

MAR 2 1995

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

ROBERT M. MARCH, Clerk
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

DWIGHT DURAN, et al.,

Plaintiffs,

vs.

CIVIL No. 77-0721-JB

GARY JOHNSON, et al.,

Defendants.

STIPULATION AS TO PENITENTIARY OF NEW MEXICO

I. GENERAL PROVISIONS

A. For the purpose of this Stipulation, the parties agree that, as used herein and as used in Section III.D.ii of the June 10, 1991 Settlement Agreement, the terms "facility" and "facilities" mean the Penitentiary of New Mexico's Main, North and South Units, separately and individually. As is contemplated by Section III.D.ii of the June 10, 1991 Settlement Agreement, the special master will conduct periodic audits at the facilities. These audits will focus, separately or collectively depending on the topic, on all substantive areas of the order, other than system-wide issues, that have not been vacated from the Decree. Collectively, these subjects of monitoring are referred to as "Areas."

B. If following an audit the special master determines that defendants have achieved substantial compliance in an Area at a facility, he will report to the parties and the Court. An



Area determined to be in substantial compliance at a facility will be designated as "awaiting self-monitoring."

C. Areas awaiting self-monitoring will be expected to remain in substantial compliance. The special master will conduct no active monitoring of any Area awaiting self-monitoring. Defendants will conduct informal audits of each Area awaiting self-monitoring, and will informally report the results of those audits to the special master and the plaintiffs' counsel every 90 days. These periodic reports will be based on a reporting format jointly developed in advance by defendants and the special master. Moreover plaintiffs will continue to have the right to inspect and monitor compliance in any facility as described in the twenty-ninth special master's report. In addition to defendants' informal reports, if other significant evidence comes to the attention of the special master indicating that an Area awaiting self-monitoring may no longer be in substantial compliance, the special master will conduct whatever monitoring he deems appropriate and report the findings of that monitoring to the parties. If the special master determines, based on an informal report by defendants or on his own monitoring, that an Area awaiting self-monitoring is no longer in substantial compliance, he will informally bring that determination, along with the evidence supporting his findings, to the attention of the parties. If the matter is not resolved informally by the parties, he will file a report that contains his findings, the evidence supporting his findings, and

a recommendation that the Area be returned to active monitoring status.

D. When all Areas at a facility are awaiting self-monitoring, the special master will issue a report noting that development and requesting from each party the suggested scope for a final audit of that facility. The special master will determine the scope of the final audit, taking into account the length of time each Area has been in awaiting self-monitoring status; allegations of non-compliance; and the findings of defendants' informal audits. Following the final audit, the special master will recommend a period of self-monitoring for that facility as required by Section III.D.ii of the June 10, 1991 Settlement Agreement, which in no event will be longer than the time period established by that Section. In establishing the period for self-monitoring, the special master will take into account the scope and results of the final audit, the length of time Areas at that facility have been in awaiting self-monitoring status, as well as other factors bearing on the likelihood of continued substantial compliance.

II. PNM-MAIN

A. Monitoring

The PNM-Main facility was built in 1956. Previous reports of the special master have documented numerous violations of the Court's Order on Living Conditions. Defendants now propose to replace PNM-Main and, therefore, believe that only interim

repairs to PNM-Main are appropriate. Plaintiffs maintain that unless and until a permanent replacement facility exists, the institution must be repaired to meet all standards set forth in the Court's Order on Living Conditions. In the interest of resolving this issue without the necessity of litigation, the parties have agreed to §II of this Stipulation.

The special master will continue to monitor Areas at PNM-Main on the auditing schedules established with the parties. In addition, unless otherwise provided, the living conditions modifications and activities described below will be completed no later than October 1, 1995. In the absence of a finding by the special master that the failure to meet one or more of these obligations affects fewer than all inmates in the facility, in which case the special master will recommend the number of inmates who can continue to be assigned safely to PNM-Main, no Duran class member may be housed in PNM-Main after November 1, 1995 unless all of the following obligations are met.

