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Mesquite may avoid fines for its response to flooding

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The city of Mesquite will apparently avoid fines for forging a new channel of the Virgin River, an effort city officials said they made following last week's flooding to avoid further damage to public and private property.

Federal officials from the Bureau of Land Management, the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers met with city officials Wednesday in an effort to resolve what the city could and couldn't do in response to the flooding.

Some of the same federal officials said earlier this week that Mesquite's response, which include digging a new channel for the river and taking out some vegetation, went beyond what would be allowed even for an emergency.

The city's work alarmed the Center for Biological Diversity, which said the response went beyond what would be needed for the emergency and threatened at least five endangered species native to the Virgin River. The group reiterated its charges Wednesday.

Bryan Montgomery, Mesquite city manager, said the city will consult with the federal agencies and should be able to resume flood control work next week with new permits. He said the work is needed to protect dozens of homes already damaged by the flooding, but which could be affected again when

runoff from melting snow enters the Virgin River this spring.

He said the city's work will include hiring technical experts to analyze the environmental impact of the flooding and the response and how best to balance the needs of protecting habitat and preventing future flood damage.

Robert Williams, Fish and Wildlife state supervisor, called the meeting "positive" and said it would protect both private property and species' habitat along the river.

"We have a strategy or plan to move forward, developing a short term plan to remove the imminent threat of spring runoff, but do it with a permit from the corps," Williams said.

The city and federal agencies also will work on a long-term effort for river restoration that will bring back habitat "consistent with the development of the cities along the river," he said.

"There is no reason to point blame or get into a negative situation," Williams said. "It's just a matter of moving forward ... We didn't talk about fines today. We didn't talk about mistakes or whatever.

"They are a growing city. They had a situation, the flooding situation. I think they dealt with it the best they could."

Helen Hankins, BLM field office interim manager, said the city has made some mistakes and that even without fines, it could cost the city to mitigate the work that has been done.

"What they had was a verbal authorization from the Army Corps of Engineers to address their emergency needs," she said. "They interpreted that more broadly than we did. They essentially interpreted it that not only did they have the emergency, they had another issue with the spring runoff, which could start any time from early February to April.

"They were trying to move the channel farther away from the community so they would not have to deal with the same kind of flooding issues. I think the city frankly in the throes of the emergency and the distress of the citizens feared what would happen tomorrow or next week and chose to define emergency more broadly."

She said the immediate goal of the agencies and the city is to look at what can be done to address the threat of the spring flooding. Looking forward, the entities have to find a way to protect critical habitat.

"They are not off the hook relative to that channel they put in there, but in the short term we need to make sure we do not flood the town.

"There's going to be a cost for them to put in whatever long term plan is arrived at and it may in fact be more costly to them because of their haste in putting in that channel," Hankins said. "They will have to deal with what they have done."

Daniel Patterson, an ecologist with the national environmental group the

Center for Biological Diversity, sharply criticized the agreement between the federal agencies and the city.

"It sounds like a typical lack of enforcement of environmental laws that we see from the Bush administration," Patterson said. "For them to make a decision that they've already ruled out enforcing the law before they even know the overall extent of the environmental damage, just shows it is an arbitrary political decision."

Patterson said he doesn't believe the city can produce "a scientifically valid opinion" by next week that would allow flood-control work to continue.

While the city disagrees, Patterson alleges the city used the flooding as a pretext to do work it otherwise would not be allowed to do.

"They were doing wholesale re-channelization of the river," Patterson said, citing the Tucson-based organization's members in Southern Nevada. "The work they were doing had nothing to do with an emergency response."

He said the group would take legal action to stop flood control work if necessary.

"The main thing we're going to do is see what comes from the consultation with the Fish and Wildlife Service," Patterson said. "In a situation as egregious and illegal as what's happening here, that shouldn't be necessary."