

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

THE LOS ALAMOS STUDY GROUP,

Plaintiff

v.

11-CV-946 JEC/WDS

UNITED STATES DEPARTMENT OF  
ENERGY, et al.,

Defendants.

**ORDER DENYING PLAINTIFF’S MOTION AND REQUEST FOR  
A CONFERENCE OF THE PARTIES UNDER RULE 26(F) AND FOR  
THE ISSUANCE OF A SCHEDULING ORDER UNDER RULE 16**

THIS MATTER comes before the Court on *Plaintiff’s Motion and Request for a Conference of the Parties Under Rule 26(f) and for the Issuance of a Scheduling Order Under Rule 16*, filed December 23, 2011 (Doc. 14)(“Motion”). Having considered the Motion, the response and reply briefs, and reviewed the governing authority, the Court finds the Motion not well taken and it will be DENIED.

Because the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 et seq., does not provide for a private cause of action, the judicial review provisions of the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706, govern judicial review of Plaintiff’s claims in this case. *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 377 n.23 (1989); *Utah Shared Access Alliance v. Carpenter*, 463 F.3d 1125, 1134 (10<sup>th</sup> Cir. 2006); see Complaint ¶ 1 (“This action arises under the National Environmental Policy Act of 1969, as amended (“NEPA”), 42 U.S.C.A. §§ 4321 et seq., NEPA regulations issued by the Council on Environmental Quality (“the CEQ Regulations”), 40 C.F.R. §§ 1500-08, and NEPA regulations

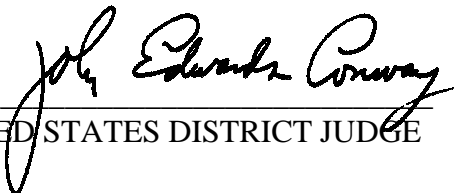
issued by the Department of Energy (“DOE”), 10 C.F.R. § 1021. This action also arises under the Administrative Procedure Act, 5 U.S.C.A. §§ 701 et seq.”).

In *Olenhouse v. Commodity Credit Corp.*, the Tenth Circuit Court of Appeals set forth the procedures for judicial review of challenges to agency actions and inactions, establishing that such actions are processed as appeals and are decidedly not governed by trial procedures or rules. 42 F.3d 1560 (10<sup>th</sup> Cir. 1994). Insofar as Plaintiff presently seeks a judicial determination that the administrative record is inadequate or otherwise in need of supplementation, not only has Plaintiff attempted to invoke improper pre-trial procedures, but no administrative record has yet been lodged in this case and such a request is premature.

For these reasons, Plaintiff’s Motion for a pretrial scheduling conference will be **DENIED**. The parties will have **three weeks from the date the certified administrative record is lodged to file any conforming motions pertaining to the sufficiency of that record and the Court will then set a schedule for briefing on the merits.** See *Olenhouse*, 42 F.3d 1560; *Franklin Sav. Ass’n v. Dir., Office of Thrift Supervision*, 934 F.2d 1127 (10<sup>th</sup> Cir. 1991).

**IT IS SO ORDERED.**

Dated January 30, 2012.

  
SENIOR UNITED STATES DISTRICT JUDGE