

STATE OF NEW MEXICO
COUNTY OF CATRON
SEVENTH JUDICIAL DISTRICT

DARREL ALLRED, ROBERT ALLRED,
JOHN ALLRED, BRUCE ALLRED,
DWAYNE ALLRED,
Plaintiffs,

v.

D-728-CV-2011-00021

NEW MEXICO DEPARTMENT
OF TRANSPORTATION,
Defendant.

STIPULATED PERMAMENT INJUNCTION ORDER

COMES NOW, the Plaintiffs and Defendant, New Mexico Department of Transportation ("NMDOT"), represented by undersigned counsel in the above-captioned matter. Following the emergency construction and maintenance of the Whitewater Creek Channel by the NMDOT due to the Whitewater-Baldy Complex fire and in compliance with the Stipulated Order issued by this Court on June 5, 2012, the Parties hereby agree to this Court's entry of this stipulated permanent injunction order ("Order") regarding NMDOT's maintenance plan for Whitewater Creek ("creek") at U.S. 180 Whitewater Creek Bridge ("bridge") in Glenwood, Catron County, New Mexico. The terms of the permanent injunction are as follows:

1. NMDOT has constructed the Whitewater Creek channel, upstream and downstream, in compliance with the June 5, 2012 Stipulated Order. The work performed by NMDOT was approved of by the U.S. Army Corps of Engineers; is in accordance with the June 12, 2012, Pre-Construction Notification for U.S. 180 MP 51.1 Emergency Bank Stabilization and Channel Reshaping and Excavation ("Emergency PCN"); and is to the satisfaction of all parties. The

dimensions of the channel and dikes are represented through the NMDOT's As-Built Plan, attached as Exhibit B.

2. The NMDOT will submit to the U.S. Corps of Engineers a Pre-Construction Notice ("PCN") addressing its subsequent maintenance and re-vegetation plan, the scope of which is to read, as much as practicable, as consistent with Exhibit B, as attached, and shall be made pursuant to the terms and conditions set forth below, subject to approval of the U.S. Army Corps of Engineers, or as otherwise directed by regulatory agencies thereto.

3. The length of the channel from the downstream side of the bridge; the dikes downstream from the bridge; outside toe of the dike from the west side of the bridge, and the length of the channel from the upstream side of the bridge shall be maintained consistent with the Right-of-Way Map and As-Built Plan, attached hereto as Exhibits A and B.

4. In accordance with the Emergency PCN, Concrete Block Revetment ("CBR") and re-vegetation have been installed for the length of the channel which constitutes a form of "armour" to provide improved and additional protection from flooding of the Whitewater Motel and its septic system. The CBR and re-vegetation shall be maintained, along with the subsequent channel and streambed maintenance, by the NMDOT, in accordance with the PCN, and as approved by the U.S. Army Corps of Engineers, or as otherwise directed by regulatory agencies thereto.

5. The maintenance trigger will be determined by averaging no less than five points, every ten feet across, under the center of the bridge, and maintenance of the creek will be triggered when the average distance between sediment accumulations to the low chord of the bridge is 7 feet.

6. When the maintenance requirement is triggered pursuant to paragraph 5 above, sediment shall be removed in accordance with the approved PCN, to return the distance between the channel bottom and the low chord of the bridge to 9 feet. When maintenance is triggered, the channel and slopes shall be restored to the channel and dike configuration defined in paragraph 3 and slopes as defined in paragraph 7 below and consistent with Exhibit B as attached.

7. The design slope of the channel bottom for the PCN must be proposed at 1.75% upstream from the bridge and no less than 0.75% downstream from the bridge, provided that slope is ultimately controlled by what is directed or approved by regulatory agencies to the PCN.

8. An inspection regarding paragraph 5 above shall be conducted once every two years, in conjunction with current bridge inspections. Measurements obtained of the clearance at the bridge shall be provided to principal plaintiff Darrel Allred in a reasonable, timely manner after such inspections. Maintenance can be triggered due to findings from the NMDOT's regularly scheduled inspections, and can also be triggered upon notice to the NMDOT's District 1 Office of any significant event that results in the distance between sediment accumulations under the bridge averaging 7 feet to the low chord of the bridge, as set forth in paragraph 5 above.

9. Plaintiffs shall grant NMDOT a new construction maintenance easement ("CME") from the downstream edge of the highway right-of-way downstream, and the specific location and width of this CME shall be based upon the Right-of-Way Map and As-Built Plan, Exhibits A and B as attached, and shall be designed to grant NMDOT access to Whitewater Creek so that it may perform all work required of it to comply with this Order. The CME shall be executed by all Plaintiffs or their authorized agents.

