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UNITED STATES COURT FOR THE
DISTRICT OF IDAHO

UNITED STATES OF AMERICA,
Plaintiff,

v.

OWYHEE CONSTRUCTION INC. &
RIVERSIDE WATER AND SEWER
DISTRICT

Defendants.

OWYHEE CONSTRUCTION INC.
&RIVERSIDE WATER AND SEWER
DISTRICT,

Third-Party Plaintiffs,

Civ. No. 3:15-cv-00088-REB

CONSENT DECREE

v.

TAYLOR ENGINEERING, INC.,

Third-Party Defendant.

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I. BACKGROUND

1. The United States of America (“United States”), on behalf of the Administrator of the U.S. Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607 (“CERCLA”), seeking declaratory judgment and reimbursement of response costs incurred or to be incurred for response actions taken or to be taken in connection with the release or threatened release of hazardous substances at the Orofino Asbestos Superfund Site (the “Site”).

2. In response to the release or threatened release of hazardous substances at the Site, EPA undertook removal actions pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. In performing the removal actions at the Site, EPA has incurred response costs.

3. The United States alleges that Owyhee Construction, Inc., (“Owyhee”), and the Riverside Water and Sewer District (“RWSD”) (collectively the “Settling Defendants”) are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred at the Site.

4. The Settling Defendants that have entered into this Consent Decree do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

5. The United States has reviewed the Financial Information and Insurance Information submitted by the Settling Defendants to determine whether the Settling Defendants are financially able to pay response costs incurred at the Site. Based upon this Financial Information and Insurance Information, the United States has determined that the Settling Defendants have limited financial ability to pay for response costs incurred at the Site.

6. The United States and the Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter without further litigation and without any further admission or adjudication of any issue of fact or law is appropriate and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

II. JURISDICTION

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, the Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Settling Defendants shall not challenge entry or the terms of this Consent Decree or this Court’s jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

8. This Consent Decree is binding upon the United States and upon the Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Settling Defendants under this Consent Decree.

IV. DEFINITIONS

9. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on the Court’s docket.

“EPA” shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Financial Information” shall mean those financial documents identified in Appendix A.

“Insurance Information” shall mean those insurance documents identified in Appendix B.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at: <http://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Orofino Asbestos Superfund Site Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Orofino Asbestos Superfund Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States and the Settling Defendants.

“Plaintiff” shall mean the United States.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendants” shall mean Owyhee Construction, Inc., and the Riverside Water and Sewer District.

“Site” shall mean the Orofino Asbestos Superfund Site comprised of the following 22 properties: 12976 Highway 12, 131 122nd Street, 12586 Hartford Avenue, 291 118th Street, 14228 Highway 12, 4753 Transfer Station Road, 256 2nd Street, 12140 Hartford Avenue, 12170 Hartford Avenue, 12453 Hartford Avenue, 12517 Hartford Avenue, 12611 Hartford Avenue, 12719 Hartford Avenue, 12742 Hartford Avenue, 12154 Indio Avenue, 12252 Indio Avenue, 12253 Indio Avenue, 12474 Indio Avenue, 12742 Jerome Avenue, 129-119th Street, 130 122nd Street, 10820 Highway 12, and public right of way areas located within or outside Orofino in Clearwater County, Idaho.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

V. STATEMENT OF PURPOSE

10. By entering into this Consent Decree, the mutual objective of the Parties is for the Settling Defendants to make a series of cash payments to resolve their alleged civil liability for the Site under Section 107 of CERCLA, 42 U.S.C. § 9607 as provided in the Covenants by Plaintiffs in Section VIII, and subject to the Reservations of Rights by the United States in Section IX.

VI. PAYMENT OF RESPONSE COSTS

11. Initial Payment. The Settling Defendants shall pay to EPA the principal amount of \$523,000. An initial payment of \$475,000 shall be made by the Settling Defendants within 60 days after the Effective Date.

12. Quarterly Payments. Owyhee shall pay to EPA \$48,000 in quarterly installments over a period not to exceed three years from the Effective Date of this Consent Decree. The first installment payment of \$6,000 is due within 90 days after the Effective Date of this Consent Decree, with an additional sum for Interest accrued on the quarterly payment amount (\$48,000)

calculated from February 3, 2016. The next installment payment of \$6,000 will be due no later than 90 days from the date of the first quarterly installment payment. Each quarterly installment payment thereafter shall be due no later than 90 days from the date of the preceding payment. Each installment payment shall also include an additional sum for Interest accrued on the then unpaid portion of the quarterly payment amount (\$48,000) calculated from the date of the prior payment until the date of payment. The Financial Litigation Unit ("FLU") of the U.S. Attorney's Office for the District of Idaho shall send a calculation of the Interest due for each payment to the Settling Defendants. Owyhee may pay any installment payment prior to the due date, but must contact the FLU in advance for a determination regarding the amount of Interest to be included with the payment. In the event any installment payment includes an overpayment, the amount of the overpayment shall be applied to the remaining principal.

