City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 5 **Ordinance/Resolution#** 13-160

For Meeting of _____ (Ordinance First Reading Date) **For Meeting of** June 3, 2013 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☐ LEGISLATIVE ☒ ADMINISTRATIVE

TITLE: **A RESOLUTION AUTHORIZING THE ISSUANCE OF A PROCLAMATION DECLARING EXTREME OR SEVERE DROUGHT CONDITIONS WITHIN THE CITY LIMITS AND IMPOSING RESTRICTIONS ON THE USE OF FIREWORKS WITHIN THE CITY LIMITS.**

PURPOSE(S) OF ACTION:

Authorization to declare extreme or severe drought conditions and to impose restrictions on the use of fireworks within the City limits.

COUNCIL DISTRICT: ALL		
Drafter/Staff Contact: Ted Sweetser	**Department/Section:** Fire	**Phone:** 528-4150
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Each year the daily number of fire calls experienced in the City of Las Cruces increases during the Fourth of July holiday. This increase is predominantly associated with the use of fireworks. Southern New Mexico, to include the City of Las Cruces, is currently facing severe or extreme drought conditions. These conditions have created an increased risk of damage or loss of property due to fire. The unrestricted use of permissible fireworks during these drought conditions would magnify the potential fire risk, thereby creating an emergency and threat to the health, safety and welfare of residents of the City of Las Cruces if firework use is not further regulated.

NMSA 1978 60-2C-8.1 grants authority to municipalities to regulate the sale and use of fireworks during times of severe or extreme drought. In order to enact restrictions pursuant to the statute, the governing body must first conduct a public hearing to determine if drought conditions exist and if firework restrictions should be imposed. If it is determined there is a need for firework restrictions due to drought conditions, a proclamation must be issued.

The proclamation must be issued no less than 20 days prior to a holiday for which fireworks may be sold and shall explain the restrictions on the sale or use of fireworks. The proclamation is

(Continue on additional sheets as required)

effective for 30 days and succeeding proclamations may be issued if conditions warrant. In the event drought conditions improve, and thereby reduce the risk associated with the sale and use of fireworks, the proclamation may be modified or rescinded within the 30 days through a meeting of the governing body.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Proclamation.
3. Attachment "A", NMSA 60-2C-8.1.
4. Attachment "B", U.S. Drought Monitor Map.
5. Attachment "C", National Weather Service Drought Information Sheet.
6. Attachment "D", State Forester Fire Restrictions.
7. Attachment "E", SWCC Fire Forecast Fire Danger Map.
8. Attachment "F", SWCC Observed Danger Map.

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
N/A	*Budget Adjustment Attached*	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the Fund.
Does this action create any revenue?			
	Yes	☐	Funds will be deposited into this fund: in the amount of $_____for FY__.
N/A	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

(Continue on additional sheets as required)

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will restrict the use of fireworks as indicated in the attached proclamation.
2. Vote "No"; this will not restrict the use of fireworks.
3. Vote to "Amend"; this could change restrictions based on City Council direction.
4. Vote to "Table"; this could delay taking any action until a further date.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A

(Continue on additional sheets as required)

RESOLUTION NO. 13-160

A RESOLUTION AUTHORIZING THE ISSUANCE OF A PROCLAMATION DECLARING EXTREME OR SEVERE DROUGHT CONDITIONS WITHIN THE CITY LIMITS AND IMPOSING RESTRICTIONS ON THE USE OF FIREWORKS WITHIN THE CITY LIMITS.

The City Council is informed that:

WHEREAS, the Fire Department is responsible for fire protection within the City of Las Cruces; and

WHEREAS, each year the daily number of fire calls experienced in the City of Las Cruces increased during the Fourth of July holiday; and

WHEREAS, this increase is predominantly associated with the use of fireworks; and

WHEREAS, southern New Mexico, to include the City of Las Cruces, is experiencing severe drought conditions, as issued by the National Weather Service; and

WHEREAS, these conditions have created an increased risk of damage or loss of property due to fire; and

WHEREAS, the unrestricted use of permissible fireworks during these drought conditions would magnify the potential fire risk, thereby creating an emergency and threat to the health, safety and welfare of residents of the City of Las Cruces; and

