



Mark Reynolds

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **SOUTHWEST RESEARCH AND**
3 **INFORMATION CENTER,**

4 **Plaintiff-Appellant,**

5 **v.**

No. A-1-CA-38924

6 **NEW MEXICO ENVIRONMENT**
7 **DEPARTMENT,**

8 **Defendant-Appellee,**

9 **and**

10 **NUCLEAR WASTE PARTNERSHIP**
11 **LLC and UNITED STATES OF**
12 **AMERICA o/b/o UNITED STATES**
13 **DEPARTMENT OF ENERGY,**

14 **Intervenors.**
15 _____/

16 **ORDER DISMISSING APPEAL**

17 This matter comes before the Court on the following motions: Appellant's
18 motion for a stay of temporary authorization, filed May 4, 2020; Appellee's motion
19 to dismiss, filed May 19, 2020; Appellant's renewed motion for leave to file reply
20 in support of motion for stay, filed May 27, 2020; Intervenor the United States of
21 America's motion to dismiss, filed May 29, 2020; and any responses thereto. We
22 have considered the pleadings and the record, and we note the following:

1 1. On April 27, 2020, Appellant filed a notice of appeal with this Court,
2 seeking review of an alleged “final administrative action” of Appellee, pursuant to
3 the letter decision filed by Appellee on April 24, 2020 (the Decision).

4 2. The Decision grants permittees their request for a temporary
5 authorization, expressly stating both that the grant is for a 180-day temporary
6 authorization expiring October 24, 2020, and that the “authorization is temporary
7 and does not constitute a final agency action on the pending [action], nor does it
8 prejudice or presuppose the outcome of the final action.”

9 3. It is incumbent upon the appellate court to address jurisdiction
10 questions when they arise. *See Dixon v. N.M. Taxation & Revenue Dep’t*, 2004-
11 NMCA-044, ¶ 29, 135 N.M. 431, 89 P.3d 680 (“[J]urisdiction is basic to any
12 appeal.” (internal quotation marks and citation omitted)); *see also Smith v. City of*
13 *Santa Fe*, 2007-NMSC-055, ¶ 10, 142 N.M. 786, 171 P.3d 300 (“[I]t is incumbent
14 upon the appellate court to raise jurisdiction questions *sua sponte* when the Court
15 notices them.”). When an appellate court does not have jurisdiction, it must dismiss.
16 *See Thornton v. Gamble*, 1984-NMCA-093, ¶ 15, 101 N.M. 764, 688 P.2d 1268.

17 4. An appellate court does not have jurisdiction when a final judgment has
18 not been entered. *See, e.g., State v. Griego*, 2004-NMCA-107, ¶ 22, 136 N.M. 272,

1 96 P.3d 1192 (dismissing for lack of jurisdiction when no final judgment had been
2 entered); *State v. Garcia*, 1983-NMCA-017, ¶¶ 29-30, 99 N.M. 466, 659 P.2d 918
3 (same). Indeed, NMSA 1978, Section 74-4-14(A) (1992) states a party may appeal
4 a *final* administrative action. *See also State ex rel. Dep't of Human Servs. v. Manfre*,
5 1984-NMCA-135, ¶ 11, 102 N.M. 241, 693 P.2d 1273 (“In the absence of a statute
6 or other provision of law specifically authorizing an appeal to this court, we have no
7 jurisdiction.”).

8 5. In the present case, the administrative agency made clear that its
9 Decision did *not* constitute a final agency action and, indeed, the relief granted is
10 temporary in nature. Thus, the Decision is not final, the issue is not ripe for appellate
11 review, and dismissal of this matter is appropriate. *See Griego*, 2004-NMCA-107,
12 ¶ 22; *Garcia*, 1983-NMCA-017, ¶¶ 29-30; *see also Manfre*, 1984-NMCA-135, ¶ 11.

13 6. As we do not have jurisdiction over this case, we will not rule on the
14 pending motion for stay or motion for leave to file reply in support of motion for
15 stay.

1 **THE COURT THEREFORE ORDERS** that the motions to dismiss are
2 hereby **GRANTED**, this appeal is **HEREBY DISMISSED** as premature, and the
3 case is **CLOSED**.

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J. MILES HANISEE, Chief Judge

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JULIE J. VARGAS, Judge