

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

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

FOREST GUARDIANS,
SANTA FE FOREST WATCH,

JAN 14 2004

Plaintiffs,

vs.

CLERK
No. CIV 04-0011 MCA/RHS

UNITED STATES FOREST SERVICE, and
UNITED STATES FISH AND WILDLIFE SERVICE,

Defendants.

TEMPORARY RESTRAINING ORDER

This matter comes before the Court on Plaintiffs' *Motion for Temporary Restraining Order* [Doc. No. 2] filed on January 9, 2004. The Court held a hearing on Plaintiff's motion in Albuquerque, New Mexico, on January 14, 2004, at which counsel for Plaintiffs was present and counsel for Defendants appeared telephonically at his request. Having considered the parties' written submissions, the arguments of counsel, the applicable law, and being fully advised in the premises, the Court grants Plaintiffs' motion in part by issuing this *Temporary Restraining Order* enjoining all ground-disturbing work (except for removal of downed timber) in Unit 6 of the Sandoval Ridge area of the "Lakes and BMG Wildfire Timber Salvage Sale" for the reasons set forth below. The Court denies Plaintiffs' motion in part with respect to the other units of this timber sale.

1. The Court has jurisdiction over the parties and the subject matter of this action, and Defendants were afforded an opportunity to respond to Plaintiffs' motion.

2. The decision of Defendant United States Forest Services (USFS) to proceed with the Lakes and BMG Wildfire Timber Salvage Sale, in conjunction with the Biological Assessment/Biological Evaluation (BA/BE), Environmental Assessment (EA), and concurrence of Defendant United States Fish and Wildlife Service (USFWS) [Ex. 5, 8, 11, 13 to Pl.'s App.], constitutes a final agency action subject to judicial review by this Court under the "arbitrary and capricious" standard set forth in Section 706 of the Administrative Procedures Act (APA), 5 U.S.C. § 706 (2000).¹ See Friends of the Bow v. Thompson, 124 F.3d 1210, 1217 (10th Cir. 1997) (reviewing NFMA and NEPA claims); Wyo. Farm Bureau Fed. v. Babbitt, 199 F.3d 1224, 1231 (10th Cir. 2000) (reviewing ESA claim); Pac. Coast Fed'n of Fishermen's Ass'ns, Inc. v. Nat'l Marine Fisheries Serv., 265 F.3d 1028, 1033-34 (9th Cir. 2000) (similar).

3. To prevail on a claim for preliminary injunctive relief, it is Plaintiffs' burden to show (1) a substantial likelihood of prevailing on the merits of their claims under the standard articulated above, (2) a significant risk that irreparable harm will result if preliminary injunctive relief is not granted, (3) that the threatened injury to Plaintiffs' interests outweighs the harm that granting such relief may cause to the opposing party, and (4) that the public interest will not be adversely affected by granting such relief. See Greater Yellowstone Coalition v. Flowers, 321 F.3d 1250, 1255, 1258 (10th Cir. 2003). "If the

¹Defendants assert that Plaintiffs have not met the jurisdictional prerequisite of filing a 60-day notice letter with respect to their ESA claim against the United States Forest Service. This assertion does not affect the likelihood that Plaintiffs will succeed on their other claims.

plaintiff can establish that the latter three requirements tip strongly in his favor, the test is modified, and the plaintiff may meet the requirement for showing success on the merits by showing that questions going to the merits are so serious, substantial, difficult, and doubtful as to make the issue ripe for litigation and deserving of more deliberate investigation.” Davis v. Mineta, 302 F.3d 1104, 1111 (10th Cir. 2002).

4. Within the confines of the limited review available in the context of ruling on *Plaintiffs’ Motion for Temporary Restraining Order*, Plaintiffs have shown a substantial likelihood of prevailing on the merits of their claims that, with respect to Unit 6 of the Lakes and BMG Wildfire Timber Salvage Sale (which overlaps with the Fenton Lake PAC), Defendant United States Forest Service (USFS) is in violation of the consistency requirements in Section 6 of the National Forest Management Act (NFMA), 16 U.S.C. § 1604(i) (2000), and that Defendant United States Fish and Wildlife Service is in violation of its obligations under the consultation requirements in Section 7 of the Endangered Species Act (ESA) with respect to Unit 6 as well, 16 U.S.C. § 1536 (2000).²

5. The Mexican Spotted Owl was listed as a threatened species under the ESA on March 16, 1993. See Final Rule to List the Mexican Spotted Owl as a Threatened Species, 58 Fed. Reg. 14,248 (Mar. 16, 1993).

