

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
Civil Action No. 09-3737 (JRT/LIB)

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 Russ Huseby,)
)
 Defendant.)
)

CONSENT DECREE

RECITALS

WHEREAS, the Plaintiff, the United States of America, on behalf of the United States Army Corps of Engineers (“USACE” or “Corps”), filed the Complaint herein against Defendants Russ Huseby and Brady Huseby, 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 fill material into waters of the United States near Silver Bay, Minnesota (the “Site”), as more fully described in the Complaint, without authorization by the Corps;

WHEREAS, through its Complaint, the United States sought: (1) to enjoin the discharge of pollutants into waters of the United States in violation of CWA Section 301(a), 33 U.S.C. § 1311(a); (2) to require Defendants, at their own expense and at the direction of Corps, to restore and/or mitigate the damages caused by their unlawful

activities; and (3) to require Defendants to pay civil penalties as provided in 33 U.S.C. § 1319(d);

WHEREAS, the parties brought cross-motions for summary judgment. After a hearing on those motions, the Court issued a Memorandum Opinion and Order on Cross Summary Judgment Motions on March 26, 2012 [Docket No. 81-1](hereafter “Memorandum Opinion and Order at __”) in which the Court *inter alia* granted summary judgment to the United States on the issue of Russ Huseby’s liability under the CWA and granted summary judgment to defendant Brady Huseby. Memorandum Opinion and Order at 2, 26. Brady Huseby has agreed to place a restrictive covenant on the parcel of property he owns which encompasses a portion of the Restoration Site on which activities required by this Consent Decree will occur. The parties have stipulated to the dismissal of Brady Huseby. Therefore, Russ Huseby is the sole remaining defendant. Russ Huseby will hereinafter be referred to as “Defendant”;

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

WHEREAS, the United States and Defendant agree that settlement of this case is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving the United States's claims under the CWA against Defendant in this case; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the United States's claims against Defendant in this case and that this Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

THEREFORE, without further adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

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

2. The Court has personal jurisdiction over the Defendant as he resides in this judicial district and his activities occurred in this judicial district.

3. Venue is proper in the District of Minnesota pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because: the Defendant resides in this District, the subject property is located in this District, and the causes of action alleged herein arose in this District.

4. The Complaint states claims upon which relief can be granted pursuant to CWA Sections 301 and 309, 33 U.S.C. §§ 1311 and 1319.

II. APPLICABILITY

5. The obligations of this Consent Decree shall apply to and be binding upon Defendant and his agents, contractors, employees, and servants, and their successors and assigns, and any person, firm, association, or corporation who is, or will be, acting in concert or participation with Defendant whether or not such person has notice of this Consent Decree. In any action to enforce this Consent Decree against Defendant, Defendant shall not raise as a defense the failure of any of his agents, contractors, employees, servants, successors, or assigns or any person, firm, or corporation acting in concert or participation with Defendant, to take any actions necessary to comply with the provisions hereof.

6. Defendant's transfer of ownership in the parcels that encompass the "Restoration Site" (hereafter defined as that portion of the approximately 28-acres of wetland impact area, as shown on Appendix A appended hereto and incorporated herein, that is located within the SE1/4 of the NW1/4 and the N1/2 of the NE1/4 of the SW1/4 of Sec. 14, T. 56N, R.8W, Lake County, Minnesota) shall not alter or relieve Defendant of his obligation to comply with all of the terms of this Consent Decree. In the event Defendant shall become the owner of the Restoration Site or any part thereof in the future, and in the event Defendant desires to transfer that interest in the Restoration Site, then Defendant shall, at least fifteen (15) days prior to the transfer of ownership or other interest in the Restoration Site, provide written notice and a true copy of this Consent Decree to his

successors in interest and shall simultaneously notify the Corps and the United States Department of Justice at the addresses specified in Section X below that such notice has been given. As a condition to any such transfer, the Defendant shall reserve all rights necessary to comply with the terms of this Consent Decree.

III. SCOPE OF CONSENT DECREE

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

8. It is the express purpose of the parties in entering this Consent Decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. All plans, studies, construction, remedial maintenance, monitoring programs, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Defendant to achieve and maintain full compliance with, and to further the purposes of, the CWA.

