

CLAIM FOR DAMAGES TO THE UNITED STATES FOREST SERVICE  
UNITED STATES DEPARTMENT OF AGRICULTURE

AMANDA BAKER WILLIS,  
Administrator of the Estate of Kylee  
Sullivan, Deceased, on Behalf of the  
Estate of Kylee Sullivan, and on Behalf  
of the Wrongful Death Beneficiaries of  
Kylee Sullivan; Administrator of the  
Estate of Julie Freeman, Deceased, on  
Behalf of the Estate of Julie Freeman,  
and on Behalf of the Wrongful Death  
Beneficiaries of Julie Freeman

CLAIMANTS

**CLAIM FOR DAMAGES FOR PERSONAL INJURY AND WRONGFUL DEATH**

COMES NOW Amanda Baker Willis, as Administrator of the Estate of Kylee Sullivan, deceased, on behalf of the Estate of Kylee Sullivan, deceased, and on behalf of the wrongful death beneficiaries of Kylee Sullivan, and as Administrator of the Estate of Julie Freeman, deceased, on behalf of the Estate of Julie Freeman, deceased, and on behalf of the wrongful death beneficiaries of Julie Freeman, by and through the undersigned attorneys, and for the administrative claim for damages for personal injury and wrongful death on behalf of their estates and the wrongful death beneficiaries under the Federal Tort Claims Act and laws of the state of Arkansas would show unto the Court as follows:

**INTRODUCTION**

I.

This is an administrative claim brought pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671 et. seq., the Arkansas survival of actions statute, Ark. Code Ann. § 16-62-101, and the Arkansas Wrongful Death Act, Ark. Code Ann. § 16-62-102, for personal injury and wrongful death caused by the negligence of the United States Forest Service. The claims arise out of the flash flood

event that resulted in the deaths of twenty people during the early morning hours of June 11, 2010, at the Albert Pike Recreation Area in the Ouachita National Forest. Kylee Sullivan and her grandmother, Julie Freeman, died as a result of the negligence that gives rise to these claims.

## PARTIES

### II.

Amanda Baker Willis is the duly appointed and serving Administratrix of the Estate of Kylee Sullivan, deceased, having been so appointed by the County Court of Bowie County, Texas, on the 27<sup>th</sup> day of December, 2010.

### III.

Kylee Sullivan died on June 11, 2010, at seven years of age. She is survived by her mother Amanda Baker Willis, step-father Clark Willis, father Justin Sullivan, and half-brother Layton Kyle Sullivan.

### IV.

Amanda Baker Willis is the duly appointed and serving Administratrix of the Estate of Julie Freeman, deceased, having been so appointed by the County Court of Bowie County, Texas, on the 27<sup>th</sup> day of December, 2010.

### VIII.

Julie Freeman died on June 11, 2010, at fifty-three years of age. She is survived by her husband Gerald Freeman, her father Bernie Brittan Jones, Jr., her mother Margaret Mignon Jones, her brother Bernie Brittan Jones, III, and her daughter Amanda Baker Willis.

## VI.

The United States Forest Service (“USFC”) is an agency of the United States government under the direct jurisdiction of the Department of Agriculture (“USDA”). Among the duties and responsibilities of the USFC are to develop and administer the national forests of the United States and recreational facilities and areas contained within them.

### BACKGROUND FACTS

## VII.

On June 9, 2010, seven year old Kylee Sullivan went camping with her mother Amanda Willis and step-father Clark Willis. The family took with them Kylee’s best friend and classmate Gayble Young Moss, who was also seven years old. The four of left Texarkana, where they all lived, bound for the Albert Pike Recreation Area (“APRA”) in the Ouachita National Forest, Montgomery County, Arkansas. Kylee, her parents and Gayble planned to camp at Loop D of the APRA, based on its convenience, facilities and proximity to the Little Missouri River. Clark and Amanda Willis had previously camped at Loop D. Upon their arrival, they discovered that Loop D was full of other campers. Rather than return to Texarkana, they decided to locate their camp a short distance upstream from Loop D along Park Road 512. The next day, they were joined by Gerald and Julie Freeman, Kylee’s grandparents (and Amanda’s step-father and mother).

### ALBERT PIKE RECREATION AREA

## VIII.

The APRA in the Ouachita National Forest, Montgomery County, Arkansas is a recreational area developed and administered by the United States Forest Service (“USFS”), approximately six

miles north of Langley, Arkansas. The campground is administered by USFS personnel stationed at the Caddo-Womble Ranger District Office in Glenwood, Arkansas.

