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The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
  
Plaintiff,

C13-1555 JCC

v.

**ORDER GRANTING CONSENT DECREE**

SUELLYN RADER BLYMYER, individually,  
SUELLYN RADER BLYMYER, in her  
capacity as the Personal Representative of the  
Estate of Lyle J. Rader, and UPTRAIL  
GROUP, LLC,  
  
Defendants.

WHEREAS, the Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed the Complaint herein against Defendants Suellyn Rader Blymyer, in her individual capacity and in her capacity as the Personal Representative of the Estate of Lyle J. Rader, and Uprail Group, LLC, (collectively, “Defendants”), alleging that Defendants violated Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a);

WHEREAS, the Complaint alleges that Defendants violated CWA Section 301(a) by discharging dredged or fill material and/or controlling and directing the discharge of dredged or

1 fill material into waters of the United States at a site located in Whatcom County, Washington,  
2 (the “Site”) and more fully described in the Complaint, without authorization by the United  
3 States Department of the Army (“the Corps”);

4 WHEREAS, the Complaint seeks (1) to enjoin the discharge of pollutants into waters of  
5 the United States in violation of CWA Section 301(a), 33 U.S.C. § 1311(a); (2) to require  
6 Defendants, at their own expense and at the direction of EPA, to restore and/or mitigate the  
7 damages caused by their unlawful activities; and (3) to require Defendants to pay civil penalties  
8 as provided in 33 U.S.C. § 1319(d);

9 WHEREAS, the Defendants neither admit nor deny the allegations in the Complaint and  
10 nothing in this Consent Decree shall constitute or be construed as an admission of liability, fact  
11 or law, or any wrongdoing on the part of the Defendants.

12 WHEREAS, this Consent Decree is intended to constitute a complete and final settlement  
13 of the United States’ claims under the CWA set forth in the Complaint regarding the Site;

14 WHEREAS, the United States and Defendants agree that settlement of this case is in the  
15 public interest and that entry of this Consent Decree is the most appropriate means of resolving  
16 the United States’ claims under the CWA against Defendants in this case; and

17 WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement  
18 of the United States’ claims against Defendants in this case, and that this Consent Decree  
19 adequately protects the public interest in accordance with the CWA and all other applicable  
20 federal law.

21 THEREFORE, before the taking of any testimony upon the pleadings, without further  
22 adjudication of any issue of fact or law, and upon consent of the parties hereto by their  
23 authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:  
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1 **I. JURISDICTION AND VENUE**

2 1. This Court has jurisdiction over the subject matter of these actions and over the  
3 parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33  
4 U.S.C. § 1319(b).

5 2. Venue is proper in the Western District of Washington pursuant to CWA Section  
6 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c), because Defendants conduct  
7 business in this District, the subject property is located in this District, and the causes of action  
8 alleged herein arose in this District.

9 3. The Complaint states claims upon which relief can be granted pursuant to  
10 Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344.

11 **II. APPLICABILITY**

12 4. The obligations of this Consent Decree shall apply to and be binding upon  
13 Defendants, their officers, directors, agents, employees and servants, and their successors and  
14 assigns and any person, firm, association or corporation who is, or will be, acting in concert or  
15 participation with any of the Defendants whether or not such person has notice of this Consent  
16 Decree. In any action to enforce this Consent Decree against a Defendant, except as expressly  
17 permitted under this Consent Decree, the Defendant shall not raise as a defense the failure of any  
18 of its officers, directors, agents, employees, successors or assigns or any person, firm or  
19 corporation acting in concert or participation with the Defendant, to take any actions necessary to  
20 comply with the provisions hereof.

21 5. The transfer of ownership or other interest in the “Restoration Area” and/or  
22 “Enhancement Area” (the Central Area and South Area, respectively, as described in Appendix  
23 A appended hereto and incorporated herein by reference) shall not alter or relieve Defendants of  
24 their obligation to comply with all of the terms of this Consent Decree. At least fifteen (15) days  
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1 prior to the transfer of ownership or other interest in the Restoration Area and/or the  
2 Enhancement Area, the party making such transfer shall provide written notice and a true copy of  
3 this Consent Decree to its successors in interest and shall simultaneously notify EPA and the  
4 United States Department of Justice at the addresses specified in Section IX below that such  
5 notice has been given. As a condition to any such transfer, the Defendant making the transfer  
6 shall reserve all rights necessary to comply with the terms of this Consent Decree.

