

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

----- X
UNITED STATES OF AMERICA,

Plaintiff,

v.

2:24-cv-00043

Civil No. -----

POTLATCHDELTAIC LAND & LUMBER, LLC,

Defendant.

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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action concurrently with this Consent Decree alleging that Defendant, PotlatchDeltic Land & Lumber, LLC, violated Sections 301 and 402 of the Clean Water Act (“Act”), 33 U.S.C. §§ 1311 and 1342.

The Complaint alleges that Defendant failed to comply with conditions and limitations of its 2015 Multi-Sector General Permit (“2015 General Permit”) and 1996 Individual Permit (“1996 Individual Permit”) related to discharges of stormwater from outfalls, and that Defendant discharged pollutants without permit authorization, at its St. Maries Complex sawmill and lumberyard facility located at 2200 Railroad Avenue (“Facility”) in St. Maries, Idaho.

Defendant denies and does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and over the Parties. Venue lies in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b), because the violations alleged in the Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district. For purposes of

this Consent Decree, or any action to enforce this Consent Decree, Defendant consents to the Court's jurisdiction over this Consent Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 309(b) and (d) of the Clean Water Act, 33 U.S.C. § 1319(b) and (d).

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Consent Decree are implemented. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA and DOJ, in accordance with Section XIV (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree.

5. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. OBJECTIVES

7. The objectives of this Consent Decree are for Defendant to achieve compliance with Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and the conditions and limitations of the Individual Permit, effective September 1, 2022 (“2022 Individual Permit”) issued to Defendant under Section 402(a) of the CWA, 33 U.S.C. § 1342(a), at Defendant’s Facility.

IV. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

“1996 Individual Permit” means the National Pollutant Discharge Elimination System (“NPDES”) permit number ID0000019 for the Facility issued October 31, 1996, expired on October 31, 2001, and administratively extended by EPA until issuance of the 2022 Individual Permit.

“2015 General Permit” means the Multi-Sector General Permit promulgated by EPA on June 4, 2015 for dischargers of industrial stormwater.

“2022 Individual Permit” means the NPDES permit number ID0000019 for the Facility, issued by EPA effective September 1, 2022, and expiring August 31, 2027.

“Complaint” means the complaint filed by the United States in this action;

“Consent Decree” or “Decree” means this Decree and all appendices attached hereto (listed in Section XXV);

“Day” means a calendar day unless expressly stated to be a business day. In computing any period of time for a deadline under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period runs until the close of business of the next business day;

“Defendant” means PotlatchDeltic Land & Lumber, LLC;

“DOJ” means the United States Department of Justice and any of its successor departments or agencies;

“EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies;

“Effective Date” means the definition provided in Section XV.

“Facility” means Defendant’s St. Maries Complex Facility located at 2200 Railroad Avenue in St. Maries, Idaho.

“Mitigation Actions” means all work described in Section VI, Paragraphs 18 and 20 and Appendix B (Mitigation Work Plan).

“Paragraph” means a portion of this Decree identified by an Arabic numeral;

“Parties” means the United States and Defendant;

“Section” means a portion of this Decree identified by a Roman numeral;

“Stormwater Pollution Prevention Plan” or “SWPPP” shall mean the plan required to document the selection, design, and installation of control measures as required by the 2022 Individual Permit.

“Tribe” means the Coeur d’Alene Tribe.

“United States” means the United States of America, acting on behalf of EPA.

V. CIVIL PENALTY

9. Within 30 Days after the Effective Date, Defendant shall pay \$225,000 as a civil penalty, together with interest accruing from the date of lodging of this Decree, at the rate specified in 28 U.S.C. § 1961.

10. Defendant shall pay the civil penalty due, together with interest, by FedWire Electronic Funds Transfer (“EFT”) to the DOJ account, in accordance with instructions provided to Defendant by the Financial Litigation Unit (“FLU”) of the United States 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 Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to counsel for Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to DOJ and EPA in accordance with Section XIV (Notices).

11. At the time of payment, Defendant shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to DOJ via email or regular mail in accordance with Section XIV; and (iii) to EPA in accordance with Section XIV. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *U.S. v. PotlatchDeltic Land & Lumber, LLC* and shall reference the civil action number, CDCS Number and DOJ case number 90-5-1-1-12509.

12. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal income tax.

VI. INJUNCTIVE RELIEF

13. Defendant shall comply with Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and the conditions and limitations of the 2022 Individual Permit issued to Defendant under Section 402(a) of the CWA, 33 U.S.C. § 1342(a) with respect to the Facility.

14. Effluent Limits. Beginning on the Effective Date until November 30, 2025, Defendant shall comply with the interim effluent limits for Total Suspended Solids (“TSS”) and Zinc, total recoverable, listed in Tables 1 and 2 of the 2022 Individual Permit. After November 30, 2025, Defendant shall comply with the final effluent limits for TSS and Zinc, total recoverable, listed in Tables 1 and 2 of the 2022 Individual Permit.