9. The parties acknowledge that St. Paul District Regional General Permit RGP-003-MN, paragraph H, issued February 1, 2012 and expiring January 31, 2017, authorizes any fill that was placed as of December 30, 2009 in the areas identified in Appendix A and that remains in place as of the date of entry of this Decree, to remain in place, subject to the conditions provided in the Regional General Permit and this Consent Decree. The parties further acknowledge that RGP-003-MN, paragraph H, authorizes

the discharge of dredged or fill material insofar as such discharge is necessary to complete the work required to be performed pursuant to this Consent Decree. Any such discharge of dredged or fill material necessary for work required by this Consent Decree shall be subject to the conditions of the Regional General Permit and this Consent Decree. The notification requirements in paragraph H of the Regional General Permit are satisfied by this Consent Decree.

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

11. This Consent Decree in no way affects or relieves Defendant of his responsibility to comply with any applicable federal, state, or local law, regulation, or permit.

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

13. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

14. Except as stated in paragraphs 1 through 4 of this Consent Decree, nothing in this Consent Decree shall constitute an admission of fact or law by any party.

IV. SPECIFIC PROVISIONS

CIVIL PENALTIES

15. Defendant shall pay a civil penalty to the United States in the amount of twenty thousand dollars (\$20,000) payable as follows: Defendant shall pay \$10,000 within 30 days of entry of this Consent Decree, and \$10,000 plus accrued interest within 365 days of the entry of this Consent Decree.

16. Interest on the civil penalty shall begin to accrue on the date on which this Consent Decree is lodged with this Court and shall accrue until final payment is made. Interest will be charged in accordance with the statutory judgment rate provided for in 28 U.S.C. § 1961 as of the date of lodging. Interest shall be computed daily and compounded annually.

17. Defendant shall make the above-referenced payment by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2009V00301. Payment shall be made in accordance with instructions provided to Defendant by the Financial Litigation Unit of the United States Attorney's Office for the

District of Minnesota. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

18. Upon payment of each installment of the civil penalty required by this Consent Decree, Defendant shall provide the United States written notice, at the addresses specified in Section X of this Consent Decree, that such payment was made in accordance with Paragraph 17.

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

RESTORATION AND PRESERVATION

20. Defendant shall perform restoration and preservation under the terms and conditions stated below.

A. Ditch in Area A of Appendix A.

Defendant shall construct a ditch plug at each of the two locations shown on Appendix B attached hereto, after submitting to the Corps plans and specifications and after having the Corps approve those plans and specifications prior to construction. Within 15 days of entry of this Consent Decree, the United States will provide general design minimums based on the NRCS design criteria provided to Defendant on August 14, 2012, to facilitate Defendant's plan for the ditch plugs. Defendant shall submit plans and

specifications to the Corps within 45 days of entry of this Consent Decree. In the event the Corps responds to Defendant's submittal within 30 days, Defendant shall construct the ditch plugs by June 17, 2013.

B. Planting Tree Seedlings.

Defendant shall plant equal numbers of balsam fir, red maple, and silver maple in the three areas (Areas A, B, and C) designated on Appendix B, an area totaling approximately six acres. A 10 foot by 10 foot spacing shall be used (435 seedlings per acre). It shall not be necessary to plant a tree seedling in any 10 foot by 10 foot area of the grid that already has one or more live tree seedlings, provided these seedlings are native, non-invasive, hydrophytic species. The planting of bare root, dormant, tree seedlings shall begin in spring 2013 as soon as frost is out of the ground and shall be completed by June 17, 2013. By September 9, 2013, Defendant shall submit an as built report to document the construction of the ditch plugs set forth above and where, when, and what species of tree seedlings were planted; the report shall include invoices from the purchase of the seedlings. After the third and fifth growing seasons, the site shall be inspected by a local forester at Defendant's expense. Defendant shall submit the qualifications of the forester to the Corps for approval; such approval will not be unreasonably withheld. The reports shall be submitted by November 30 in 2015 (for the year three report) and 2017 (for the year five report). The survival rates of the planted seedlings shall be 80% after three years and 70% after five years. If these survival rates are not met, Defendant shall replant

as necessary to meet the criteria, in the quantity, species, locations, and timing specified by the Corps, unless the Corps determines that natural regeneration of native, non-invasive hydrophytic tree species (including but not limited to black ash, quaking aspen, balsam poplar, and northern white cedar) make planting unnecessary. The forester hired by Defendant will be allowed to consult with the Corps on whether replanting is necessary, but the Corps's decision shall be determinative and final.