7 **III. SCOPE OF CONSENT DECREE**

8           6. This Consent Decree shall constitute a complete and final settlement of all civil  
9 claims for injunctive relief and civil penalties alleged in the Complaint against Defendants under  
10 CWA Section 301 concerning the Site.

11           7. It is the express purpose of the parties in entering this Consent Decree to further  
12 the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. The parties agree all plans,  
13 studies, construction, remedial maintenance, monitoring programs, and other obligations in this  
14 Consent Decree or resulting from the activities required by this Consent Decree have the  
15 objective of causing Defendants to achieve and maintain full compliance with, and to further the  
16 purposes of, the CWA.

17           8. Defendants' obligations under this Consent Decree are joint and several.

18           9. Except as in accordance with this Consent Decree, Defendants and Defendants'  
19 agents, successors and assigns are enjoined from discharging any pollutant into waters of the  
20 United States at the Site, unless such discharge complies with the provisions of the CWA and its  
21 implementing regulations.

22           10. The parties acknowledge that Nationwide Permit 32, found at 77 Fed. Reg. 10,184  
23 (Feb. 21, 2012), authorizes the discharge of dredged or fill material insofar as such discharge is  
24 necessary to complete the work required to be performed pursuant to this Consent Decree. Any  
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1 such discharge of dredged or fill material necessary for work required by this Consent Decree  
2 shall be subject to the conditions of the Nationwide Permit and this Consent Decree. No later  
3 than 30 days after entry of this Consent Decree, Defendants will apply to the United States Army  
4 Corps of Engineers for authorization under Nationwide Permit 32, and will timely respond to all  
5 requests for information by the Corps.

6 11. This Consent Decree is not and shall not be interpreted to be a permit or  
7 modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33  
8 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability  
9 of the United States Army Corps of Engineers to issue, modify, suspend, revoke or deny any  
10 individual permit or any nationwide or regional general permit, nor shall this Consent Decree  
11 limit EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. §  
12 1344(c).

13 12. This Consent Decree in no way affects or relieves Defendants of their  
14 responsibility to comply with any applicable federal, state, or local law, regulation or permit.

15 13. This Consent Decree in no way affects the rights of the United States as against  
16 any person not a party to this Consent Decree.

17 14. The United States reserves any and all legal and equitable remedies available to  
18 enforce the provisions of this Consent Decree and applicable law; except as provided for in this  
19 Consent Decree, Defendants reserve any and all rights and defenses, both legal and equitable, in  
20 any future action by the United States.

21 15. The Defendants neither admit nor deny the allegations in the Complaint and  
22 nothing in this Consent Decree shall constitute or be construed as an admission of liability, fact  
23 or law, or any wrongdoing on the part of the Defendants. Nothing in this Consent Decree shall  
24 constitute an admission of fact or law by any party.  
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1 **IV. SPECIFIC PROVISIONS**

2 **Civil Penalties**

3 16. Defendants shall pay a civil penalty to the United States in the amount of two  
4 hundred and ten thousand dollars (\$210,000.00), within thirty (30) days of entry of this Consent  
5 Decree.

6 17. Defendants shall make the above-referenced payment by FedWire Electronic  
7 Funds Transfer (“EFT” or wire transfer) to the U.S. Department of Justice account in accordance  
8 with current electronic funds transfer procedures, referencing U.S.A.O. file number  
9 (2014V00453), EPA Region 10, and the DOJ case number (DJ # 90-5-1-1-19398). Payment  
10 shall be made in accordance with instructions provided to Defendants by the Financial Litigation  
11 Unit of the United States Attorney’s Office for the Western District of Washington. Any  
12 payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited  
13 on the next business day.

14 18. Upon payment of the civil penalty required by this Consent Decree, Defendants  
15 shall provide written notice, at the addresses specified in Section IX of this Consent Decree, that  
16 such payment was made in accordance with Paragraph 17.

17 19. Civil penalty payments pursuant to this Consent Decree (including stipulated  
18 penalty payments under Section VIII) are penalties within the meaning of Section 162(f) of the  
19 Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible  
20 expenditures for purposes of federal law.  
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1 **Restoration, Mitigation and Preservation**

2 20. Defendants shall perform the work under the terms and conditions stated in  
3 Appendix A appended hereto and incorporated herein by reference.

4 21. Upon completion of the terms and conditions of Appendix A, Defendants shall  
5 not mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain or otherwise disturb in  
6 any manner whatsoever any location identified in Appendix A, except as approved by EPA or in  
7 accordance with the Conservation Easement (see Paragraph 23).

