 7, 2003.
- 6 2. The parties will try to informally resolve any issues relating to the content of the  
7 Administrative Records. If informal efforts fail, the Plaintiffs shall have until  
8 December 17, 2003 to complete review of the Administrative Records and to file  
9 any motion to supplement the Administrative Records, to be heard on shortened  
10 time by January 9, 2004. The parties specifically reserve for the summary  
11 judgment phase of this proceeding any issues regarding whether extra-record  
12 evidence is permissible under the law of this Circuit.
- 13 3. Plaintiffs shall file and serve their opening summary judgment motion by February  
14 5, 2004.
- 15 4. Defendants shall file and serve their consolidated opposition to plaintiffs' summary  
16 judgment motion and their cross-motion for summary judgment by March 8, 2004.
- 17 5. Plaintiffs shall file and serve their consolidated reply in support of their summary  
18 judgment motion, and opposition to defendants' cross-motion by March 29, 2004.
- 19 6. The defendants shall file and serve their reply in support of their cross-motion for  
20 summary judgment by April 13, 2004.
- 21 7. The merits hearing in this matter shall be held, at the convenience of the Court, no  
22 later than April 23, 2004.
- 23 8. It is the parties' desire to facilitate expeditious resolution of this action through  
24 motions for summary judgment, and to avoid forcing the parties and this Court to  
25 expend unnecessary resources addressing a request for preliminary injunctive  
26 relief. The Defendants therefore agree to give plaintiffs 30 days' written notice  
27 prior to commencement of operations at the challenged BSL-3 facilities at  
28 Lawrence Livermore National Laboratory or Los Alamos National Laboratory and

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agree that operations at the challenged BSL-3 facilities will not begin prior to May 15, 2004. Plaintiffs agree they will not seek preliminary injunctive relief related to the operations of the two facilities prior to April 15, 2004. The parties acknowledge that this agreement is not an admission that preliminary injunction of **operations is necessary or legally appropriate.**

9. The undersigned counsel for the parties further agree to consult no later than April 15, 2004, to determine whether a further delay in the commencement of operations is appropriate pending this Court’s ruling on the cross-motions for summary **judgment.**

10. Operations as used herein is defined as the introduction of, or experiments with, infectious microorganisms for which BSL-3 level protections and handling procedures are recommended by the CDC’s “Biosafety in Microbiological and Biomedical Laboratories” (“BMBL”) guidelines. Before BSL-3 operations can start at either of the proposed BSL-3 facilities, the process of Authorization Basis and Readiness Review must be completed. Readiness Review involves demonstrating that all procedures and training needed for safe and secure operations are in place, and will involve performing laboratory protocols using surrogate organisms that do not include select agents that fall under the requirements of 42 CFR 73. Authorization Basis and Readiness Review is anticipated to run through May 15, 2004. Neither of the proposed BSL-3 facilities will begin operations with agents for which BSL-3 containment is recommended by the BMBL guidelines or any select agents prior to May 15, 2004.

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