²In their reply brief filed on January 14, 2004, Plaintiffs raise additional concerns about the presence of the Jemez Mountains Salamander in Units 7 and 8 of the Lakes and BMG Wildfire Timber Salvage Sale. The Court finds that Plaintiffs have not met their burden of showing an entitlement to a restraining order with respect to Units 7 and 8 or any other units besides Unit 6.

6. The Recovery Plan for the Mexican Spotted Owl issued in December 1995 provides the following guidelines pertaining to the designation and implementation of "protected activity centers" or "PACs" around the owls' known nesting and roosting sites:

1. Establish PACs at all Mexican spotted owl sites known from 1989 through the life of the Recovery Plan, including new sites located during surveys. . . . Identify the activity center within each PAC. "Activity center" is defined as the nest site, a roost grove commonly used during the breeding season in absence of a verified nest site, or the best roosting/nesting habitat if both nesting and roosting information are lacking. Site identification should be based on the best judgment of a biologist familiar with the area. Delineate an area no less than 243 ha (600 ac) around this activity center using boundaries of known habitat polygons and/or topographic boundaries, such as ridgelines, as appropriate The boundaries should enclose the best possible owl habitat, configured into as compact a unit as possible, with the nest or activity center located near the center. This should include as much roost/nest habitat as is reasonable, supplemented by foraging habitat where appropriate. . . . All PACs should be retained for the life of this Recovery Plan, even if spotted owls are not located there in subsequent years. A potential exception to this rule is described in #8 below.

2. No harvest of trees >22.4cm (9 in) dbh is allowed in PACs. . . .

....

8. If a stand-replacing fire occurs within a PAC, timber salvage plans must be evaluated on a case-specific basis. In all cases, the PAC and a buffer extending 400m from the PAC must be surveyed for owls following the fire. A minimum of four visits, spaced at least one week apart, must be conducted before non-occupancy can be inferred. If the PAC is still occupied by owls or if owls are nearby (i.e., within 400m of the PAC boundary), the extent and severity of the fire should be assessed and reconfiguration of the PAC boundaries might be considered through section 7 consultation. If no owls are detected, then section 7 consultation should be used to evaluate the proposed salvage plans. If informal consultation cannot resolve the issue within 30 days, the appropriate RU working team should be brought into the negotiations.

Salvage logging within PACs should be the exception rather than the rule. The Recovery Team advocates the general philosophy of Beschta et al. (1995) for the use of salvage logging. In particular: (1) no management activities should be undertaken that do not protect soil integrity; (2) actions should not be done that impede natural recovery of disturbed systems; and (3) salvage activities should maintain and enhance native species and natural recovery processes. Further, any salvage should leave residual snags and logs at levels and size distributions that emulate those following pre-settlement, stand-replacing fires. Scientific information applicable to local conditions should be the basis for determining those levels.

.....

Salvage logging in PACs should be allowed only if sound ecological justification is provided and if the proposed actions meet the intent of this Recovery Plan, specifically to protect existing habitat and accelerate the development of replacement habitat. Fires within PACs are not necessarily bad. In many cases, patchy fires will result in habitat heterogeneity and may benefit the owl and its prey. In such cases, adjustments to PAC boundaries are probably unnecessary and salvage should not be done. Salvage should be considered in PACs only when the fire is extensive in size and results in the mortality of a substantial proportion of trees.

[Ex. 2 to Pl.'s App., at 84-89.]

7. In 1996, the USFS amended its land-use plans for national forests in Arizona and New Mexico to incorporate special management considerations and protections for the Mexican Spotted Owl in accordance with the Recovery Plan for this subspecies of spotted owl, and critical habitat for the owl on lands outside the national forests in Arizona and New Mexico was designated on February 1, 2001. See Final Designation of Critical Habitat for the Mexican Spotted Owl, 66 Fed. Reg. 8530, 8543 (Feb. 1, 2001).³

³The designation of critical habitat for the Mexican Spotted Owl has been the subject of recent litigation. See Ctr. for Biological Diversity v. Norton, 240 F. Supp. 2d 1090, 1091-96 (D. Ariz. 2003) (recounting the history of the litigation concerning this issue).