8 22. To ensure that all parcels of land identified in Appendix A remain undisturbed,  
9 Defendants shall, within fifteen (15) days of entry of this Consent Decree, record a certified copy  
10 of this Consent Decree with the Auditor's Office, in Whatcom County, Washington. Thereafter,  
11 each deed, title, or other instrument conveying an interest in any property identified in Appendix  
12 A shall contain a notice stating that the property is subject to this Consent Decree and shall  
13 reference the recorded location of the Consent Decree and any restrictions applicable to the  
14 property under this Consent Decree.

15 23. Defendants shall, within fifteen (15) days of entry of this Consent Decree, execute  
16 and deliver to Whatcom County a deed of easement as contained in Appendix B appended hereto  
17 and incorporated herein by reference.

18 **V. NOTICES AND OTHER SUBMISSIONS**

19 24. Within thirty (30) days after the deadline for completing any task set forth in  
20 Appendix A of this Consent Decree, Defendants shall provide the United States with written  
21 notice, at the addresses specified in Section IX of this Consent Decree, of whether or not that  
22 task has been completed.

23 25. If the required task has been completed, the notice shall specify the date when it  
24 was completed. If the task was not or has not been completed within the scheduled time for such  
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1 completion required by the Consent Decree, the notice shall explain the reasons for any delay in  
2 completion.

3           26. In all notices, documents or reports submitted to the United States pursuant to this  
4 Consent Decree, Defendants shall, by signature of a senior management official, certify such  
5 notices, documents and reports as follows:

6           I certify under penalty of law that this document and all attachments were  
7 prepared under my direction or supervision in accordance with a system designed  
8 to assure that qualified personnel properly gather and evaluate the information  
9 submitted. Based on my inquiry of the person or persons who manage the system,  
10 or those persons directly responsible for gathering such information, the  
11 information submitted is, to the best of my knowledge and belief, true, accurate  
12 and complete. I am aware that there are significant penalties for submitting false  
13 information, including the possibility of fine and imprisonment for knowing  
14 violations.

## 15 **VI. RETENTION OF RECORDS AND RIGHT OF ENTRY**

16           27. Until ten years after entry of this Consent Decree (the “Document Retention  
17 Period”), Defendants shall preserve and retain all records and documents now in their possession  
18 or control or which come into their possession or control that relate to the performance of the  
19 tasks in Appendix A, regardless of any corporate retention policy to the contrary. Until ten years  
20 after entry of this Consent Decree, Defendants shall also instruct their contractors and agents to  
21 preserve all records and documents that relate to the performance of the tasks in Appendix A.  
22 “Records and documents” means all written or graphic documentation, both physical and  
23 electronic, but shall exclude voicemail messages, text messages, and social media.  
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1           28.     At the conclusion of the Document Retention Period, Defendants shall notify the  
2 United States at least ninety (90) days prior to the destruction of any such records or conclusion  
3 of the Document Retention Period, and, upon request by the United States, Defendants shall  
4 deliver any all such records or documents to EPA. Defendants may assert that certain  
5 documents, records and other information are privileged under the attorney-client privilege or  
6 any other privilege recognized by federal law. If Defendants assert such a privilege, they shall  
7 provide the United States with the following: (1) the title of the document, record, or  
8 information; (2) the date of the document, record, or information; (3) the name and title of the  
9 author of the document, record, or information; (4) the name and title of each addressee and  
10 recipient; (5) a description of the subject of the document, record, or information; and (6) the  
11 privilege asserted by Defendants. However, no documents, reports or other information created  
12 or generated pursuant to the requirements of the Consent Decree shall be withheld on the  
13 grounds that they are privileged.

14           29.     A. Until termination of this Consent Decree, the United States and its authorized  
15 representatives and contractors shall have authority at all reasonable times, after providing  
16 reasonable prior notice to Defendants and upon presentation of credentials or other  
17 documentation identifying the individual as an employee or contractor of EPA or the Department  
18 of Justice, to enter the Restoration Action Area (as defined in Appendix A) to:

- 19                   1) Monitor the activities required by this Consent Decree;
- 20                   2) Verify any data or information submitted to the United States pursuant to  
21                   this Consent Decree;
- 22                   3) Obtain samples for purposes of verifying compliance with this Consent  
23                   Decree. At the time samples are taken, the United States will concurrently  
24                   provide the Defendants a duplicate sample(s).The United States will provide  
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1 Defendants a copy of any final report or analysis related to the samples within  
2 a reasonable time after EPA receives such report or analysis;

3 4) Inspect and evaluate Defendants' performance of the tasks in Appendix A;  
4 and

5 5) Inspect and review any records and documents required to be kept under  
6 Paragraph 27 of this Consent Decree.

