



Enviro group plans lawsuit if Army Corps fails to alter Rio Grande plans

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An environmental group plans to file a federal lawsuit against the Army Corps of Engineers if the agency does not change operations at dams and reservoirs in the Middle Rio Grande River in New Mexico to protect endangered silvery minnows and other imperiled species.

WildEarth Guardians formally sent a 60-day **notice of intent to sue** the Army Corps for its operations along the segment of the river in central New Mexico, as well as for apparently not working with the Fish and Wildlife Service on an updated plan to address impacts to the silvery minnow as well as the Southwestern willow flycatcher.

WildEarth Guardians' notice says that the Army Corps violated the Endangered Species Act by walking away in late November from formal consultation with Fish and Wildlife over impacts to the listed species. The Army Corps' actions have interfered with the development of a new plan that the service, the Bureau of Reclamation and other water managers are working on to ensure adequate river flows in the Middle Rio Grande to sustain the silvery minnow and other species, according to the notice.

"Such delay of the ongoing consultation will likely mean the Service's inability to provide a timely, adequate and complete plan to meaningfully prevent 'jeopardy' to the silvery minnow, willow flycatcher or other listed species or their designated critical habitat for the 2014 irrigation season and beyond," the group's 11-page notice said.

WildEarth Guardians plans to file a citizens' lawsuit authorized under ESA if the Army Corps has not made operational changes, particularly at the Cochiti Dam about 50 miles north of Albuquerque, N.M., which is one of the nation's largest earthen dams.

"The Rio Grande is on life support after a decade of failed leadership and broken promises," said Jen Pelz, director of WildEarth Guardians' wild rivers program. "The corps continues to point fingers instead of stepping up and presenting creative ways to utilize their own authorities as part of the solution."

The Army Corps did not respond to requests for comment on this story in time for publication.

But officials with the Army Corps outlined their reasons for withdrawing from consultation in a formal **letter** in November to Benjamin Tuggle, Fish and Wildlife's regional director in Albuquerque.

In the two-page letter, Army Corps Lt. Col. Antoinette Gant wrote that the agency has a duty to properly operate dams and reservoirs to, among other things, ensure proper water storage and guard against flooding, and that protecting listed species is only one part of that responsibility.

"While the Corps shares in the goal of protecting listed species with the Service, we also must ensure that we can operate and maintain Civil Works projects to serve their Congressionally-authorized purposes," Gant wrote.

She also pointed to guidance documents issued last June by the Army Corps' chief counsel directing the agency "to ensure that any measures intended to minimize adverse impacts pursuant to the ESA consist only of those activities over which the Corps has discretion and authority, and only those impacts directly attributable to Corps actions."

Pelz said the group's chief concern is keeping enough water flowing downstream of the dam during the spring months to allow the silvery minnow to spawn. The water releases from the dam are designed to simulate snowmelt, which triggers the spawning season, she said.

The corps, she added, has altered operations at the Cochiti dam before, most recently in 2010. Stored water was released to establish spring flows that benefit not only the silvery minnow but also the Southwestern willow flycatcher by overbanking flows that support riparian vegetation along the river used by the flycatcher for nesting, she said.

The Army Corps has also modified operations at the Jemez Canyon Dam downriver of the Cochiti Dam "to provide a base flow in the river for the survival of the minnow," Pelz said.

But they have declined to do so recently, according to the notice of intent to sue.

"The corps' refusal to operate Cochiti Dam in a manner that does not impact water users but would significantly aid in the recovery of endangered species is irresponsible," Pelz said. "Guardians will not sit on our hands while the corps plays politics with the survival of the iconic Rio Grande and its river-dependent species."