

MARTIN B. BUSHMAN (5594)
Assistant Attorney General
MARK L. SHURTLEFF (4666)
UTAH ATTORNEY GENERAL
Attorneys for Utah Division of Wildlife Resources
1594 West North Temple, Suite 2110
P.O. Box 146301
Salt Lake City, Utah 84114-6301
Telephone: (801) 538-4703
Facsimile: (801) 538-4709

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VIKKI BARNETT, Recorder
CARBON COUNTY CORPORATION
For: STATE OF UTAH

IN THE SEVENTH JUDICIAL DISTRICT COURT
IN AND FOR CARBON COUNTY, STATE OF UTAH

LEO FOY; GARY L. FOY; CLAY
L. FOY; and GHOST TOWN
GET-A-WAY, LLC, a Limited Liability
Company,

Plaintiffs,

vs.

RICHARD G. GATHERUM,

Defendant.

RICHARD G. GATHERUM, an individual,
STATE OF UTAH, DEPARTMENT OF
NATURAL RESOURCES, DIVISION OF
WILDLIFE RESOURCES, a Division of
the State of Utah,

Counterclaim Plaintiff and Third
Party Plaintiffs,

vs.

STIPULATION AND SETTLEMENT

Civil No: 070700873

Judge George M. Harmond, Jr.

DOUBLE J TRIANGLE, L.L.C., KIM C. JENSEN, CLAYTON FOY, GARY FOY, LEO FOY, and GHOST TOWN GET-A-WAY, L.L.C., and JOHN DOES I-X and JANE DOES I-X, UNKNOWN,

Counterclaim Defendants and
Third-Party Defendants.

The Utah Division of Wildlife Resources, by and through counsel, Martin B. Bushman, Assistant Attorney General; Richard G. Gatherum, by and through counsel, Samuel P. Chiara; and Leo Foy, Gary L. Foy, Clayton Foy, Kim C. Jensen, Ghost Town Get-a-Way, L.L.C., and Double J Triangle, L.L.C., by and through counsel, Daniel J. McDonald, hereby execute and submit the following Stipulation and Settlement.

STIPULATION

Utah Division of Wildlife Resources (“DWR”); Richard G. Gatherum (“Gatherum”); Leo Foy, Gary L. Foy, Clayton Foy, and Ghost Town Get-a-Way, L.L.C. (“Ghost Town”); and Kim C. Jensen and Double J Triangle, L.L.C. (“Jensen”) do hereby stipulate and agree as follows:

1. DWR, Gatherum, and Jensen executed an Option to Purchase Fee Title and Purchase Agreement (“Purchase Agreement”) on December 18, 2002 wherein: 1) DWR purchased a conservation easement on approximately 3,360 acres of property (Property”) owned by Jensen in Carbon County, Utah; and 2) Gatherum acquired an option to purchase the Property encumbered by the conservation easement. The Purchase Agreement was recorded in the Carbon County Recorder’s Office on April 28, 2003 as Entry No. 098258, Book 531, Page 665 and attached hereto as Exhibit A.

2. The Purchase Agreement reserved to Jensen a number of property interests (“Retained Interests”), including the right to: 1) identify and acquire in the future, at no cost, a 40-acre parcel in Lone Pine with a three acre building envelope to construct a single family dwelling; 2) retain a 60-acre parcel and associated buildings; 3) retain certain water rights appurtenant to the Property; 4) retain a pipeline easement on the Property to transport retained water rights; 5) retain an easement for utilities necessary to service other retained rights; and 6) have perpetual access over and upon the Property for personal and family purposes.

3. DWR and Jensen also executed a Deed of Conservation Easement (“Conservation Easement”) on December 18, 2002 wherein Jensen conveyed to DWR a Conservation Easement on the Property. The Conservation Easement was recorded in the Carbon County Recorder’s Office on April 28, 2003 as Entry No. 098257, Book 531, Page 643.

4. The Purchase Agreement conveys to DWR and Gatherum rights of first refusal to purchase any interest in the Property retained or reserved by Jensen in the event of sale to a third party.

5. Additionally, the Conservation Easement conveys to DWR the right of first refusal to purchase any interest in the Property retained or reserved by Jensen in the event of sale to a third party.