7 B. This provision of this Consent Decree is in addition to, and in no way limits or  
8 otherwise affects, the statutory authorities of the United States to conduct inspections, to require  
9 monitoring and to obtain information from Defendants as authorized by law.

## 10 **VI. DISPUTE RESOLUTION**

11 30. Any dispute that arises with respect to the meaning or requirements of this  
12 Consent Decree shall be, in the first instance, the subject of informal negotiations between the  
13 United States and Defendants affected by the dispute to attempt to resolve such dispute. The  
14 period for informal negotiations shall not extend beyond sixty (60) days beginning with written  
15 notice by one party to the other affected party or parties that a dispute exists, unless agreed to in  
16 writing by those parties. If a dispute between the United States and Defendants cannot be  
17 resolved by informal negotiations, then the position advanced by the United States shall be  
18 considered binding unless, within thirty (30) days after the end of the informal negotiations  
19 period, Defendants file a motion with the Court seeking resolution of the dispute. The motion  
20 shall set forth the nature of the dispute and a proposal for its resolution. The United States shall  
21 have thirty (30) days to respond to the motion and propose an alternate resolution. The  
22 Defendants may file a reply memorandum within thirty (30) days of the United States' response.  
23 In resolving any such dispute, Defendants shall bear the burden of demonstrating that the United  
24 States' position is not in accordance with the objectives of this Consent Decree, and that  
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1 Defendants' position will achieve compliance with the terms and conditions of this Consent  
2 Decree and Defendants' position does not violate the CWA.

3 31. If the United States believes that a dispute is not a good faith dispute, or that a  
4 delay would pose or increase a threat of harm to the public or the environment, it may move the  
5 Court for a resolution of the dispute prior to the expiration of the sixty (60) day period for  
6 informal negotiations. Defendants shall have thirty (30) days to respond to the motion and  
7 propose an alternate resolution. In resolving any such dispute, Defendants shall bear the burden  
8 of demonstrating that United States' position is not in accordance with the objectives of this  
9 Consent Decree, and that Defendants' position will achieve compliance with the terms and  
10 conditions of this Consent Decree and Defendants' position does not violate the CWA.

11 32. The filing of a motion asking the Court to resolve a dispute shall not extend or  
12 postpone any obligation of Defendants under this Consent Decree, except as provided in  
13 Paragraph 41 below regarding payment of stipulated penalties.

14 **VII. FORCE MAJEURE**

15 33. Defendants shall perform the actions required under this Consent Decree within  
16 the time limits set forth or approved herein, unless the performance is prevented or delayed  
17 solely by events which constitute a Force Majeure event. A Force Majeure event is defined as  
18 any event arising from causes beyond the control of Defendants, including their employees,  
19 agents, consultants and contractors, which could not be overcome by due diligence and which  
20 delays or prevents the performance of an action required by this Consent Decree within the  
21 specified time period. A Force Majeure event does not include, inter alia, increased costs of  
22 performance, changed economic circumstances, changed labor relations, normal precipitation or  
23 climate events, changed circumstances arising out of the sale, lease or other transfer or  
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1 conveyance of title or ownership or possession of a site, or failure to obtain federal, state or local  
2 permits.

3           34. If Defendants believe that a Force Majeure event has affected Defendants' ability  
4 to perform any action required under this Consent Decree, Defendants shall notify the United  
5 States in writing within seven (7) calendar days after the event at the addresses listed in Section  
6 IX. Such notice shall include a discussion of the following:

- 7                   A. what action has been affected;  
8                   B. the specific cause(s) of the delay;  
9                   C. the length or estimated duration of the delay; and  
10                  D. any measures taken or planned by Defendants to prevent or minimize  
11 the delay and a schedule for the implementation of such measures.

12 Defendants may also provide to the United States any additional information that they deem  
13 appropriate to support their conclusion that a Force Majeure event has affected their ability to  
14 perform an action required under this Consent Decree. Failure to provide timely and complete  
15 notification to the United States shall constitute a waiver of any claim of Force Majeure as to the  
16 event in question.

17           35. If the United States determines that the conditions constitute a Force Majeure  
18 event, then the deadline for the affected action shall be extended by the amount of time of the  
19 delay caused by the Force Majeure event. Defendants shall coordinate with EPA to determine  
20 when to begin or resume the operations that had been affected by any Force Majeure event.  
21 Stipulated penalties do not apply or accrue to any affected action from the date of the Force  
22 Majeure event through the extended deadline for the affected action.

