

CERTIFIED COPY
IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT JOHNSON
COUNTY, WYOMING



BRUCE SALZBURG, Attorney General of Wyoming,)
)
 Plaintiff,)
)
 v.)
)
 FRED L. DOWD and LINDA S. DOWD; and the)
 BOARD OF COUNTY COMMISSIONERS OF)
 THE COUNTY OF JOHNSON, in their Official)
 Capacity as Trustees of the SCENIC PRESERVE)
 TRUST,)
 Defendants)

FILED 4TH JUDICIAL DISTRICT COURT
 CASE NO. _____

FEB 17 2010

JOHNSON COUNTY, WYOMING
 Clerk of District Court

Civil Action No. CV-2008-0079

STIPULATED JUDGMENT

The above entitled matter came on for hearing before the court. The court was advised the parties have reached an agreement to settle this matter under the terms set out in this stipulated judgment.

Background of Controversy

The Meadowood Ranch ("Ranch") is located along Clear Creek outside of the Town of Buffalo, Wyoming, and consists of approximately 1,043 acres. In 1993, the then owner of the Ranch, the Lowham Limited Partnership ("Lowham"), made a charitable gift of a conservation easement for the purpose of protecting the conservation values of the Ranch in perpetuity to the Board of County Commissioners of Johnson County, Wyoming, ("Board") by a Deed of Conservation Easement and Quitclaim Deed dated December 29, 1993 ("Conservation Easement"). The Deed of Conservation Easement and Quitclaim Deed was recorded on December 29, 1993, in the Office of the County Clerk of Johnson County, Wyoming, in Book 86A41 at Pages 672-688. The Deed of Conservation Easement and Quitclaim Deed also conveyed to the Board one acre of land described in Exhibit B of the Conservation Easement.

On April 15, 1997, Johnson County, Wyoming, executed a quitclaim deed by which it conveyed the one acre of land described in Exhibit B of the Conservation Easement to the Scenic Preserve Trust of Johnson County, Wyoming ("Scenic Preserve Trust"). This deed was recorded in Book 87A89 at Page 160 in the Office of the County Clerk of Johnson County, Wyoming.

On February 1, 1999, Fred L. Dowd and Linda S. Dowd purchased the Ranch subject to the Conservation Easement from Lowham. The deed from Lowham to the Dowds is recorded in Book 87A41 at Pages 293-294 in the Office of the County Clerk of Johnson County, Wyoming. The Dowds were aware of the Conservation Easement on the Ranch when they bought the land and had no objection to the Conservation Easement. The Conservation Easement provided that mining, drilling, removal of minerals, hydrocarbons and other materials on or below the surface of the land were inconsistent with the purposes of the easement and were prohibited upon or within the Ranch.

The minerals in the land subject to the Conservation Easement were not owned nor controlled by the Dowds or the Board; however, the Board and the Dowds believed mineral development on the Ranch would not occur because Lowham provided them with information stating the likelihood of surface disturbing activity for mineral development on the Ranch was so remote as to be negligible.

In the fall of 2001, the Dowds were contacted by Northwest Energy. Northwest Energy told the Dowds it had a lease on the coalbed methane from the owners of the minerals under the Ranch. Northwest Energy threatened to sue the Dowds if they tried to stop Northwest Energy from entering the Ranch to drill wells, and Northwest Energy entered the Ranch and commenced coalbed methane operations.

The Dowds asked the Board to terminate the Conservation Easement because of the unanticipated mineral development on the Ranch. On August 6, 2002, the Board voted to terminate the easement, and adopted Resolution No. 257 in which it agreed to transfer the Conservation Easement and the one-acre tract to the Dowds for the purpose of terminating the easement because of unknown, unforeseen and unanticipated coalbed methane development ("Resolution No. 257"). The Board then executed a quitclaim deed to the Dowds for the one acre tract and the Conservation Easement which stated the Conservation Easement "is and shall be hereby extinguished and terminated." This deed, dated August 6, 2002, was recorded in Book 87A45 at Pages 607-610 (and rerecorded in Book 87A45 at pages 620-625) in the Office of the County Clerk of Johnson County, Wyoming.