#### IX.

The campgrounds at APRA are located in a valley surrounded by mountains with steep terrain. The Little Missouri River, which has been designated a wild and scenic river, runs through the APRA , as do a number of tributary creeks and streams. The campground at APRA is located in the floodplain of the Little Missouri River. Rain that falls in the watershed of the river and its tributaries rapidly runs down the mountainside and accumulates in the streams and river causing them to rise rapidly. The Little Missouri River has long been known to rise rapidly during rain events.

#### X.

The APRA has a long history of documented flooding events dating back to at least 1940. Between 1940 and 2010, there were at least ten documented flood events: 1940, 1961, 1975, 1982, 1987, 1990, 2001, 2006, 2008 and 2010. There have been thirteen flood incident reports evidencing severe weather, flooding and property damage resulting from severe weather between March 27, 2000 and September 2, 2008.

### EVENTS LEADING TO JUNE 11, 2010

#### XI.

On June 9, 2010, a storm system developed in south Texas that moved slowly to the northeast through east Texas on June 9th and 10th. The storm caused more than ten inches of rain to fall in areas from San Antonio to Tyler, Texas, requiring the evacuation of persons from flooded homes.

This storm system brought two rounds of thunderstorms into the southwest section of Arkansas in the afternoon and evening hours of June 10, 2010. One to three inches of rain were common with up to four inches in local areas. As a result of the storm moving into Arkansas, the National Weather Service issued a flash flood watch for western Arkansas at 11:58 a.m. on Thursday, June 10, 2010, which was to remain in effect until 7:00 p.m. on Friday, June 11, 2010.

## XII.

In the early morning hours of June 11<sup>th</sup>, rain was widespread from Texarkana, Arkansas in southwest Arkansas to Little Rock. Heavy rainfall was also experienced in Montgomery County, Arkansas. This rainfall caused a rapid rise in the Little Missouri River and its tributaries located within APRA. According to the United States Geological Service, between 2:00 a.m. and 5:00 a.m. on June 11<sup>th</sup>, the Little Missouri River rose rapidly from a stage of 3.81 feet to 22.30 feet, and crested at 23.39 feet at 5:30 a.m. These flood waters completely and rapidly inundated the floodplain in which the APRA is located.

## XIII.

Those camping in APRA were sleeping at the time the rapid flooding occurred. Those people were caught by surprise and without any warning that the area was being flooded. Twenty persons were unable to get to safety and were drowned in the flooding that night. Prior to the flooding, Kylee Sullivan and Gayble Young Moss had sought shelter from the rain with Kylee's grandmother Julie Freeman in her vehicle. Their vehicle was swept from its parking spot by flood waters and all three drowned.<sup>1</sup>

---

1 The estate and heirs of Gayble Young Moss are represented by separate counsel and have made their own administrative claims.

## CLAIMS

### XIV.

#### A. Willful and Wanton Negligence of the U.S. Forest Service and the U.S. Department of Agriculture

The deaths of Kylee Sullivan and Julie Freeman were caused by the willful and wanton negligence of the U.S. Forest Service, a division of the U.S. Department of Agriculture. Such agencies were willfully and wantonly negligent in the following particulars and respects:

- a. In failing to conduct an adequate and proper environmental assessment or environmental impact statement to determine the potential harm to future campers at the APRA, including the potential and obvious threat from flooding to the safety of campers using the APRA, at the time of the expansion and renovation of the APRA in 2000 and 2001;
- b. In failing to determine that the camping area of the APRA was located in the floodplain of the Little Missouri River;
- c. In placing the APRA in an area that constituted a public nuisance under the laws of the state of Arkansas;
- d. In planning, locating, constructing, approving and allowing campsites and overnight camping facilities and activities in the floodplain of the Little Missouri River;
- e. In failing to foresee the potential for flooding that could endanger the life and safety of campers, particularly in view of the topography of the area (a river valley surrounded by steep mountainous walls and no warning devices);
- f. In failing to consider the extensive flooding history of the Little Missouri River in

planning, locating, constructing, approving and allowing overnight camping facilities and activities in the floodplain of the Little Missouri River;