WHEREAS, NMSA 1978 60-2C-8.1 grants authority to municipalities to regulate the sale and use of fireworks during times of severe or extreme drought; and

WHEREAS, on June 3, 2013 City Council held a public meeting and determined that severe drought conditions do exist; and

WHEREAS, on June 3, 2013 City Council passed a resolution authorizing the issuance of a proclamation which imposed additional restrictions on the use of fireworks; and

WHEREAS, on July 3, 2013 the current proclamation will expire.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the proclamation as shown in Exhibit "A", attached hereto and made part of this resolution be issued for a period of thirty (30) days from June 3, 2013 unless a subsequent proclamation is issued by the City Council.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this ____ day of _____, 20___.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

Moved by:_____

Seconded by:_____

APPROVED AS TO FORM:

City Attorney

Exhibit "A"

PROCLAMATION

WHEREAS, the City Council is the governing body of the City of Las Cruces; and

WHEREAS, the City Council has obtained information and forecasts from the National Weather Service concerning drought indices; and

WHEREAS, the City Council of the City of Las Cruces has obtained information and forecasts from the United States Forest Service concerning drought indices; and

WHEREAS, the City Council held a public hearing on June 3 2013, to determine whether the City of Las Cruces is affected by extreme or severe drought conditions and whether fireworks restrictions should be imposed within the municipal boundaries of the City; and

WHEREAS, the City Council made certain findings of fact based upon information provided during the public hearing and said findings are included in the resolution passed at the hearing authorizing this Proclamation; and

WHEREAS, the findings of the City Council was that the City of Las Cruces is affected by extreme or severe drought conditions based upon current drought indices published by the National Weather Service and other information supplied by the United States Forest Service.

NOW, THEREFORE, be it Proclaimed by the Governing Body of the City of Las Cruces, New Mexico;

(I)

THAT extreme or severe drought conditions exist within the municipal boundaries of the City of Las Cruces.

(II)

THAT permissible fireworks are defined in Las Cruces Ordinance number 2226 and do not include aerial devices, ground audible devices, stick type rockets having a tube less than five-eighths inch outside diameter and less than three and one-half inches in length; and fireworks intended for sale to the public that produce an audible effect, other than a whistle, by a charge of more than one hundred thirty milligrams of explosive composition per report.

(III)

THAT the Governing Body is authorized to limit the use of otherwise permissible fireworks, including ground and hand held sparkling devices, cone fountains, crackling devices, cylindrical fountains, flitter sparklers, ground spinner, illuminating torches, toy smoking devices and wheels, to areas within the municipal boundaries that are paved, barren, or areas that have a readily accessible source of water.

(IV)

THAT the Governing Body, having consulted with the state forester, is authorized to and has banned the use of all fireworks within areas that are covered wholly or in part by timber, brush or native grass.

(V)

THAT this Proclamation is effective for a period for thirty days from this date unless a subsequent Proclamation is issued by the Governing Body.

APPROVED THIS 3rd DAY OF JUNE, 2013

_____
Mayor

_____
Date

ATTEST:

_____
City Clerk

(SEAL)

ARTICLE 2C
Fireworks Licensing and Safety
60-2C-8.1 Extreme or severe drought conditions; restricted sale and use.

