

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOSEPH M. GLISSON,

Plaintiff,

and

SAM STEARNS and JOHN B. WALLACE,

Plaintiff-Intervenors

v.

UNITED STATES FOREST SERVICE, HURSTON A.
NICHOLAS, Supervisor, Shawnee National Forest, and
JEFFREY C. SEEFELDT, District Ranger, Shawnee National
Forest,

Defendants,

and

SHAWNEE TRAIL CONSERVANCY,

Defendant-Intervenor

Case No. 99-cv-4189-JPG

ORDER

This matter comes before the Court following the Court's issuance of a Report and Recommended Resolution (Doc. 92) of the longstanding conflict involving the use of the Lusk Creek Wilderness and equestrian campground operations in the vicinity. After months of shuttling between all parties involved in this conflict, on March 1, 2005, the Court issued the Report and Recommended Resolution setting forth a resolution to the conflict that the Court believes is fair and equitable. The Court has received written notice from Messrs. Glisson, Wallace and Stearns and the Shawnee Trail Conservancy that the Recommended Resolution is an acceptable settlement of this dispute. They have further indicated that they freely and voluntarily waive any rights they may have to appeal this order implementing that resolution or

to administratively or judicially challenge the implementation of that resolution.. Accordingly,
the Court hereby **ORDERS**:

1. The Shawnee Trail Conservancy, including its member commercial equestrian campgrounds, shall sign and abide by the "Court Ordered Special Use Permit" negotiated during these settlement hearings, a copy of which is attached as Exhibit A.
2. The Shawnee Trail Conservancy, including its member commercial equestrian campgrounds, shall agree to an "Outfitter/Guide Operation and Maintenance Plan" ("O&M Plan") that includes (in substance, if not in the exact form) the following modifications and additions to be made by the Forest Service to the existing terms of the O&M Plan.

OPERATIONS

- **Seasonal Restriction:**
From December 1, 2005, to March 31, 2006, and each year thereafter until the EIS is approved, the Holder shall not perform outfitting or guiding services for equestrian use on Lusk Creek Wilderness.
- **Soil Saturation Restriction:**
The Holder shall not perform outfitting or guiding services for equestrian use on Lusk Creek Wilderness for 24 hours following any day in which one inch or more of rain falls during the peak use periods of April, May, September, October, and November. The Holder shall maintain a rain gauge, provided by the Forest Service, at its campground to assist the Forest Service in monitoring rainfall. The Forest Service will maintain an official rain gauge at Dixon Springs Ag Center, and any other sites it deems appropriate.

Although these restrictions are technically not applicable to non-commercial operations, the Forest Service shall make reasonable efforts to publicize and encourage local equestrians and non-campground-owners to refrain from riding in Lusk Creek Wilderness during any of the 24-hour closure periods.
- **Temporary Closure of Trail:**
The Forest Service shall inspect trails within Lusk Creek Wilderness and exercise its authority to temporarily close those trails it deems unreasonably wet for equestrian traffic until drier conditions prevail. The Holder shall not perform outfitting or guiding services for equestrian use on Lusk Creek Wilderness during temporary trail closings by the Forest Service.

Although these restrictions are technically not applicable to non-commercial operations, the Forest Service shall make reasonable efforts to

publicize and encourage local equestrians and non-campground-owners to refrain from riding on the closed trails in Lusk Creek Wilderness area during temporary trail closure periods.

The seasonal and temporary weather-related closures are mandatory only for Holders performing the activities for which a permit was issued and apply only to Lusk Creek Wilderness.

- **ROUTE IDENTIFICATION:** The Holder is authorized to perform outfitting and guiding services for equestrian use on the permitted trails shown on the attached map [attached as Exhibit B] and additional maps generated by the Forest Service. The Holder is also authorized to use additional temporary crossings of Lusk Creek east of Salt Peter Cave (now known as Liam's Crossing) and in the vicinity of Blanchard Church/New Liberty until completion of the Trails EIS and the official designation by the Forest Service of equestrian trails and creek crossings in Lusk Creek Wilderness; provided, that before the crossings are used for equestrian traffic, the Forest Service samples for the least brook lamprey and completes the necessary steps to repair or construct the additional temporary creek crossings to make said crossings reasonably suitable for equestrian and hiker use so as to not adversely affect environmental or ecological concerns. Trails and crossings are subject to temporary closures for trail maintenance to avoid resource damage.
- **LAW ENFORCEMENT:** The Holder will inform its customers of the penalties for violating Forest Service rules and regulations.