13. The Settling Defendants shall make the payments required by Paragraph 11 (Initial Payment) and Paragraph 12 (Quarterly Payments) by either: a) certified or cashier's check; or b) electronic transfer. Payments made by certified or cashier's check must be made payable to the United States Department of Justice and mailed to the United States Attorney's Office, Financial Litigation Unit, 800 E. Park Blvd., Ste. 600, Boise, ID 83712. Payments made by electronic transfer shall be made through Fedwire Electronic Funds Transfer EFT to the U.S. Department of Justice account, in accordance with instructions provided to the Settling Defendants by the FLU of the U.S. Attorney's Office for the District of Idaho after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

As to Owyhee:

Joseph M. McClure
President
Owyhee Construction, Inc.
6336 W. Contractors St., Suite A
Boise, Idaho 83709
(208) 376-2240
Joe@owyheeconstruction.com

As to RWSD:

EJ Bonner
Administrator
Riverside Water and Sewer District
10460 Highway 12
Orofino, ID 83544
(208) 476-3613
rwsd.ebonner@frontier.com

on behalf of the Settling Defendants. The Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice to DOJ and EPA of such change in accordance with Section XIII (Notices and Submissions).

14. Deposit of Payment. The total amount of each payment to be paid pursuant to Section VI (Payment of Response Costs) shall be deposited in the Orofino Asbestos Superfund

Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

15. Notice of Payment. At the time of each payment, the Settling Defendants shall send notice that payment has been made to: (a) EPA in accordance with Section XIII (Notices and Submissions); (b) DOJ in accordance with Section XIII (Notices and Submissions); and (c) the EPA Cincinnati Finance Center (“CFC”) at:

EPA CFC by email: cinwd_acctsreceivable@epa.gov

EPA CFC by regular mail: EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number provided by the FLU, Site/Spill ID Numbers 10JN and 10JG, and DJ Number 90-11-3-10860.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

16. Interest on Payments and Accelerated Payment. If the Settling Defendants fail to make the payment required by Paragraph 11 (Initial Payment) by the required due date, Interest shall accrue on the unpaid balance from February 3, 2016 through the date of payment. If Owyhee fails to make any payment required by Paragraph 12 (Quarterly Payments) by the required due date, all remaining installment payments and all accrued Interest shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amount until the total amount due has been received.

17. Stipulated Penalty.

a. If any amount due to EPA under Paragraph 11 (Initial Payment) is not paid by the required date, the Settling Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 16 (Interest on Payments and Accelerated Payment), \$5,000 per violation per day that such payment is late.

b. If any amount due to EPA under Paragraph 12 (Quarterly Payments) is not paid by the required date, Owyhee shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 16 (Interest on Payments and Accelerated Payment), \$500 per violation per day that such payment is late.

c. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as “stipulated penalties” and shall be made by Fedwire EFT to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

Each payment shall reference the CDCS Number provided by the FLU, Site ID Numbers 10JN and 10JG, and DJ Number 90-11-3-10860.

d. Penalties shall accrue as provided in this Section regardless of whether EPA has notified the Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

18. The United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action to collect any portion of the response costs or any stipulated penalties due but not paid by the Settling Defendants.

19. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of the Settling Defendants' failure to comply with the requirements of this Consent Decree.

20. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse the Settling Defendants from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

VIII. COVENANTS BY PLAINTIFF

21. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against the Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), regarding the Site. With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by the Settling Defendants of their obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs), and any Interest or stipulated penalties due thereon under Section VII (Failure to Comply with Consent Decree). These covenants are also conditioned upon the veracity and completeness of the Financial Information and the Insurance Information provided to EPA by the Settling Defendants and the financial, insurance, and indemnity certification made by the Settling Defendants in Paragraph 33. These covenants extend only to the Settling Defendants and do not extend to any other person.

IX. RESERVATION OF RIGHTS BY UNITED STATES

22. The United States reserves, and this Consent Decree is without prejudice to, all rights against the Settling Defendants with respect to all matters not expressly included within Paragraph 21. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against the Settling Defendants with respect to:

- a. liability for failure of the Settling Defendants to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability based on the ownership or operation of the Site by the Settling Defendants when such ownership or operation commences after signature of this Consent Decree by the Settling Defendants;
- e. liability based on the Settling Defendant's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by the Settling Defendants; and
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

23. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information or the Insurance Information provided by the Settling Defendants or the financial, insurance, or indemnity certification made by the Settling Defendants in Paragraph 33, is false, or in any material respect, inaccurate.