23           36. If the parties are unable to agree whether the conditions constitute a Force  
24 Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at  
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1 issue should be extended, any party may seek a resolution of the dispute under the procedures in  
2 Section VI of this Consent Decree.

3 37. Defendants shall bear the burden of proving (1) that the noncompliance at issue  
4 was caused by circumstances beyond the control of Defendants and any entity controlled by  
5 Defendants, including their contractors and consultants; (2) that Defendants or any entity  
6 controlled by Defendants could not have foreseen and prevented such noncompliance; and (3)  
7 the number of days of noncompliance that were caused by such circumstances.

8 **VIII. STIPULATED PENALTIES**

9 38. After entry of this Consent Decree, if Defendants fail to timely fulfill any  
10 requirement of the Consent Decree (including Appendix A), Defendants shall pay a stipulated  
11 penalty to the United States for each violation of each requirement of this Consent Decree as  
12 follows:

- |    |    |                                |                    |
|----|----|--------------------------------|--------------------|
| 13 | A. | For Day 1 up to and including  | \$1000.00 per day  |
| 14 |    | Day 30 of non-compliance;      |                    |
| 15 | B. | For Day 31 up to and including | \$2,000.00 per day |
| 16 |    | 60 of non-compliance; and      |                    |
| 17 | C. | For Day 61 and beyond          | \$3,000.00 per day |
| 18 |    | of non-compliance.             |                    |

19 Except as provided in Paragraphs 39 and 41 of this Section, stipulated penalty payments shall be  
20 made without demand by the United States on or before the last day of the month following the  
21 month in which the stipulated penalty accrued.

22 39. Defendants may request in writing that the United States waive stipulated  
23 penalties which have been assessed pursuant to Paragraph 38. The United States may, in its sole  
24 discretion, waive such claims for stipulated penalties. A request for waiver shall not alter any  
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1 deadline or other requirement of this Consent Decree and shall not stay the accrual of stipulated  
2 penalties. In the event that EPA decides not to waive stipulated penalties, stipulated penalties  
3 shall be paid by Defendants within thirty (30) days after EPA mails notice of its decision.

4           40. Any disputes concerning the amount of stipulated penalties, or the underlying  
5 violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant  
6 to the Dispute Resolution provisions in Section VI and/or the Force Majeure provisions in  
7 Section VII shall be resolved upon motion to this Court as provided in Paragraphs 30 and 31.

8           41. The filing of a motion requesting that the Court resolve a dispute shall stay  
9 Defendants' obligation to pay any stipulated penalties with respect to the disputed matter  
10 pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties  
11 shall continue to accrue from the first day of any failure or refusal to comply with any term or  
12 condition of this Consent Decree. In the event that Defendants do not prevail on the disputed  
13 issue, stipulated penalties shall be paid by Defendants within thirty (30) days after the Court  
14 issues its decision.

15           42. To the extent Defendants demonstrate to the Court that a delay or other non-  
16 compliance was due to a Force Majeure event (as defined in Paragraph 33 above) or otherwise  
17 prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-  
18 compliance.

19           43. In the event that a stipulated penalty payment is applicable and not paid on time,  
20 interest will be charged in accordance with the statutory judgment interest rate provided for in 28  
21 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the  
22 date the payment is made. The interest shall also be compounded annually.

23           44. Defendants shall make any payment of a stipulated penalty by FedWire Electronic  
24 Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance  
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1 with current electronic funds transfer procedures, referencing U.S.A.O. file number  
2 (2014V00453), EPA Region 10, and the DOJ case number (DJ # 90-5-1-1-19398). Payment  
3 shall be made in accordance with instructions provided to Defendants by the Financial Litigation  
4 Unit of the United States Attorney's Office for the Western District of Washington. Any  
5 payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited  
6 on the next business day. Further, upon payment of any stipulated penalties, Defendants shall  
7 provide written notice, at the addresses specified in Section IX of this Decree.