1. In order to prevent the leakage of raw sewage and the accumulation of sewage odors, sewer and other plumbing lines will be improved and maintained with the addition of two jetter/blasters and the design of and installation of cleanouts in accordance with Exhibit 1 attached hereto. Defendants will maintain the sewage system, including the main line outside of the building, through regularly scheduled preventive maintenance and rooting as needed. Such preventive maintenance shall include:

- a. use of a written preventive maintenance manual, a maintenance schedule, and an equipment maintenance checklist
- b. keeping on hand an adequate inventory of parts
- c. recording of preventive maintenance, including conditions at time of maintenance, on a permanent log.

2. Within ten days following the execution of this stipulation, defendants will submit for Dr. Lambert King's review and approval the defendants' protocol for the screening and identification of prisoners for tuberculosis. That protocol requires prompt and appropriate testing and evaluation, as well as the prompt transfer of any prisoner suspected of having tuberculosis to a medically appropriate hospital facility for final diagnosis and treatment. Inmates found to have active infectious tuberculosis will not be returned to any facility within the New Mexico Department of Corrections until they are no longer infectious or unless they can be placed in a setting that will prevent the spread of infection to other inmates. Any revisions in defendants' protocol will be implemented no later than ten days after those revisions are finalized by Dr. King and defendants.

3. No later than June 1, 1995, in order to ensure that extreme temperatures do not interfere with educational activities in the classrooms, defendants will:

- a. improve ventilation and provide for sufficient intake of fresh air in the class rooms by enclosing the 4 x 1 vent

openings and replacing the vents with air diffusers to provide a better controlled and balanced air supply

b. take air flow measurements to determine if the installation of additional air diffusers is needed

c. install cooling units or other cooling devices adequate to accomplish the stated objective of this paragraph.

4. All lock improvements and repairs necessary to meet state building and fire codes will be completed.

5. (a) A manual fire alarm system will be installed throughout the main building. In general, pull stations will be located at each correctional officer's station and adjacent to each exit from each building except for the secondary rear exits from the cell blocks (for example, pull stations will be located adjacent to the connection of the cellblocks to the central corridor at the first floor and basement level). Pull stations will also be located adjacent to the rear exits in non-housing units.

5. (b) Smoke detectors shall be provided in the following areas:

(i) at the ceilings in the common areas of each cellblock (for example, this will include the center port of cellblocks 1, 2 and 6 and outside the cells in cellblocks 3, 4 and 5)

(ii) the corridors in the basement and on the first floor

6. Smoke barriers will be provided across the main corridor on the first floor to allow for horizontal evacuation of the occupants. These barriers shall be provided at the following locations:

- (a) between cellblocks 3 & 6 and cellblocks 4 & 5
- (b) between cellblocks 1 & 2 and the dining area/administrative areas

The location of the barriers are more particularly described on Exhibit 2 attached hereto.

7. The HVAC controls in the mechanical rooms will shut down the HVAC Units automatically, sequentially within a two minute period, upon activation of any device connected to the fire alarm system, including smoke detectors, heat detectors and pull stations. This paragraph shall not apply to the administration area, the chapel, the first floor area of the kitchen and the gymnasium.

8. A smoke-tight enclosure of stairways connecting the main corridors in the basement and the first floor, as well as the stairways in the hospital and psychiatric units, will be provided.

9. All of the following enclosures, including all openings in the enclosures, will be one hour fire rated: door at the rear stairwell of the basement hospital storage area; enclosure and door at the existing fenced storage area of the convenience snack bar; two walls and 2 doors to enclose the storage area in the basement that serves the laundry and is used

for mattress, clothing and supply storage; sealing of windows in the basement kitchen storage area and a door in this area. In addition, heat detectors will be installed in each storage area and the laundry and maintenance shops in the basement and they will be connected to the fire alarm system.

