

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

Freedom From Religion Foundation,
Inc.,

Plaintiff,

v.

Case No. 9:12-cv-19-DLC

Chip Weber, Flathead National Forest
Supervisor; and

United States Forest Service, an
Agency of the United States
Department of Agriculture

Defendants.

DECLARATION OF WILLIAM GLIDDEN

I, William Glidden, declare as follows:

(1) I am over 18 years of age and have personal knowledge of each of the statements in this declaration.

(2) I am a resident of the town of Kalispell, Montana, and the Grand Knight of the Kalispell Council of the Knights of Columbus (Council 1328). The office of "Grand Knight" is the highest office within an individual Council of the Knights of Columbus.

(3) The Knights of Columbus is the world's largest Catholic layman's organization with approximately 1.7 million members in a dozen countries.

(4) The Knights have approximately 5400 members in Montana, including over 100 who are members of the Kalispell Council.

(5) In the early 1950s, several veterans from the United States Army's 10th Mountain Division who had participated in the 1949 and 1951 National Ski Championships at Big Mountain approached the Knights about creating a mountain memorial to their comrades who had fallen in World War II.

(6) In September 1953, the Knights applied for a special use permit from the United States Forest Service to place the memorial on a plot of land in the Flathead National Forest overlooking the Big Mountain ski run.

(7) Attached as Exhibit 1 is a true and correct copy of the Knights' application.

(8) The permit was granted approximately one month later.

(9) Attached as Exhibit 2 is a true and correct copy of the permit that was granted.

(10) In the next year, the Knights commissioned a statue representing Jesus Christ to be erected on the property.

(11) The statue has remained in the same location near the top of Chair 2 at the Whitefish Mountain Resort for 58 years. The Knights have maintained the statue over the years, repainting it and performing minor repairs.

(12) I have been a member of Council 1328 for five years and the Council's Grand Knight for the last two years. Throughout these years I have participated in the Knights' maintenance of the statue.

(13) One of the hands of the statue was broken off this year—as it has been on other occasions. The Council has a mold it uses for building a replacement hand. This summer the Council has plans to fix the broken hand again and take the statue back to its original color of white.

(14) The Council frequently coordinates with Boy Scout groups and others to perform additional maintenance on the statue. Big Mountain Ski Resort, for example, has contributed significantly to the statue's upkeep, building a protective fence and installing a plaque about the statue.

(15) I and other Knights, as well as members of the community and visitors, visit the statue often to remember and honor the sacrifices of service members on behalf of all Americans during World War II.

(16) Other members of the Kalispell community, as well as visitors to the Whitefish Mountain Resort, frequently visit the memorial has a historical site when skiing or hiking on the mountain.

(17) I personally and the Knights collectively seek to maintain the statue as a memorial designed to remember and honor fallen service members and our veterans. We also seek to maintain the statue as an important artifact of Montana and Kalispell history. We view our maintenance of the statue as a form of service to Kalispell, Montana, and the Nation.

(18) A plaque placed near the statue by the owners and operators of the Whitefish Mountain Resort contains the following inscription:

When the troops started returning from WWII in Europe to their home in the Flathead Valley they brought with them many memories ...

some good, some bad. Some of these troops were members of the Knights of Columbus at St. Matthew's parish in Kalispell. A common memory of their time in Italy and along the French and Swiss border was of the many religious shrines and statues in the mountain communities. This started a dialogue with the U.S. Forest Service for leased land to place this statue of Jesus. On October 15, 1953 the U.S. Forest Service granted a permanent special use permit to the K of C Council #1328 for a 25ft x 25ft square for placement of the statue. A commission for the statue construction was given to St. Paul Statuary in St. Paul, Minnesota. The statue was installed in 1955 and has been maintained by the Knights of Columbus from St. Matthew's ever since. We thank those brave troops that brought this special shrine of Christ to the Big Mountain and hope that you enjoy and respect it. – Whitefish Mountain Resort, 2010.

(19) When the Knights sought renewal of their permit in 2010, the Forest Service objected.