RESOURCE PROTECTION AND DATA COLLECTION

- **TRAIL USE:** The Holder shall distribute to its customers maps of permitted equestrian trails (the attached map(s)) and shall instruct and encourage its customers to confine their livestock to the permitted trails and confinement areas. The Holder shall distribute to its customers Forest Service literature regarding responsible equestrian use of the Shawnee National Forest and rules of civility and etiquette between various users of the Forest.
- **DATA COLLECTION:** The Holder shall distribute to its customers bridal tags provided by the Forest Service for use by the Forest Service in monitoring equestrian use in Lusk Creek Wilderness from commercial operations. The distribution of these bridal tags will be at no cost to the Holder or its customers.

LIVESTOCK

- The Holder shall not perform outfitting or guiding services for equestrian use on Lusk Creek Wilderness involving groups of more than ten riders, including guides. The Holder shall not allow more than ten riders to assemble at one time at the Salt Peter Cave confinement area or any other area in Lusk Creek Wilderness.

3. On or before March 24, 2005, all parties shall move to withdraw any pending motions in

this case (the Motion for Contempt Sanctions (Doc. 69) and Motion for Hearing (Doc. 80) filed by Messrs. Wallace and Stearns and the Motion to Strike (Doc. 84) filed by the Shawnee Trail Conservancy).

4. On or before April 1, 2005, Shawnee Trail Conservancy members who own equestrian campgrounds in the vicinity of Lusk Creek Wilderness, including any campground owner who have been a member of the Shawnee Trail Conservancy at any time since it was permitted to intervene in this litigation on October 15, 1999, shall sign and accept the aforementioned permits. Equestrian campground owners who do not sign and accept the aforementioned permits will not be permitted to conduct outfitting or guiding services.
5. On or before April 16, 2005, the Forest Service shall develop literature to effectively communicate standards for responsible equestrian use of the Shawnee National Forest and rules of civility and etiquette between various users of the Forest. The Forest Service shall develop a summary of the penalties for violating Forest Service rules and regulations. The Forest Service shall provide these materials to Shawnee Trail Conservancy members and equestrian campground owners on reasonable demand.
6. On or before April 16, 2005, the Forest Service shall develop a trail maintenance and damage mitigation program for the trails indicated as permitted equestrian trails on the map(s) attached to the aforementioned permit. The program shall ultimately be funded by the Forest Service and shall include volunteer work from equestrian and environmental groups as a key component.
7. On or before May 1, 2005, the Forest Service shall complete the necessary steps to construct the additional creek crossing at Liam's Crossing and in the vicinity of Blanchard Church/New Liberty to make the crossings suitable for equestrian and hiker use so as not to adversely affect environmental and ecological concerns.
8. The Forest Service shall conduct sampling for least brook lamprey before opening the additional temporary creek crossings. If at any point the Forest Service concludes that there are environmental concerns related to these temporary crossings, the Forest Service shall take the appropriate action to close said crossings or mitigate such concerns.
9. On or before May 1, 2005, the Forest Service shall implement measures at the Salt Peter Cave confinement area and other areas within Lusk Creek Wilderness to protect trees from livestock damage.
10. The Forest Service shall work with the Court to increase fines and forfeiture amounts for violations of Forest Service rules and regulations.
11. The Forest Service shall collect data on equestrian and hiker usage in Lusk Creek Wilderness.
12. The Forest Service shall monitor commercial equestrian use in all wilderness areas on the Shawnee National Forest and shall use its statutory and regulatory authority to manage

those areas to ensure that commercial equestrian use is controlled to mitigate and prevent resource damage to the significant ecological features of those areas.