10. Defendants agree to conduct training and drilling of correctional officers in fire safety. Such training shall be conducted by staff who are specially trained for that purpose. Drilling shall be conducted in each housing unit, including the infirmary, at least three times a year, on each shift (for example, each shift will receive a drill every four months and each unit will receive 9 drills per year). Not all drills require the evacuation of all inmates. Drill scenarios will be varied.

11. Defendants will contract with a competent outside provider for the regular maintenance, inspection, and repair of the fire alarm and smoke detection systems, which contract will provide for timely service as needed.

12. Defendants will remove the stored combustible material from the basement corridor and maintain that area as combustible-free.

13. Defendants will provide a secondary means of egress from the inmate dining room. The means of egress shall be clearly posted, marked and accessible when the inmates' dining room is occupied.

14. Defendants will demonstrate, by drill, on or before March 1, 1995 that, during lockdowns, all locks necessary to release inmates from a cellblock can be accomplished by one correctional officer within five minutes. This may not be possible in Cellblock 6 and, if not possible, then, on or before June 30, 1995, a smoke control system shall be provided, for that cellblock, following the criteria in Section A-15-3.1.3 and Figure A-15-3.1.3(a) of the NFPA Life Safety Code (1991 ed.).

15. Defendants' progress in achieving the tasks required by paragraph II.A.4 through 14 above will be reviewed by the Court's expert on fire safety during the second quarter of 1995. No later than October 1, 1995, defendants will notify the special master that all of these tasks have been completed, and the special master thereupon will arrange for a prompt audit and report by the court's expert on fire safety. Upon completion of the tasks required by paragraph II.A.4 through 14 above, defendants will notify plaintiffs' counsel and the special master, will begin informal auditing of the maintenance of these improvements, and will informally report the results of those audits to the special master and the plaintiffs' counsel every 90 days. In addition, following completion of tasks II.A.1 through 14 above or as long as Duran class members are housed at PNM-Main, the court's experts on living conditions will periodically review living conditions at PNM-Main. To the extent possible, the special master will schedule these reviews in conjunction with audits by these experts at other facilities.

B. Replacement of PNM-Main

Defendants agree to take all steps necessary to obtain a replacement facility for PNM-Main. In accomplishing this goal, defendants agree that their efforts will include, but not be limited to, the following:

1. Defendants will seek appropriate funding for a replacement facility by providing all necessary feasibility studies and other data to appropriate legislative committees. Defendants will meet all reasonable requests from such legislative committees in providing data and expertise necessary to expedite the funding process prior to the next legislative session.

2. Defendants will take all other reasonably necessary steps to see that this funding request is considered and acted upon favorably during the 1995 legislative session, including, but not limited to, making this particular capital outlay request the first priority among all other capital outlay requests submitted during the session and seeking all available emergency funding provisions in this capital outlay legislation.

C. Further Agreements

No later than May 1, 1995, defendants will certify to plaintiffs' counsel and the special master that the Legislature has enacted and the Governor has signed legislation approving and funding a replacement facility for PNM-Main. No later than

May 1, 1997, defendants will certify to plaintiffs' counsel and the special master that the Legislature has enacted and the Governor has signed legislation to adequately fund the transition to and operation of the replacement facility. Finally, no later than October 31, 1997, defendants will certify to plaintiffs' counsel and the special master that PNM-Main has been replaced or that no Duran class members are housed at that facility.

If any of the three certifications required by the immediately preceding paragraph fail to occur in a timely fashion, the parties will meet no later than thirty days after the date the certification was due to discuss what further repairs, renovations and improvements must be made to PNM-Main to permit its use on a long-term basis as a facility housing Duran class members. If the parties do not come to an agreement on those further repairs, renovations and improvements within ninety days after consultations commence, the special master will audit living conditions at PNM-Main, using whatever expert consultation is required, and file a report recommending further repairs, renovations and improvements, if any, that will permit its use on a long-term basis to house Duran class members. The parties maintain, and do not waive in this Stipulation, their right to object to that special master's report, whether to a particular factual finding or to any recommendation he makes in connection with whether PNM-Main can continue to be occupied by Duran class members and under what specific conditions.


