

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

GEORGIACARRY.ORG, INC., )  
and DAVID JAMES, )

Plaintiffs, )

v. )

U.S. ARMY CORPS OF )  
ENGINEERS and JOHN J. )  
CHYTKA, in his official capacity )  
as Commander, Mobile District, )  
U.S. Army Corps of Engineers, )

Defendants. )

CIVIL ACTION FILE NO.

4:14-CV-139-HLM (consolidated  
with 4:15-CV-0009-HLM)

**DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT**

**I. Case No. 4:14-CV-139-HLM**

Defendants U.S. Army Corps of Engineers (“Corps”) and John J. Chytka, Commander, Mobile District (collectively, “Defendants”) answer the individual allegations of Plaintiffs’ Complaint, using the same paragraph numbering as is found in the Complaint, as follows:

## **I. INTRODUCTION**

1. This paragraph consists of Plaintiffs' characterization of the present action, to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.

## **II. JURISDICTION & VENUE**

2. This paragraph consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.

3. This paragraph consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are admitted.

## **III. PARTIES**

4-7. Defendants do not possess knowledge or information sufficient to form a belief as to the truth of the allegations contained in these paragraphs, and therefore deny them.

8. Defendants admit that the Corps is part of the U.S. Department of the Army.

9-11. Defendants admit the allegations contained in these paragraphs.

12. This paragraph consists of a legal conclusion, to which no response is required; to the extent that a response is deemed required, Defendants admit that Defendant John J. Chytka is sued only in his official capacity.

13. Defendants admit the allegations contained in this paragraph.

#### **IV. FACTUAL BACKGROUND**

14. Defendants do not possess knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny them.

15. This paragraph consists of a legal conclusion, to which no response is required; to the extent that a response is deemed required, Defendants do not possess knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny them.

16-17. Defendants do not possess knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny them.

18. Defendants admit the allegations contained in this paragraph.

19. Defendants admit that Lake Allatoona lies within the Mobile District and that Defendant Chytka is the Commander of the Mobile District.

20-21. Defendants admit the allegations contained in these paragraphs.

22. Defendants do not possess knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny them.

23-25. These paragraphs consist of Plaintiffs' characterization of the effects of a regulation, to which no response is required. To the extent that a response is deemed required, the Court is respectfully referred to the cited regulation for a full and fair statement of its terms, and otherwise the allegations of these paragraphs are denied.

26. Defendants do not possess knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny them.

27-28. These paragraphs consist of Plaintiffs' characterization of the effects of a regulation, to which no response is required. To the extent that a response is deemed required, the Court is respectfully referred to the cited regulation for a full and fair statement of its terms, and otherwise the allegations of these paragraphs are denied.

29. Defendants do not possess knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny them.

30. Defendants admit the allegations contained in this paragraph and aver that Col. David Walker was the Acting Division Commander of the South Atlantic Division of the Corps.

31-32. Defendants admit the allegations contained in these paragraphs.

33. Defendants do not possess knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny them.

### **Count 1 – Violations of Second Amendment**

34. This paragraph consists of Plaintiffs' characterization of a constitutional provision, to which no response is required; to the extent that a response is deemed required, the Court is respectfully referred to the cited constitutional provision for a full and fair statement of its terms, and otherwise the allegations of this paragraph are denied.

35. This paragraph consists of a legal conclusion, to which no response is required; to the extent that a response is deemed required, the allegations in this paragraph are denied.

### **Prayer for Relief**

36-39. These paragraphs set forth Plaintiffs' request for relief, to which no

response is required. To the extent that a response is deemed required, Defendants deny that Plaintiffs are entitled to the relief requested or to any relief at all.

Except to the extent expressly admitted or qualified above, Defendants deny each and every allegation of Plaintiffs' Complaint.

Wherefore, having answered, Defendants respectfully request that the Court enter judgment in their favor, award Defendants their costs, and provide such other relief as the Court deems just and proper.

## **II. Case No. 4:15-CV-0009-HLM**

Defendants U.S. Army Corps of Engineers ("Corps") and Marvin L. Griffin,<sup>1</sup> Commander, Savannah District (collectively, "Defendants") answer the individual allegations of Plaintiffs' Complaint, using the same paragraph numbering as is found in the Complaint, as follows:

### **I. INTRODUCTION**

1. This paragraph consists of Plaintiffs' characterization of the present action, to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.

---

<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 25(d)(1), Marvin L. Griffin, Commander, Savannah District, is substituted for his predecessor, Thomas J. Tickner.