8. Upon their approval, the Forest Plan and its amendments provide the basis for all subsequent activities in the forest, and all permits, contracts, and other instruments for the use and occupancy of these national forest system lands must be consistent with the Forest Plan and its amendments. See 16 U.S.C. § 1604(i); 36 C.F.R. § 219.10; Forest Service Manual § 2213; Colo. Env'tl. Coalition v. Dombeck, 185 F.3d 1162, 1168 (10th Cir. 1999); Neighbors of Cuddy Mountain v. U.S. Forest Serv., 137 F.3d 1372, 1377 (9th Cir. 1998); Forest Guardians v. Veneman, Civ. No. 01-0504 MCA/KBM, slip. op. at 8, 31 (D.N.M. Dec. 31, 2002).

9. With respect to the standards contained in the 1996 Forest Plan Amendment, this consistency requirement is nondiscretionary. See Veneman, Civ. No. 01-504 MCA/KBM, supra, slip. op. at 34-36; Forest Guardians v. United States Forest Serv., 180 F. Supp. 2d 1273, 1278-80 (D.N.M. 2001).

10. These nondiscretionary standards apply to salvage timber sales in "protected activity centers" or "PACs," and require Defendant USFS to:

Survey all potential spotted owl areas including protected, restricted, and other forest and woodland types within an analysis area plus the area ½ mile beyond the perimeter of the proposed treatment area.

Establish a protected activity center at all Mexican spotted owl sites located during the surveys and all management territories established since 1989.

Allow no timber harvest except for fuelwood and fire risk abatement in established protected activity centers. For protected activity centers destroyed by fire, windstorm, or other natural disaster, salvage timber harvest or declassification may be allowed after evaluation on a case-by-case basis in consultation with the US Fish and Wildlife Service.

[Ex.3 to Pl.'s App., at 87.]

11. As indicated in the Recovery Plan [Ex. 2 to Pl.'s App., at 88], the decision to proceed with a salvage timber sale in a PAC where a stand-replacing fire has occurred constitutes an "agency action" that triggers the consultation process under Section 7 of the ESA. See 16 U.S.C. § 1536(a)(2); Natural Res. Def. Council v. Houston, 146 F.3d 1118, 1125 (9th Cir. 1998). That consultation process may be undertaken in conjunction with an environmental assessment under NEPA. See generally Veneman, Civ. No. 01-504 MCA/KBM, supra, slip. op. at 3-6 (explaining consultation process under Section 7 of the ESA and its interrelationship with NEPA analysis).

12. Unit 6 in the Sandoval Ridge area of the Lakes and BMG Wildfire Timber Salvage Sale overlaps with a protected activity center for the Mexican Spotted Owl designated as "the Fenton Lake PAC." "This PAC has produced one young in 1998; pairs were present, but no young were produced in 1999 or 2000; the PAC was not monitored in 2001, but feathers and pellets were found indicating occupancy; and adult female with two recently fledged young was present in 2002." [Ex. 5 to Pls.' App.; Ex. 1 to Defts.' Resp.]

13. In the summer of 2002, a wildfire occurred in the Sandoval Ridge area where the Fenton Lakes PAC and Units, 6, 7, and 8 of the Lakes and BMG Wildfire Timber Salvage Sale are located. [Defts.' Resp. at 2 n.2 and Ex. 1.]

14. In December 2002, following a field review by USFS personnel, the Lakes and BMG Wildfire Timber Salvage Sale was listed in Defendant USFS's Schedule of Proposed

Actions.

15. On April 10, 2003, Mexican spotted owls were observed in the Fenton Lake PAC by Jo Wargo of the USFS; she reported these observations to Danney Salas of the USFS, and the two USFS personnel agreed to wait three weeks before conducting another survey to see if the owls were nesting. [Ex. 5, 10 to Pls.' App.]

16. On April 22, 2003, before any additional surveys were completed, Defendant USFS issued its EA and BA/BE for the Lakes and BMG Wildfire Timber Salvage Sale for public comment; the BA/BE also was sent to the USFWS on that date. The BA/BE stated, on page 6, that: "At this time, it is unknown whether th[e Fenton Lakes] PAC will remain viable, although consultation with MSO specialists . . . indicates that it is probable that this PAC will not be suitable breeding habitat until mixed conifer forest cover is once again re-established." [Ex. 5, 8, 9 to Pls.' App.]