The Wyoming Attorney General filed the instant action against the Board and the Dowds alleging, *inter alia*, that the Board violated its fiduciary duties by transferring the

Conservation Easement and one-acre tract to the Dowds for the purpose of terminating the easement. The Attorney General maintains the Conservation Easement cannot be terminated without court approval obtained in a *cy pres* proceeding.

The Dowds have invested heavily in conservation and fish and wildlife habitat improvement on the Ranch since they acquired it, including paying part of the cost of an extensive environmental study of the Ranch in 2002 to mitigate the impact of coalbed methane activity, placing land in the Conservation Reserve Program, fencing areas to protect the creek and fishery from damage by livestock, installing center pivot irrigation systems in 2004 to improve fisheries by reducing water use and reducing high temperature return flow, leaving the third cutting of hay on the Ranch as winter feed for wildlife, cooperating with the Wyoming Game and Fish Department by allowing public hunting for doe deer without charging hunters, and by providing access in 2010 for wheelchair hunters to hunt on the Ranch. As a result of conservation work which the Dowds have done on the Ranch, the Natural Resources Conservation Service determined the Ranch was one of the healthiest and most diverse areas on Clear Creek.

Coalbed methane activity on the Ranch stopped six years after litigation concerning the validity of the Board's actions in attempting to terminate the Conservation Easement had begun, and it appears unlikely to resume. The Dowds had no objection to the Conservation Easement when they purchased the Ranch, and they have no objection to the Conservation Easement with certain clarifications which are acceptable to all parties.

Judgment

It is, therefore, ordered and decreed that (i) Resolution No. 257 is of no legal effect insofar as it purported to authorize the Board to sell and transfer the Conservation Easement and one acre tract to the Dowds, (ii) the quitclaim deed recorded in Book 87A45 at Pages 607-610 (and rerecorded in Book 87A45 at pages 620-625) in the Office of the County Clerk of Johnson County, Wyoming, is null and void and of no effect, and (iii) the Deed of Conservation Easement and Quitclaim Deed recorded in Book 86A41 at Pages 672-688 in the Office of the County Clerk of Johnson County, Wyoming, is in full force and effect with the amendments set forth in this Judgment.

It is ordered and decreed that the Conservation Easement is held by the Board of County Commissioners of Johnson County, Wyoming, as trustee of the Scenic Preserve

Trust of Johnson County, Wyoming. The one acre tract of land described in Exhibit B of the Deed of Conservation Easement and Quitclaim Deed is owned by the Board of County Commissioners of Johnson County, Wyoming, as trustee of the Scenic Preserve Trust of Johnson County, Wyoming.

It is ordered and decreed that the Deed of Conservation Easement and Quitclaim Deed is amended as follows:

Paragraph 5(d) is amended in its entirety to read as follows:

(d) The filling, excavating, dredging, mining, or drilling, removal of minerals, hydrocarbons, and other materials on or below the surface of the land by Grantor or a lessee of Grantor, or other change in the topography of the land, except where necessary for the construction, maintenance and repair of roads, bridges, utility lines, irrigation facilities, fishery improvements, other scenic, habitat and recreational improvements, such as ponds, springs, streams, creeks and irrigation ditches specifically referenced in Paragraph 4(i) above and construction of any residential or agricultural structures as referenced in Paragraph 4(k), above. However, the leveling of land to improve the irrigation of Ranch meadows is not restricted or prohibited, as long as any such leveling is done in a manner that is consistent with good agricultural practices. The minerals in and under the Ranch are not owned by Grantor, and Grantor shall have no liability arising out of the exploration, development, mining or production of minerals. If a third party proposes to explore for, develop, mine or produce minerals on the Ranch, Grantor may enter into a surface use agreement in order to attempt to reduce the impact of such mineral development on the Ranch and may enter into a surface use agreement as provided in W.S. 30-5-405(a) without violating the terms of this Easement.

The last sentence of paragraph 6(a) is amended to read as follows:

In any such suit the nonprevailing party shall reimburse the other party for the latter's costs, including reasonable attorneys' fees.

The following sentence is added to paragraph 7:

Anything herein to the contrary notwithstanding, nothing in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Ranch resulting from causes beyond Grantor's control, including, without limitation, acts of trespassers, unauthorized wrongful acts of third persons, fire, flood, storm, earth movement, and major crop or tree disease or resulting from action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Ranch resulting from such causes.