## **II. JURISDICTION & VENUE**

2. This paragraph consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.

3. This paragraph consists of a legal conclusion, to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are admitted.

## **III. PARTIES**

4-7. Defendants do not possess knowledge or information sufficient to form a belief as to the truth of the allegations contained in these paragraphs, and therefore deny them.

8. Defendants admit that the Corps is part of the U.S. Department of the Army.

9-10. Defendants admit the allegations contained in these paragraphs.

11. Defendants deny the allegation that Thomas J. Tickner was ever the Commander of the Mobile District of the Corps. Defendants admit that Thomas J. Tickner was formerly the Commander of the Savannah District of the Corps, but has been succeeded in command by Colonel Marvin L. Griffin.

12. This paragraph consists of a legal conclusion, to which no response is required; to the extent that a response is deemed required, Defendants admit that Defendant Thomas J. Tickner is sued only in his official capacity.

13. Defendants admit that the Savannah District of the Corps includes operation of a Corps project located on the Savannah River that inundates the Broad and Little Rivers, and otherwise deny the allegations in this paragraph.

#### **IV. FACTUAL BACKGROUND**

14. Defendants do not possess knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny them.

15. This paragraph consists of a legal conclusion, to which no response is required; to the extent that a response is deemed required, Defendants do not possess knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny them.

16-17. Defendants do not possess knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny them.

18-21. Defendants admit the allegations contained in this paragraph.



22. Defendants admit that Thurmond Lake lies within the Savannah District and that Defendant Tickner was formerly the Commander of the Savannah District, but has been succeeded by Marvin L. Griffin.

23-24. Defendants admit the allegations contained in these paragraphs.

25. Defendants do not possess knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny them.

26-28. These paragraphs consist of Plaintiffs' characterization of the effects of a regulation, to which no response is required. To the extent that a response is deemed required, the Court is respectfully referred to the cited regulation for a full and fair statement of its terms, and otherwise the allegations of these paragraphs are denied.

29. Defendants do not possess knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny them.

30-32. These paragraphs consist of Plaintiffs' characterization of the effects of a regulation, to which no response is required. To the extent that a response is deemed required, the Court is respectfully referred to the cited regulation for a full

and fair statement of its terms, and otherwise the allegations of these paragraphs are denied.

33. Defendants do not possess knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny them.

34. Defendants admit the allegations in this paragraph, and aver that Col. David Walker was the Acting Division Commander of the South Atlantic Division of the Corps.

35-36. Defendants admit the allegations contained in these paragraphs.

37. Defendants do not possess knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny them.

### **Count 1 – Violations of Second Amendment**

38. This paragraph consists of Plaintiffs' characterization of a constitutional provision, to which no response is required; to the extent that a response is deemed required, the Court is respectfully referred to the cited constitutional provision for a full and fair statement of its terms, and otherwise the allegations of this paragraph are denied.

39. This paragraph consists of a legal conclusion, to which no response is required; to the extent that a response is deemed required, the allegations in this paragraph are denied.

**Prayer for Relief**

41-43. These paragraphs set forth Plaintiffs' request for relief, to which no response is required. To the extent that a response is deemed required, Defendants deny that Plaintiffs are entitled to the relief requested or to any relief at all.

Except to the extent expressly admitted or qualified above, Defendants deny each and every allegation of Plaintiffs' Complaint.

Wherefore, having answered, Defendants respectfully request that the Court enter judgment in their favor, award Defendants their costs, and provide such other relief as the Court deems just and proper.

Dated: August 14, 2015

Of Counsel

JOHN A. HORN  
United States Attorney  
LORI BERANEK  
Assistant United States Attorney  
600 Richard B. Russell Federal Building  
75 Spring Street, S.W.  
Atlanta, Georgia 30303  
[Lori.Beraneck@usdoj.gov](mailto:Lori.Beraneck@usdoj.gov)

Respectfully submitted,

BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney  
General

          /s/ Daniel Riess            
JOHN R. TYLER  
Assistant Branch Director  
DANIEL RIESS  
Trial Attorney  
U.S. Department of Justice

Civil Division, Rm. 6122  
20 Massachusetts Avenue, NW  
Washington, D.C. 20530  
Telephone: (202) 353-3098  
Fax: (202) 616-8460  
Email: [Daniel.Riess@usdoj.gov](mailto:Daniel.Riess@usdoj.gov)  
*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I certify that, on August 14, 2015, I electronically filed the within and foregoing with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the parties' attorneys of record.

This 14th day of August, 2015.

/s/ Daniel Riess

Daniel Riess