13. The Court is very mindful that the Shawnee National Forest Supervisor has limited personnel and funds to dedicate to this issue. The time and expense that all parties have devoted to this litigation over the past several years has been enormous. But the time has now come for all parties to join together for the common good and devote their energies and resources to the cooperative and multiple-use purposes for which the Shawnee National Forest generally, and wilderness areas in particular, were created. In order to accomplish this in the short term, the Court hopes the Regional Office of the Forest Service has the flexibility to immediately provide additional funds necessary for equestrian trail repair and maintenance and any other resources necessary to implement this plan.

The Court **FURTHER ORDERS** the Forest Service to submit monthly reports on the progress of the implementation of this order. These monthly reports may be consolidated with other monthly reports the Forest Service submits to the Court in connection with this case.

IT IS SO ORDERED.

DATED: March 17, 2005

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE

U.S. DEPARTMENT OF AGRICULTURE
Forest Service
TEMPORARY COURT ORDERED SPECIAL - USE PERMIT
(FSH 2709.11, sec. 54.6)

AUTHORITY:
FEDERAL LAND RECREATION ENHANCEMENT ACT, Title VIII, Div. J, of Pub. L. 108-447

_____ CAMPGROUND, _____, IL 62928, hereinafter called the holder, is hereby authorized to use and occupy Shawnee National Forest System lands, subject to the terms and conditions of this permit, to provide outfitting/guiding services from the holder's campground to the Shawnee National Forest, as shown on the map of the authorized area attached to this permit.

This permit is a temporary use permit issued for the purpose of authorizing the following activities: equestrian outfitting/guiding services. These services will be provided in compliance with the Environmental Assessment dated September 16, 2003, and the Amended Land and Resource Management Plan dated 1992.

This use will be exercised as described in the annual operating plan which is hereby incorporated in this permit.

TERMS AND CONDITIONS

1. Use under this permit shall begin on **4/1/2005** and end on **3/31/2006**. The permit shall not be extended except as ordered by the United States District Court for the Southern District of Illinois.
2. A flat fee shall be assessed annually for this use at the rate of \$0.89 per service day. The minimum fee for this use is \$90.00 per year. The annual fee for this use shall be paid in advance and is not refundable. The holder shall provide documentation of use and revenue for purposes of permit fee verification. This authorization shall terminate upon the holder's failure to make the annual fee payment, late payment charge, and any other charges when due.
3. The holder shall make the accounting books and supporting records for the business activities authorized by this permit available for audit by the Forest Service or other federal agencies authorized to review Forest Service activities. The holder shall retain these records and make them available for review for five years after the end of the year they were generated, unless disposition is otherwise authorized by the Forest Service in writing.
4. The annual operating plan, which shall be attached to this permit, shall be submitted by the holder and approved by the authorized officer before the holder conducts any services authorized by this permit. The holder shall prepare an annual operating plan by **[date]**, in consultation with the authorized officer. At a minimum, the annual operating plan shall include (1) the season of use for authorized outfitting and guiding activities, including the start and stop date of operations; (2) limitations on use established by the Forest Service (including fire restrictions); and (3) a completed Estimated Fee Determination Sheet (which shall be attached to this permit).
5. The holder shall not install any improvements on Shawnee National Forest System land without prior written approval of the authorized officer.
6. In exercising the rights and privileges granted by this permit, the holder shall comply with all present and future federal laws and regulations and all present and future state, county, and municipal laws, regulations, and other legal requirements that apply to the permit area, to the extent they do not conflict with federal law, regulation, or policy. The Forest Service assumes no responsibility for enforcing laws, regulations, and other legal requirements that fall under the jurisdiction of other governmental entities.
7. The holder has an affirmative duty to take reasonable steps to protect from damage the land, property, and other interests of the United States. Damage includes but is not limited to fire suppression costs, damage to government-owned improvements covered by this permit, and all costs and damages associated with or resulting from the release or threatened release of a hazardous material occurring during or as a result of activities of the

holder or the holder's heirs, assigns, agents, employees, contractors, or lessees on, or related to, the lands, property, and other interests covered by this permit. "Hazardous material" shall mean any hazardous substance, pollutant, contaminant, hazardous waste, oil, and/or petroleum product, as those terms are defined under any federal, state, or local law or regulation.