17. Defendant USFS determined in its BA/BE and EA that the proposed Lakes and BMG Wildfire Timber Salvage sale was not likely to adversely affect the Mexican Spotted Owl. [Ex. 5, 8, 9 to Pls.' App.]

18. On May 1, 2003, the USFWS issued a letter concurring in the USFS' determination that the proposed Lakes and BMG Wildfire Timber Salvage Sale was not likely to adversely affect the Mexican Spotted Owl. The letter further stated that "the Fenton Lake protected activity center (PAC) was completely destroyed in the 2002 Lake Fire. That PAC may be decommissioned pending survey results. Owl surveys have been and will be

conducted before project implementation.” [Ex. 11 to Pls.’ App.]

19. On May 13, 2003, Santiago Gonzales of the USFWS sent an e-mail to Jo Wargo of the USFS indicating that a recent survey showed the presence of a nesting pair of Mexican spotted owls in the Fenton Lake PAC. [Defts.’ Resp. at 7.]

20. On May 27, 2003, the public comment period ended for the EA associated with the Lakes and BMG Wildfire Timber Salvage Sale. [Ex. 5, 13 to Pls.’ App.]

21. On August 1, 2003, Jo Wargo of the USFS sent an e-mail to Santiago Gonzales of the USFWS and Lee Johnson of the USFS stating as follows:

Terry Johnson and I went in on Tuesday night, July 29, to check for evidence of young. We checked the nest site which we had found earlier in the summer when we moused. Terry found lots of feathers. We found many pellets – most with woodrat bones, some with beetles. There was evidence of roosting on many ledges - about 8-10 - with lots of whitewash. We called NE of the nest site with no response; then called at the nest site. We heard a response to the southwest. We walked in that direction into the next drain and called again. We saw and heard at least two young. They were flying back and forth around us, calling, and perching on a tree in front and behind us and rocks next to us. There may have been a third (we thought we heard a third once or twice), but we only had visual and auditory confirmation for two. An adult flew in once, so it’s possible he/she fed the third, so it did not call again or fly around with the other two, but we had no confirmation. So at least we know there are two. The area they are in is SW of the nest in a drain where there was less fire damage and still quite a few green trees high up on the canyon side.

[Ex. 12 to Pls.’ App.]

22. On August 6, 2003, Defendant USFS issued its Decision Notice and Finding of No Significant Impact for the Lakes and BMG Wildfire Timber Salvage Sale. The Decision Notice approved the timber sale in the units occurring in the Sandoval Ridge area

and the Fenton Lake PAC, noting that “[c]onsultation with the United States Fish and Wildlife Service has been completed and they concurred with the resource specialist’s determination of *may affect, not likely to adversely affect*.” The Decision Notice and Finding of No Significant Impact make no reference to the information about the owl’s nesting and breeding in the Fenton Lake PAC that was reported in surveys conducted after the BA/BE and EA were issued on April 22, 2003. [Ex. 5, 13 to Pls. App.]

23. From the record before the Court, it appears that Defendants’ determination to proceed with Unit 6 of the timber sale, as well as their determination that the sale of this unit is not likely to adversely affect the Mexican Spotted Owl, is based in part on the premise that the Fenton Lake PAC was destroyed by fire in 2002 and no longer provides viable habitat for the owl. [Ex. 5, 9, 11, 13 to Pl.’s App.; Defts.’ Resp. at 5-6.]

24. These determinations appear to run contrary to the undisputed data which indicates that a pair of Mexican spotted owls and their offspring continued to occupy and successfully reproduce in the Fenton Lakes PAC after the 2002 fire, and that the Fenton Lake PAC still contains an area with “less fire damage and still quite a few green trees.”⁴ The need to collect this additional data through subsequent surveys before decommissioning the PAC and implementing the timber sale was identified in the USFWS concurrence letter

⁴Defendants dispute whether the Declaration of Dr. Peter Stacey attached as Exhibit 7 to Plaintiffs’ Appendix may be considered by the Court as it is not part of the Administrative Record. [Defts.’ Resp. at 4 n.3.] The Court finds it unnecessary to reach this issue because Defendants do not dispute the key fact that they knew of the owl’s presence and behavior in the PAC prior to issuing the decision to proceed with the sale. [Def’t.’s Resp. at 5; Ex. 10, 12 to Pls.’ App.]

of May 1, 2003, and Defendants knew of the data collected in such surveys before the final decision to proceed with the sale was issued on August 6, 2003.⁵ [Ex. 7, 10, 12 to Pl.'s App.; Defs.' Resp. at 5.]

