

Briefing Statement

Bureau: National Park Service

Issue: Tentative Settlement of NTS Corporation Violation of the Park Service
Resource Protection Act (19jj)

Park Site: Fredericksburg and Spotsylvania National Military Park

Date: December 2, 2005

Background: In 1989, the National Park Service executed a land swap with the NTS Corporation to both facilitate NTS development of the Fawn Lake subdivision and preserve additional lands then along the park boundary on the Wilderness Battlefield. As part of this land swap, the NPS retained a protective easement over three tracts that now comprise the main entrance into Fawn Lake. That easement predominantly protects a line of Civil War trenches that run the length of the parcel conveyed in fee to NTS Corporation.

In July 1999, NTS Corporation violated the easement and destroyed a 100-foot-long of earthworks—an area of protected landscape totaling about .74 acre. By authority of the Park Service Resource Protection Act (PSRPA--104 Stat. 379, 16 U.S.C. 19jj), the NPS pursued recovery of damages totaling \$96,000. NTS Corporation agreed to an out-of-court settlement of \$60,000.

In June 2001, NTS Corporation employees again entered the protected area and damaged historic resources in violation of the easement. Again, the NPS sought recovery of damages under the PSRPA. In 2004, the NPS submitted a claim totaling [REDACTED] to the NTS Corporation. NTS did not respond. In 2005, NPS solicitors filed a claim in court. On September 29th a meeting was held in the Washington Office at the request of Senator Mitch McConnell. At that meeting it was agreed that further meeting would be held among the attorneys and specialists to negotiate an agreement.

The Incident: On December 1 a meeting was held on site at Fawn Lake. Attending for the NPS were Marcia Gittes (Solicitor's Office), Karen Battle (WASO Damage Assessment), John Hennessy (FRSP Chief Historian/Chief Ranger, and Russ Smith (FRSP Superintendent). At that meeting, a tentative settlement was reached.

Current Status: Marcia Gittes will prepare the final agreement for signature and Karen Battle will prepare the necessary clearances from her office.

The tentative settlement amount is \$88,300. This is short of the original claim, but the negotiating team felt that this was the best defensible amount if the case were to go to litigation.

Position of Interested Parties: The Public Employees for Environmental Responsibility has followed up on their initial FOIA regarding the case. The FOIA office in Washington has turned down the request for a waiver of fees and has remanded the FOIA to the park for further consideration (The FOIA has not yet been received at the park.)

Department/Bureau Prospective: The Bureau in Washington has shown an interest in the case because of Senator McConnell's involvement. They should be pleased that a settlement has been reached and that it upholds the principles of 19jj.

Funding Requirements: None

Contact: Russell P. Smith, Superintendent
Fredericksburg and Spotsylvania NMP
120 Chatham Lane
Fredericksburg, VA 22405
(540) 372-3032