8. The holder shall avoid damaging or contaminating the environment, including but not limited to the soil, vegetation (such as trees, shrubs, and grass), surface water, and groundwater, during the holder's use and occupancy of the permit area. If the environment or any government property covered by this permit becomes damaged during the holder's use and occupancy of the permit area, the holder shall immediately repair the damage or replace the damaged items to the satisfaction of the authorized officer and at no expense to the United States.

9. The holder shall indemnify, defend, and hold harmless the United States for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the holder in connection with the use and occupancy authorized by this permit. This indemnification and hold harmless provision includes but is not limited to acts and omissions of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees in connection with the use and occupancy authorized by this permit which result in (1) violations of any laws and regulations which are now or which may in the future become applicable, including but not limited to applicable environmental laws; (2) judgments, claims, demands, penalties, or fees assessed against the United States relating to the use and occupancy on Shawnee National Forest System land under this permit; (3) costs, expenses, and damages incurred by the United States; or (4) the release or threatened release of any solid waste, hazardous waste, hazardous substance, pollutant, contaminant, oil in any form, or petroleum product into the environment relating to the use and occupancy on Shawnee National Forest System land under this permit. The authorized officer may prescribe terms that allow the holder to replace, repair, restore, or otherwise undertake necessary curative actions to mitigate damages in addition to or as an alternative to monetary indemnification.

10. The holder shall furnish proof of insurance, such as a certificate of insurance, to the authorized officer prior to issuance of this permit and each year thereafter that this permit is in effect. The Forest Service reserves the right to review and approve the insurance policy prior to issuance. The holder shall send an authenticated copy of any insurance policy obtained pursuant to this clause to the authorized officer immediately upon issuance of the policy. Any insurance policies obtained by the holder pursuant to this clause shall name the United States as an additional insured, and the additional insured provision shall provide for insurance coverage for the United States as required under this clause. Such policies shall also specify that the insurance company shall give 30 days prior written notice to the authorized officer of cancellation of or any modification to the policies. The certificate of insurance, the authenticated copy of the insurance policy, and written notice of cancellation or modification of insurance policies should be sent to **[mailing address of administering office]**. Minimum amounts of coverage and other insurance requirements are subject to change at the sole discretion of the authorized officer on the anniversary date of this permit.

a. The holder shall have in force liability insurance covering losses associated with the use and occupancy authorized by this permit arising from personal injury or death and third-party property damage in the minimum amount of \$ \$500,000 as a combined single limit per occurrence.

11. The holder agrees at all times to permit the free and unrestricted access to the Shawnee National Forest System lands covered by this permit for all lawful and proper purposes not inconsistent with the intent of the permit or with the reasonable exercise and enjoyment by the holder of the privileges thereof.-

12. This permit is subject to all valid existing rights and claims of third parties on Shawnee National Forest System land.

13. The authorized officer may revoke or suspend this permit in whole or in part (1) for noncompliance with federal, state, or local laws and regulations; (2) for noncompliance with the terms of this permit; (3) for failure of the holder to exercise the privileges granted by this permit; (4) with the consent of the holder; or (5) at the discretion of the authorized officer, for specific and compelling reasons in the public interest. Prior to revocation or suspension,

the authorized officer shall give the holder written notice of the grounds for the action to be taken. Prior to revocation or suspension, the authorized officer also shall give the holder a reasonable period, not to exceed 30 days, to complete corrective action prescribed by the authorized officer.

14. The authorized officer may immediately suspend this permit in whole or in part when necessary to protect public health or safety or the environment. The suspension decision must be in writing. Within 10 days of the request of the holder, the superior of the authorized officer shall arrange for an on-the-ground review of the adverse conditions with the holder. Following this review, the superior shall take action within 5 days to affirm, modify, or cancel the suspension.

15. Any written decisions by the authorized officer relating to administration of this permit, including annual ratings of probationary and unacceptable and revocation or suspension decisions, are subject to the administrative appeal regulations at 36 CFR Part 251, Subpart C, as amended. Revocation or suspension of this permit shall not give rise to any claim for damages by the holder against the Forest Service.

16. This permit shall terminate when by its terms a fixed or agreed upon condition, event, or time occurs without any action by the authorized officer. Examples include but are not limited to expiration of the permit by its terms on a specified date and termination upon change of control of the business entity. Termination of this permit is not subject to administrative appeal and shall not give rise to any claim for damages by the holder against the Forest Service.

