

DRAFT SETTLEMENT COMMUNICATION PROTECTED BY FRE 408

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

SACRAMENTO MOUNTAINS)	
WATERSHED RESTORATION)	
CORPORATION,)	
)	
Plaintiff,)	
)	
v°)	Civ. No. 03-01110 JC/LCS
)	Civ. No. 04-00780 LH/RHS
)	(Consolidated)
UNITED STATES FOREST)	
SERVICE, et al.)	
)	
Defendants,)	
)	
CITY OF ALAMOGORDO,)	
)	
Intervenor.)	
_____)	

**ORDER DISMISSING CERTAIN CLAIMS, GRANTING SUMMARY
JUDGMENT ON CERTAIN CLAIMS, AND STIPULATED SETTLEMENT ON
CERTAIN CLAIMS**

THE COURT being advised that: Plaintiff Sacramento Mountains Watershed Restoration Corporation commenced Civil Action 03-1110 JC/LCS against the U.S. Forest Service (USFS), the U.S. Army Corps of Engineers (USCOE), the U.S. Environmental Protection Agency (USEPA) and officials in those agencies, on September 29, 2003, alleging violations of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 to 4370e, and the Clean Water Act, 33 U.S.C. § 1251 et seq; and

On July 9, 2004 Plaintiff commenced Civil Action 04-780 LH/RHS against the USFS and the USCOE alleging violations of the Clean Water Act and the

Federal Land Policy Management Act, 43 U.S.C. § 1701 et seq. (FLPMA); and

On November 19, 2003, an order was entered permitting the City of Alamogordo to intervene in Civil Action 03-1110 JC/LCS and on January 4, 2005, an order was entered permitting the City to intervene in Civil Action Civil Action 04-~~780~~RHS; and

The United States and Intervenor have filed Motions to Dismiss and/or for Summary Judgment on all counts in Civil Action 03-1110 JC/LCS and the United States filed a Motion to Dismiss Claim A, "Violations of the Clean Water Act" in Civil Action 04-780 LH/RHS.

IT IS HEREBY ORDERED THAT:

1. All counts of Plaintiffs claims in Civil Action 03-1110 JC/LCS and Claim A, the Violations of the Clean Water Act in Civil Action 04-780, are dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2). The United States and the City of Alamogordo's Motions for Summary Judgment in Civil Action 03-1110 JC/LCS are GRANTED and Summary judgment is entered in Civil Action 03-110 JC/LCS for the United States and the City of Alamogordo that:

- A. The Clean Water Act citizens suit claims brought in Civil Action 03-1110 JC/LCS are not subject to judicial review and the court lacks jurisdiction for the Clean Water Act claims because the waters involved are not waters of the United States.
- B. The Forest Service action in approving the City of Alamogordo's construction projects in the Upper Maruche Springs and Springer Springs followed all applicable federal regulations, were not

arbitrary and capricious or otherwise not in accordance with law, are supported by substantial evidence and the City construction projects did not require a National Environment Policy Act, Environmental Impact Study or Environmental Assessment.

C. The Plaintiff's claims in Civil Action 03-1110 JC/LCS under the National Environmental Policy Act are moot and therefore, this Court lacks jurisdiction.

D. The Plaintiff's claims in Civil Action 03-1110 JC/LCS under the National Environmental Policy Act are barred by applicable statute of limitations and therefore, this Court lacks jurisdiction.

2. The Intervenor, City of Alamogordo may assert claims for its reasonable attorneys fees and costs in defending the Clean Water Act citizens suit claims in Civil Action 03-1110 JC/LCS and Civil Action 04-780 pursuant to the LR-CV 54.5 within thirty (30) days of this Order.

The court being advised that: all parties agree that settlement of the Federal Land Management Policy Act Claim B. (FLMPA) is in the public interest and it is appropriate to resolve the FLPMA claim; and

It is stipulated by and among the parties as follows:

3. The undersigned representatives of the Parties certify that they are ~~fully~~ authorized by the party or parties whom they represent to enter into the terms and conditions of this stipulation and to legally bind the parties to it.

4. Within thirty days after the Order adopting this Stipulation is entered, the USFS will issue a Scoping Letter with respect to its consideration of

Alamogordo's application to renew its special use permits for water diversion and conveyance activities on USFS lands in the Fresno, La Luz, and Maruchi River area.

5. The USFS will provide the Scoping Letter and any subsequent environmental analyses or determinations, as well as notice of any action taken on the special use permits to Plaintiff and Plaintiff's counsel at the following addresses:

Sacramento Mountains Watershed Restoration Corporation
P.O. Box 340
La Luz, NM 88337
Alletta Belin
Belin & Sugarman
618 Paseo de Peralta
Santa Fe, NM 87501

6. The USFS will complete appropriate environmental analysis of Alamogordo's application within 18 months of the date it issues the Scoping Letter referenced in Paragraph 3 above. This deadline may be modified by the Court by written stipulation between the parties or upon written motion demonstrating good cause. Plaintiff agrees to consent to reasonable modification of the deadline should such prove necessary. The City of Alamogordo's use of National Forest System lands shall continue under the terms of its prior permit until the Forest Service reaches a decision on the City's application to renew its permit.

7. Upon approval of this Agreement by the Court, the Federal Land Policy and Management Act count of Plaintiff's Complaint in Civil Action 04-780 LH/RHS shall be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(1).

8. Notwithstanding the dismissal of claims pursuant to Paragraph 7 above, the USFS, the Plaintiff and City of Alamogordo hereby stipulate and

respectfully request that this Court retain jurisdiction over Claim B of Civil Action 04-780 LH/RHS to enforce the terms of this Agreement. In the event of a disagreement between parties concerning any aspect of this Agreement, the dissatisfied party shall provide the other parties with written notice of the dispute and a request for negotiations. The parties shall meet and confer in order to attempt to resolve the dispute within 30 days of the written notice, or at such time thereafter as is mutually agreed. If the parties are unable to resolve the dispute within 60 days of such meeting, then any party may file a motion to enforce the terms of the Agreement or for other specific relief. The parties agree that contempt of court is not an available remedy under this Agreement.

9. The USFS will pay Plaintiff a total of \$2,000 in full and complete satisfaction of any and all claims for attorney's fees and costs of litigation by Plaintiff for pursuing Civil Action 04-780 LH/RHS.

10. Plaintiff agrees that receipt of this payment from the USFS shall operate as a release of any and all claims for attorney's fees and costs that Plaintiff may seek in Civil Action 04-780 LH/RHS.

The Order Dismissing Certain Claims and Granting Summary Judgment on Certain Claims is effective this date and the Stipulated Settlement on Certain Claims is adopted as an Order of this court and this matter is hereby dismissed.

DATED: _____

APPROVED AS TO FORM:

UNITED STATES DISTRICT JUDGE

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