(20) In a private meeting with the Knights, which I attended, Forest Service officials indicated that they feared the risk of litigation and thus wanted the Knights to remove the statue. We reminded the Forest Service that the monument was an important historical site for this area and inquired whether the Forest Service had considered preserving the statue on that basis. They agreed to look further into the matter but re-affirmed that, as of that point and time, the statue needed to be removed.

(21) Although the Knights could not agree that the statue should be removed, we consulted an engineer who confirmed that the statue could not be moved without significant risk of damaging or destroying it.

(22) I and other Knights informed Forest Service officials that we declined to remove the statue.

(23) On August 24, 2011, after the Knights declined to remove the memorial, Chip Weber announced in a letter to the Knights that the Forest Service would not renew the Knights' permit and that that the statue would have to be removed by December 31, 2011.

(24) Attached as Exhibit 3 is a true and correct copy of the Forest Service's August 24, 2011 letter.

(25) The Forest Service has since reversed its decision and announced that it will allow the statue to remain in place.

(26) If the statue is removed as a result of this lawsuit, my personal interest and the Knights' interest in visiting and maintaining the memorial will be extinguished. I believe this interest to be unique from any interest the Forest Service may have in allowing the statue to remain.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on May 22, 2012.


William Glidden

EXHIBIT 1



UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

SPECIAL USE APPLICATION

(Case Designation)

Application is hereby made for permit to use the following described lands: That piece of land
25 feet by 25 feet approx. 400 ft. north-north west of the upper
Terminal of the Big Mountain Ski Lift, and in elevation approx. 70 feet
higher. This land is located in section 35, Range 22 west Township 32
North.

for the purpose of Erecting a Shrine overlooking the Big Mountain ~~Ski~~ run.
(State fully the nature of the intended use)

Construction of intended improvements will begin within 3 months and be completed within
9 months; the premises will be used at least 250 days each year; the contem-
plated improvements will cost approximately \$800.00 dollars

and will consist of the following: 6x6 base constructed of native stone using
cement to hold together. On this base it is proposed to erect a Statue
of our Lord Jesus Christ.

Reccommend that this be made a permanent part of the recreation
area on top of Big Mountain

Sept. 11, 1953
(Date of application)

Knights of Columbus Committee
L. J. Reed Chairman
(Signature of applicant)

Box 506 Whitefish, Mont.
(Post office address)

Permits are usually granted subject to the following general conditions and such special conditions as may be found desirable:

1. That there will be compliance with the regulations of the Department of Agriculture governing the National Forest and with all sanitary laws and regulations applicable to the premises.
2. That the premises will be kept in a neat and orderly condition and all refuse disposed of and outhouses and cesspools located as directed by the forest officers.
3. That all reasonable precautions will be observed to prevent and suppress forest fires.
4. That if engaged in business the permittee will conduct same in an orderly manner and in accordance with State as well as Federal laws.
5. That the permit is granted subject to valid claims.
6. That no timber will be cut or destroyed except under permit obtained from the forest officers.
7. That an annual rental charge will be paid.
8. That when requested by forest officers, a way across the land, covered by permit, will be provided for the free ingress or egress of forest officers and the users of National Forest and purchasers of National Forest products.

EXHIBIT 2

Case # 3003

Kind of Use 5th

Case Designation:

U
USES - Flathead
Knights of Columbus
Monument 9-11-53



SPECIAL USE PERMIT

_____ Flathead _____ National Forest.

Permission is hereby granted to Knights of Columbus - % L. J. Reed
of Box 506, Whitefish, Montana

hereinafter called the permittee, to use, subject to the conditions set out below, the following-described lands or improvements:

That piece of land 25 ft. by 25 ft. approximately 400 feet north-northwest of the upper terminal of the Big Mountain ski lift - Sec. 35, T. 32N., R. 22W.

This permit covers about .1 acres ~~and/or~~ for the purpose of:
erecting a religious shrine overlooking the Big Mountain ski run.

The exercise of any of the privileges granted in this permit constitutes acceptance of all the conditions of this permit.