C. Control of Invasive Species.

Defendant shall use spot treatments to apply appropriate herbicide to Canada thistle, tansy and reed canary grass in all areas throughout the Restoration Site where the Corps identifies such treatments are necessary, including but not limited to the three areas outlined in yellow on Appendix B attached hereto. By June 3, 2013, the Corps will provide information to Defendant on where the first herbicide treatment must be applied, along with a recommended herbicide. The first herbicide treatment shall be applied after Defendant receives the information from the Corps and before July 1, 2013. By August 5, 2013, the Corps will provide information to Defendant on where the second herbicide treatment must be applied, along with a recommended herbicide. The second herbicide treatment shall be applied after Defendant receives the information from the Corps and before September 3, 2013. By August 4, 2014, the Corps will determine whether an additional herbicide treatment is necessary and provide information to Defendant on where any additional herbicide treatment must be applied, along with a recommended herbicide.

Any additional herbicide treatment shall be applied after the Defendant receives the information from the Corps and before September 2, 2014.

D. Restrictive Covenants.

Defendant shall arrange for the current landowners of the parcels of real property in which the Restoration Site is located (Dallas Dean, Mary Dean, Matthew Lundgren, and Brady Huseby), and their mortgagees (e.g., Jane Huseby) to execute and record restrictive covenants on the parcels they own with the following land use restrictions for ten (10) years with the Lake County Recorder's Office within fifteen (15) days of the entry of this Consent Decree. The restrictive covenants shall use the forms attached as Appendices C-1, C-2, and C-3 with the appropriate covenantor(s) and legal description filled in, and shall contain the following terms:

(a) For the areas of the Restoration Site identified as Zone I on Appendix D, the following activities are prohibited: (1) grazing of livestock, including horses; (2) haying; (3) mowing; (4) plowing; (5) cropping (except for personal gardens totaling no more than 2500 square feet; such gardens must not include the planting of invasive species); (6) logging; (7) filling; (8) ditching; (9) excavating; and (10) construction of structures, other than hunting blinds;

(b) For the areas of the Restoration Site identified as Zone II on Appendix D (the southern boundary of which is a line parallel to and 25 feet south of the ditch) the following activities are prohibited: (1) grazing of livestock, including horses; (2) haying;

(3) mowing; (4) plowing; (5) cropping (except for personal gardens totaling no more than 2500 square feet; such gardens must not include the planting of invasive species); (6) logging; (7) filling; (8) ditching; (9) excavating; and (10) construction of structures, other than hunting blinds and structures totaling no more than 2500 square feet which have no permanent foundation.

(c) For the areas of the Restoration Site identified as Zone III on Appendix D (the northern boundary of which is a line parallel to and 25 feet south of the ditch), the following activities are prohibited: (1) haying; (2) mowing; (3) plowing; (4) cropping (except for personal gardens totaling no more than 2500 square feet; such gardens must not include the planting of invasive species); (5) logging; (6) filling; (7) ditching; (8) excavating; and (9) construction of structures, other than hunting blinds and structures totaling no more than 2500 square feet which have no permanent foundation.

(d) For all areas of the Restoration Site, access shall be provided to Defendant and his agents, consultants, contractors, and employees to perform all the restoration, preservation, and monitoring activities required by this Consent Decree;

(e) For all areas of the Restoration Site, access shall be provided to the United States and its employees, agents, and contractors for inspection, monitoring, and other activities as provided in this Consent Decree; and

(f) A copy of this Consent Decree shall be attached to and recorded with the Restrictive Covenants.

V. NOTICES AND OTHER SUBMISSIONS

21. Within 30 days after the deadline for completing any task set forth above, Defendant shall provide the United States with written notice, at the addresses specified in Section X of this Consent Decree, of whether or not that task has been completed.

22. If the required task has been completed, the notice shall specify the date when it was completed and explain the reasons for any delay in completion beyond the scheduled time for such completion required by this Consent Decree.

