

UNITED STATES FISH AND  
WILDLIFE SERVICE,

Complainant,

v.

SHEL-JENN, INCORPORATED.

Respondent.

§ ENDANGERED SPECIES ACT OF  
§ 1973, AS AMENDED, 16 U.S.C.  
§ §§1531-1543  
§  
§  
§

AGREEMENT FOR COMPROMISE AND SETTLEMENT  
OF PROPOSED CIVIL PENALTY

This agreement is entered into by and among Shel-Jenn, Incorporated (“Shel-Jenn”) and the United States Fish and Wildlife Service (the “Service”) (Shel-Jenn and the Service shall be collectively referred to herein as the “Parties”) in complete settlement of all claims related to the Matter, as hereinafter defined.

WHEREAS, Shel-Jenn is the owner of a subdivision known as Heritage Oaks in Williamson County;

WHEREAS, while undertaking utility excavation activities, Shel-Jenn contractors encountered several voids which were previously unknown to Shel-Jenn or its contractors (the “Matter”);

WHEREAS, upon investigation by a qualified biologist, one of those voids contained the endangered Bone Cave harvestman (*Texella reyeisi*) (hereafter, the “Occupied Void”);

WHEREAS, pursuant to section 9 of the Endangered Species Act (“ESA”), 16 U.S.C. 1538(a)(1)(B), it is unlawful to “take” an endangered species within the United States. “Take” is defined by section 4 of the ESA as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” By regulation, the Service has defined the term “harm” to include significant habitat modification where such modification actually kills or injures a member of a listed species by significantly altering essential behavioral patterns such as breeding, feeding, or sheltering. 50 C.F.R. 222.102;

WHEREAS, it is the desire of the Parties to settle and compromise all controversies arising from the Matter;

Now, therefore, to compromise, fully settle, and terminate all proceedings which are now or may be filed against Shel-Jenn with regard to this charge, Shel-Jenn and the Service hereby agree as follows:

1. Shel-Jenn hereby waives its rights to further notice and hearing in this matter, including the right to receive a Notice of Violation and a Notice of Assessment, and to request a hearing in this civil penalty proceeding pursuant to 16 U.S.C. 1540(a).

Shel-Jenn further acknowledges that this agreement is entered by its duly authorized representatives. Shel-Jenn acknowledges that this agreement is executed and solidified without coercion or duress and that it has had an opportunity to consult with its legal counsel.

2. By entering into this agreement, Shel-Jenn does not admit any fact, wrongdoing, liability, or responsibility, nor that its actions constituted a violation of the ESA or any regulation promulgated thereunder.
3. Shel-Jenn specifically agrees without limitation to perform all respective conservation measures as described in the “Voluntary Conservation Measures” section of that certain report titled, “Endangered Karst Invertebrates Impacts Assessment and Proposed Pre-Enforcement Settlement Terms for the Heritage Oaks Subdivision, Georgetown, Texas,” and attached hereto as Exhibit A. Additionally, Shel-Jenn specifically agrees to make a one-time, voluntary contribution of \$25,000.00 to the Williamson County Conservation Foundation.
4. Pursuant to Shel-Jenn’s waiver in Paragraph 1 of this agreement, the Service agrees that it shall not issue a Notice of Violation or otherwise institute civil proceedings against Shel-Jenn or its partners, officers, employees, agents, or contractors, for any matter arising out of the Matter. Further, the Service agrees that it will not consider any of the circumstances described herein as a basis for any form of debarment.
5. Shel-Jenn acknowledges and agrees that the Service, by executing this agreement, does not waive or release in any way its rights to seek enforcement of this agreement, including without limitation Shel-Jenn’s covenants herein to perform the Voluntary Conservation Measures described in paragraph 3 above.
6. Shel-Jenn acknowledges and agrees that the Service retains its full rights pursuant to 16 U.S.C. 1540(a)(1) to initiate new civil penalty proceedings against Shel-Jenn should Shel-Jenn fail to perform the measures described in paragraph 3 above.
7. This agreement constitutes the entire agreement of the Parties and consists of \_\_\_ pages and one attachment denoted as Exhibit A.
8. This agreement shall become effective the date of the last signature affixed hereto. This agreement may be signed in counterparts which together shall constitute the final agreement.

**RESPONDENT:  
Shel-Jenn, Incorporated**

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2012

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_ Esq.

Date: \_\_\_\_\_, 2012

Attorney for \_\_\_\_\_

**U.S. FISH AND WILDLIFE SERVICE**

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2012

\_\_\_\_\_  
[insert appropriate USFWS title, etc.]

Concur: \_\_\_\_\_

Date: \_\_\_\_\_, 2012

\_\_\_\_\_  
Austin Ecological Services, FWS