10. The Plaintiffs shall grant NMDOT a new CME from the bridge upstream in the same dimensions as represented by Exhibit B as attached, to be read consistent with Exhibit A, and

shall be designed to grant NMDOT access to Whitewater Creek so that it may perform all work required of it to comply with this Order. The CME shall be executed by all Plaintiffs or their authorized agents.

11. The Parties recognize that if regulatory changes or conditions are unilaterally implemented by any controlling state or federal agency that impacts the ability of Defendant to comply with the terms of this Order, the Parties recognize Defendant will need to comply with those regulatory requirements, and will notify principal plaintiff Darrel Allred of all such changes. Defendant will not submit information or documents that do not conform to this Permanent Injunction in order to create a regulatory condition or change. In the event there is not agreement between the Parties that regulatory changes or conditions were unilaterally implemented by any controlling state or federal agency that impacts the ability of Defendant to comply with the terms of this Order, Defendant must request and obtain modification to the permanent injunction.

12. The Parties recognize that if site conditions change such that Defendant's ability to comply with the terms of this Order is impacted, Defendant will advise the principal plaintiff Darrel Allred of such changes. In the event there is not agreement between the Parties that site conditions change such that Defendant's ability to comply with the terms of this Order is impacted, Defendant must request and obtain modification to the permanent injunction.

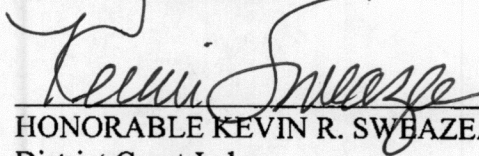
13. The PCN, as referenced in paragraph 2 above, will be submitted upon expiration of the current PCN and Emergency Status. A copy of the PCN, and documents that may be attached to it, shall be provided to principal plaintiff Darrel Allred at the time of the PCN submittal.

14. Continuing maintenance required under the PCN shall be performed in conformance with the maintenance plan, as set forth herein, as consistent with the approved PCN, and shall be

diligently pursued until completion recognizing that, *force majeure*, regulatory restrictions, and conditions provided for upon approval of the Defendant's PCN, or otherwise, will ultimately dictate the Defendant's maintenance time frames.

The terms set forth herein resolve all pending issues related to the injunctive relief requested by the Plaintiffs. Title and compensation issues between Parties shall be disposed of and resolved through a separate simultaneously executed settlement agreement and release. The terms and conditions set forth in this Order, as stipulated by the Parties, does not constitute precedent for the Defendant.

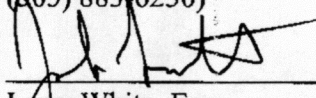
IT IS SO ORDERED.


HONORABLE KEVIN R. SWAZEA,
District Court Judge

Submitted and approved by:

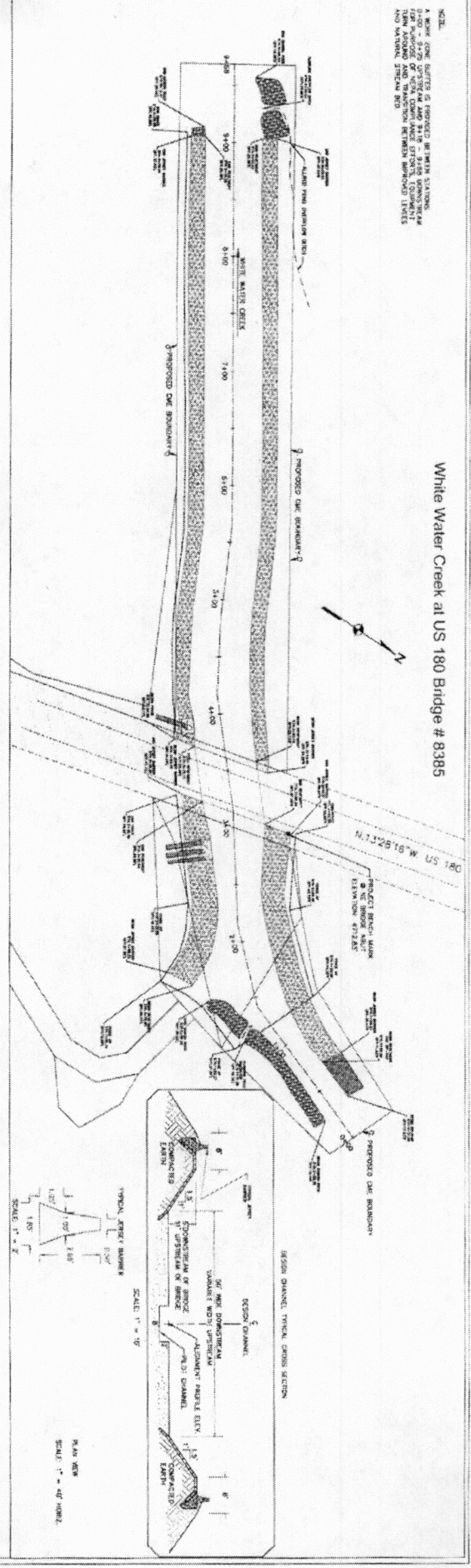
Electronically Approved 1/11/2013

Pete V. Domenici, Jr., Esq.,
Attorney for Plaintiffs,
Domenici Law Firm, PC
320 Gold Avenue SW
Suite 1000
Albuquerque, NM 87102
(505) 883-6250

