

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:09-cv-01967-WDM

UNITED STATES OF AMERICA,

Plaintiff

v.

LAKE FORK RESORTS LLC, ADAM THOMAS BARFIELD,
GILBERT BARFIELD, and BRENDA BARFIELD

Defendants.

STIPULATION AND ORDER OF DISMISSAL

On August 19, 2009, the United States filed a Complaint against Defendants Lake Fork Resorts LLC, Adam Barfield, Brenda Barfield, and Gilbert Barfield (collectively "Defendants") pursuant to the Park System Resource Protection Act, 16 U.S.C. § 19jj *et seq.*, seeking response costs and damages resulting from the August 2006 construction of a motocross track on a portion of Curecanti National Recreation Area (the "Incident").

The United States and the Defendants agree that settlement of this action without further litigation is in the public interest and that entry of this Stipulation and Order is the most appropriate means of resolving this action.

NOW THEREFORE, without trial of any issue of fact or law, and upon the consent and agreement of the parties to this Stipulation and Order, it is hereby agreed and stipulated as follows:

1. The Court has jurisdiction over the subject matter and over the Parties pursuant to 16 U.S.C. § 1911-2 and 28 U.S.C. §§ 1331 and 1345. Venue is proper in the District of Colorado pursuant to 28 U.S.C. §§ 1391 and 1395.

2. This settlement constitutes a compromise of a disputed claim, and nothing herein shall be construed as an admission by Defendants as to any of the allegations contained in the Complaint.

3. Defendant Adam Barfield shall pay the United States twelve thousand dollars (\$12,000) not later than thirty (30) days after entry of this Stipulation and Order.

4. If Defendant Adam Barfield fails to make timely payment pursuant to Paragraph 3 above, Defendant Adam Barfield shall pay a stipulated penalty of two hundred dollars (\$200) for each day that the payment is delayed beyond the due date.

5. Defendants and the United States agree to cooperate in removing the existing fence that currently exists between the parties adjoining properties and placing the fence on the surveyed boundary line. After December 31, 2010 and before July 31, 2011, the NPS shall remove that portion of the existing fence that is on NPS property and deliver the removed fencing material to Defendants for their re-use. The NPS will provide Defendants two weeks notice of the day work will begin. On or before October 31, 2011, the Defendants shall build a statutory fence (as defined in Colorado Revised Statute § 35-46-101(1)) along the surveyed boundary line. Defendants will provide the NPS two weeks notice of the day work will begin.

Defendants have no obligation to obtain a special use permit for replacing the fence along the surveyed boundary so long as the fence work occurs on their property with only incidental incursion onto NPS property. The provisions of this paragraph may be modified by written agreement of the parties.

6. In consideration of the payment that will be made under Paragraph 3 and the agreements set forth in Paragraph 5, the United States, on behalf of the National Park Service, releases and covenants not to sue Defendants for response costs or damages (as defined in 16 U.S.C. § 19jj) for injury to, destruction of, loss of, or loss of use of, park system resources as a result of the Incident or for civil trespass, including claims under 36 C.F.R. § 2.31, 36 C.F.R. § 4.10, and 36 C.F.R. § 5.7, relating to the Incident. This release and covenant not to sue is not effective until, and is conditioned upon, complete and satisfactory performance by Defendants of their obligations under this Stipulation and Order. Defendants release and covenant not to sue and agree not to assert any claims or causes of action against the United States or its employees with respect to the Incident, the response to the Incident, or the prosecution of this case, including claims brought under the Equal Access To Justice Act, 28 U.S.C. § 2412.

7. All payments due under this Stipulation and Order shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with instructions timely provided to Defendants by the Financial Litigation Unit of the United States Attorney’s Office for the District of Colorado. At the time of payment, Defendants shall send a copy of the EFT transaction record together with a transmittal letter, which shall state that the payment constitutes the amount due in United States v. Lake Fork Resorts, et al. (1:09-cv-01967-WDM) and shall reference DOJ Case Number 90-5-1-1-09758, to the following persons:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Karen Battle
Environmental Quality Division
National Park Service
U.S. Department of Interior
1201 Oak Ridge Drive
Fort Collins, CO 80525

8. Each party shall bear its own costs, expenses and attorney's fees in this action.


9. This Court retains jurisdiction to enforce this Stipulation and Order. Except for such retained jurisdiction, the Complaint shall be dismissed with prejudice.

10. The undersigned representatives of the U.S. Department of Justice and Defendants certify that he or she is fully authorized to enter into the terms and conditions of this Stipulation and Order and to execute and legally bind the United States and Defendants, respectively, to it.

ORDER

As stipulated to and agreed by the parties, IT IS SO ORDERED AND ADJUDGED, AND THIS MATTER IS DISMISSED, WITH PREJUDICE, EACH PARTY TO BEAR ITS OWN COSTS AND FEES.


Dated: Oct. 19, 2010



WALKER D. MILLER
United States District Judge

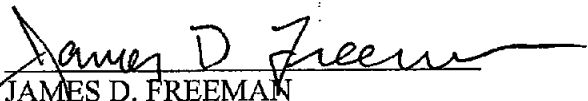
FOR PLAINTIFF THE UNITED STATES OF AMERICA:

Dated: 10/5/10



W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Dated: 10/19/10




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FOR DEFENDANTS LAKE FORK RESORTS LLC, ADAM BARFIELD, BRENDA BARFIELD, AND GILBERT BARFIELD:

DATE: 10/18/10



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