8 **IX. ADDRESSES**

9  
10 45. All notices and communications required under this Consent Decree shall be  
11 made to the parties through each of the following persons and addresses:

12 A. TO EPA:

- 13 (1) Kristin Leefers  
Assistant Regional Counsel  
14 United States Environmental Protection Agency  
Region 10  
15 1200 Sixth Avenue  
Suite 900, ORC-158  
16 Seattle, WA 98101
- 17 (2) Krista Rave-Perkins  
Wetland Protection Specialist  
18 United States Environmental Protection Agency  
Region 10  
19 1200 Sixth Avenue  
Suite 900, ETPA-202-2  
20 Seattle, WA 98101

21  
22 B. TO THE UNITED STATES DEPARTMENT OF JUSTICE

23 Section Chief  
Environmental Defense Section  
24 Environment and Natural Resources Division  
U.S. Department of Justice  
25 P.O. Box 7611

1 Washington, D.C. 20044

2 C. TO DEFENDANTS:

- 3 (1) Suellyn Rader Blymyer  
4 303 Snohomish Drive  
5 La Conner, Washington 98257
- 6 (2) Uptrail Group LLC  
7 Att: Suellyn Rader Blymyer, Manager  
8 303 Snohomish Drive  
9 La Conner, Washington 98257
- 10 (3) Amit D. Ranade  
11 Andy F. Rigel  
12 Hillis Clark Martin & Peterson P.S.  
13 1221 Second Avenue, Suite 500  
14 Seattle, Washington 98101-2925
- 15 (4) Ankur K. Tohan  
16 K&L Gates LLP  
17 925 Fourth Avenue, Suite 2900  
18 Seattle, Washington 98104-1158

19 **X. COSTS OF SUIT**

20 46. Each party to this Consent Decree shall bear its own costs and attorneys' fees in  
21 this action. Should Defendants subsequently be determined by the Court to have violated the  
22 terms or conditions of this Consent Decree, Defendants shall be liable for any costs or attorneys'  
23 fees incurred by the United States in any action against Defendants for noncompliance with or  
24 enforcement of this Consent Decree

25 **XI. PUBLIC COMMENT**

47. The parties acknowledge that after the lodging and before the entry of this  
Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R.  
§ 50.7, which provides for public notice and comment. The United States reserves the right to  
withhold or withdraw its consent to the entry of this Consent Decree if the comments received  
disclose any facts which lead the United States to conclude that the proposed judgment is



1 inappropriate, improper, or inadequate. Defendants agree not to withdraw from, oppose entry of,  
2 or to challenge any provision of this Consent Decree, unless the United States has notified  
3 Defendants in writing that it no longer supports entry of the Consent Decree.

## 4 **XII. CONTINUING JURISDICTION OF THE COURT**

5 48. This Court shall retain jurisdiction over this action in order to enforce or modify  
6 the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as  
7 may be necessary or appropriate for construction or execution of this Consent Decree. During  
8 the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to  
9 construe and effectuate the Consent Decree.

## 10 **XIII. MODIFICATION**

11 49. Upon its entry by the Court, this Consent Decree shall have the force and effect of  
12 a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take  
13 effect unless signed by both the United States and Defendants and approved by the Court.

14 50. The undersigned representatives of Defendants certify that each is authorized to  
15 enter into this Consent Decree on behalf of that party and to execute and legally bind the party to  
16 the terms and conditions of this Decree.

## 17 **XIV. TERMINATION**

18 51. Except for Paragraph 21, this Consent Decree may be terminated by either of the  
19 following:

20 A. Defendants and the United States may at any time make a joint motion to the  
21 Court for termination of this Consent Decree or any portion of it; or

22 B. Defendants may make a unilateral motion to the Court to terminate this  
23 Consent Decree after each of the following has occurred:  
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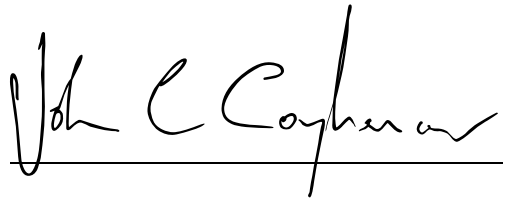
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1. Defendants have obtained and maintained compliance with all provisions of this Consent Decree for twelve (12) consecutive months;
2. Defendants have paid all penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed to the United States;
3. Defendant's have certified compliance pursuant to subparagraphs 1 and 2 above to the Court and all Parties; and
4. EPA, within forty-five (45) days of receiving such certification from Defendants, has not contested in writing that such compliance has been achieved. If EPA disputes Defendant's full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court, pursuant to section VI.

52. The headings of the sections contained in this Consent Decree are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Decree.

IT IS SO ORDERED.

Dated and entered this 1 day of October, 2015.



John C. Coughenour  
UNITED STATES DISTRICT JUDGE

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