

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

NUCLEAR WATCH NEW MEXICO,

*Plaintiff,*

v.

U.S. DEPARTMENT OF ENERGY,

*Defendant,*

and

NEW MEXICO ENVIRONMENT DEPT.,

*Intervenor.*

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

**JOINT MOTION TO ADMINISTRATIVELY CLOSE THE CASE  
PENDING PERFORMANCE OF A SETTLEMENT AGREEMENT**

Plaintiff Nuclear Watch New Mexico (“Nuclear Watch”) and Defendant the United States Department of Energy (“DOE”), with the agreement of Intervenor the New Mexico Environment Department (“NMED”), hereby jointly move the Court to enter an order administratively closing this case, holding all case-related deadlines and requirements in abeyance, and requiring DOE to submit status reports at six-month intervals, pending DOE’s fulfillment of the terms in the attached settlement agreement that has been executed by Nuclear Watch and DOE as of February 24, 2022. In support of that motion, the parties state as follows:

1. Previously, the Court dismissed Nuclear Watch's claims for declaratory and injunctive relief, but declined to dismiss Nuclear Watch's claims for civil penalties. *Nuclear Watch New Mexico v. U.S. Dep't of Energy*, Case No. 16-cv-00433-JCH-SCY, 2018 WL 3405256, \*12–15 (D.N.M. July 12, 2018). In so doing, the Court acknowledged that any civil penalty imposed would be paid to the U.S. Treasury rather than Nuclear Watch. *Id.* at \*2. Subsequently, the Court denied the parties' respective cross-motions for summary judgment in a decision that preserved Nuclear Watch's claim for civil penalties and again recognized that such penalties must be paid to the U.S. Treasury. *Nuclear Watch New Mexico v. U.S. Dep't of Energy*, Case No. 16-cv-00433, 2019 WL 5964744 \*2, 11 (D.N.M. Nov. 19, 2019).
2. After the Court's decision on the cross-motions for summary judgment, Nuclear Watch, DOE, and NMED diligently pursued settlement negotiations to resolve this matter. Those negotiations ultimately were successful, enabling Nuclear Watch and DOE to reach the settlement embodied in the attached Settlement Agreement. *See* Ex. 1.
3. Under the Settlement Agreement, DOE will perform a series of environmental projects with prescribed steps and parameters, milestones and time frames. *See id.* ¶¶ 1-4. Because of the nature of the work to be performed by

DOE, completion of the agreed projects will occur over several years, with the latest project estimated to be completed around the fourth quarter of 2027.<sup>1</sup>

4. To facilitate this work, the Settlement Agreement also provides that: (1) within 10 days the parties will move the Court to administratively close this case and hold it in abeyance while DOE fulfills its obligations under the Settlement Agreement (*id.* ¶ 7); (2) Nuclear Watch will not pursue this litigation or assert any other claims regarding alleged violations of the 2005 Compliance Order on Consent or alleged invalidity of the 2016 Compliance Order on Consent (*id.* ¶ 8); and (3) the parties will follow a specified and robust dispute resolution process in an effort to resolve any disputes regarding compliance with the Settlement Agreement (*id.* ¶ 9). The Settlement Agreement also resolves Nuclear Watch’s claim for costs of litigation. (*id.* ¶ 5).

5. The Settlement Agreement becomes effective once the case is administratively closed and held in abeyance (*id.* ¶ 16), and it shall terminate upon completion by DOE of its obligations under Paragraphs 1 through 5 or if the Court

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<sup>1</sup> DOE notes that civil penalties or a monetary settlement would have adversely impacted DOE’s mission of cleaning up legacy contamination at the Los Alamos National Laboratory (“LANL”). Congress appropriates funds to specific DOE programs and limits DOE’s reprogramming authority, and funds to satisfy civil penalties or a monetary settlement in this case would come from funds that Congress appropriated specifically for environmental cleanup at LANL. *See* Consolidated Appropriations Act, 2021, Pub. L. 116-260, div. D, tit. III, § 301, 134 Stat. 1182, 1373–74.

orders the termination of the abeyance and resumption of the litigation due to an unresolved dispute between the parties regarding compliance with the Settlement Agreement (*id.* at ¶ 17).

6. To keep the Court apprised of DOE's progress under the Settlement Agreement, DOE agrees to file status reports with the Court at six-month intervals.

7. Upon DOE's completion of the actions required by the Settlement Agreement, Nuclear Watch will file a motion to dismiss or a joint stipulation of dismissal of this case with prejudice to refile. *Id.* ¶ 17(c)).

WHEREFORE, to allow the Settlement Agreement to become effective and to avoid unnecessary litigation while DOE's obligations under the Settlement Agreement are being fulfilled, with the agreement of NMED, Nuclear Watch and DOE jointly and respectfully request that the Court enter an order: (1) administratively closing this case; (2) holding all case-related deadlines and obligations in abeyance; and (3) requiring DOE to submit status reports to the Court at six-month intervals.

Respectfully submitted,

Dated: March 1, 2022

/s/ John Stroud (by permission)

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Dated: March 1, 2022

/s/ Heather E. Gange  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of March 1, 2022, I caused a copy of the foregoing document to be served by the Court's CM/ECF system on counsel for all parties in this matter.

/s/ Heather E. Gange

Heather E. Gange