1. In consideration for this use, the permittee shall deposit with the Regional Fiscal Agent, Forest Service, Free Use - Reg. U-11, a check, draft, or money order made payable to the Treasurer of the United States in the sum of _____ dollars (\$ _____) for the period from _____, 19____, to _____, 19____, and thereafter annually on _____,

_____ dollars (\$ _____). The charges for this use may be readjusted from time to time to place this permit on a basis consistent with the charge to other permittees for like privileges.

2. Construction or occupancy and use under this permit shall begin within 3 months, and construction, if any, shall be completed within 12 months, from the date of the permit. This use shall be actually exercised at least 250 days each year, unless otherwise authorized in writing.

3. Development plans; lay-out plans; construction, reconstruction, or alteration of improvements; or revision of lay-out or construction plans for this area must be approved in advance and in writing by the forest supervisor. Trees or shrubbery on the permitted area may be removed or destroyed only after the forest officer in charge has approved, and has marked or otherwise designated that which may be removed or destroyed. Merchantable timber cut must be paid for by the permittee. Trees, shrubs, and other plants may be planted in such manner and in such places about the premises as may be approved by the forest officer in charge.

4. The permittee shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the forest officer in charge.

5. This permit is subject to all valid claims.

6. The permittee, in exercising the privileges granted by this permit, shall comply with the regulations of the Department of Agriculture and all Federal, State, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit.

7. The permittee shall take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during the closed season established by law or regulation without a written permit from the forest officer in charge or his authorized agent.

8. The permittee shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit, and shall pay the United States for any damage resulting from negligence or from the violation of the terms of this permit or of any law or regulation applicable to the national forests by the permittee, or by any agents or employees of the permittee acting within the scope of their agency or employment.

9. The permittee shall fully repair all damage, other than ordinary wear and tear, to national forest roads and trails caused by the permittee in the exercise of the privilege granted by this permit.

10. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.

11. Upon abandonment, termination, revocation, or cancellation of this permit, the permittee shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall restore the site, unless otherwise agreed upon in writing or in this permit. If the permittee fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that will not relieve the permittee of liability for the cost of their removal and restoration of the site.

12. This permit is not transferable. If the permittee through voluntary sale or transfer, or through enforcement of contract, foreclosure, tax sale, or other valid legal proceeding shall cease to be the owner of the physical improvements situated on the land described in this permit and is unable to furnish adequate proof of ability to redeem or otherwise reestablish title to said improvements, this permit shall be subject to cancellation. But if the person to whom title to said improvements shall have been transferred in either manner above provided is qualified as a permittee, and is willing that his future occupancy of the premises shall be subject to such new conditions and stipulations as existing or prospective circumstances may warrant, his continued occupancy of the premises may be authorized by permit to him if, in the opinion of the forest supervisor, issuance of a permit is desirable and in the public interest.

13. In case of change of address, the permittee shall immediately notify the forest supervisor.

14. The temporary use and occupancy of the premises and improvements herein described may not be sublet by the permittee to third parties without the prior written approval of the forest supervisor and the permittee shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

15. This permit may be terminated upon breach of any of the conditions herein or at the discretion of the regional forester or the Chief, Forest Service.

16. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provision thereof, the preceding printed clauses will control.

17. This permit is subject to the conditions set forth above ~~and the conditions set forth~~

~~in the attached hereto and made a part of this permit~~

Date October 15, 1953

(Signature of issuing officer)
Forest Supervisor

(Title)

EXHIBIT 3



COPY

File Code: 2720-2

Date: August 24, 2011

Bill Glidden
Kalispell Council #1328
Knights of Columbus
P.O. Box 9204
Kalispell, MT 59904

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dear Mr. Glidden:

The review of your application for renewal of the Knights of Columbus special use permit for the statue of Jesus Christ located on National Forest System (NFS) land near the top of Chair 2 at the Whitefish Mountain Resort Ski Area has been completed. I have determined that the statue is an inappropriate use of NFS lands and must be removed; however, as the authorizing officer, I will work with you to assure that you are given a reasonable time for the removal to take place. As specified in clause V.D. Removal of Improvements in expired permit TAL11, you will now need to prepare a plan for removal for my approval. This plan is to be submitted by December 31, 2011.

