

UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	AWA Docket No. 06-0002	RECEIVED
)		
LOST CREEK ANIMAL SANCTUARY)		
FOUNDATION, INC., a Kansas)		
corporation; and DOUG BILLINGSLEY)		
and KEITH BILLINGSLEY, individuals)		
doing business as LOST CREEK ANIMAL)		
SANCTUARY AND ANIMAL)		
ENTERTAINMENT PRODUCTIONS,)		
)		
Respondents.)	Consent Decision and Order	

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.)(the "Act"), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture ("APHIS"), alleging that the respondents willfully violated the Act and the regulations and standards issued thereunder (9 C.F.R. § 1.1 et seq.). This decision is entered into pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

Respondents admit the jurisdictional allegations in the complaint, and admit the remaining allegations as set forth herein as findings of fact and conclusions of law, waive oral hearing and further procedure, and consent and agree to the entry of this decision for the purpose of settling this proceeding. The complainant agrees to the entry of this decision.

Findings of Fact

1. Lost Creek Animal Sanctuary Foundation, Inc. ("Lost Creek, Inc."), is a Kansas corporation whose registered agent for service of process is respondent Keith Billingsley, 14036 Gray Road, Mound Valley, Kansas 67354. At all times mentioned herein, respondent Lost Creek, Inc., was an exhibitor, as that term is defined in the Act and the Regulations.

2. Respondent Doug Billingsley is an individual doing business as Lost Creek Animal Sanctuary and Animal Entertainment Productions ("Lost Creek Sanctuary and Productions"), and whose mailing address is 14028 Gray Road, Mound Valley, Kansas 67354. Since 2000, said respondent has been the President of respondent Lost Creek, Inc., was an exhibitor, as that term is defined in the Act and the Regulations, and since approximately 1996 held Animal Welfare Act license number 48-C-0109, jointly with respondent Keith Billingsley.

3. Respondent Keith Billingsley is an individual doing business as Lost Creek Sanctuary and Productions, and whose mailing address is 14028 Gray Road, Mound Valley, Kansas 67354. Since 2000, said respondent has been the Secretary and agent for service of process of respondent Lost Creek, Inc., was an exhibitor, as that term is defined in the Act and the Regulations, and since approximately 1996 held Animal Welfare Act license number 48-C-0109, jointly with respondent Doug Billingsley.

4. On August 18, 2005, respondents failed to establish and maintain a program of adequate veterinary care that included the availability of appropriate personnel, and specifically, personnel capable of handling animals in conformance with the Regulations.

5. On August 18, 2005, respondents failed to establish and maintain a program of adequate veterinary care that included the use of appropriate methods to prevent and control injuries, and specifically, respondents allowed the public to have direct contact and pose for photographs with adult tigers.

6. On August 18, 2005, respondents failed to establish and maintain a program of adequate veterinary care that included adequate guidance to personnel involved in the care and use of animals regarding handling, immobilization, and tranquilization, and specifically, said

respondents lacked the ability to adequately care for, handle, or tranquilize animals safely and humanely, failed to employ personnel capable of doing so, and allowed members of the public (a photographer and a 17-year-old girl) to handle a 550-pound adult male tiger, and when the tiger attacked the girl, respondent Doug Billingsley's nephew shot the tiger.

7. On August 18, 2005, respondents failed to handle animals as expeditiously and carefully as possible in a manner that would not cause trauma, behavioral stress, unnecessary discomfort, or physical harm, and specifically, respondents exhibited an adult male tiger in a manner that resulted in his death by gunshot administered by a Sheriff (after respondent Doug Billingsley's teenage nephew shot the tiger with a .22 caliber handgun "about ten times," without killing him).

8. On August 18, 2005, respondents failed to handle a tiger (Shakka) during public exhibition so there was minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of the animals and the public, and respondents exhibited Shakka to a photographer and a teenage girl with no distance or barrier, and allowed the girl to pose with Shakka for the purpose of taking the girl's picture, and the tiger attacked and killed the girl, and thereafter the tiger was also killed.

9. On four occasions (September 16, 2004, September 28, 2004, November 16, 2004, and January 27, 2005), respondents failed to allow APHIS officials, during business hours, to enter their place of business, examine records, inspect and photograph the facilities, property and animals, and document conditions and noncompliance.

