

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

LAWRENCE J. BURKE and GABRIELLE BURKE.

Plaintiffs,

vs.

No. CIV 98-01110 SC/DJS-ACE

UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT;
THE BOARD OF COUNTY COMMISSIONERS, COUNTY OF SANTA FE;
ELOY and SUZANNE H. GARCIA,

Defendants.

STIPULATION OF DISMISSAL

Plaintiffs Lawrence J. Burke and Gabrielle Burke, by and through their undersigned attorneys, and Defendants United States Department of the Interior, Bureau of Land Management, and Eloy and Suzanne Garcia, by and through their respective undersigned attorneys, stipulate and agree that they have reached an amicable compromise and settlement of all disputed claims in this civil action, and that the same may and should be dismissed ~~with~~ ^{without} prejudice, each party to bear its own costs and attorney's fees.

RUBIN, KATZ, SALAZAR, ALLEY & ROUSE
a Professional Corporation

By: 

Owen C. Rouse III
James S. Rubin
Post Office Drawer 250
Santa Fe, New Mexico 87504-0250
(505) 982-3610

NORTAN C. BAY
JOHN J. KELLY
UNITED STATES ATTORNEY

By: _____

[Signature]
John W. Zavitz
Assistant U.S. Attorney
Post Office Box 607
Albuquerque, New Mexico 87103
(505) 224-1505

FELKER, ISH, RITCHIE & GEER, P.A.

By: _____

[Signature]
Randolph B. Felker
911 Old Pecos Trail
Santa Fe, New Mexico 87501
(505) 988-4483

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into effective the 3rd day of April 2000, by and among Lawrence J. and Gabrielle Burke (collectively, "the Burkes", the United States Department of the Interior, Bureau of Land Management ("BLM"), and Eloy and Suzanne Garcia ("the Garcias").

Whereas, the Burkes have commenced Civil action No. CIV 98-01110 SC/DJS-ACE in the United States District Court for the District of New Mexico (the "Federal Civil Action"); and

Whereas, in the Federal Civil Action the Burkes have asserted certain claims against the Garcias, and have sought a decree quieting their title to certain real property located in the north one-half of Section 13, T.18 N., R.8E, NMPM, Santa Fe County, New Mexico, presently known as Mariah Ranch, with its appurtenant interests and easements (the "Burkes' Property") as to all the Defendants; and

Whereas, the Garcias have asserted certain counterclaims in the Federal Civil Action; and

Whereas, the parties desire to settle and compromise all the claims and counterclaims which were or which might have been asserted in the Federal Civil Action;

Now, therefore, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. Upon execution of this Settlement Agreement by the parties, they shall instruct their attorneys to file a Stipulation of Dismissal Without Prejudice of the Federal Civil Action. At such time as the BLM formally grants the Garcias and the Ortiz families (Laluz LLC, Paul Ortiz, Lillian Ortiz Walker and Charles A. Walker) Rights-of-Way and the Burkes have completed all their engineering and construction obligations relative to the Rights-of-Way, the parties shall execute mutual releases as to all issues, claims and counterclaims presented in the federal civil action, and the Garcias shall execute quitclaim deeds to the Burkes' Property. BLM's granting of the right of way will be subject to compliance with the requirements of 43 CFR Part 2800. The terms of the right of way are subject to BLM's review and approval in accordance with these requirements. If for any reason the BLM fails to grant the Rights-of-Way or permit described herein to the Garcias or the Ortiz families, this Agreement shall be null and void, and the parties shall be entitled to assert all their legal rights, claims and defenses which they otherwise were entitled to prior to the execution of this Agreement.

2. Upon completion of the performance of Burkes' and the BLM's duties herein, the Garcias shall release and waive any claim that they own any interest in the real property owned by the Burkes' Property, including, but not limited to, a prescriptive or implied easement or other right of access to the Burkes' Property.

3. Promptly after the execution of this Settlement Agreement, subject to compliance with the requirements of 43 CFR Part 2800, the BLM agrees to grant the Garcias and the Ortiz family Rights-of-Way to travel over the public lands West of the Burkes' Property, along the route shown on Exhibit "A" attached hereto, in order to obtain access to lands owned by the Garcias in Section 2, T.18 N., R.8E, NMPM, Santa Fe County, New Mexico and to the Ortiz family Property (the "BLM Rights-of-Way"). In addition, subject to compliance with the requirements of 43 CFR Part 2800, the BLM agrees to grant underground utility easements to the Garcias and applicable public utility companies within the Right-of-Way of Horcado Ranch Road and within the Right-of-Way to be granted herein. The annual aggregate charge for the access-egress and underground utility Rights-of-Way payable to BLM will be that provided in 43 CFR Part 2800. The BLM shall give the Burkes permission to replant the tree or trees located near the Horcado Ranch Road and in the path of the dirt tracks presently on the ground, subject to the requirements of 43 CFR Part 2800.

4. The Burkes agree not to directly or indirectly oppose or to support any opposition to the granting to the Garcias or the Ortiz family of the BLM Rights-of-Way. The Garcias agree to request and encourage the members of the Ortiz Family (Susanita Ortiz, La Luz Group LLC, Paul Ortiz, Lillian Ortiz Walker and Charles Walker) and their spouses, if any, to release and relinquish any claim of right or interest in any of the real property of the Burkes.