The following information is being furnished to provide context to my determination on your permit application:

Permit History

- September 11, 1953 -- The Knights of Columbus applied to the Forest Service for authorization to construct a statue of Jesus Christ overlooking the Big Mountain Ski Area.
- October 15, 1953 -- The Forest Service issued special use permit #3003-01 to the Knights of Columbus authorizing the statue.
- August 8, 1990 -- Permit #3003-01 was renewed for 10 years.
- February 3, 2000 -- The Forest Service issued permit #TAL11 to renew the authorization for another 10 years.
- On July 19, 2010, the Knights of Columbus submitted an application requesting that the Forest Service reissue another 10-year special use permit to authorize the statue. They paid an application processing cost recovery fee of \$111.00 on August 3, 2010, and the Flathead National Forest accepted the application.
- December 31, 2010 -- Permit #TAL11 expired. The statue is currently not authorized to be on NFS land.



Religious Monument on Federal Land

The Supreme Court has held that the Establishment Clause of the First Amendment to the United States Constitution prohibits the government from promoting or affiliating itself with any religious doctrine or organization. *County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573, 590-91 (1989). Case law (see *Trunk v. City of San Diego*, 629 F.3d 1099 (9th Cir. 2011)), holds that the Establishment Clause of the First Amendment of the Constitution of the United States prohibits the Federal government from preferring one religion over another or from preferring religion over non-religion or non-religion over religion. See also *Access Fund v. U.S. Dep't of Agric.*, 499 F.3d 1036, 1043 (9th Cir. 2007), test is "whether the challenged governmental practice has the effect of endorsing religion."

Historical Significance

The statue has been in its current location for nearly 60 years. The Knights of Columbus and Winter Sports, Inc. (WSI) (owners and operators of the Whitefish Mountain Resort Ski Area) contend that the statue is a symbol of spiritual and religious significance for many citizens.

Flathead National Forest Heritage Program Leader Tim Light is currently assessing the historical significance of the statue in accordance with the National Historic Preservation Act (NHPA), including consultation with the Montana State Historic Preservation Office (SHPO). The statue's historical significance in relation to the United States Army's 10th Mountain Division and the development of the Whitefish Mountain Ski Area is the focus of this analysis. A religious property cannot be historically significant under NHPA by virtue of its religious value to a group or community alone.

If the Forest Service and SHPO agree that the statue is historically significant, removal is still not precluded by NHPA or its implementing regulations at 36 CFR 60 and 800; although some form of mitigation (i.e. photo documentation) would likely be required.

Moving the Statue to Nearby Private Land

Forest Service policy at FSM 2703.2 limits authorized use of NFS lands to those that "... *cannot be reasonably accommodated on non-National Forest System lands.*"

The statue is currently located near the top of Chair 2 on the Big Mountain. Private land owned by WSI is located approximately 2,600 feet south of the statue's current location. A monument dedicated to the United States Army's 10th Mountain Division already exists on private land next to the parking lot across from the Bierstube, and another monument dedicated to an individual named Jacques Manonian is also located on private land near the top of Chair 3. Therefore, it seems reasonable that the statue could be relocated to private land.

Discussions with WSI and Knights of Columbus with respect to moving the statue to private land brought up concerns that the statue could easily be damaged or even destroyed during the process. The concerns identified were that the plinth or cement base was poured on-site almost 60 years ago, and may require separating the statue from the base in order to move it. A structural engineer or other specialist may need to be consulted to determine what would be the safest way to accomplish the removal and/or relocation.

Decision

After extensive review and evaluation of your application, I have determined that renewing your permit would result in an inappropriate use of public land. The original stated purpose for the statue was to establish a shrine, an inherently religious object. Furthermore, the statue and its religious objective can be accommodated on adjacent private land. Therefore, I will not renew the special use permit for this statue.