60-2C-8.1. Extreme or severe drought conditions; restricted sale and use. (1999)
Statute text
A. The governing body of a municipality may hold a hearing to determine if fireworks restrictions should be imposed within the boundaries of the incorporated municipality affected by extreme or severe drought conditions. The findings of the governing body shall be based on current drought indices published by the national weather service and any other relevant information supplied by the United States forest service.
B. Pursuant to any hearing under Subsection A of this section, the governing body of a municipality shall issue a proclamation declaring extreme or severe drought conditions within the boundaries of the incorporated municipality if the governing body determines such conditions exist. The governing body's proclamation:
(1) shall ban the sale and use of missile-type rockets, helicopters, aerial spinners, stick-type rockets and ground audible devices within the affected drought area; and
(2) shall give the governing body the power to:
(a) limit the use within its jurisdiction of any fireworks not listed in Paragraph (1) of this subsection to areas that are paved or barren or that have a readily accessible source of water for use by the homeowner or the general public;
(b) ban the use of all fireworks within wildlands in its jurisdiction, after consultation with the state forester; and
(c) ban or restrict the sale or use of display fireworks.
C. The municipal governing body's proclamation declaring an extreme or severe drought condition shall be issued no less than twenty days prior to a holiday for which fireworks may be sold. The proclamation shall explain restrictions on the sale or use of fireworks and permitted sales or uses of fireworks.
D. A municipal governing body's proclamation shall be effective for thirty days and the governing body may issue succeeding proclamations if extreme or severe drought conditions warrant. A proclamation may be modified or rescinded within its thirty-day period by the governing body upon conducting an emergency hearing to determine if weather conditions have improved.
E. The governing body of a county may hold a hearing to determine if fireworks restrictions should be imposed within the unincorporated portions of the county affected by extreme or severe drought conditions. The findings of the governing body shall be based on current drought indices published by the national weather service and any other relevant information supplied by the United States forest service.
F. Pursuant to any hearing under Subsection E of this section, the governing body of a county shall issue a proclamation declaring extreme or severe drought conditions within the unincorporated portions of the county if the governing body determines such conditions exist. The governing body's proclamation:
(1) shall ban the sale and use of missile-type rockets, helicopters, aerial spinners, stick-type rockets and ground audible devices within the affected drought area; and
(2) shall give the governing body the power to:

(a) limit the use within its jurisdiction of any fireworks not listed in Paragraph (1) of this subsection to areas that are paved or barren or that have a readily accessible source of water for use by the homeowner or the general public;
(b) ban the use of all fireworks within wildlands in its jurisdiction, after consultation with the state forester; and
(c) ban or restrict the sale or use of display fireworks.
G. The county governing body's proclamation declaring an extreme or severe drought condition shall be issued no less than twenty days prior to a holiday for which fireworks may be sold. The proclamation shall explain restrictions on the sale or use of fireworks and permitted sales or uses of fireworks.
H. Except as otherwise provided in this subsection, a proclamation shall be effective for thirty days, and the county governing body may issue succeeding proclamations if extreme or severe drought conditions warrant. A proclamation may be modified or rescinded within its thirty-day period by the governing body upon conducting an emergency hearing to determine if weather conditions have improved.

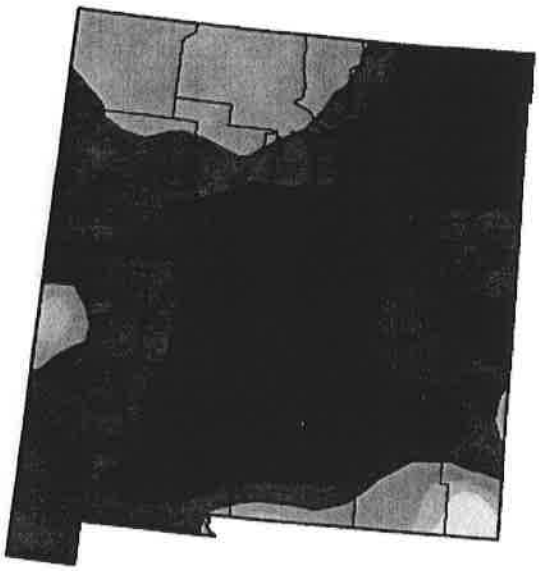
U.S. Drought Monitor

May 14, 2013
Valid 7 a.m. EST

New Mexico

Drought Conditions (Percent Area)

	None	D0-D4	D1-D4	D2-D4	D3-D4	D4
Current	0.00	100.00	99.04	97.63	81.68	44.14
Last Week (05/07/2013 map)	0.00	100.00	99.04	97.75	81.82	39.89
3 Months Ago (02/12/2013 map)	0.20	99.80	98.45	89.85	25.36	0.97
Start of Calendar Year (01/01/2013 map)	0.00	100.00	98.83	94.05	31.88	0.97
Start of Water Year (09/25/2012 map)	0.00	100.00	100.00	62.56	12.25	0.66
One Year Ago (05/08/2012 map)	0.00	100.00	96.20	68.67	27.26	3.49



Intensity:

- D0 Abnormally Dry
- D1 Drought - Moderate
- D2 Drought - Severe
- D3 Drought - Extreme
- D4 Drought - Exceptional

The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. See accompanying text summary for forecast statements.

http://droughtmonitor.unl.edu

Released Thursday, May 16, 2013
Rich Tinker, Climate Prediction Center/NCEP/NWS/NOAA

NOAA's Drought Information Center

Drought Home

THE PALMER DROUGHT SEVERITY INDEX

The Palmer Index was developed by Wayne Palmer in the 1960s and uses temperature and rainfall information in a formula to determine dryness. It has become the semi-official drought index.