- g. In failing to plan, develop and maintain equipment at the APRA campsite that would provide warnings to campers or potential campers that heavy rains were predicted for the watershed of the Little Missouri River;
- h. In failing to provide and train Forest Service personnel to warn campers at the APRA facility of the potential of the Little Missouri River and its tributaries to rise rapidly and to flood into the area in the event of heavy rains;
- i. In failing to provide and train Forest Service personnel to be alert to weather forecasts of the National Weather Service regarding potential storm events in the watershed of the Little Missouri River, and to provide warnings to persons camping or proposing to camp of the potential of the Little Missouri River and its tributaries to rise rapidly and to flood, or to order the APRA to be evacuated;
- j. In failing to post signs prominently at the entrance to and throughout the APRA of the potential of the Little Missouri River and its tributaries to rise rapidly and to flood, and that the campsites in the APRA were in the floodplain of the River and subject to flash flooding;
- k. In failing to provide Forest Service personnel and the Volunteer Hosts at the APRA with training regarding the potential for flooding of the APRA during storm events, and regarding safety precautions and procedures to be followed in the event of storm events and flooding;

- l. In failing to develop, implement, maintain and repair communications capability between the APRA and other offices of the Forest Service and other agencies of the federal, state and local governments regarding warnings of potential flooding, safety precautions, and procedures to be followed in the event of storm events and flooding;
- m. In failing to develop, maintain and implement contingency plans for emergency services, evacuation or search and rescue of visitors camping in the APRA; and
- n. In failing to take all reasonable, necessary and appropriate precautions and measures to protect the safety, lives and property of persons who utilized the APRA.

#### STRICT LIABILITY

##### XV.

In placing the APRA in a floodplain that constituted a public nuisance under the laws of the state of Arkansas that caused or contributed to the deaths of Kylee Sullivan and Julie Freeman, the U.S. Forest Service and the U.S. Department of Agriculture engaged in an ultra-hazardous activity, and are subject to strict liability for damages arising out of their deaths.

##### XVI.

As invitees, the U.S. Forest Service and the U.S. Department of Agriculture owed a duty to Kylee Sullivan and Julie Freeman to use ordinary care to maintain the premises in a reasonably safe condition to prevent injury to their lives and safety.

##### XVII.

Even if Kylee Sullivan and Julie Freeman were not invitees, but licensees on the APRA, the U.S. Forest Service and U.S. Department of Agriculture knew or had reason to know of conditions



in the APRA that were not open and obvious, and which created an unreasonable risk of harm to Kylee Sullivan and Julie Freeman and other persons camping overnight at the APRA. Consequently, the U.S. Forest Service and U.S. Department of Agriculture were under a duty to use ordinary care to make the conditions safe or to warn Kylee Sullivan, Julie Freeman and others camping overnight at the APRA who did not know or have reason to know of the danger.

#### XVIII.

The U.S. Forest Service and U.S. Department of Agriculture willfully and wantonly violated their obligation to use care for the lives and safety of Kylee Sullivan and Julie Freeman in failing to take the precautions, in the acts and omissions set forth above, and in the reports issued by the U.S. Forest Service and the U.S. Department of Agriculture on September 24, 2010 and October 18, 2010, which are attached hereto and incorporated by reference.

#### DAMAGES

#### XIX.

As a direct and proximate result of the negligent acts and omissions described herein above, USFS and USDA employees and agents caused or were a substantial factor in causing the deaths of Kylee Sullivan and Julie Freeman.

#### XX.

Amanda Baker Willis, as Administrator of the Estates of Kylee Sullivan and Julie Freeman, deceased, and on behalf of the Estates of Kylee Sullivan and Julie Freeman, and on behalf of the wrongful death beneficiaries of Kylee Sullivan and Julie Freeman, for their administrative claim for damages for personal injury and wrongful death on behalf of said estates and wrongful death

beneficiaries, assert claims for all compensatory damages including, but not limited to, the physical injuries and death described herein, all pecuniary injuries, pain and suffering, mental anguish, loss of life, loss of consortium, loss of services and contributions, loss of parental guidance, medical expenses, property damage, and funeral and burial expenses, including any such damages reasonably certain to be incurred in the future, in an amount to be determined by the finder of fact, plus the costs of this litigation, and any all further relief to which Claimants are entitled to under the law.

XXI.

The undersigned attorney represents that he and the law firm named below are the duly authorized representatives of the Claimants. Attached to this claim are Orders Granting Letters of Administration dated December 27, 2010, from the County Court of Bowie County, Texas, as well as the Fee Agreement between Amanda Baker Willis and the law firm named below authorizing said firm to present this claim. All communications regarding this claim should be directed to the undersigned attorney.

March \_\_\_\_, 2012

Respectfully submitted,

MERCY ★ CARTER ★ TIDWELL, L.L.P.  
1724 Galleria Oaks Drive  
Texarkana, Texas 75503  
(903) 794-9419 - Telephone  
(903) 794-1268 - Facsimile

---

W. David Carter, TSB No. 03932780

Attorneys for Amanda Baker Willis