25. If correct, the recently collected data regarding Mexican Spotted Owl activity in the Fenton Lake PAC would mean that, under the terminology used in the Recovery Plan and the 1996 Forest Plan Amendment, there is an "established PAC" that overlaps with Unit 6 of the salvage timber sale and that has not been "destroyed by fire."

26. Such a timber sale in an established PAC in which owls are known to breed successfully would be inconsistent with the nondiscretionary standards contained in the 1996 Forest Plan Amendment. The data indicating such Mexican spotted owl activity within the Fenton Lake PAC also tends to undermine the rationale for Defendants' determinations under the consultation requirements in Section 7 of the ESA, because those determinations relied on the untested hypothesis that the Fenton Lake PAC was completely destroyed by the fire and no longer contained any viable breeding habitat for the Mexican Spotted Owl.

27. While the Court's review of Defendants' actions is a deferential one that does not displace the agency's choice between two fairly conflicting views so long as that choice is supported by substantial evidence, see Wyo. Farm Bureau Fed., 199 F.3d at 1231, in this instance it is substantially likely that Defendants' have acted arbitrarily or capriciously by

⁵The Court notes that, as presented in Plaintiffs' Appendix, some pages of the Decision Notice and Finding of No Significant Impact for this timber sale [Ex. 13] appear to be misplaced within the exhibit containing the Biological Assessment/Biological Evaluation [Ex. 5].

“entirely fail[ing] to consider an important aspect of the problem” and “offer[ing] an explanation for its decision that runs counter to the evidence before it or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983); see Pac. Coast Fed’n of Fishermen’s Ass’ns, Inc., 265 F.3d at 1034 (applying this standard to proposed timber sales and noting that “[a] biological opinion may also be invalid if it fails to use the best available scientific information as required by §16 U.S.C. 1536(a)(2)”); Cascadia Wildlands Project v. United States Fish and Wildlife Serv., 219 F. Supp. 2d 1142, 1147, 1150 (D. Or. 2002) (similar); Bensman v. United States Forest Serv., 984 F. Supp. 1242, 1246, 1249 (W.D. Mo. 1997) (similar). In particular, Defendants’ apparent conclusion that the viability of the Fenton Lake PAC had been destroyed by the 2002 fire fails to account for, and is counter to, the undisputed evidence that a pair of owls were successfully reproducing in that very same PAC after the fire occurred, and that the PAC still contains areas with green trees and less fire damage.

28. Defendants have represented that timber-harvesting activities are already underway in Unit 6, but are not occurring in other areas subject to this timber sale. [Defis.’ Resp. at 2 n.2.]

29. Based on the recent data indicating the presence of a breeding pair of Mexican spotted owls in a PAC that overlaps with Unit 6 of the Sandoval Ridge area of the Lakes and BMG Wildfire Timber Salvage Sale, and the fact that the timber harvesting pursuant to this

sale is ongoing in Unit 6 [Defts.' Resp. at 2 n.2], the Court finds that Plaintiffs have met their burden of showing a significant risk that irreparable harm will result if a temporary restraining order does not issue against Defendants enjoining all ground-disturbing work (except for removal of downed timber) in Unit 6 of the Sandoval Ridge area.

30. In this regard, the Court notes that while irreparable harm is not presumed simply because Plaintiffs assert a cause of action under an environmental protection statute, a factual showing of “[c]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable.” Amoco Prod. Co. v. Village of Gambell, 480 U.S. 531, 545 (1987). Consequently, when environmental injury is “sufficiently likely, the balance of harms will usually favor the issuance of an injunction to protect the environment.” Id. at 545.