15. Facility Improvements and Other Requirements. Defendant shall complete the following work for its Facility, in accordance with the deadlines set forth in this Paragraph:

a. Mixed Media Filtration Project for Basin 002 and Combined Basins 003/004.

(1) Combined Outfall Plan. Defendant shall combine Outfall 002 with Outfalls 003/004 in accordance with the plans and specifications attached hereto as Appendix A (“Combined Outfall Plan”).

(2) Completion of Construction. Defendant shall complete all construction work in accordance with the Combined Outfall Plan by December 31, 2023 and establish vegetation by December 31, 2024 to achieve the final effluent limits by November 30, 2025, as required in the 2022 Individual Permit.

b. Basin 001.

(1) Water Balance Report. Defendant has completed the water balance

study for Basin 001 initiated in September 2022 with collection of sampling data (including flow measurements) through September 29, 2023 to assess water intake from the St. Joe River, contribution of stormwater into the system, evaporation rates and losses, water reuse, and amount of water discharged via Outfall 001. On November 30, 2023, Defendant submitted a Water Balance Report to EPA, for review, identifying, based on the results of the water balance study to date, a list of alternatives under consideration to contain stormwater before discharge, and the Defendant's selected alternative. No later than August 31, 2024, Defendant shall provide a report to EPA, for review, identifying the conceptual plan to achieve compliance with final effluent limits at Outfall 001, including any necessary treatment and any changes to the selected alternative to contain stormwater;

- (2) Basin 001 Plan. No later than December 31, 2024, Defendant shall submit a proposed plan to EPA, for review, specifying the design of Defendant's selected alternative to contain stormwater and any necessary treatment to achieve compliance with the final effluent limits for discharges from Outfall 001;
- (3) Completion of Construction. Defendant shall complete all construction work under the plan, such that the improvements are fully operational to achieve compliance with the final effluent limits in the 2022 Individual Permit for discharges from Outfall

001 no later than November 30, 2025.

c. SWPPP Updates. As required by the 2022 Individual Permit, Defendant shall regularly revise its stormwater pollution prevention plan (“SWPPP”) to reflect actions taken to address stormwater management and site changes, including all actions taken required by this Paragraph. Defendant shall resubmit any revisions to the SWPPP to EPA.

16. Review of Deliverables. Defendant shall submit any plan, report, or other item that it is required to submit for review pursuant to this Consent Decree to EPA. EPA may provide written comments within thirty (30) days of receipt of a required submission. Within thirty (30) Days of receiving EPA’s written comments, Defendant shall either: (i) alter the submission consistent with EPA’s written comments, or (ii) provide a written explanation to EPA why Defendant did not alter the submission. The Parties recognize that it is Defendant’s responsibility to achieve the effluent limits in the 2022 Individual Permit.

17. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section IX (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

18. Mitigation Actions. Defendant shall implement the Mitigation Actions, designed to protect and enhance habitat for trout and salmon in Hangman Creek headwaters streams on Defendant’s property, in accordance with the requirements and deadlines of this

Section and the Mitigation Work Plan attached at Appendix B. The Mitigation Actions include replacement of four culverts currently blocking fish passage and limiting access to spawning habitat, as well as recording a Conservation Easement granted to the Coeur d'Alene Tribe to provide 100-year, no timber harvest stream buffers. Defendant shall construct and place into service all four culvert replacements and improvements by November 15, 2024 and record the Conservation Easement, in the form attached as Appendix C, by November 15, 2024.

19. Mitigation Action Certifications. With regard to the Mitigation Actions, Defendant certifies the truth and accuracy of each of the following:

- a. That, as of the date of executing this Decree, Defendant is not required to perform or develop the Mitigation Actions by any federal, state, or local law or regulation and is not required to perform or develop the Mitigation Actions by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- b. That the Mitigation Actions are not actions that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;
- c. That Defendant has not received and will not receive credit for the Mitigation Actions in any other enforcement action; and
- d. That Defendant shall neither generate nor use any pollutant reductions from the Mitigation Actions as netting reductions, pollutant offsets, or to apply for, obtain, trade, or sell any pollutant reduction credits.

20. Mitigation Actions Completion Report. Within 30 Days after the date set for

completion of the Mitigation Actions, Defendant shall submit a Completion Report to DOJ and EPA, in accordance with Section XIV (Notices). The Completion Report shall contain the following information:

- a. a detailed description of the Mitigation Actions as implemented;
- b. a description of any problems encountered in completing the Mitigation Actions and the solutions thereto; and
- c. certification that the Mitigation Actions have been fully implemented pursuant to the provisions of this Decree.

21. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate Defendant's Completion Report.

22. After receiving the Completion Report, the United States will notify Defendant within thirty (30) days whether or not Defendant has satisfactorily completed the Mitigation Actions. If EPA notifies Defendant that it has not completed the Mitigation Actions in accordance with this Consent Decree, Defendant shall have sixty (60) days to complete the Mitigation Actions, unless EPA approves a longer time period due to weather conditions. Thereafter, stipulated penalties may be assessed under Section VIII.

