



**FEMA**

March 28, 2011

Keith Johns  
San Juan County Executive Officer  
(or current officeholder)  
100 South Oliver Drive  
Aztec, New Mexico 87410

Dear Mr. Johns:

The purpose of this letter is to notify you that in 2001, the Sierra Club, Forest Guardians, and Southwest Environmental Center sued the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) for failure to consult under the Endangered Species Act (ESA) with respect to administration of the National Flood Insurance Program (NFIP) in New Mexico. FEMA settled this litigation in 2002. In 2009, WildEarth Guardians, the successor organization to Forest Guardians, filed a motion to enforce the earlier settlement as well as a new lawsuit alleging FEMA failed to consult.

On February 11, 2011, FEMA entered into an agreement with WildEarth Guardians settling this lawsuit and the dispute arising from the implementation of the 2002 settlement agreement in the earlier lawsuit. The agreement requires FEMA to request the initiation of formal consultation with the U.S. Fish and Wildlife Service (Service) on the impacts of certain aspects of the NFIP on ESA-listed species in New Mexico. The agreement further provides that FEMA will send letters to communities participating in the NFIP notifying them of the agreement and relevant provisions of the ESA.

Under section 7 of the ESA, Federal agencies shall ensure that any action authorized, funded, or carried out by such agencies is not likely to jeopardize the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of its critical habitat. Certain portions of the ESA are applicable to everyone, whether a Federal agency, state agency, local jurisdiction or individual. We all have a responsibility to ensure our actions do not cause a take (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct) to ESA-listed threatened and endangered species. Under section 9 of the ESA, actions taken or decisions enacted by you and your officials are subject to this prohibition regardless of federal involvement. Additionally, any person can be subject to criminal or civil penalties for causing a take. During the consultation, FEMA must take extra steps to ensure that it does not foreclose the Service's ability to formulate reasonable and prudent alternative measures to avoid jeopardy. Therefore, FEMA will process Conditional Letters of Map Change (CLOM-Cs) caused by manmade alterations only when the requestor has demonstrated compliance

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with the ESA. In addition, FEMA will also ensure that floodplain modeling incorporates on-the-ground data as is readily available to increase the accuracy of maps depicting the floodplain.

As indicated above, FEMA will be requesting initiation of consultation with the Service on the impacts of the NFIP on affected ESA-listed species and their habitat in New Mexico. FEMA recognizes that your community may already be implementing measures which protect/mitigate floodplain development actions affecting ESA-listed species and their habitat. For those that may need assistance in designing and implementing such measures, FEMA will work diligently with you, the state resource agencies, and the Service to provide as much assistance as possible.

Please note that the results of our consultation may affect the way the NFIP is implemented in your community. We will keep you informed as we move forward with consultation with the Service. If you have any questions, please contact Dale Hoff, Floodplain Management and Insurance Branch, at (940) 898-5225.

Sincerely,



Frank Pagano, Director  
Mitigation Division

Cc: Bill Borthwick, CFM, NFIP State Coordinator, New Mexico Department of  
Homeland Security and Emergency Management  
Floodplain Administrator, San Juan County