The Palmer Index is most effective in determining long term drought—a matter of several months—and is not as good with short-term forecasts (a matter of weeks). It uses a 0 as normal, and drought is shown in terms of minus numbers; for example, minus 2 is moderate drought, minus 3 is severe drought, and minus 4 is extreme drought.

The Palmer Index can also reflect excess rain using a corresponding level reflected by plus figures; i.e., 0 is normal, plus 2 is moderate rainfall, etc.

The advantage of the Palmer Index is that it is standardized to local climate, so it can be applied to any part of the country to demonstrate relative drought or rainfall conditions. The negative is that it is not as good for short term forecasts, and is not particularly useful in calculating supplies of water locked up in snow, so it works best east of the Continental Divide.

State of New Mexico

Energy, Minerals and Natural Resources Department

May 3, 2013 **News Release**

Contact: Dan Ware – Fire Prevention and Outreach Program Manager

505-476-3336/505-690-8210

daniel.ware@state.nm.us

Energy, Minerals and Natural Resources Department Secretary and the State Forester Announce Fire Restrictions for All NM Counties

SANTA FE – Due to high fire danger across the state, New Mexico Energy, Minerals and Natural Resources Secretary-designate David Martin and State Forester Tony Delfin today announced restrictions on fireworks, smoking, campfire and open-fires. The restrictions will go into effect at **8:00 a.m. on Wednesday, May 8, 2013.**

"High fire danger exists across much of New Mexico and new fire starts are becoming difficult to control," said Delfin. "I'm urging all state residents affected to follow the restriction guidelines to protect lives and property in their communities."

The restrictions will be imposed on all non-municipal, non-federal and non-tribal lands in New Mexico and will remain in effect until rescinded.

State Forestry will con btinue to coordinate with other jurisdictions including federal, counties and municipalities to insure that appropriate protections are in place to protect New Mexico as fire danger and wildfires increase.

SMOKING, FIREWORKS, CAMPFIRES, OPEN BURNING, AND OPEN FIRES ARE PROHIBITED UNLESS THE FOLLOWING CONDITIONS ARE MET:

Smoking is prohibited except in enclosed buildings, within vehicles equipped with ashtrays, and on paved or surfaced roads, developed recreation sites, or while stopped in an area at least three feet in diameter that is barren or cleared of all flammable material.

Fireworks use is prohibited on lands covered wholly or in part in timber, brush, grass, grain, or other flammable vegetation. The State Forester is allowing exceptions to the ban on fireworks where they are a part of a public exhibit approved by the local fire department.

Campfires are prohibited unless the following exceptions are met. An exception is granted where cooking or heating devices use kerosene, white gas, or propane as a fuel in an improved camping area that is cleared of

flammable vegetation for at least 30 feet or has a water source. New Mexico State Parks are included in this prohibition. For information on this contact the local State Park Superintendent or Manager or visit the website at www.nmparks.com.

The State Forester is also allowing exceptions for charcoal grills and wood and coal stoves within yards associated with a residence or on the premises of a business.

Open burning i.e., burning of cropland, fields, rangeland, debris burning, slash piles, prescribed burning, or weed burning, is prohibited. The State Forester grants an exception to open burning when all of the following conditions are met:

1. the cropland is irrigated (This exception does not apply to non-irrigated croplands, fields, or rangelands.);

2. burning is done with adequate planning;

3. adequate personnel are present to monitor and control the burn to assure that it will not become an uncontrolled fire;

4. the burn area is secured from becoming uncontrolled at the end of daily operations; and

5. at the beginning of each day, before ignition, the person responsible for the burn notifies the local fire department responsible for fire protection and follows all local burning guidelines and

20.2.60.111 NMAC, Open Burning of Vegetative Material, related to state air quality.

Flaring of gas is prohibited. The State Forester grants an exception to the prohibition on open fires for the flaring of natural gas when the following conditions are met. Unless flaring is needed for safety purposes, flaring pursuant to this exception shall not be done on days that are "red flag days" as determined by the National Weather Service or on days when the sustained wind is in excess of 25 miles per hour in the area.

