

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

JOHN P. TUSTIN, Trial Attorney
Natural Resources Section
P.O. Box 663
Washington, D.C. 20044-0663
Phone: (202) 305-3022/Fax: (202) 305-0506
john.tustin@usdoj.gov

ANDREW A. SMITH, Trial Attorney
Natural Resources Section
c/o U.S. Attorney's Office
P.O. Box 607
Albuquerque, NM 87103
Phone: (505) 224-1468/Fax: (505) 346-7205
andrew.smith6@usdoj.gov

Attorneys for Federal Defendants

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

THE LOS ALAMOS STUDY GROUP,)	Case No. 1:10-CV-0760-JH-ACT
)	
Plaintiff,)	FEDERAL DEFENDANTS' MOTION
)	FOR LEAVE TO FILE A THREE-PAGE
v.)	SURREPLY TO PLAINTIFF'S REPLY ON
)	MOTION TO COMPEL [DKT. NO. 48]
UNITED STATES DEPARTMENT OF)	
ENERGY, et al.)	
)	
Federal Defendants.)	
)	
)	
)	

On April 4, 2011, Plaintiff Los Alamos Study Group filed a reply in support of its motion to compel Federal Defendants to participate in a Rule 26(f) conference pursuant to the Federal Rules of Civil Procedure. See Dkt. No. 48. In its reply, Plaintiff raised a new and unexpected argument

that the Tenth Circuit's strongly-worded admonition in Olenhouse v. Commodity Credit Corporation, 42 F.3d 1560 (10th Cir. 1994), that challenges to federal agency action must be treated as appeals, and *not* pursuant to the Federal Rules of Civil Procedure, does not apply to claims brought pursuant to the National Environmental Policy Act ("NEPA"). Pl. Reply at 2. Plaintiff's argument that Olenhouse does not apply to NEPA cases is plainly at odds with a well-established body of Tenth Circuit case law *expressly* applying Olenhouse to NEPA cases, and reiterating Olenhouse's admonishment that such cases *must* be processed as appeals based on judicial review of the Administrative Record. Pursuant to D.N.M.L.R.-Civ. 7.4(b), Federal Defendants respectfully request leave to file a three-page surreply to address Plaintiff's anomalous arguments that Olenhouse does not apply to Plaintiff's NEPA claims, that Federal Rules of Civil Procedure 16 and 26 govern these proceedings, and that judicial review need not be based on an Administrative Record. In accordance with D.N.M.L.R.-Civ. 7.1(a), Federal Defendants have conferred with Plaintiff, who opposes this motion.

Respectfully submitted on this 7th day of April, 2011.

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Assistant Attorney General
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/s/ John P. Tustin
JOHN P. TUSTIN, Trial Attorney
Natural Resources Section
P.O. Box 663
Washington, D.C. 20044-0663
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Albuquerque, NM 87103
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andrew.smith6@usdoj.gov

Attorneys for Federal Defendants

CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2011, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing, which transmitted a Notice of Electronic Filing to the following CM/ECF registrants:

THOMAS M. HNASKO
DULCINEA Z. HANUSCHAK
P.O. Box 2068
Santa Fe, NM 87504
Phone: (505) 982-4554/Fax: (505) 982-8623
thnasko@hinklelawfirm.com
dhanuschak@hinklelawfirm.com

DIANE ALBERT
2108 Charlevoix St NW
Albuquerque, NM 87104
Phone: (505) 842-1800
diane@dianealbertlaw.com

LINDSAY A. LOVEJOY, JR.
Law Office of Lindsay A. Lovejoy, Jr.
3600 Cerrillos Road #1001A
Santa Fe, NM 87507
Phone: (505) 983-1800/Fax: (505) 983-4508
lindsay@lindsaylovejoy.com

Attorneys for Plaintiff

/s/ John P. Tustin
JOHN P. TUSTIN
Attorney for Federal Defendants