Paragraph 9(a) is amended in its entirety to read as follows:

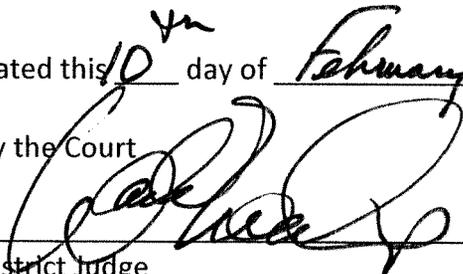
(a) Grantee shall have the right to transfer or assign any and all rights and responsibilities accruing unto it by this Easement, provided that Grantor consents to the assignment in writing and the assignee is an entity acceptable to Grantor, and that, at the time of such transfer or assignment the transferee is a "qualified organization," within the meaning of § 170(h) of the Code, and provided that such transfer or assignment shall be conditioned on the transferee or assignee complying with and enforcing the conservation purposes which this Easement intends to accomplish. If Grantee dissolves, becomes insolvent, ceases to exist as a "qualified organization," or for any other reason becomes unable to enforce effectively the conservation purposes of this Easement then Grantee shall be required to assign its interest in the Easement to a "qualified organization," approved in writing by Grantor, and if such Grantee is unable to so transfer the Easement, the Easement shall be transferred to such "qualified organization" as a court of competent jurisdiction applying the doctrine of *cy pres*, or analogous principles shall determine.

It is ordered and decreed that all other claims in this case are dismissed with prejudice, that Fred L. Dowd and Linda S. Dowd and the Board of County Commissioners have no liability for any coalbed methane activity which occurred as a result of the third party's lease of minerals under the land subject to the Conservation Easement, that Fred L. Dowd and Linda S. Dowd have no obligation to indemnify or hold harmless the Board of County Commissioners or Johnson County, Wyoming, from any liability, claims or causes of action that arise out of or by virtue of the actions authorized by Resolution No. 257 of the Board of County Commissioners, and that the parties shall bear their own attorneys' fees and costs.

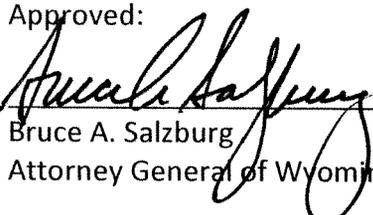
In order to implement this Stipulated Judgment, to give effect thereto, and to ensure that adequate notice thereof is provided to future owners of the property which is the subject thereof, the Clerk of the Court is hereby ordered and directed to cause this Stipulated Judgment to be recorded in the land records of the Office of the County Clerk of Johnson County, Wyoming, and indexed under the names of: (i) the Board of County Commissioners of Johnson County, Wyoming, a body corporate and politic, (ii) the Board of County Commissioners of Johnson County, Wyoming, in its capacity as Board of Trustees of the Scenic Preserve Trust, and (iii) Fred L. Dowd and Linda S. Dowd.

Dated this 10th day of February, 2010.

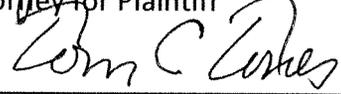
By the Court

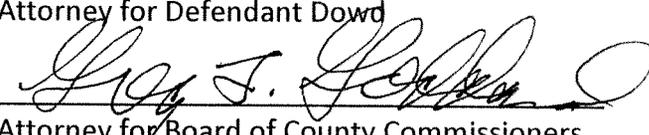

District Judge

Approved:


Bruce A. Salzburg
Attorney General of Wyoming


Attorney for Plaintiff


Attorney for Defendant Dowd


Attorney for Board of County Commissioners of Johnson County, Wyoming, a body corporate and politic, and Attorney for Board of County Commissioners of Johnson County, Wyoming, in its capacity as Board of Trustees of the Scenic Preserve Trust

The foregoing is a true and correct copy of the Original instrument which is on file or of record in this court. Fourth Judicial District Court, Johnson County, WY
Thelma M. Axberg, Clerk of District Court
Certified this 17 day of Feb, 20 10
By Mina [unclear] Ass. - Deputy
Term of Office expires on January 3, 2011.