1. The day is not a "red flag day" as determined by the National Weather Service and the sustained wind is not in excess of 25 miles per hour in the area.

2. The local fire department and county dispatch are notified at least 24 hours in advance of anticipated releases that will result in flaring. If flaring is done by an automated system then the schedule of flaring shall be provided to the local fire department and county dispatch. The area is mowed and maintained at a length not to exceed 4 inches and all other flammable products or debris shall be cleared in the area for a distance of one and one half times the height of the stack.

3. At least one adult is on site with communications equipment adequate to reach county dispatch and the local fire department in the event of a fire. The individual should also be equipped with a shovel and a water backpack pump or other equipment to deliver water to suppress a fire.

4. If flaring is to take place at an unmanned facility, then the area around the flare stack is mowed and maintained at a length not to exceed 4 inches and all other flammable products or debris shall be cleared in the area for a distance of three times the height of the stack.

Other exceptions may be requested.

The State Forester may allow additional exemptions upon receiving a written request and granting subsequent approval in writing. You may apply for exemptions other than those listed above for flaring or agricultural burning on the Forestry Division website at ww.nmforestry.com. The exemptions provided above for flaring and agricultural

burning do not require written approval so long as the conditions listed are met.

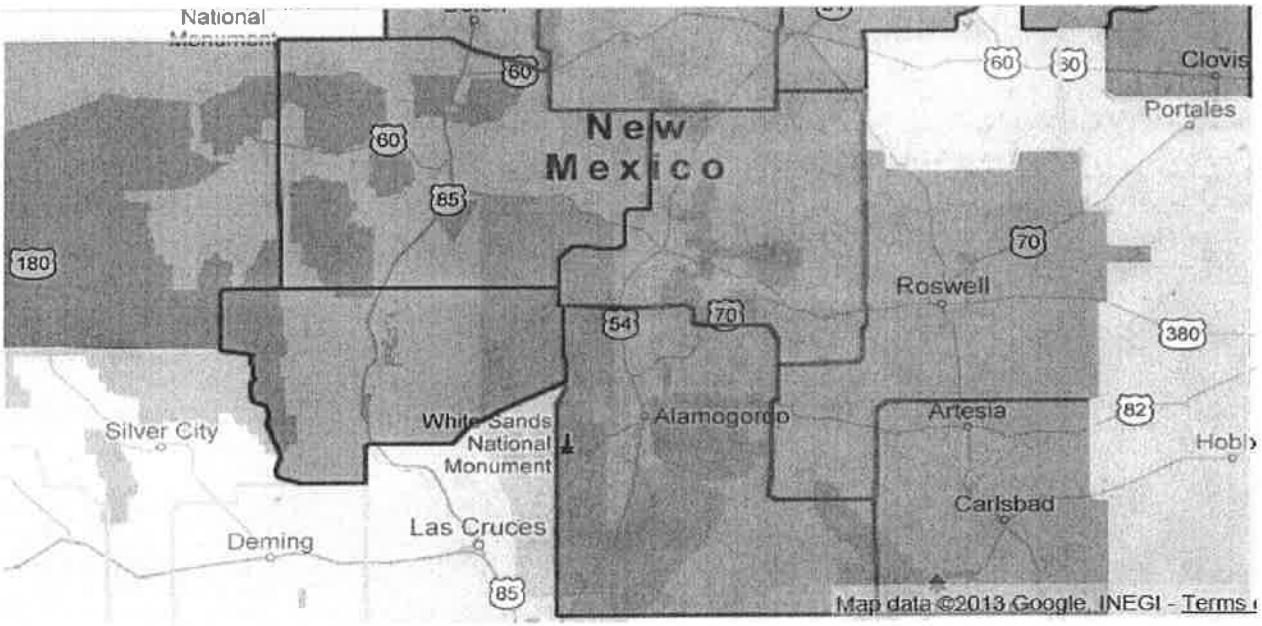
The State Forester may allow exemptions from the above upon receiving a written request and granting subsequent approval in writing. You may apply for an exemption on the Forestry Division website at www.nmforestry.com.