10. On February 3, 2005, respondents failed to meet the standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals, as follows:

a. Respondents failed to construct housing facilities to be structurally sound, to

contain the animals, and specifically, respondents housed eight exotic felids in an enclosure where the top corners were not fastened, and consequently could allow the animals to escape.

b. Respondents failed to repair housing facilities to contain the animals, and specifically, respondents housed a big cat, Simba, in an enclosure where the roof needs repair, and consequently could allow the animal to escape.

c. Respondents failed to maintain housing facilities structurally sound and in good repair to protect the animals housed therein from injury, and specifically, the steel wire in the feeding pen that is used by four big cats is damaged and in need of repair.

d. Respondents failed to construct housing facilities to contain the animals, and specifically, respondents housed eight big cats in an open enclosure from which the animals could escape, by climbing or jumping over the fence.

e. Respondents failed to construct housing facilities to contain the animals, and specifically, respondents did not house two lion cubs in an enclosure, for the protection of the cubs themselves, the other animals, and people.

f. Respondents failed to provide three animals (1 liger, 1 leopard, and 1 tiger) with natural or artificial shelter from inclement weather, and specifically, the south pen in which all three animals were housed offered a single shelter that is inadequate for all three of these animals.

g. Respondents failed to provide a suitable method to rapidly drain excess water from the enclosure housing two bears, one leopard, and five tigers, and specifically, these enclosures contained standing water, and additional water was backing into these enclosures.

h. Respondents failed to provide a black leopard and three other animals with

enclosures that allow the animals to make normal postural adjustments with adequate freedom of movement, and the failure to provide such space has caused at least three of the animals to exhibit stress.

Conclusions of Law

1. On August 18, 2005, respondents failed to establish and maintain a program of adequate veterinary care that included the availability of appropriate personnel, and specifically, personnel capable of handling animals in conformance with the Regulations, in willful violation of section 2.40(b)(1) of the Regulations. 9 C.F.R. § 2.40(b)(1).

2. On August 18, 2005, respondents failed to establish and maintain a program of adequate veterinary care that included the use of appropriate methods to prevent and control injuries, and specifically, respondents' practice was to allow the public to have direct contact, and pose for photographs with adult tigers, in willful violation of section 2.40(b)(2) of the Regulations. 9 C.F.R. § 2.40(b)(2).

3. On August 18, 2005, respondents failed to establish and maintain a program of adequate veterinary care that included adequate guidance to personnel involved in the care and use of animals regarding handling, immobilization, and tranquilization, and specifically, said respondents lacked the ability to adequately care for, handle, or tranquilize animals safely and humanely, failed to employ personnel capable of doing so, and respondents allowed members of the public (a photographer and a 17-year-old girl) to handle a 550-pound adult male tiger, and when the tiger attacked the girl, respondent Doug Billingsley's nephew shot the tiger, in willful violation of section 2.40(b)(4) of the Regulations. 9 C.F.R. § 2.40(b)(4).

4. On August 18, 2005, respondents failed to handle animals as expeditiously and

carefully as possible in a manner that would not cause trauma, behavioral stress, unnecessary discomfort, or physical harm, and specifically, respondents exhibited an adult male tiger in a manner that resulted in his death, by gunshot administered by a Sheriff (after respondent Doug Billingsley's teenage nephew shot the tiger with a .22 caliber handgun "about ten times," without killing him), in willful violation of section 2.131(b)(1) of the handling regulations. 9 C.F.R. § 2.131(b)(1).

5. On August 18, 2005, respondents failed to handle a tiger (Shakka) during public exhibition so there was minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of the animals and the public, and in fact respondents exhibited Shakka to a photographer and a teenage girl with no distance or barrier, and specifically, respondents allowed the girl to pose with Shakka for the purpose of taking the girl's picture, and the tiger attacked and killed the girl, and thereafter the tiger was also killed, in willful violation of section 2.131(c)(1) of the handling regulations. 9 C.F.R. § 2.131(c)(1).

6. On four occasions (September 16, 2004, September 28, 2004, November 16, 2004, and January 27, 2005), respondents failed to allow APHIS officials, during business hours, to enter their place of business, examine records, inspect and photograph the facilities, property and animals, and document conditions and noncompliance, in willful violation of section 2146(a) of the Act (7 U.S.C. § 2146(a)), and section 2.126(a) of the Regulations (9 C.F.R. § 2.126(a)).

7. On February 3, 2005, respondents willfully violated section 2.100(a) of the Regulations by failing to meet the standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals (9 C.F.R. Subpart F), as follows:

a. Respondents failed to construct housing facilities to be structurally sound, to

contain the animals, and specifically, respondents housed eight exotic felids in an enclosure where the top corners were not fastened, and consequently could allow the animals to escape. 9 C.F.R. § 3.125(a).

b. Respondents failed to repair housing facilities to contain the animals, and specifically, respondents housed a big cat, Simba, in an enclosure where the roof needs repair, and consequently could allow the animal to escape. 9 C.F.R. § 3.125(a).

c. Respondents failed to maintain housing facilities structurally sound and in good repair to protect the animals housed therein from injury, and specifically, the steel wire in the feeding pen that is used by four big cats is damaged and in need of repair. 9 C.F.R. § 3.125(a).

