

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

LOUIS D. GOMEZ, <i>et al.</i> ,	§	
<i>Plaintiffs,</i>	§	
	§	
vs.	§	Civil Action No. 4:08cv150-MHS-ALM
	§	
UNITED STATES DEPARTMENT	§	
OF THE ARMY, <i>et al.</i> ,	§	
<i>Defendants.</i>	§	

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by plaintiffs Louis D. Gomez, David Jackson, Don Kelley, Fred White (“Plaintiffs”) and defendants United States Department of the Army and United States Army Corps of Engineers (“Federal Defendants”). These plaintiffs and defendants are referred to herein as “the Parties.” Plaintiffs’ complaint, as filed on April 29, 2008, and amended on August 5, 2008, alleged that Federal Defendants violated the Privacy Act and the Administrative Procedure Act by disclosing protected information to Grayson Central Appraisal District (“GCAD”).

The Parties now mutually desire to resolve all of the claims asserted by Plaintiffs in this action without the need for further litigation, and without any admission of liability by any party. Accordingly, the Parties hereby agree to compromise, settle and resolve all of the claims asserted by Plaintiffs in this action on the following terms and conditions:

1. For purposes of this Agreement, the following definitions apply:
 - a. “Corps” is the United States Army Corps of Engineers, a component of the United States Department of the Army.
 - b. “GCAD” is the Grayson Central Appraisal District, a political subdivision

of the state of Texas in Grayson County, Texas.

- c. "Texoma Shoreline Management Plan" is the published guidance by which the Corps administers Lake Texoma, Denison Dam, and the portion of the Red River under its control.
- d. "SUP" is a Shoreline Use Permit issued by the Corps pursuant to the Texoma Shoreline Management Plan, under the authority of 36 C.F.R. § 327.30(f)(1).
- e. "Protected information" means "any record which is contained in a system of records" under 5 U.S.C. § 552a(b), specifically including SUP applications and other records associated with any individual's SUP.
- f. "FOIA" means the Freedom of Information Act, 5 U.S.C. § 552.
- g. "FOIA Exemption 6" means 5 U.S.C. § 552(b)(6), which exempts from FOIA requirements those "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."
- h. "Privacy Act" means the Privacy Act, 5 U.S.C. § 552a.
- i. "AR 25-55" means the Department of Army Regulation 25-55, entitled "The Department of the Army Freedom of Information Act Program."

2. Subsequent to the execution and delivery of this Agreement, the Parties shall execute, deliver and cause to be filed no later than August 14, 2009, in the United States District Court for the Eastern District of Texas a Stipulation and Order of Dismissal, in the form appended hereto as Exhibit A.

3. Subject to any relevant change in law or regulation, the Corps has determined that any disclosure of protected information about SUP holders by the Corp to GCAD or to anyone acting on GCAD's behalf is subject to the specific requirements of the Privacy Act.

4. Subject to any relevant change in law or regulation, the Corps has determined that the owner name(s), address(es), and telephone number(s) associated with any SUP are subject to exemption from release under FOIA pursuant to FOIA Exemption 6.

5. Without admitting liability, nor admitting a violation of the Privacy Act or any other law, the Corps has determined that its disclosures to GCAD, in response to GCAD FOIA requests in 2007 and 2008, of protected information about Plaintiffs were not fully consistent with the requirements of AR 25-55, ¶ 5-103.

6. This Agreement is not and shall not be construed as an admission by Federal Defendants of the truth of any allegation or the validity of any claim asserted in this action, or Federal Defendants' liability therein. Nor is it a concession or an admission of any fault or omission in any act or failure to act. Nor shall any of the terms hereof be offered or received in evidence against Federal Defendants or, in any civil, criminal, or administrative action, be referred to against Federal Defendants or construed against Federal Defendants as an admission or presumption of wrongdoing on the part of Federal Defendants.

7. Plaintiffs hereby forever fully, absolutely, and unconditionally release, acquit, and forever discharge Federal Defendants or any officer, agent, or employee of Federal Defendants from any and all claims, counterclaims, defenses asserted, liabilities, or damages, known or unknown, real or contingent, relating or pertaining to or arising out of the above-captioned litigation, the subject matter thereof, or the actions taken for or on behalf of Federal Defendants

relating thereto.

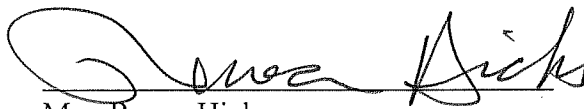
8. The Parties agree to be responsible for their own attorneys' fees, costs, and expenses incurred in this litigation.

9. The terms of the Agreement, and the attachment thereto, constitute the entire agreement of the Parties, and no statement, remark, agreement or understanding, oral or written, which is not contained therein, shall be recognized or enforced; nor does the Agreement reflect any agreed-upon purpose other than the desire of the parties to reach a full and final conclusion of this action and to resolve the matter without the time and expense of further litigation.

10. This Agreement cannot be modified or amended except by an instrument in writing signed by the party to be charged therewith; nor shall any provision hereof be waived other than by a writing setting forth such waiver and signed by the party to be charged with such waiver.

11. This Agreement shall be binding upon and inure to the benefit of Plaintiffs and the Federal Defendants and their respective successors, assigns and personal representatives, including any persons, entities, departments or agencies succeeding to the interests or obligations of the Parties.

Dated: August 10, 2009



Max Renea Hicks
101 West 6th Street
Austin, Texas 78701
Tel: (512) 480-9105
rhicks@renea-hicks.com

Counsel for Plaintiffs

Dated: August 7, 2009



Galen N. Thorp

United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., NW
Washington, D.C. 20530
Tel: (202) 514-4781
galen.thorp @usdoj.gov

Counsel for Federal Defendants

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

LOUIS D. GOMEZ, *et al*,
Plaintiffs,

§
§
§
§
§
§
§

vs.

Civil Action No. 4:08cv150-MHS-ALM

UNITED STATES DEPARTMENT
OF THE ARMY, *et al.*,
Defendants.

ORDER

Whereas the plaintiffs Louis D. Gomez, David Jackson, Don Kelley, and Fred White (“Plaintiffs”) and the United States Department of the Army and the United States Army Corps of Engineers (“Federal Defendants”) in the above-captioned case have reached full and complete settlement of all claims brought by Plaintiffs, it is hereby

ORDERED that Plaintiffs’ claims against the Federal Defendants set forth in their First Amended Complaint [31] be, and hereby are, DISMISSED WITH PREJUDICE and that the respective parties shall bear their own fees, costs, and expenses.

Dated this _____ day of _____, 2009.

HONORABLE MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE