

STATE OF NEW MEXICO  
COUNTY OF CATRON  
SEVENTH JUDICIAL DISTRICT COURT

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

Plaintiffs,

v.

NEW MEXICO DEPARTMENT OF TRANSPORTATION,  
Defendant.

**PRELIMINARY INJUNCTION ORDER**

THIS MATTER came before the Court on Plaintiffs' hearing for Preliminary Injunction on October 20, 2011. Having reviewed the Complaint, Answer, and having heard argument and evidence, and being advised in the premises, it is ORDERED that the Plaintiffs' request for Preliminary Injunction is granted, and an Order for Preliminary Injunction (Order) is entered as follows:

1. Within forty-five (45) days from entry of this Court's Order:
  - a. Defendant shall update its Pre-construction notice (PCN) application and provide the updated biological assessment and environmental analysis that may be required by the Army Corps of Engineers (ACE) and or U.S. Fish and Wild Life (FWL), and submit to the ACE a construction notice with a specific plan for immediate maintenance of the Whitewater Creek bed and the Bridge, which shall also include a subsequent maintenance plan that is sufficient to put the creek bed and Bridge in compliance with the 1981 design standards of the Bridge. The PCN shall provide for maintenance of the streambed 452 feet

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below, 158 feet above, and provide for maintenance of 9 feet clearance under the Bridge in accordance with the 1981 design standards and as-built conditions of the Bridge;

- b. The channel bottom elevation and cross-sectional area with respect to restoration of channel capacity shall be maintained in accordance with Defendant New Mexico Department of Transportation (NMDOT) drainage and design criteria;
  - c. Defendants shall provide Plaintiffs notice and an opportunity to be present when any biological assessment occurs. Defendants shall provide Plaintiffs' counsel any documents submitted to ACE and FWL at time of submittal. Copies of such documents shall also include, but is not limited to, the updated PCN;
  - d. Defendant shall promptly respond to any requests for additional information or other responses from the ACE and or FWL.
2. Within thirty (30) days of ACE's approval of the updated PCN, Defendant shall undertake to begin the maintenance operation and promptly prosecute the maintenance to completion. Pending further order of this Court, regular streambed maintenance shall be undertaken to maintain Whitewater Creek in accordance with this Order as described in the updated and amended PCN, the requirements of paragraph 1 above, and the NMDOT drainage and design criteria.
  3. Plaintiffs shall permit necessary access to Defendants for the limited purpose of allowing Defendant to perform maintenance of Whitewater Creek Bridge in

accordance with the scope of the updated and amended PCN, and in accordance with the requirements of paragraphs 1(a) (b) (c) above, and this Order.

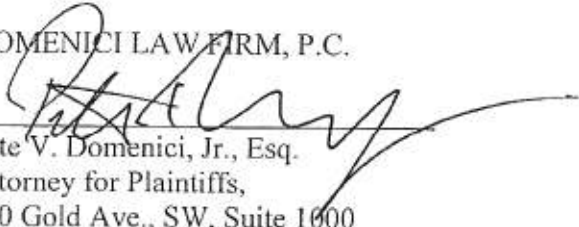
4. Plaintiffs shall be notified and allowed to accompany Defendant whenever Defendant or its contractors requires access on Plaintiffs' property.
5. Plaintiffs are not required to post a bond.
6. This Order does not address or resolve issues of title, compensation, or other damage claims pending in this matter.
7. This Order shall remain in effect until a decision on the trial on the merits or until further Order of the court.

**IT IS SO ORDERED.**

Kevin R. Sweazea  
Honorable Kevin R. Sweazea,  
District Judge

Approved:

DOMENICI LAW FIRM, P.C.

  
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MILLER STRATVERT, P.A.

Telephonic Approval on Nov. 7, 2011  
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