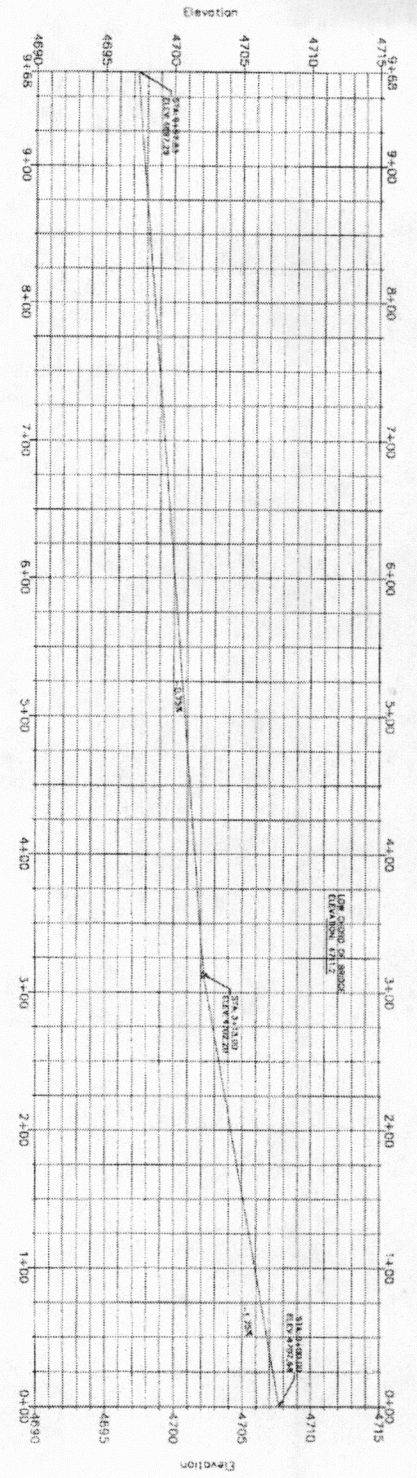

Larry White, Esq.
Joshua Smith, Esq.,
Attorneys for Defendant,
Miller Stratvert, PA
3800 E. Lohman Ave, Suite B
Las Cruces, NM 88011-8287
(575) 523-2481

NOTE:
 1. NEW CONCRETE BRIDGE IS PROPOSED BETWEEN STATIONS
 2+00 - 2+25 OF STREAM AND 2+18 - 2+20 DOWNSTREAM
 FROM ABOVE AND TRANSITION BETWEEN PROPOSED LEVELS
 AND EXISTING STREAM BED.

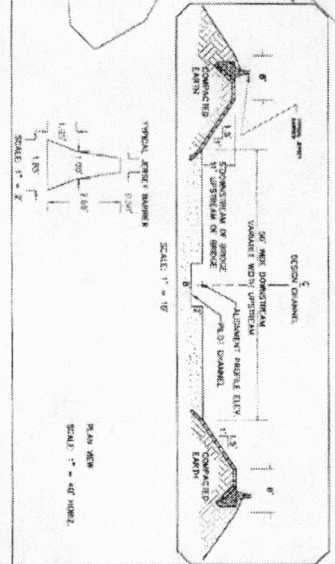
White Water Creek at US 180 Bridge # 8385



AS-BUILT CHANNEL CL ALIGNMENT PROFILE



PROFILE VIEW
 SCALE: 1" = 40' VERT.
 1" = 4' HORIZ.



NO.	REVISIONS (SEE SHEET 422)	DATE	BY
1	REVISED, JERRY SHAFER, ISS. R. MATEO	2-13-12	JAS
2			
3			

DRAWN BY: JERRY SHAFER #422

NEW MEXICO DEPARTMENT OF TRANSPORTATION
 AS-BUILT PLAN
 NEW MEXICO PROJECT NO.
 HWY 250/180
 US 180 BRIDGE # 8385
 BRIDGE # 8385 CARBON COUNTY
 SCALE: 1" = 40'
 SHEET 1 OF 1

NOVEMBER 30, 2012