31. The Supreme Court has held that the ESA “reveals a conscious decision by Congress to give endangered species priority over the ‘primary missions’ of federal agencies.” Tennessee Valley Auth. v. Hill, 437 U.S. 153, 184-185 (1978). In enacting the ESA, Congress also recognized that “the preservation of a species’ habitat is essential to the preservation of the species itself.” Ctr. for Biological Diversity, 240 F. Supp. 2d at 1098 (citing H.R. Rep. No. 94-887, at 3 (1976), and Tenn. Valley Auth., 437 U.S. at 179). For these reasons, courts have held that “[t]he ‘language, history, and structure’ of the ESA demonstrate Congress’ determination that the balance of hardships and the public interest tips heavily in favor of protected species” when considering motions for preliminary

injunctive relief in this context. Nat'l Wildlife Fed'n v. Burlington Northern R.R., 23 F.3d 1508, 1511 (9th Cir.1994) (citing Tennessee Valley Auth., 437 U.S. at 174); Southwest Ctr. for Biological Diversity v. United States Forest Serv., 307 F.3d 964, 971 (9th Cir. 2002); Strahan v. Coxe, 127 F.3d 155, 171 (1st Cir.1997).

32. The benefits of proceeding with the timber sale that have been identified by Defendants in the record are “social and economic” and consist of “help[ing] to sustain the timber industry as well as supplying firewood and other forest products to local and area residents.” [Ex. 5, 13 to Pl.’s App.] While it is appropriate for Defendants to consider these social and economic benefits to the local economy in their decision-making, foregoing these benefits in a single unit of the timber sale (without restriction on timber harvesting in other units of the sale) does not constitute the type of irreparable harm that would outweigh the irreparable environmental harm to a species protected by the ESA in this context.

33. In light of the foregoing, the Court finds that the threatened irreparable environmental harm to Plaintiffs’ interests outweighs the social or economic harm that issuance of a temporary restraining order may cause to Defendants’ other interests.

34. The Court further finds that the issuance of a temporary restraining order would not be contrary to the public interest in light of the congressional intent expressed in the ESA.

35. A temporary restraining order should issue immediately, as Defendants were provided with timely notice and appeared at the hearing on Plaintiffs’ motion, and time is

of the essence given that the timber sale in the affected area is ongoing.

36. The temporary restraining order should issue without Plaintiffs being required to post security, as Defendants have not shown that a bond in a particular amount is needed.

37. In accordance the briefing schedule set forth below and agreed upon by the parties at the hearing, the Court finds that good cause exists to extend this *Temporary Restraining Order* beyond ten days.

For the foregoing reasons, the Court concludes that Plaintiffs have met the prerequisites for the issuance of the temporary restraining order with respect to Unit 6 of the Lakes and BMG Wildfire Timber Salvage Sale.

IT IS THEREFORE ORDERED that *Plaintiffs' Motion for Temporary Restraining Order* [Doc. No. 2] is **GRANTED IN PART** with respect to Unit 6 of the Lakes and BMG Wildfire Timber Salvage Sale and **DENIED IN PART** with respect to the other units of this timber sale.

IT IS FURTHER ORDERED that Defendants, their officers, agents, servants, employees, and attorneys, and any persons in active concert or participation with Defendants who receive actual notice of this Order by personal service or otherwise, are hereby **IMMEDIATELY ENJOINED AND RESTRAINED** from all ground-disturbing work (except removal of downed timber) in Unit 6 of the "Lakes and BMG Wildfire Timber Salvage Sale."

IT IS FURTHER ORDERED that this *Temporary Restraining Order* is effective as of 6:30 p.m. on January 14, 2004, and shall expire at 6:30 p.m. on January 30, 2004, unless otherwise extended by the Court or by agreement of the parties.

IT IS FURTHER ORDERED that Plaintiffs are not required to post bond.

IT IS FURTHER ORDERED that the parties meet and confer on or before Friday, January 16, 2004, with respect to designation of the record for purposes of the pending Motion for Preliminary Injunction, and that they notify the Court, in writing, as to their efforts in this regard.

IT IS FURTHER ORDERED that Defendants file their response to the Motion for Preliminary Injunction on or before January 22, 2004; and that Plaintiffs file their reply, if any, on or before January 27, 2004.

IT IS FURTHER ORDERED that the parties appear for hearing the Motion for Preliminary Injunction at 9:00 a.m. on January 30, 2004.

SO ORDERED this 14th day of January, 2004, in Albuquerque, New Mexico.


M. CHRISTINA ARMIJO
United States District Judge

1-14-2004