

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

May 23, 2022

Tenth Circuit Court of Appeals
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
10th_Circuit_Clerk@ca10.uscourts.gov

Arnold Bradley Fagg
Ryan Kennedy Lighty
Morgan Lewis & Bockius
1111 Pennsylvania Avenue, NW
Washington, DC 20004-2541
brad.fagg@morganlewis.com
ryan.lighty@morganlewis.com

Andrew Averbach
Marian Zobler
Justin Heminger
U.S. Nuclear Regulatory Commission
Office of the General Counsel
One White Flint North
11555 Rockville Pike
Rockville, MD 20852
Andrew.averbach@nrc.gov
marian.zobler@nrc.gov
justin.heminger@usdoj.gov

Re: Balderas, et al v. United States Nuclear Regulatory Commission, et al.
United States Court of Appeals Docket No. 21-9593

Dear Clerk:

The State of New Mexico, by and through counsel, pursuant to FRAP Rule 28(j) hereby provides notice that on March 10, 2022, the New Mexico District Court dismissed case No. CIV 21-0284 JB/JFR. New Mexico's First Amended Complaint had sought a court order declaring the Nuclear Regulatory Commission had acted outside of its authority in the review of materials license applications filed by Interim Storage Partners and Holtec International. See "March 10, 2022 Order," attached hereto as Exhibit 1. The district court's order was issued the same day

New Mexico's Opening Brief was filed in the instant case, as was noted in the Statement of Related Cases at page vi of that brief. It is New Mexico's position that the Order supports the proposition that this Court has jurisdiction over New Mexico's ultra vires arguments and New Mexico's unfunded mandate arguments. See Order at 4-8; Opening Brief at 21-22, 26-29, 40-42.

In addition, New Mexico's Petition pursuant to 10 C.F.R. § 2.206 before the U.S. Nuclear Regulatory Commission was denied on March 25, 2022. The petition sought revocation of the materials license issued to Interim Storage Partners for a consolidated interim storage facility. See NRC Letter of March 25, 2022, attached hereto as Exhibit 2. The letter finalizes the preliminary rejection of New Mexico's petition noted in footnote 3 on page 3 of the Opening Brief. It is New Mexico's position that this denial shows there is no administrative relief available to New Mexico via 10 C.F.R. § 2.206.

Respectfully submitted this 23rd day of May, 2022

Very truly yours,

/s/Zachary Ogaz
Assistant Attorney General
NM Office of the Attorney General