

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

NUCLEAR WATCH NEW MEXICO,
Plaintiff,

v.

UNITED STATES DEPARTMENT
OF ENERGY,

and

LOS ALAMOS NATIONAL SECURITY, LLC,
Defendants

and

NEW MEXICO ENVIRONMENT
DEPARTMENT,

Intervenor

No. 1:16-cv-00433-JCH-SCY

**NUCLEAR WATCH NEW MEXICO'S
RESPONSE TO LOS ALAMOS NATIONAL SECURITY, LLC ("LANS") NOTICE OF
SUPPLEMENTAL AUTHORITY**

On June 26, 2017, defendant LANS filed a Notice of Supplemental Authority (Doc. #68) citing *Sierra Club v. Chesapeake Operating, LLC*, 2017 WL 1287546, 2017 U.S. Dist. LEXIS 90913 (W.D. Okla. Apr. 4, 2017). Pursuant to D.N.M.LR-Civ. 7.8(c), Plaintiff Nuclear Watch New Mexico responds as follows:

1. The cited authority is neither pertinent nor significant. It is not pertinent because the cited case is factually distinct from the matter before this Court. As noted in Nuclear Watch New Mexico's *Response to LANS's Motion to Dismiss* (Doc. #57) ("*Response*") at 11, 13-14, neither the primary jurisdiction nor *Burford Abstention* doctrines apply because, in contradistinction to *Sierra Club*, there has been neither diligent prosecution nor penalties for the continuing RCRA violations at issue in the Second Amended Complaint. *Sierra Club* is not

significant because it is merely cumulative to case law LANS previously argued. Moreover, as stated in the *Response* at 14-17, contrary to *Sierra Club*, none of the criteria for invoking primary jurisdiction exist in this case.

2. As noted in the *Response* at 17-21, and, again, contrary to *Sierra Club*, LANS cannot make the requisite showing for *Burford Abstention* that this litigation involves the kind of difficult questions of state law that bear upon policy problems of substantial public importance which would transcend the results in the case or that the case would disrupt a state effort to establish a coherent policy on a matter of substantial public interest.

Respectfully submitted:

NUCLEAR WATCH NEW MEXICO

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CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2017, a true and correct copy of the foregoing was served via the Court's electronic filing system upon the parties to this proceeding.



Jonathan M. Block