5. In consideration for the further promise and commitment by the Burkes to arrange and pay for the cost of design and constructing a portion of the roadway along a segment of the BLM Right-of-Way, hereinafter the "Burkes' Segment" more fully described and depicted on Exhibit "A" as the road segment between points L1 and a point between point L14 and L15 where the Burkes' Segment connects with the old road on the NW side of the arroyo, the Garcias agree that the location of said Rights-of-Way shall be restricted to the course shown on Exhibit A attached hereto and incorporated herein, including "spurs" leading from such Right-of-Way to the Ortiz family property, as shown on Exhibit "A." This further agreement is subject to the following terms and conditions.

- a. The portion of the roadway to be constructed by the Burkes shall satisfy minimum County of Santa Fe standards, which shall at a minimum be as follows:
 - (i) improved driving surface of a width of twenty two feet (22');
 - (ii) elevated arroyo crossing engineered to withstand anticipated one hundred (100) year floods;

iii) at least three foot (3') wide bar ditching on each side of improved road surfaces

(iv) six inch (6") graveled/basecoarsed driving surface;

(v) compaction to ninety five percent (95%);

(vi) incline of no more than eight percent (8%) grade on west side of the ridge crossing and ten percent (10%) on the east side of ridge crossing.

b. The Garcias shall be solely responsible for the design and cost of construction the roadway along the BLM Rights-of-Way from and after the Burkes' Segment, but not including the spurs to the Ortiz family property (segments L40 - L 52 and L 53 - L56).

c. The Garcias shall be responsible for preparation of all environmental clearance documentation for the main right of way, including an environmental assessment, and archeological and threatened and endangered species reports from qualified professionals, but not including the spurs to the Ortiz family property. The Garcias will also be responsible for BLM's direct administrative costs in accordance with 43 CFR Part 2800. The Burkes agree to reimburse the Garcias for 10% of these environmental and administrative costs up to a maximum of \$1500.

d. Following completion of the segment of roadway in accordance with the above standards, the Burkes shall have no further obligation with respect to the maintenance, repair or further development of any part of the roadway. Maintenance will be subject to a maintenance plan approved by BLM and the County of Santa Fe. The parties agree that a private security gate may be placed at or near the entrance to the Burkes' Segment, subject to applicable governmental approvals and regulations.

e. The Garcias shall request of any contractor(s) performing utility work for the Garcias in the Horcado Ranch Road to execute a contractual provision requiring the contractor to promptly repair any damage they may cause to the phone, electric and other utility lines owned by the Burkes.

6. The BLM shall deliver executed Rights-of-Way as provided herein and the necessary BLM permits as soon as reasonably practical. The Burkes shall have nine (9) months after the Garcias obtain the BLM permit and the Garcias and the Burkes have obtained any other necessary governmental permits, for which they shall promptly apply and diligently pursue, in which to complete all engineering and construction as provided for herein. Time is of the essence in this Settlement Agreement.

7. Any party breaching this Agreement will be subject to an award of all costs and expenses incurred by any non-breaching party in enforcing this Agreement, including costs of suit and reasonable attorneys' fees. Any liability of the BLM is limited to what may be available under the Equal Access to Justice Act, the Federal Tort Claims Act or any other applicable federal law.

8. Except as specifically set forth above, upon full performance of all their respective obligations herein, the Burkes and the Garcias release each other from all claims, demands, actions and causes

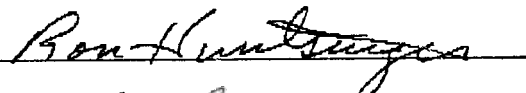
In witnesses whereof, the parties have executed this Settlement Agreement effective the year and date set forth above.

(approved telephonically)
Lawrence J. Burke




Eloy Garcia

United States Department of the Interior,
Bureau of Land Management


By: 

Field Manager - Tacos

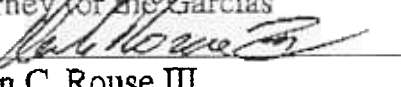
Approved as to form.



John Zavitz, Assistant U.S. Attorney
Attorney for BLM



Randolph B. Felker
Attorney for the Garcias



Owen C. Rouse III
Attorney for the Burkes

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Gabrielle Burke


Eloy Garcia

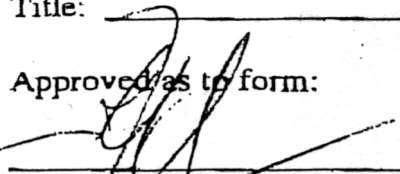

Suzanne Garcia

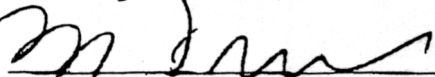
United States Department of the Interior,
Bureau of Land Management

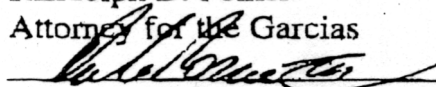
By:

Title: _____

Approved as to form:


John Zavitz, Assistant U.S. Attorney
Attorney for BLM


Randolph B. Felker
Attorney for the Garcias


Owen C. Rouse III
Attorney for the Burkes