

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

December 6, 2022

Hon. Alejandro Mayorkas
Secretary United States Dept. Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528

VIA Electronic Mail: alexa.mcmillan@hq.dhs.gov

Dear Secretary Mayorkas,

As New Mexico's Chief Law Enforcement Officer, I am, like you, primarily focused on the health and safety of New Mexican families; and so I write to you regarding the U.S. Department of Homeland Security's current rulemaking under the Hermit's Peak/Calf Canyon Fire Assistance Act. I am also very concerned with the lack of progress we have made recovering our environment and cultural heritage for our communities. You are no doubt aware of the drastic impact of the Hermit's Peak/Calf Canyon Fire on rural New Mexican families, farmers and ranchers, and acequias, many of whom continue to struggle to recover from the devastation caused by this disaster. The challenges are many, including cumbersome processes for accessing critical aid to advance their recovery. For example, many families continue to struggle to access disaster relief funding because families are simply without the resources even to meet the burdens of the regulatory process. Further, many families and the community associations they rely upon, like acequia associations, are unable to quantify the damages they suffer because they lack the resources to hire scientific experts who can properly assess their damages. These are not the only challenges New Mexicans face in their effort to recover from the disaster, but they highlight the need for flexible, localized regulation in the post-disaster recovery effort.

In light of the Act's direction to the Federal Emergency Management Agency (FEMA) to promulgate regulations to affect the purpose of the Act, I would like to call your attention to three specific matters that I believe are critical to the legislation and its impact on our communities.

First, the Act provides that FEMA may elect to appoint a manager to oversee the administration of the program under the Act. While your agency may rely on FEMA's Administrator to oversee the program, I strongly encourage FEMA to appoint a manager with both prior judicial

experience and a local connection to our communities and laws to oversee the program. As I am sure you are aware, many families in the impacted communities have encountered difficulties in navigating the post-disaster relief process, and these families have a growing frustration regarding accessing the assistance necessary to aid them in recovering. I firmly believe that if FEMA appoints a local manager who is steeped in the issues particular to these communities and is well-versed in New Mexico law, the regulations will optimally achieve the intention of the Act.

Next, I strongly encourage FEMA to promulgate a rule that would allow for claims of non-economic damages, which are currently cognizable under New Mexico law. The Act gives broad latitude to FEMA to permit claims for damages that “the Administrator determines to be appropriate.” Due to the magnitude of the fire’s devastation on these communities, it is imperative that these families have an opportunity to seek redress beyond simply economic damages. The devastation from these fires impact every facet of these communities’ existence, and they will surely have lasting and detrimental impact, which cannot be compensated simply by paying for a family’s insurance deductible, if insurance existed, or for temporary relocation expenses, for example. Given the trust relationship between the United States government and these communities, it is imperative that New Mexican families and communities be able to seek full compensation for the lasting impact of the fire on them, their communities and their unique cultural heritage.

Finally, I am requesting that FEMA remove the arbitrary cap on the recovery for tree damages. The initial regulations limit the amount a fire victim may recover for damages to trees to 25% of the pre-fire value of the property. This cap is contrary to New Mexico law and will prevent fire victims from obtaining a full recovery, particularly given the unique circumstances of this fire in which properties with many acres of trees and small homes are commonplace.

I appreciate your agency’s work on this important matter, which is critical to our citizens and these communities; and I hope that you will give serious consideration to these recommendations. Please let me know if I can provide anything further in support of these comments.

Respectfully,



Hector Balderas
Attorney General

CC (via electronic mail):

Governor Michelle Lujan Grisham

Senator Martin Heinrich

Senator Ben Ray Lujan

Representative Melanie Stansbury

Representative Teresa Leger Fernandez

Representative Yvette Harrell

Speaker Brian Egolf

Senate Pro Tem Mimi Stewart

Senate Majority Leader Peter Wirth

Representative Patty Lundstrom, Chair, Legislative Finance Committee

Senator George Muñoz, Vice-Chair, Legislative Finance Committee

Harold Garcia, Chair, San Miguel County Commission

Veronica Serna, Chair, Mora County Commission

Candyce O'Donnell, Chair, Taos County Commission

Louie Trujillo, Mayor, City of Las Vegas

Paula Garcia, New Mexico Acequia Association