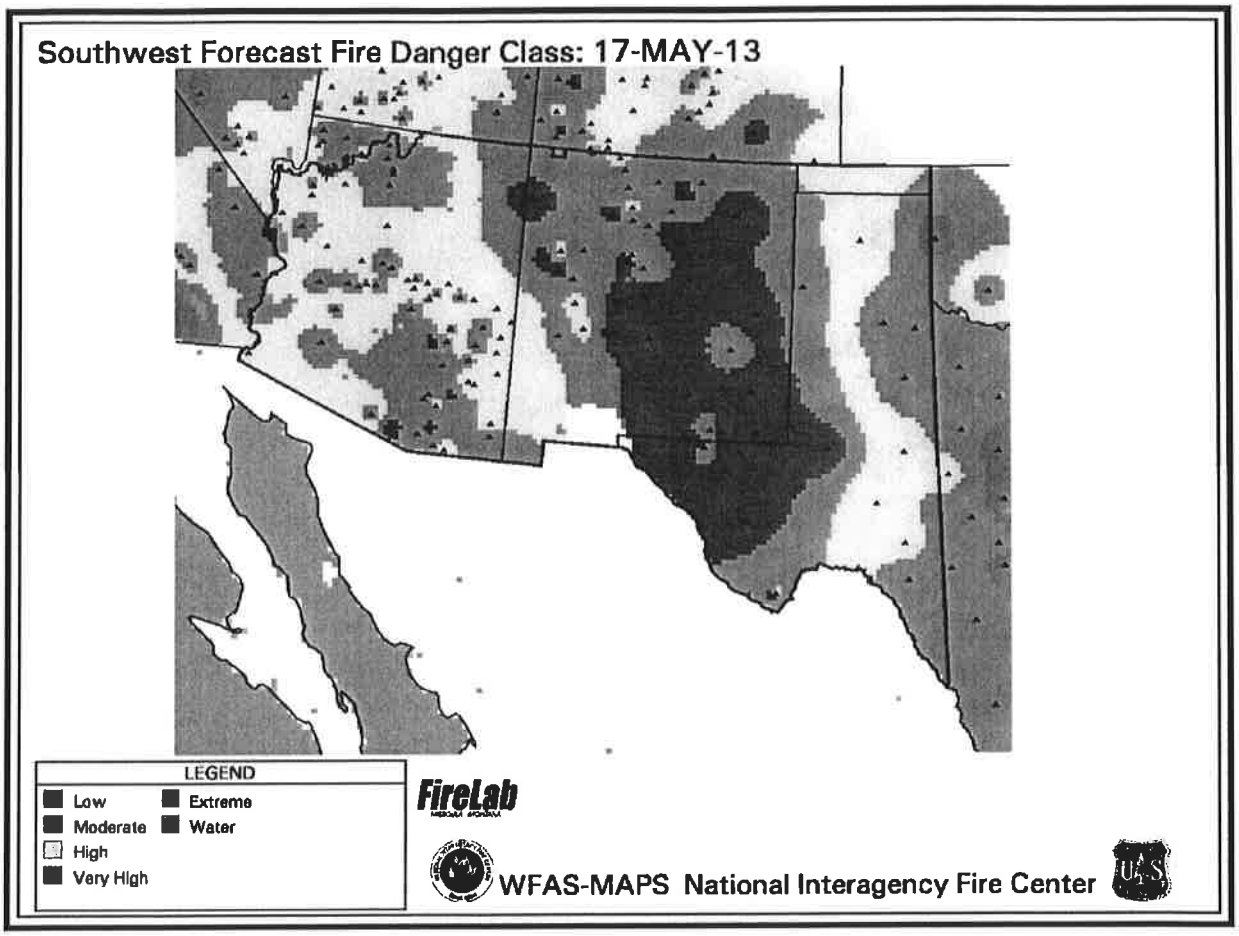
An exemption does not relieve a person from any civil or criminal liability associated with an uncontrolled fire, including costs associated with wildland fire suppression.