Clause V.D of special use permit #TAL11 states, "... *within a reasonable time following revocation or termination of this authorization, the holder shall prepare, for approval by the authorized officer, an abandonment plan for the area. The abandonment plan shall address removal of improvements and restoration of the permit area and prescribed time frames for these actions.*" (Reference 36 CFR 251.60(i) and FSM 2716.4)

By December 31, 2011, the Knights of Columbus must submit a written plan addressing how and when the statue will be removed and the permit area restored. As required under Clause V.D. of the expired special use permit, this plan must be approved in advance by the authorized officer. The plan must accomplish removal of the statue from NFS land no later than October 31, 2012.

Appeal Rights

My decision to not renew a long-term permit for this statue and to require removal of improvements is subject to administrative appeal pursuant to U.S. Department of Agriculture administrative appeal regulations at 36 CFR 251, Subpart C.

Timing for Appeal

You must file the notice of appeal within 45 days of the date of this written decision, on or before October 8, 2011 (36 CFR 251.88(a)(2)). The date of this letter constitutes the date of notice of my written decision and initiates the timeline under which a notice of appeal can be filed.

Name and Address to Who Appeals are to be Sent

If appealed, a notice of appeal is to be sent to the Appeal Reviewing Officer in the Northern Regional Office of the U.S. Forest Service (36 CFR 251.87(a)(1) and 251.88(a)(1)). A copy of the appeal must also be sent to the Flathead National Forest (36 CFR 251.88(a)(3)).

Paper appeals must be submitted to:

USDA Forest Service, Northern Region
ATTN: Appeal Reviewing Officer
200 East Broadway
P.O. Box 7669
Missoula, MT 59802

Electronic appeals must be submitted to: appeals-northern-regional-office@fs.fed.us

In electronic appeals, the subject line should contain the name of the project being appealed. An automated response would confirm your electronic appeal has been received. Electronic appeals must be submitted in MS Word, Word Perfect, Portable Document Format (PDF), or Rich Text Format (RTF).

Items Required in an Appeal

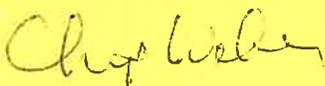
In accordance with 36 CFR 251.90, it is the appellant's responsibility to provide sufficient specific evidence and argument to show why the Responsible Official's decision should be reversed or changed. At a minimum, an appeal must include the following: 1) the appellant's name, mailing address, and daytime phone number; 2) the title or type of written instrument involved, the date of issuance of the written instrument, and the name of the responsible Forest Service Officer; 3) a brief description and the date of the written decision being appealed; 4) a statement of how the appellant is adversely affected by the decision; 5) a statement of the facts of the dispute and the issue(s) raised by the appeal; 6) specific references to any law, regulation, or policy the appellant believes to be violated and the reason for such an allegation; 7) a statement as to whether and how the appellant has tried to resolve the issue(s) being appealed with the Deciding Officer, the date of any discussion, and the outcome of the meeting or contact; and 8) a statement of the relief the appellant seeks.

The appellant may also include a request for an oral presentation and a request for a stay of implementation in a notice of appeal.

If the appellant is requesting a stay of decision, per 36 CFR 251.91(c), the appellant must: 1) file a written request with the Reviewing Officer; 2) simultaneously send a copy of the stay request to any other appellant(s), to intervenor(s), and to the Deciding Officer; and 3) provide a written justification of the need for a stay, which at a minimum includes the following: i) a description of the specific project(s), activity(ies), or action(s) to be stopped; and ii) specific reasons why the stay should be granted in sufficient detail to permit the Reviewing Officer to evaluate and rule upon the stay request, including at a minimum: (A) the specific adverse effect(s) upon the requestor, (B) harmful site-specific impacts or effects on resources in the area affected by the activity(ies) to be stopped; and (C) how the cited effects and impacts would prevent a meaningful decision on the merits.

If you have any questions about this process please contact me at 758-3538.

Sincerely,



CHIP WEBER
Forest Supervisor

CC: Lisa Timchak, Tally Lake District Ranger
Regional Forester
Region 1 Lands Specialist
Office of the General Counsel