X. COVENANTS BY THE SETTLING DEFENDANTS

24. The Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees, with respect to the Site and this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law, relating to the Site.

25. Except as provided in Paragraph 27 (claims against other PRPs) and Paragraph 32 (Res Judicata and other Defenses), these covenants shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section IX (Reservations of Rights by United States), other than in Paragraph 22.a (liability for failure to meet a requirement of the Consent Decree) or 22.b (criminal liability), but only to the extent that a Settling Defendant's claims arises from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

26. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

27. The Settling Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for response costs relating to the Site against each other or any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

28. Except as provided in Paragraph 27 (claims against other PRPs), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section X (Covenants by the Settling Defendants), each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

29. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement pursuant to which the Settling Defendants have, as of the Effective Date, resolved their liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, except for the State; provided, however, that if the United States exercises rights under the reservations in Section IX (Reservations of Rights by United States), other than in Paragraphs 22.a (liability for failure to meet a requirement of Consent Decree) or 22.b (criminal liability), the "matters addressed" in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

30. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which the Settling Defendants have, as of the Effective Date, resolved their liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

31. The Settling Defendants shall, with respect to any suit or claim brought by them for matters related to this Consent Decree, notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. The Settling Defendants also shall, with respect to any suit or claim brought against them for matters related to this Consent Decree, notify EPA and DOJ in writing within 10 days after service of the complaint or claim upon them. In addition, the Settling Defendants shall notify EPA and DOJ within 10 days after service or receipt of any Motion for Summary Judgment, and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

32. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, the Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by Plaintiff set forth in Section VIII.

XII. CERTIFICATION

33. The Settling Defendants certify that, to the best of their knowledge and belief, after thorough inquiry, they have:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, documents, or other information (including records, reports, documents and other information in electronic form), other than identical copies, relating to its potential liability regarding the Site since notification of potential liability by the United States, and that they have fully complied with any and all EPA requests for information regarding the Site and the Settling Defendants' financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B);

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth their financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time the Settling Defendants execute this Consent Decree; and

c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA upon request such insurance policies, indemnity agreements, and information.

34. The Settling Defendants shall supplement the Financial Information listed in Appendix A by providing updated materials, including tax returns for fiscal year 2015, in order to confirm the United States' ability to pay analysis.

XIII. NOTICES AND SUBMISSIONS

35. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

As to DOJ by email: eescasemanagement.enrd@usdoj.gov

As to DOJ by regular mail: EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ# 90-11-3-10860

As to EPA: Angie Zavala
On-Scene Coordinator
U.S. EPA, Region 10
1200 Sixth Avenue
Mail Stop: ECL-133
Seattle, WA 98101
(206) 553-2101
zavala.angie@epa.gov

As to RWSD : EJ Bonner
Administrator
Riverside Water and Sewer District
10460 Highway 12
Orofino, ID 83544
(208) 476-3613
rwsd.ebonner@frontier.com

As to Owyhee:	Joseph M. McClure	Richard W. Stover
	President	Eberle, Berlin, Kading, Turbow & McKlveen, Chtd.
	Owyhee Construction, Inc.	P.O. Box 1368
	6336 W. Contractors St., Suite A	Boise, Idaho 83701
	Boise, Idaho 83709	(208) 344-8535
	(208) 376-2240	
	Joe@owyheeconstruction.com	rstover@eberle.com

XIV. RETENTION OF JURISDICTION

36. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XV. INTEGRATION/APPENDICES

37. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is a list of the financial documents submitted to EPA by the Settling Defendants.

“Appendix B” is a list of the insurance documents submitted to EPA by the Settling Defendants.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

38. This Consent Decree shall be lodged with the Court for a period of at least 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. The Settling Defendants consent to the entry of this Consent Decree without further notice.

39. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any Party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XVII. SIGNATORIES/SERVICE

40. Each undersigned representative of the Settling Defendants and the Assistant Attorney General, U.S. Department of Justice, Environment and Natural Resources Division certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

41. The Settling Defendants agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

42. The Settling Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. The Settling Defendants agree to accept service in that manner and to waive the formal service requirements set forth in

Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XVIII. FINAL JUDGMENT

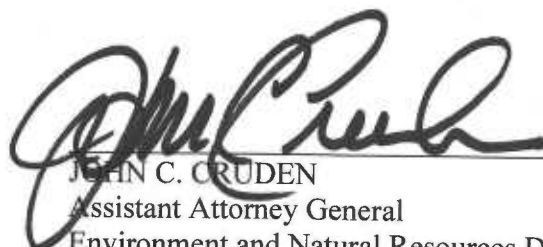
43. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and the Settling Defendants. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 20__.