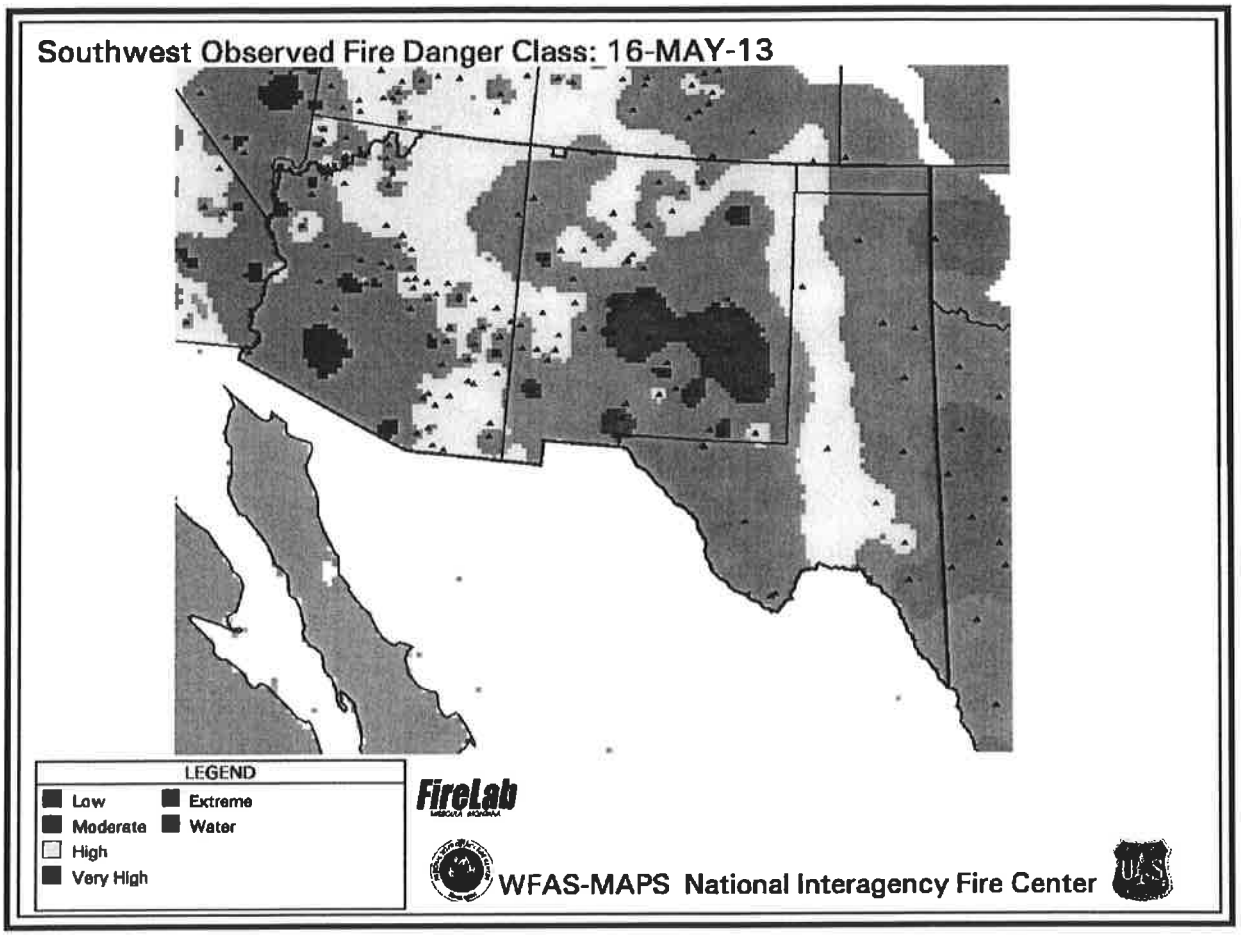
For details and the legal restriction notification, log onto www.nmforestry.com or call (505) 476-3325.

Restriction Stages

- Local Burn Ban
- Stage I
- Stage II
- Closures




Southwest Forecast Fire Danger Class: 17-MAY-13
LEGEND
Low
Moderate
High
Very High
Extreme
Water
FireLab
WFAS-MAPS National Interagency Fire Center


Southwest Observed Fire Danger Class: 16-MAY-13
LEGEND
Low
Moderate
High
Very High
Extreme
Water
FireLab
WFAS-MAPS National Interagency Fire Center