Moreover, following completion of the process established by this paragraph, plaintiffs are free to seek appropriate relief from the court.

Except as provided in the immediately preceding sentence, plaintiffs agree to forebear from seeking remedial relief based on any previous findings of the Court's experts relating to living conditions at PNM-Main so long as defendants comply with the terms of this Stipulation; provided, however, plaintiffs specifically reserve the right to seek further remedial orders from the Court in the event that additional violations of the Court's Order on Living Conditions are discovered during the term of this Stipulation. With respect to PNM-Main only, and only until the replacement facility is constructed or PNM-Main no longer houses Duran class members, defendants agree to forebear from moving to vacate the Decree; from seeking self-monitoring status; and from moving to modify the Court's order on living conditions.


Plaintiffs shall dismiss, with prejudice, their pending Motion for Order to Show Cause and For Further Remedial Orders, which was filed on December 21, 1994.

APPROVED: *MAR 1, 1995*

FOR THE PLAINTIFFS:


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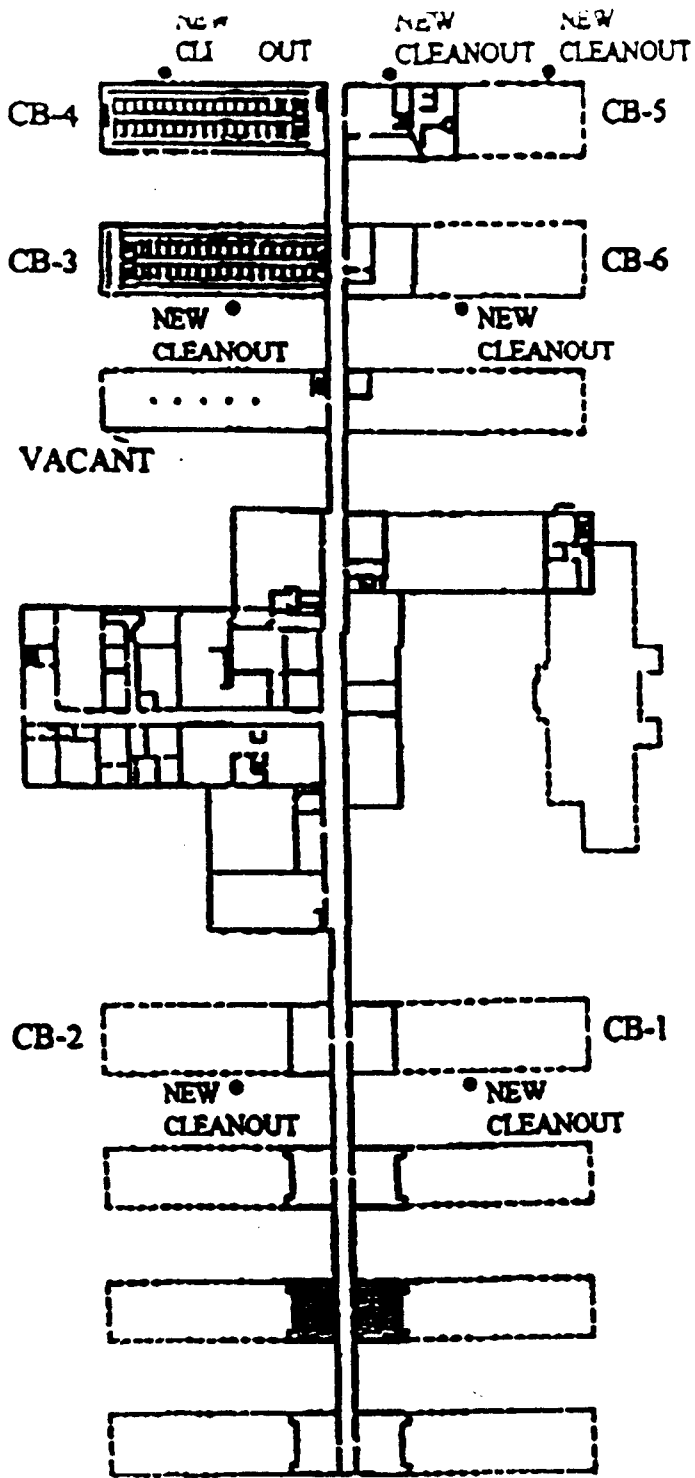
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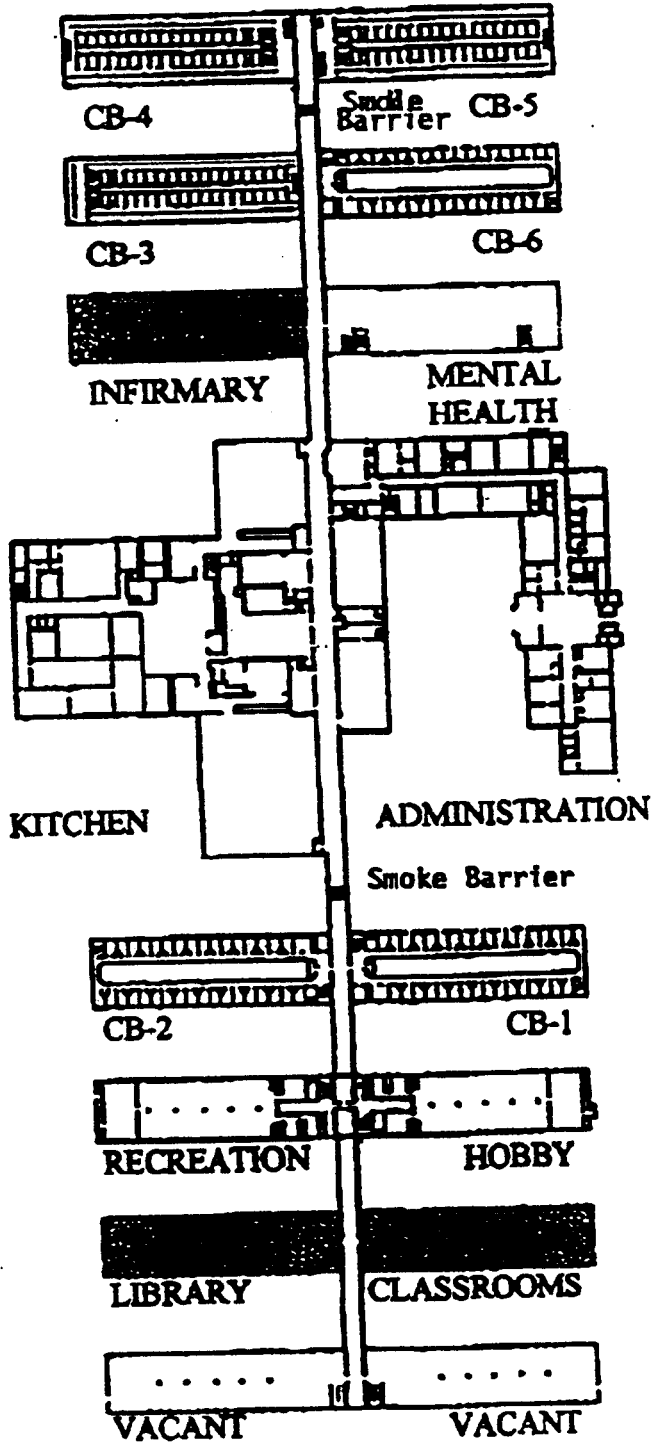
PNM - MAIN MECHANICAL IMPROVEMENTS

**BASEMENT
NO SCALE**



EXHIBIT
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PNM - MAIN MECHANICAL IMPROVEMENTS



FIRST FLOOR
NO SCALE



EXHIBIT
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