d. Respondents failed to construct housing facilities to contain the animals, and specifically, respondents housed eight big cats in an open enclosure from which the animals could escape, by climbing or jumping over the fence. 9 C.F.R. § 3.125(a).

e. Respondents failed to construct housing facilities to contain the animals, and specifically, respondents did not house two lion cubs in an enclosure, for the protection of the cubs themselves, the other animals, and people. 9 C.F.R. § 3.125(a).

f. Respondents failed to provide three animals (1 liger, 1 leopard, and 1 tiger) with natural or artificial shelter from inclement weather, and specifically, the south pen in which all three animals were housed offered a single shelter that is inadequate for all three of these animals. 9 C.F.R. § 3.127(b).

g. Respondents failed to provide a suitable method to rapidly drain excess water from the enclosure housing two bears, one leopard, and five tigers, and specifically, these

enclosures contained standing water, and additional water was backing into these enclosures.

9 C.F.R. § 3.127(c).

h. Respondents failed to provide a black leopard and three other animals with enclosures that allow the animals to make normal postural adjustments with adequate freedom of movement, and the failure to provide such space has caused at least three of the animals to exhibit stress. 9 C.F.R. § 3.128.

8. The respondents have admitted the above facts, the parties have agreed to the entry of this decision, and therefore such decision will be entered.

Order

1. Respondents, their agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the Regulations and Standards.


2. Animal Welfare Act license number 48-C-0109 is hereby revoked, effective November 1, 2006.

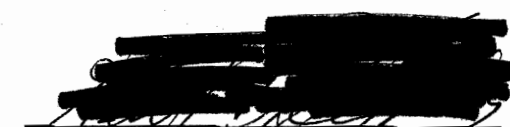
3. For the purposes of this consent decision and order, the five-year period of time between November 1, 2006, and October 31, 2011, shall be referred to as the "probation period." Respondents Keith Billingsley and Doug Billingsley agree that during the probation period, if they engage in any activity for which a license under the Act is required, directly or through any agent, employee, or other device, upon receipt of notice and supporting documentation from APHIS of a failure by either respondent to comply with section 2.1 of the Regulations (9 C.F.R. § 2.1), such respondent shall individually be assessed a civil penalty of \$12,600 therefor, without further procedure. Such civil penalty would be due and payable within 60 days of such respondent's receipt

of notice. Respondents Keith Billingsley and Doug Billingsley further agree to a prospective waiver of their right to notice and opportunity for an oral hearing pursuant to section 19 of the Act (7 U.S.C. § 2149) as to any such failure to comply with said Regulation described in this paragraph, and the parties agree that respondents Keith Billingsley and Doug Billingsley may seek further review or injunctive, declaratory or other appropriate relief in the district court in the district where they reside or have their principal place of business, pursuant to section 2146(c) of the Act (7 U.S.C. § 2146(c)), within 60 days of receipt of such notice.

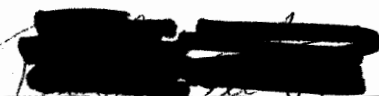
4. Respondents agree to provide to the complainant by November 1, 2006, an accurate and complete inventory of all animals, as that term is used in the Act, and further agree to allow complainant to enter respondents' facility at a mutually-agreeable time to review respondents' animals and records, in order to confirm the accuracy of the inventory. Respondents further agree to convey the animals identified by APHIS as regulated under the Act to persons who have previously approved by APHIS, in writing, to receive such animal(s), and to use their best efforts to complete such conveyances by January 31, 2006. APHIS agrees to assist respondents in identifying persons to whom such animals may be conveyed.

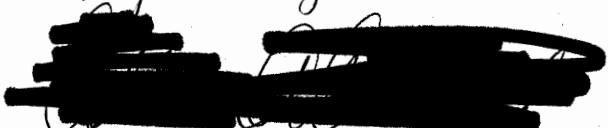
This order shall become effective on the first day after service of this decision on the respondent. Copies of this decision shall be served upon the parties.


Doug Billingsley
Respondent

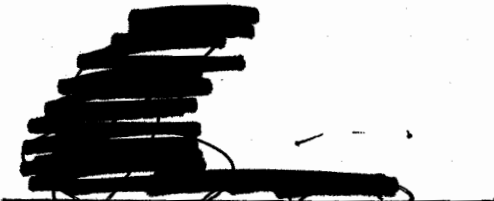

Keith Billingsley
Respondent


LOST CREEK ANIMAL
SANCTUARY FOUNDATION, INC.
a Kansas corporation
Respondent

By 
Its *Registered agent*


Colleen A. Carroll
Attorney for Complainant

Done at Washington, D.C.
this 3rd day of November, 2006


ATTORNEY FOR RESPONDENT


Marc R. Hillson
Chief Administrative Law Judge