23. In all notices, documents, and/or reports submitted to the United States pursuant to this Consent Decree, the Defendant shall, by his signature, certify such notices, documents, and/or reports as follows:

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

VI. RETENTION OF RECORDS AND RIGHT OF ENTRY

24. Until 10 years after entry of this Consent Decree, Defendant shall preserve and retain all records and documents now in his possession or control or which come into his possession or control that relate in any manner to the performance of the tasks described above, regardless of any retention policy to the contrary. Until 10 years after entry of this

Consent Decree, Defendant shall also instruct his contractors and agents to preserve all documents, records, and information of whatever kind, nature, or description relating to the performance of the tasks described above.

25. At the conclusion of the document retention period, Defendant shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Defendant shall deliver any such records or documents to the Corps. The Defendant may assert that certain documents, records, and/or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, he shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, reports, and/or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

26. A. Until termination of this Consent Decree, and with 14 days written notice to Defendant and the record owners of the Restoration Site, the United States and its authorized representatives and contractors shall have authority to enter the Restoration Site to:

- (1) Monitor the activities required by this Consent Decree;
- (2) Verify any data or information submitted to the United States;
- (3) Obtain samples; and
- (4) Inspect and evaluate Defendant's restoration and/or preservation activities as required by this Consent Decree.

B. Until termination of this Consent Decree, and with 14 days written notice to Defendant, Defendant shall allow the United States and its authorized representatives and contractors to inspect and review any records required to be kept under the terms and conditions of this Consent Decree and the CWA.

C. The provisions in this numbered paragraph of this Consent Decree are in addition to, and in no way limit or otherwise affect, the statutory authorities of the United States to conduct inspections, to require monitoring, and/or to obtain information from Defendant as authorized by law.

VII. DISPUTE RESOLUTION

27. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the United States and Defendant to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond 30 days beginning with written notice by one party to the other party that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and Defendant cannot be resolved by

informal negotiations, then the position advanced by the United States shall be considered binding unless, within 14 days after the end of the informal negotiations period, Defendant files a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have 30 days to respond to the motion and propose an alternate resolution. In resolving any such dispute, Defendant shall bear the burden of proving by a preponderance of the evidence that the United States's position is not in accordance with the objectives of this Consent Decree and the CWA, and that Defendant's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

28. If the United States believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, it may move the Court for a resolution of the dispute prior to the expiration of the 30 day period for informal negotiations. Defendant shall have 14 days to respond to the motion and propose an alternate resolution. In resolving any such dispute, Defendant shall bear the burden of proving by a preponderance of the evidence that the United States's position is not in accordance with the objectives of this Consent Decree, and that Defendant's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

29. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Defendant under this Consent Decree, except as provided in Paragraph 37 below regarding payment of stipulated penalties.

VIII. FORCE MAJEURE

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

31. If Defendant believes that a Force Majeure event has affected Defendant's ability to perform any action required under this Consent Decree, Defendant shall notify the United States in writing within seven (7) calendar days after the event at the addresses listed in Section X. Such notice shall include a discussion of the following:

- A. what action has been affected;
- B. the specific cause(s) of the delay;
- C. the length or estimated duration of the delay; and

- D. any measures taken or planned by Defendant to prevent or minimize the delay and a schedule for the implementation of such measures.

Defendant may also provide to the United States any additional information that he deems appropriate to support his conclusion that a Force Majeure event has affected his ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

32. If the United States determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. Defendant shall coordinate with the Corps to determine when to begin or resume the operations that had been affected by any Force Majeure event.

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

34. Defendant shall bear the burden of proving (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of Defendant and any entity controlled by Defendant, including his contractors and consultants; (2) that Defendant or any entity controlled by Defendant could not have foreseen and prevented such

noncompliance; and (3) the number of days of noncompliance that were caused by such circumstances.

IX. STIPULATED PENALTIES

35. After entry of this Consent Decree, if Defendant fails to fulfill, timely and completely, any requirement of the Consent Decree, Defendant shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

- A. For Day 1 up to and including Day 30 of non-compliance \$1000.00 per day
- B. For Day 31 up to and including 60 of non-compliance \$2,000.00 per day
- C. For Day 61 and beyond of non-compliance \$3,000.00 per day

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued.

36. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant to the Dispute Resolution provisions in Section VII and/or the Force Majeure provisions in Section VIII shall be resolved upon motion to this Court as provided in Paragraphs 27 and 28.

37. The filing of a motion requesting that the Court resolve a dispute shall stay Defendant's obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Defendant does not prevail on the disputed issue, stipulated penalties shall be paid by Defendant as provided in this Section.