17. This permit, which is revocable and terminable, is not a contract or a lease, but rather a federal license. The benefits and requirements conferred by this authorization are reviewable solely under the procedures set forth in 36 CFR Part 251, Subpart C, and 5 U.S.C. 704. This permit does not constitute a contract for purposes of the Contract Disputes Act, 41 U.S.C. 601. The permit is not real property, does not convey any interest in real property, and may not be used as collateral for a loan. The holder may not assign all or part of the authorized use to others.

18. a. As it relates to the use and occupancy on Shawnee National Forest System lands, the holder and its employees shall not discriminate against any person on the basis of race, color, sex (in educational activities), national origin, age, or disability or by curtailing or refusing to furnish accommodations, facilities, services, or use privileges offered to the public generally. In addition, as applicable, the holder and its employees shall comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended, Section 504 of the Rehabilitation Act of 1973 as amended, Title IX of the Education Amendments of 1972, as amended, and the Age Discrimination Act of 1975 as amended.

b. The holder shall include and require compliance with the above nondiscrimination provisions in any third-party agreement made with respect to the operations authorized under this permit as it relates to the use and occupancy on Shawnee National Forest System land.

c. The Forest Service shall furnish signs setting forth this policy of nondiscrimination. These signs shall be conspicuously displayed on the premises and at other exterior or interior locations, as directed by the Forest Service.

d. The Forest Service shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or by any other available remedy under the laws of the United States or the State in which the violation occurs.

19. In addition to the nondiscrimination policy in clause 18, the holder agrees to insure that its programs and activities as they relate to the use and occupancy on Shawnee National Forest System land are open to the general public on an equal basis and without regard to any non-merit factor.

20. The Forest Service reserves the right to regulate the adequacy, type, and price of services provided to the

public on Shawnee National Forest System lands and to require that these services conform to satisfactory standards. The holder may be required to furnish a schedule of prices for sales and services authorized by this permit. Such prices and services may be regulated by the Forest Service, provided that the holder shall not be required to charge prices significantly different from those charged by comparable or competing businesses. The Forest Service shall not have the right to regulate prices for sales and services rendered and supplied on holder's lands or offsite of Shawnee National Forest Systems lands.

21. Signs posted on Shawnee National Forest System lands must have prior written approval of the authorized officer.

22. The holder shall not misrepresent in any way, either orally, in its circulars, brochures, advertising, and other materials, or on its World Wide Web site, signs, or letterheads, any aspect of the use authorized by this permit, including services provided by the holder, the status of this permit, or the area it covers. All of the holder's circulars, brochures, and advertising and its World Wide Web site regarding use of the permit area may state that the permit area is located in the Shawnee National Forest.

23. This permit does not provide for the furnishing of road or trail maintenance, water, fire protection, search and rescue, or any other such service by a government agency, utility, association, or individual.

24. No member of or delegate to Congress or resident commissioner shall benefit from this permit either directly or indirectly, except to the extent the authorized use provides a general benefit to a corporation.

25. The above clauses shall control if they conflict with additional clauses or provisions.

26. The District Ranger, Vienna, Illinois, Ranger District, Telephone No. 618-658-2111, is responsible for administering this special-use authorization. The holder should contact the District Ranger regarding any questions concerning the occupancy and use authorized and the provisions of this authorization.

27. Except as set forth in the Holder's Acceptance of Recommended Resolution in *Glisson v. United States Forest Service*, Case No. 99-cv-4189-JPG, the execution and acceptance of this permit shall not be considered to be a waiver of any right that the holder may have under law regarding future permits. The execution of this Temporary Court-Ordered Special-Use Permit by holder and issuer shall not be used as evidence of agreement or consent regarding any future permit.

This permit is accepted subject to all its terms and conditions.

HOLDER: _____ CAMPGROUND

U.S. DEPARTMENT OF AGRICULTURE
Forest Service

By: _____

By: _____

Owner

Address: _____

Name: JEFF SEEFELDT
Title: District Ranger, Vienna, IL
(Authorized Officer)

Phone #: _____

Date: _____

Date: _____