

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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

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Robert M. March
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RIO GRANDE SILVERY MINNOW, et al.,

Plaintiffs,

vs.

JOHN W. KEYS III, et al.,

Federal Defendants,

MIDDLE RIO GRANDE CONSERVANCY
DISTRICT, et al.,

Defendant-Intervenors.

No. CIV 99-1320-JP/RLP-ACE

**PLAINTIFFS' MOTION FOR
EMERGENCY INJUNCTIVE RELIEF
EXPEDITED HEARING REQUESTED**

Plaintiffs hereby move this Court to issue emergency injunctive relief, to prevent the likely extinction in the wild of the Rio Grande silvery minnow during the remainder of this terrible drought year. Expedited treatment and hearing are requested, so that the Court can timely issue either a Temporary Restraining Order ("TRO") and/or preliminary injunction, as described below.

This motion is made pursuant to the ESA citizen suit provision, 16 U.S.C. § 1540(g)(1)(A), which authorizes the Court to enjoin Defendants from violating Sections 7 and 9 of the ESA; and pursuant to Rule 65 of the Federal Rules of Civil Procedure.

This Motion for Emergency Injunctive Relief is brought pursuant to Plaintiffs' First, Second, and Fourth Causes of Action of their Second Amended Complaint, which allege that Federal Defendants' actions are or will cause prohibited "jeopardy" and "take" of the Rio Grande silvery minnow, in violation of ESA Sections 7(a)(2) and 9, and that they violate the agencies' duty to carry out programs for the conservation of the silvery minnow under ESA Section 7(a)(1). The Court has expressly acknowledged and anticipated that Plaintiffs may need to seek injunctive relief under these claims, which have not yet been adjudicated by the Court, as discussed in the Memorandum Opinion and Order of April 19, 2002 ("April 19th Opinion") at pp. 3, 45-48.

By way of emergency injunctive relief, Plaintiffs respectfully pray that the Court order Federal Defendants to meet the flow requirements of the June 29, 2001 Biological Opinion, which this Court upheld in the April 19th Opinion, for the remainder of this calendar year, or until Federal Defendants complete a new consultation under ESA Section 7 which is upheld by the Court. As a part of such requested injunctive relief, Plaintiffs believe it will be necessary for the Court to order Federal Defendants to release water from storage in upstream federal reservoirs or projects, including (but not necessarily limited to) Heron Reservoir. The Court has already addressed the propriety of such releases to aid the silvery minnow in the April 19th Opinion.

In the alternative, and only if the Court chooses not to issue the requested injunctive relief, Plaintiffs pray the Court to issue such alternative injunctive relief as it

may deem necessary and appropriate under the circumstances and record before the Court. Plaintiffs reserve the right to submit additional information or proposals in this regard.

This Motion for Emergency Injunctive Relief is supported by the accompanying Brief In Support Of Motion For Emergency Injunctive Relief, Declaration of Alletta Belin, and Declaration of John Pittenger In Support Of Motion For Emergency Injunctive Relief, all filed herewith. The Motion is also supported by all orders, briefings, declarations, exhibits and other materials on file in this case, including (but not limited to) the April 19th Opinion; Plaintiffs' Second Amended Complaint (Doc. No. 271); the entire Administrative Record filed by Federal Defendants; the Declaration of Dean Hendrickson (Doc. No. 43) previously filed by Plaintiffs herein, and Plaintiffs' four case briefs filed May 14 (Doc. No. 229), June 20 (Doc. No. 258), July 16 (Doc. No. 279), and August 22, 2001 (Doc. No. 303).

Because Federal Defendants have advised Plaintiffs that they soon intend to manage reservoir releases and river flows in a manner that will not meet the flow requirements of the June 29th Biological Opinion, and that extensive river drying may begin in coming days, Plaintiffs believe that an emergency situation exists and that expedited treatment of this motion is necessary. Plaintiffs have endeavored to avoid bringing such a motion for injunctive relief before the Court, but so far to no avail. In light of the time that it takes for water to move down the Rio Grande system to the areas of the river where Rio Grande silvery minnow are concentrated below Cochiti Dam and Reservoir (Plaintiffs understand that it takes about 5-7 days for water to travel from Heron Reservoir down to Cochiti), Plaintiffs request that the Court hear this matter as

soon as possible on a TRO basis, before close of business on Monday, September 9, 2002; and set a preliminary injunction hearing at the next practicable opportunity.

WHEREFORE, for reasons set forth above and in the accompanying brief and declarations, Plaintiffs respectfully pray that the Court enter emergency injunctive relief under the ESA and the April 19th Opinion.

DATED: Sept. 4, 2002

Respectfully submitted,

LAND AND WATER FUND OF THE ROCKIES

A handwritten signature in black ink, appearing to read 'Alletta Belin', with a horizontal line underneath.

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CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2002, copies of the foregoing MOTION FOR EMERGENCY INJUNCTIVE RELIEF was served via electronic mail where possible, and either hand delivery, overnight mail, or U.S. mail on the following counsel of record:

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