6. Gatherum subsequently exercised the option in the Purchase Agreement and acquired the Property owned by Jensen.

7. In September of 2005, Ghost Town approached Jensen expressing interest in purchasing all of Jensen's Retained Interests in the Property that Jensen ultimately agreed to sell for \$ 125,000.

8. Ghost Town contacted Gatherum to negotiate a deal where Gatherum would purchase Jensen's Retained Interest in the 40-acre parcel in Lone Pine and Ghost Town would purchase the 60-acre parcel. Ghost Town did not contact or notify DWR concerning the acquisition believing it had satisfied the right of first refusal in the Purchase Agreement by involving Gatherum.

9. On December 14, 2005, Gatherum repudiated the agreement between himself, Ghost Town, and Jensen on the joint purchase of Jensen's Retained Interests in the Property and declared his desire to purchase all of Jensen's Retained Interests.

10. Ghost Town and Jensen declined to accept Gatherum's demand on account of the agreement he executed with them concerning the disposition of those interests.

11. Consequently, Jensen conveyed to Ghost Town by warranty deed on December 15, 2005 all the Retained Interests he owned in the Property. The Warranty Deed was recorded in the Carbon County Recorder's Office on December 15, 2005 as Entry No. 114900, Book 608, Page 299 and is attached as Exhibit B.

12. The above entitled quiet title action ensued with Ghost Town, Gatherum, and DWR each claiming right to the Retained Interests.

13. Ghost Town and Jensen filed for summary judgment against DWR and Gatherum, and on June 5, 2008 the Court entered its order denying the motion based on the finding that DWR had a valid, independent right of first refusal in the Retained Interests and that Ghost Town and Jensen failed to afford DWR an opportunity to exercise that right.

14. Rather than incur additional costs and fees litigating the validity of DWR's right of first refusal and its potential impact on Ghost Town's title in the Retained Interests, the parties agree as follows.

15. Except as provided in Paragraph 16., Ghost Town and Jensen will convey to Gatherum by special warranty deed, free and clear, all right, title, and interest in and to the:

- a. water rights reserved by Double J Triangle, L.L.C. and Jensen in Section C., Paragraph 1.c. of the Purchase Agreement executed on December 18, 2002;
- b. waterline right-of-way and utility easement reserved by Double J Triangle, L.L.C. and Jensen in Section C., Paragraph 1.d. of the Purchase Agreement executed on December 18, 2002;

- c. perpetual access rights reserved by Double J Triangle, L.L.C. and Jensen in Section C., Paragraph 1.e. of the Purchase Agreement executed on December 18, 2002; and
- d. right to designate a 40-acre parcel in Lone Pine reserved by Double J Triangle, L.L.C. and Jensen in Section C., Paragraph 1.b. of the Purchase Agreement executed on December 18, 2002.

16. Notwithstanding Paragraph 15., Ghost Town will retain the following rights associated with the Retained Interests it acquired by the Warranty Deed executed on December 15, 2005 and attached as Exhibit B:

- a. .45 acre feet of water from Water Right No. 91-3887 for culinary use at Ghost Town's residential facilities located in the Northeast 1/4 of the Northeast 1/4 of Section 17, Township 13 South, Range 9 East, SLB&M; and
- b. an easement for the construction, installation, and maintenance of a buried water supply pipeline from the source of Water Right No. 91-3887 located in Lone Pine (Northwest 1/4 of the Southwest 1/4 of Section 12, Township 13 South, Range 8 East, SLB&M) to Ghost Town's residential facilities located in the Northeast 1/4 of the Northeast 1/4 of Section 17, Township 13 South, Range 9 East, SLB&M.

17. The parties agree that the water supply pipeline easement reserved in Paragraph 16.b. is subject to the following terms and conditions:

- a. The pipeline easement will be 10 feet in width and follow a course directly from the water's source in Lone Pine to the existing dirt road in the bottom of the canyon, thence easterly following the existing dirt road to where it intersects the county road in Spring Canyon (near the old Mutual building) in the Southwest 1/4 of the Northwest 1/4 of Section 7, Township 13 South, Range 9 East, SLB&M.
- b. The easement includes the right to develop the water's source consistent with state and federal law. All development activities will be carried out in an environmentally sensitive manner, protecting to the maximum extent reasonably possible, the topography of the ground and the existing riparian area associated with the spring and its outflow.
- c. The easement includes a reasonable right of ingress and egress to construct, install, and maintain the pipeline.
- d. Ghost Town will provide Gatherum and DWR 30 days prior notice before commencing any surface disturbing, installation activities on Gatherum's property under authority of this easement.