38. To the extent Defendant demonstrates to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in Paragraph 30 above) or otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

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

40. Defendant shall make any payment of a stipulated penalty by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2009V00301. Payment shall be made in accordance with

instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Minnesota. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, upon payment of any stipulated penalties, Defendant shall provide written notice to the United States, at the addresses specified in Section X of this Decree.

X. ADDRESSES

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

A. TO THE CORPS:

Benjamin R. Cox, Enforcement Coordinator
Regulatory Branch
U.S. Army Corps of Engineers, St. Paul District
180 Fifth Street East, Suite 700
St. Paul, MN 55101-1678

and

Molly M. Hunt
Office of Counsel
U.S. Army Corps of Engineers, St. Paul District
180 Fifth Street East, Suite 700
St. Paul, MN 55101-1678

B. TO THE UNITED STATES ATTORNEY'S OFFICE FOR THE DISTRICT OF MINNESOTA:

Friedrich A. P. Siekert
Ana H. Voss
Assistant U. S. Attorneys
600 United States Courthouse

300 South Fourth Street
Minneapolis, MN 55415

C. TO DEFENDANTS:

Russ Huseby
5639 Lax Lake Road
Silver Bay, MN 55614

R. Thomas Torgerson, Esq.
Hanft Fride, P.A.
1000 U.S. Bank Place
130 West Superior Street
Duluth, MN 55802-2094

Patrick Dinneen, Esq.
5554 Highway 61
Silver Bay, MN 55614

XI. COSTS OF SUIT

42. Each party to this Consent Decree shall bear its own costs and attorney's fees in this action. Should Defendant subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, Defendant shall be liable for any costs and/or attorney's fees incurred by the United States in any action against Defendant for noncompliance with or enforcement of this Consent Decree.

XII. PUBLIC COMMENT

43. 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 facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. Defendant agrees not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified Defendant in writing that the United States no longer supports entry of the Consent Decree.

XIII. CONTINUING JURISDICTION OF THE COURT

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

XIV. MODIFICATION

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

XV. TERMINATION

46. This Consent Decree may be terminated by either of the following:

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

B. Defendant may make a unilateral motion to the Court to terminate this Decree after each of the following has occurred:

1. Defendant has obtained and maintained compliance with all provisions of this Consent Decree;

2. Defendant has paid all penalties and other monetary obligations hereunder;

3. Defendant has certified compliance pursuant to subparagraphs 1 and 2 above to the Court and the United States; and

4. Within thirty (30) days of receiving such certification from Defendant, the United States has not contested in writing that such compliance has been achieved. If the United States disputes Defendant's full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

IT IS SO ORDERED.

Dated and entered this _____ day of _____, 20__.

John R. Tunheim
United States District Judge

ON BEHALF OF THE UNITED STATES:

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division

B. TODD JONES
United States Attorney
District of Minnesota

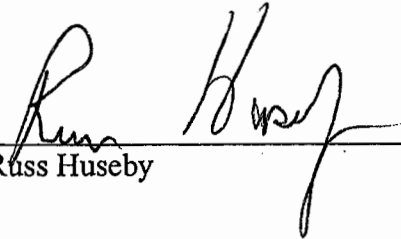
Friedrich A. P. Siekert

Dated: *April 1, 2013*

BY: Friedrich A. P. Siekert
Attorney ID Number 0142013
Assistant United States Attorney
600 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5600 Telephone
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Attorneys for the United States of America

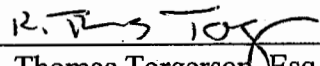
USA v. Huseby Consent Decree Signature Page

FOR DEFENDANT:



Russ Huseby

Dated: 2-22-13



R. Thomas Torgerson, Esq.
Attorney ID Number 170367
Hanft Fride, P.A.
1000 U.S. Bank Place
130 West Superior Street
Duluth, MN 55802-2094
218-722-4766 Telephone
218-529-2401 Facsimile

Dated: 3/1/13

Patrick Dinneen, Esq.
Attorney ID Number 293775
5554 Highway 61
Silver Bay, MN 55614
(218) 226-0183 Telephone
(218) 226-0183 Facsimile
Attorneys for Defendant

Dated: _____

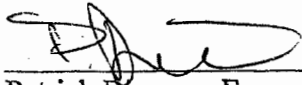
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