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Via Email and U.S. Mail

Ms. Angela Gladwell
Director, Hermit's Peak/Calf Canyon Claims Office
P.O. Box 1329
Santa Fe, New Mexico 87504
Fema-hermits-peak@fema.dhs.gov

Re: FEMA's refusal to issue proper releases regarding flood insurance

Dear Ms. Gladwell,

I am writing regarding the improper releases FEMA is insisting that Hermit's Peak/Calf Canyon victims sign in order to obtain flood insurance.

As you know, in order to receive compensation for flood insurance (which is a minimal part of most victim's claims), FEMA is **requiring the claimant to sign a release for any and all claims against FEMA and the United States, not just their claims related to the flood insurance premiums at issue.**

Although FEMA maintains that this is a partial payment, and has repeatedly stated that accepting it will not affect a victim's ability to recover for their other damages, the actual release says exactly the opposite.

The title of the release is "RELEASE AND CERTIFICATION – FINAL PAYMENT." The release itself states:

I hereby elect to seek compensation under the Act as my exclusive remedy for all damages suffered in the Fire and waive my right to any judicial or other proceeding over the damages covered by the Act. **I acknowledge that final payment in the amount stated above fully satisfies all of my outstanding claims against the Federal Emergency Management Agency** ("Hereafter FEMA") and/or the United States resulting from the Fire.

Simply put, there is nothing about this release that limits it to the *de minimus* partial payment that is being made. To the contrary, it does exactly the opposite.

The language stating "**all of my outstanding claims**" expressly includes a victims' pending claims for damages to their real property. If this release is intended to apply only to the flood insurance premiums, then it needs to explicitly state as much. It does not.

This is legally binding language that will affect our clients' ability to recover on the damages that they suffered during the Hermit's Peak/Calf Canyon fires. This release should be specific to the flood insurance premium only and not apply to their entire claim.

In addition, the following issues also need to be addressed.

First, offers and releases are still being sent directly to victims who are represented by counsel, rather than to the attorneys. Because these are legal documents – and, if signed, will severely restrict a victim's ability to fully recover – these must be sent to counsel.

Second, there is language in the "Response Instructions and Additional Information" page of the waiver packet that provides that if victims do not respond to the offer, then FEMA will consider such non-response as an acceptance. Specifically, the language states that if the victim does not respond within 120 days, "you will be conclusively presumed to have accepted this claim determination and payment will be made...."

Additionally, and equally concerning, this page also states that after 120 days, an appeal is no longer available.

To date, however, FEMA has not explained what the appeals process is or indicated that the appeals process is up and running.

How can a victim elect to appeal – or an attorney advise their client on an appellate process – when no such process has been created?

Third, the flood control policies that have been provided to our clients are for one year. However, the Claims Office has repeatedly represented that the flood insurance policies for victims would be for five years. Our clients, and the other victims, do not understand why they are receiving one year policies when FEMA has repeatedly stated that the policies would be for five years. Please provide an explanation.

Fourth, many of the flood control policies are unclear on which properties are covered. The only addresses on the determination letters we have seen are the mailing addresses that were on the heading. As you know, however, many of these properties are remote and multiple, separate addresses. This must be addressed if the policies are to protect the victims' properties.

REQUEST FOR CORRECTION

It has been over 14 months since the Hermit's Peak Relief Act was signed into law, and FEMA still is not providing basic things like flood insurance.

Although we have repeatedly pointed out the serious deficiencies in these releases, you have refused to modify them. This is unacceptable.

If FEMA is going to provide partial payments – as you have repeatedly stated you intend to do – then you cannot condition it on victims waiving their entire recovery in exchange for a miniscule payment.

We have repeatedly requested that your office work with the attorneys who represent the victims to create proper releases. Thus far, you have refused to do so. We remain willing and able to meet and work with your office on these releases at any time. If you refuse to work with us, please either have your counsel draft proper releases or notify the victims that accepting partial payment will impair their right to fully recover.

Sincerely,



Gerald Singleton

Cc: Office of US Senator Ben Ray Luján
Office of US Senator Martin Heinrich
Office of US Representative Teresa Leger Fernández
Office of US Representative Melanie Stansbury
Office of US Representative Gabe Vasquez
George A Trujillo, County Commission Chair, District 2, County of Mora, NM
Johnny H. Trujillo, County Commission Vice-Chair, District 3, County of Mora, NM
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State Representative Joseph Sanchez (Dist. 40)
Liz Stefanics (advocating for San Miguel County victims)