- e. Ghost Town will be responsible for repairing or replacing all fences, gates, fixtures, and other structures on Gatherum's property that are damaged or destroyed as a result of installing or maintaining the water supply pipeline.
- f. Ghost Town will be responsible for restoring all real property disturbed or altered as a result of installing or maintaining the water supply pipeline to a state reasonably comparable to that which existed prior to the disturbance.
- g. Except as provided in Paragraph 18., Ghost Town will be solely responsible for all costs and liabilities incurred in developing the source of the .45 acre feet of water, including the construction and maintenance of the water supply pipeline conveying the water to its residential facilities.

18. In the event Ghost Town develops the water supply pipeline referred to in Paragraphs 16. and 17., Gatherum will have the right to connect to the pipeline to divert excess water to a location to be determined on Gatherum's property, subject to the following terms and conditions:

- a. Gatherum will be solely responsible for all costs and liabilities involved in connecting to the pipeline and in constructing and maintaining his branch pipeline.

- b. Gatherum will reimburse Ghost Town the additional material costs associated with increasing the pipeline's capacity to satisfy his diversion flow requirements.

19. In the event Gatherum develops Water Right No. 91-3887 for culinary use and an associated water supply pipeline in Lone Pine prior to Ghost Town developing a water supply pipeline pursuant to Paragraphs 16. and 17., Ghost Town will have the right to connect to the pipeline to divert excess water, not to exceed .45 acre feet, to a location to be determined on Ghost Town's property, subject to the following terms and conditions:

- a. Ghost Town will be solely responsible for all costs and liabilities involved in connecting to the pipeline and in constructing and maintaining its branch pipeline.
- b. Ghost Town will reimburse Gatherum the additional material costs associated with increasing the pipeline's capacity to satisfy its diversion flow requirements.

20. In consideration of the Retained Interests conveyed by Ghost Town to Gatherum in this Stipulation, Gatherum will pay Ghost Town \$ 70,000.

21. In consideration of the Retained Interests conveyed by Ghost Town to Gatherum in this Stipulation that eliminate or mitigate encumbrances on DWR's Conservation Easement, DWR will pay Ghost Town \$ 1,000.

22. Gatherum will release and withdraw the Notice of Interest filed in the Carbon County Recorder's Office on January 27, 2006 as Entry No. 115561, Book 611, Page 341 concerning the 60 acre parcel purchased by Ghost Town from Jensen on December 15, 2005. Gatherum will release and withdraw any other notices or encumbrances previously filed on title to the Retained Interests remaining in Ghost Town's possession pursuant to this Stipulation.

23. Neither Gatherum nor DWR is under any obligation to compensate Double J Triangle, L.L.C. or Jensen for any residual rights in the Retained Interests relinquished and transferred to Gatherum pursuant to Paragraph 15. of this Stipulation.

24. Upon conveyance to Gatherum of the right to designate the 40-acre in-holding in Lone Pine described in Paragraph 15.d., Gatherum agrees to extinguish that right and forever subordinate to the Conservation Easement on the Property any claim he may have to designate the 40-acre parcel, establish a three acre building envelope, or to convey those rights to another person.

25. Upon conveyance to Gatherum of the Retained Interests described in Paragraph 15., Gatherum agrees to subordinate the Retained Interests to the Conservation Easement executed on December 18, 2002 and recorded in the Carbon County Recorder's Office on April 28, 2003 as Entry No. 098257, Book 531, Page 643.

26. The conveyance of deeds contemplated in Paragraph 15. will be transacted by a title company. Closing of the transaction will occur on or before March 24, 2010, at the office of Southeastern Utah Title Company, whose address is 175 East 100 South, Price, Utah 84501, or at such other time as the Parties may mutually agree. Closing costs and other charges associated with closing will be equally split between the parties.

