

137 001

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

COALITION OF LOUISIANA ANIMAL ADVOCATES,

Appellant,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE,  
UNITED STATES FOREST SERVICE, and  
UNITED STATES ARMY,

Appellees.

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\* No. 01-31361

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DEPARTMENT OF AGRICULTURE  
FOREST SERVICE  
APPELLATE SECTION

PARTIAL SETTLEMENT AGREEMENT

This Partial Settlement Agreement ("Agreement") is entered into by and between Coalition of Louisiana Animal Advocates ("COLAA"), the United States Department of Agriculture, the United States Forest Service, and the United States Army ("the Appellees").

WITNESSETH

The following Recitals are to be considered part of this Agreement.

WHEREAS, COLAA is a statewide coalition of animal protection organizations and individuals;

WHEREAS, the Appellees have developed a plan ("Horse Plan") to capture, test for Equine Infectious Anemia ("EIA") and remove Kisatchie Forest horses ("Kisatchie horses") from the Fort Polk-Peason Ridge Military Training area;

WHEREAS, a dispute has arisen between COLAA and the Appellees which relate to the Appellees' duties regarding the Horse Plan under the Wild Free-Roaming Horses and Burros Act and the National Environmental Policy Act;

WHEREAS, on August 17, 2001, this matter was adjudicated by the United States District Court for the Eastern District of Louisiana on COLAA's Motion for Summary Judgment and the Appellees' Cross-Motion for Summary Judgment and Motion to Strike Extra-Record Evidence;

WHEREAS, the United States District Court for the Eastern District of Louisiana denied COLAA's Motion for Summary Judgment and granted the Appellees' Cross-Motion for Summary Judgment and Motion to Strike Extra-Record Evidence;

WHEREAS, COLAA has appealed to the United States Court of Appeals for the Fifth Circuit from the final judgment granting summary judgment in favor of the Appellees.

#### I. TERMS OF AGREEMENT

##### A. COLAA shall:

1. Agree not to raise the Appellees' alleged failure to undertake a National Environmental Policy Act ("NEPA") analysis of their Horse Plan (involving the capture, EIA testing, and removal of the Kisatchie horses) as an assignment of error before the United States Court of Appeals for the Fifth Circuit;
2. Agree to allow the current NEPA count to be dismissed with prejudice. This dismissal would not affect their rights expressly set forth in I.A.3 to I.A.4 of this Agreement.
3. Retain the right to challenge Appellees' proposed action regarding the Kisatchie horses if it disagrees with their NEPA determination;

4. Retain the right to appeal the district court's determination of the legal status of the Kisatchie horses.

B. Appellees shall:

1. Refrain in any way, shape, or form from engaging in or permitting any roundup or any action having the practical effect of a roundup of the Kisatchie horses until the Court rules on the status of the horses and the NEPA process has been concluded;
2. Retain the right to avail themselves of the emergency provision of 40 C.F.R. 1506.11 (in such case that a significant change in events involving the horse herd that adversely impacts current health/safety or training requirements — for example, if Fort Polk receives a priority training mission related to Afghanistan or some disease occurs in the herd requiring immediate action, such as hoof & mouth disease);
3. Provide notice to COLAA and other interested individuals and organizations prior to engaging in an emergency roundup of the Kisatchie horses if a significant change in events that adversely impacts current health, safety, or training requirements occurs;
4. Initiate the NEPA process after receiving a final decision from the Court as to the status of the Kisatchie horses but prior to any roundup;
5. Solicit public comments on its proposed action regarding the Kisatchie horses, by way of public notice in local newspapers normally used by appellees for such notices and mailed notice to COLAA. The notice shall state that the Army shall provide a copy of the draft EA and FONSI or draft EIS (whichever is relevant) upon request. The notice shall also state that the Army shall provide the final EA, and resulting EIS or FONSI, to any party requesting the document in their written comments or to

any party who subsequently requests the document.

6. Retain the right to elect to perform an environmental assessment ("EA") and issue a finding of no significant impact (FONSI) rather than an environmental impact statement ("EIS"); if an EA rather than an EIS is performed, Appellees agree to
  - a. Provide a notice of this action to COLAA;
  - b. Publish a notice in local papers and media;
  - c. Provide a copy of the draft EA, and resulting EIS or FONSI, to COLAA, receipt of such initiating the 30-day public comment period;
7. Agree to provide notice of the final EA, and resulting EIS or FONSI, to COLAA and other groups/organizations that have submitted public comments in this matter as well as publish a notice in the same local newspapers as the original notice of the draft EA, and resulting EIS or FONSI, at the conclusion of the 30-day public comment period. This notice shall state that a copy of the final EA, EIS or FONSI will be provided upon request;
8. Include in the EA, and resulting EIS or FONSI, distribution any person, organization, or agency that submitted substantive comments on that document;
9. Attach, as an appendix to the final EA, and resulting EIS or FONSI that is distributed, all substantive public comments that were received, as well as Appellees' responses to all substantive public comments (similar comments, however, may be grouped for a common response), including any changes to the original proposed project made as a result of the public comments;

10. Refrain from taking any action on the proposed project until the end of the 30-day public comment period;
11. Retain the right to choose to prepare an EIS either initially or as a result of the public comments submitted by any person, organization, or agency, including COLAA.

C. The Parties shall:

1. Agree to abide by the terms of this Agreement.

II. OTHER PROVISIONS

- A. **Governing Law.** The validity, effect, and construction of this Agreement and any dispute relating to or arising from the negotiation and execution of this Agreement, shall be governed by the laws of the State of Louisiana, without regard to conflicts of laws provisions.
- B. **Attorneys' Fees, Costs, and Expenses.** Each party shall bear all of his own attorneys' fees, costs and expenses, including, but not limited to, those incurred in prosecuting or defending the litigation and in the negotiation and execution of this Agreement, including court costs.
- C. **Additional Documents.** The Parties or their counsel shall execute all such further and additional documents that shall be reasonable, convenient, and necessary to carry out the provisions and intent of this Agreement.
- D. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.
- E. **Titles.** The titles of the paragraphs of this Agreement are inserted for convenience only and shall not affect the meaning or construction of any of the terms of this Agreement.

- F. **Entire Agreement; Amendment.** The Parties understand, acknowledge, and agree that this Agreement contains and constitutes the entire agreement and understanding among the Parties, that no other representation, promise, or covenant of any kind has been made to induce or cause any party to execute this Agreement, and that all the understandings and agreements of the Parties are embodied and expressed herein. The Parties also agree that this Agreement may not be amended, except in a writing signed by each and every party to this Agreement.
  
- G. **Representation by and Consultation with Counsel.** Each Party to this Agreement acknowledges that he has been represented by counsel of his own choosing in connection with the litigation and the negotiation and execution of this Agreement and that he has had a reasonable and sufficient opportunity to consult with counsel to the extent he desires before executing this Agreement.
  
- H. **Acknowledgment.** Each of the Parties acknowledges that it has read this Agreement and that it fully knows, understands and appreciates this Agreement, and executes this Agreement and makes the settlement provided for herein voluntarily and of its own free will, and by executing this Agreement signifies its assent to and willingness to be bound by the terms of this Agreement.



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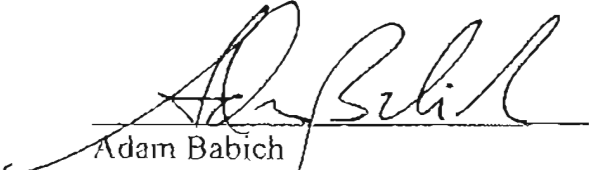
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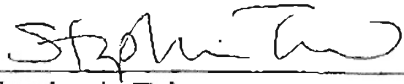
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July 25, 2002

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