Honorable Edward J. Lodge
United States District Court Judge

FOR THE UNITED STATES OF AMERICA

June 13, 2016
DATE



JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice



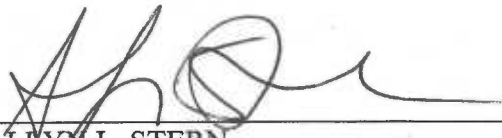
ZACHARY N. MOOR
KATHERINE MATTHEWS
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
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Boise, ID 83712

May 17, 2016

DATE



ALLYN L. STERN

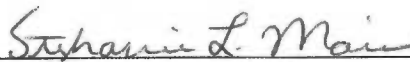
Regional Counsel

U.S. Environmental Protection Agency

Region 10

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Seattle, WA 98101



STEPHANIE L. MAIRS

Assistant Regional Counsel

U.S. Environmental Protection Agency


Region 10

1200 Sixth Avenue, Suite 900

Seattle, WA 98101

FOR THE RIVERSIDE WATER AND SEWER DISTRICT

April 28-2016
DATE


MICHAEL J. DUGGER
CHAIRMAN
Riverside Water and Sewer District
10460 Highway 12
Orofino, ID 83544

Agent Authorized to Accept Service on Behalf
of Above-signed Party:


JILL S. HOLINKA
Moore, Smith, Buxton & Turcke, Chtd.
950 W. Bannock Street, Suite 520
Boise, ID 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202
Email: seb@msbtlaw.com

FOR OWYHEE CONSTRUCTION, INC.

5-7-16
DATE



JOSEPH M. MCCLURE
President
Owyhee Construction, Inc.
6396 W. Contractors St., Suite A
Boise, Idaho 83709

Agent Authorized to Accept Service on Behalf
of Above-signed Party:



RICHARD W. STOVER
Eberle, Berlin, Kading, Turbow & McKlveen,
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Facsimile: (208) 344-8542
Email: rstover@eberle.com

APPENDIX A

**APPENDIX A
FINANCIAL INFORMATION**

1. Owyhee Construction, Inc.

- a. U.S. Income Tax Return (S Corporation, IRS Form 1120S) FY 2014
- b. U.S. Income Tax Return (S Corporation, IRS Form 1120S) FY 2013
- c. U.S. Income Tax Return (S Corporation, IRS Form 1120S) FY 2012
- d. Unaudited Balance Sheet and Statement of Earnings for FY 2015
- e. Corporate Financial Statement for FY 2014 (Harding & Co., P.A.)
- f. Corporate Financial Statement for FY 2013 (Harding & Co., P.A.)
- g. Corporate Financial Statement for FY 2012 (Harding & Co., P.A.)
- h. Letter from Richard W. Stover, Counsel for Owyhee, to Stephanie L. Mairs, Counsel for EPA (November 6, 2015).

2. Riverside Water and Sewer District

- a. Annual Budget FY 2015-2016
- b. Annual Budget FY 2014-2015
- c. Annual Budget FY 2013-2014
- d. Annual Budget FY 2012-2013
- e. Annual Budget FY 2011-2012
- f. Audited Financial Statements FY 2014 (Presnell Gage, PLLC)
- g. Audited Financial Statements FY 2013 (Presnell Gage, PLLC)
- h. Letter from Jill S. Holinka, Counsel for RWSD, to Stephanie L. Mairs, Counsel for EPA (Oct. 30, 2015).
- i. Letter from Susan E. Buxton, Counsel for RWSD, to Lisa A. Castanon, Counsel for EPA (Nov. 17, 2013).
- j. Letter from Susan E. Buxton, Counsel for RWSD, to Wendy Watson and Kelly Cole, Counsel for EPA (Dec. 17, 2012).

APPENDIX B

**APPENDIX B
INSURANCE INFORMATION**

1. Owyhee Construction, Inc.
 - a. American International Specialty Lines Insurance Company's Contractor's Pollution Liability Policy No. 2189658

2. Riverside Water and Sewer District
 - a. American International Specialty Lines Insurance Company's Contractor's Pollution Liability Policy No. 2189658
 - b. Idaho Counties Risk Management Program (ICRMP), Public Entities Multi-Lines Insurance Policy No. 28A10040100108
 - c. Idaho Counties Risk Management Program (ICRMP), Public Entities Multi-Lines Insurance Policy No. 31A10040100111
 - d. Continental Western Insurance Policy No. CWP 234553-27
 - e. Continental Western Insurance Policy No. CU 23236741
 - f. Travelers Indemnity Company of CT, Policy No. 680-8258L286
 - g. Hudson Insurance Company, Policy No. AEE7123203