27. This Stipulation constitutes the entire agreement and understanding between the parties, and there are no representations, understandings or agreements, oral or written, expressed or implied, that are not included herein.

28. This Stipulation represents the negotiated settlement of disputed matters and will in no event be construed or deemed to be evidence of any admission on the part of any party of any liability other than as set forth herein.

29. This Stipulation will be governed by and construed in accordance with the laws of the State of Utah.

30. Should any provision of this Stipulation require judicial interpretation, the court interpreting or construing the same will not apply a presumption that its terms be more strictly construed against the drafting party, it being acknowledged that all parties participated in the preparation of this Stipulation.

31. Each party will be solely responsible for its own duties and obligations hereunder. No party will be deemed to have guaranteed performance by or to be jointly

liable for the obligations of another party (except as expressly agreed by the party in writing), and nothing contained herein will be deemed to create an agency, partnership or other similar relationship between or among the parties.

32. The parties represent and warrant that each has the authority to enter into this Stipulation and bind the respective entity that he is acting for.

33. The parties agree that each party will bear its own costs and attorney fees.

34. The parties agree no party will be in default of this Stipulation unless it has been notified of the alleged breach and given a reasonable opportunity to cure the breach.

35. If any legal action is brought by any party to enforce a provision of this Stipulation, the prevailing party will be entitled to recover from the other party reasonable attorneys' fees and court costs in such amounts as will be allowed by the court.

36. This Stipulation will be binding on the heirs, successors, lessees and assigns of the parties.

37. The parties agree that this Stipulation will be recorded in the Carbon County Recorder's Office once executed by the parties and adopted by the Court.

38. The parties agree that all claims of all parties are merged into this Stipulation and resolved hereby.

39. The parties request that the Court enter its order reflecting the terms of this Stipulation and to dismiss the above entitled action in its entirety with prejudice.

DATED this 15TH day of ~~February~~^{MARCH}, 2010.



MARTIN B. BUSHMAN
Assistant Attorney General
Attorney for Division of Wildlife Resources

DATED this 10th day of ~~February~~^{March}, 2010.



JAMES F. KARPOWITZ
Utah Division of Wildlife Resources
Third-Party Plaintiff

DATED this 22 day of February, 2010.



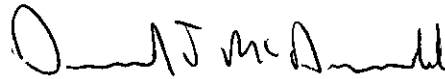
SAMUEL P. CHIARA
Attorney for Richard G. Gatherum

DATED this 12 day of February, 2010.



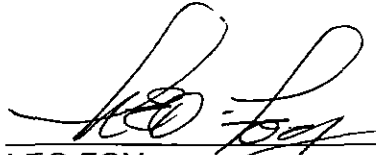
RICHARD G. GATHERUM
Defendant/Counterclaim Plaintiff

DATED this 15th day of March, 2010.



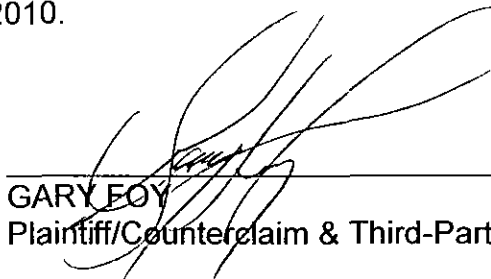
DANIEL J. McDONALD
Attorney for Leo Foy, Gary Foy, Clayton Foy,
Ghost Town Get-A-Way, LLC, Kim C.
Jensen, and Double J Triangle, LLC

DATED this 9 day of March, 2010.



LEO FOY
Plaintiff/Counterclaim & Third-Party Defendant

DATED this 9 day of March, 2010.




GARY FOY
Plaintiff/Counterclaim & Third-Party Defendant

DATED this 9 day of March, 2010.




CLAYTON FOY
Plaintiff/Counterclaim & Third-Party Defendant

DATED this 9 day of March, 2010.


GHOST TOWN GET-AWAY, LLC
Plaintiff/Counterclaim & Third-Party Defendant
Its: Robert J. Boy Pres. Member

DATED this 9 day of March, 2010.


KIM C. JENSEN
Third-Party Defendant

DATED this 9 day of March, 2010.



DOUBLE J TRIANGLE, LLC
Third-Party Defendant
Its: PRESIDENT

EXHIBIT A