

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

FOREST GUARDIANS, *et al.*,)
)
Plaintiffs,)
v.)
)
FEDERAL EMERGENCY)
MANAGEMENT AGENCY,)
)
Defendant.)
_____)

CIV. No. 01-0079-MCA/RLP PAGE 00

FILED
U.S. DISTRICT COURT
DISTRICT OF NEW MEXICO

02 FEB 25 PM 12:00

Robert J. ...
CLERK OF DISTRICT COURT

SETTLEMENT AGREEMENT AND STIPULATION OF DISMISSAL

WHEREAS, Plaintiffs Forest Guardians, Southwest Environmental Center, and Sierra Club (“Plaintiffs”) commenced this lawsuit on January 22, 2001, to challenge the Federal Emergency Management Agency’s (“FEMA’s” or “Federal Defendant’s”) compliance with the Endangered Species Act (“ESA”) and the National Environmental Policy Act (“NEPA”) with regard to the agency’s National Flood Insurance Program (“NFIP”) in certain areas of New Mexico;

WHEREAS, Plaintiffs and Federal Defendant, through their authorized representatives and without trial or final adjudication of the issues of fact or law with respect to Plaintiffs’ claims on the merits, have reached a settlement thereof and hereby consent to the dismissal of Plaintiffs’ causes of action as discussed herein;

NOW, THEREFORE, PLAINTIFFS AND FEDERAL DEFENDANT HEREBY AGREE AS FOLLOWS:

1. The Parties agree that this settlement is negotiated in good faith and that it constitutes a settlement of claims that were vigorously contested, denied and disputed by the Parties.
2. The Parties understand that this Settlement Agreement and Stipulation of Dismissal will resolve all outstanding issues in this case.

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3. Prior to April 1, 2002, FEMA will prepare and submit a biological assessment ("BA") to the U.S. Fish and Wildlife Service on the effects, if any, of NFIP on listed species and designated critical habitat through the New Mexico portions of the Rio Grande, San Juan River, and other rivers. FEMA will seek to complete consultation pursuant to Section 7 of the ESA as expeditiously as possible.

4. FEMA will initiate 10 Community Assistance Visits ("CAVs") and 20 Community Assistance Contracts ("CACs") in New Mexico in fiscal year 2002. Five of these 10 CAVs will be conducted in Carlsbad, Las Cruces, Zuni Pueblo, Chama, Silver City. The other five will be conducted in communities that FEMA selects based on compliance issues identified through CACs and other forms of contacts with communities.

5. Following the completion of each CAV conducted pursuant to paragraph 4 above, FEMA will provide the community with notice of any program deficiencies or violations identified during the CAV. Before reaching a decision on placing a community on probation, FEMA will afford the community a reasonable period of time following the CAV to demonstrate buildings are in compliance and to correct any program deficiencies. If a community does not resolve any compliance problems within a reasonable time, FEMA will consider initiating probation proceedings. The measure for the amount of time that is "reasonable" for a community to resolve compliance problems will depend on the nature and extent of the problems.

6. If it becomes necessary to initiate probation proceedings in relation to any of the CAVs pursuant to paragraph 5 above, FEMA will notify the community that it will be placed on probation upon 120 days if the community does not demonstrate it has corrected its program deficiencies and has

remedied violations. The procedures for placing communities on probation and potentially suspending them from the program are established in NFIP Regulations at 44 C.F.R. § 59.24(b), (c).

7. Plaintiffs' First Claim for Relief ("Endangered Species Act") is hereby dismissed with prejudice.

8. Plaintiffs' Second Claim for Relief ("National Environmental Policy Act") is hereby dismissed without prejudice.

9. Upon entry of this Settlement Agreement and Stipulation of Dismissal, Federal Defendants agree that Plaintiffs will be entitled to an award of costs of litigation, including reasonable attorney's fees pursuant to section 11(g)(4) of the Endangered Species Act, 15 U.S.C. § 1540(g)(4), and/or the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Federal Defendants agree to pay \$8,878.91 to Kenna & Hickox, P.C., on behalf of Plaintiffs in this action. Plaintiffs agree that such award encompasses the entire amount of attorneys' fees and costs to which they are entitled from any party in the above-captioned matter, including all work and costs already performed or incurred in this action through and including the date of this Settlement Agreement and Stipulation for Dismissal and any additional work or costs performed or incurred after this Settlement Agreement and Stipulation for Dismissal, including but not limited to any work associated with the dismissal of this action. Plaintiffs agree that they are not entitled to any further monetary award in connection with this action.

10. Within 10 days of entry of this Settlement Agreement and Stipulation of Dismissal, Federal Defendants agree to submit all necessary documentation for initiation of disbursement processing by the General Accounting Office for payment of this award.

11. Within 10 days of receipt of payment of fees and costs pursuant to this Settlement Agreement and Stipulation of Dismissal, Plaintiffs will file a notice of satisfaction of judgment.

12. The Parties, by their duly authorized representatives, agree to this Settlement Agreement and Stipulation of Dismissal.

13. The provisions of this Settlement Agreement and Stipulation of Dismissal shall apply to and be binding upon each of the Parties including, but not limited to, their officers, directors, servants, employees, successors, and assigns.

14. This Settlement Agreement and Stipulation of Dismissal constitutes the entire agreement of the Parties concerning the rights and obligations discussed herein and subject to dispute in this suit. No other agreement shall govern the rights of the Parties with respect to the matters resolved by this Settlement Agreement and Stipulation of Dismissal, except in accordance with the terms herein.

15. Plaintiffs agree to attempt to confer with Federal Defendant, through one of the undersigned Department of Justice attorneys or agency counsel, and to discuss the possibility of mediation or informal settlement negotiations prior to the filing of further litigation concerning application of FEMA's NFIP in New Mexico.

16. If Plaintiffs elect to commence further litigation concerning application of FEMA's NFIP in New Mexico, the Federal Defendant reserves any objections to the sufficiency of their notice of intent to sue pursuant to the citizen suit provisions of the ESA or other law.

17. This Settlement Agreement and Stipulation of Dismissal does not constitute an admission by any Party to any fact, claim, or defense in this lawsuit.

18. The Parties recognize that notwithstanding their efforts to comply with the commitments contained herein, an "Act of God" or "force majeure," including a natural disaster, may prevent or delay such compliance. Force majeure will not continue beyond the circumstances and conditions that prevent timely performance, and will not apply if alternative means of compliance are available. The

Party claiming force majeure will have the burden of proof in proceedings to enforce or modify this Settlement Agreement and Stipulation of Dismissal.

19. Nothing in this Settlement Agreement and Stipulation of Dismissal will be construed to deprive a federal official of the authority to revise, amend, or promulgate regulations. Nothing in this Settlement Agreement and Stipulation of Dismissal will be construed to commit a federal official to expend funds not appropriated by Congress.

RESPECTFULLY SUBMITTED,

DATED February 21, 2002



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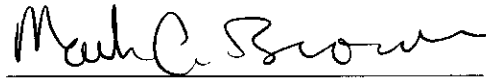
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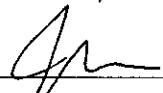
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I hereby certify that a copy of the foregoing was served on opposing counsel of record
this February 21, 2002.



Matt Kenna