23. Each submission required under this Section shall be signed by an official with knowledge of the Mitigation Actions and shall bear the certification language set forth in Paragraph 26.

24. In connection with any communication to the public regarding Defendant's actions specifically referring to the Mitigation Actions in this Consent Decree, Defendant shall include prominently in the communication the information that the actions were required by this Consent Decree.

VII. REPORTING REQUIREMENTS

25. Defendant shall submit the following reports to EPA and DOJ, at the addresses set forth in Section XIV (Notices):

a. By July 31st and January 31st of each year after the lodging of this Consent Decree, until termination of this Decree pursuant to Section XVIII, Defendant shall submit via email a semi-annual report for the preceding six months that includes: a narrative description of activities undertaken pursuant to the Decree; the status of any construction or other injunctive relief measures required by the Decree, including the Mitigation Actions; completion of milestones, including those set forth in Appendix A (Combined Outfall Plan) and Appendix B (Mitigation Work Plan); problems encountered or anticipated, together with implemented or proposed solutions; status of any permit applications; and injunctive relief measures and related activities anticipated to be conducted in the next six month period.

b. If Defendant violates, or has reason to believe that it may violate, any other requirement of this Consent Decree not governed by the permit, Defendant shall notify DOJ and EPA of such violation and its likely duration, in writing, within ten business days of the Day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or

the following Paragraph relieves Defendant of its obligation to provide the notice required by Section IX (Force Majeure).

26. Each report submitted by Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of perjury 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 the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than 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.

27. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

28. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

29. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

30. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all

applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

31. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section V (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$5,000 per Day for each Day that the payment is late.

32. Effluent Limits. The following stipulated penalties shall accrue per violation per Day for each violation of interim or final effluent limits (on or after the date upon which Defendant is required to comply with such final effluent limits) of the 2022 Individual Permit, as set forth in Paragraph 14:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,250	1 st through 14 th Day
\$2,500	15 th through 30 th Day
\$5,000	31 st Day and beyond

33. Compliance Milestones.

a. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in subparagraph 33.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1 st through 14 th Day
\$2,000	15 th through 30 th Day
\$4,000	31 st Day and beyond

b. timely compliance with the following requirements set forth in Section VI (Injunctive Relief):

- (1) submission of conceptual plan and proposed plan for Basin 001 pursuant to subparagraphs 15.b.(1) and 15.b.(2), respectively;
- (2) completion of construction, and placement in full operation, of

improvements for Combined Basins 002/003/004 and Basin 001 required by subparagraphs 15.a.(2) and 15.b.(3), including timely compliance with all deadlines set forth in Appendix A (Combined Outfall Plan);

- (3) updates to the SWPPP pursuant to subparagraph 15.c; and
- (4) implementation of the Mitigation Actions required by Paragraphs 18 and 20, including timely compliance with all interim milestones and deadlines set forth in Appendix B (Mitigation Work Plan).

34. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VII:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750.....	1 st through 14 th Day
\$1,500.....	15 th through 30 th Day
\$2,500.....	31 st Day and beyond

35. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

36. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States’ written demand except as otherwise provided below under Paragraph 38.

37. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

38. Stipulated penalties shall continue to accrue as provided in Paragraph 36, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined by the final appellate court to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

39. Defendant shall pay stipulated penalties owing to the United States in the manner set forth in Paragraph 10 and with the confirmation notices required by Paragraph 11, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

40. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

41. The payment of penalties and interest, if any, shall not alter in any way Defendant's obligation to complete the performance of the requirements of this Consent Decree.

42. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XII (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendant's violation of this Decree or applicable law, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

IX. FORCE MAJEURE

43. "Force majeure," for purposes of this Consent Decree, means any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure, such that any delay or non-performance is, and any adverse effects of the delay or non-performance are minimized to the greatest extent possible. "Force majeure" does not include financial inability to perform any obligation under this Consent Decree.

44. If any event occurs for which Defendant will or may claim a force majeure, Defendant shall provide notice to EPA (Steven Potokar) by telephone or email, in accordance with Section XIV (Notices). The deadline for the initial notice is three days after Defendant first

knew or should have known that the event would likely delay or prevent performance.

Defendant shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by Defendant knew or should have known.

45. Regardless of whether Defendant seeks to assert a claim of force majeure concerning the event, within seven Days after the notice under Paragraph 44, Defendant shall submit a further notice to EPA that includes (a) an explanation and description of the event and its effect on Defendant's completion of the requirements of the Consent Decree; (b) a description and schedule of all actions taken or to be taken to prevent or minimize the delay and/or other adverse effects of the event; (c) if applicable, the proposed extension of time for Defendant to complete the requirements of the Consent Decree; (d) Defendant's rationale for attributing such delay to a force majeure if it intends to assert such a claim; (e) a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health or welfare or the environment; and (f) any other relevant information Defendant believes supports a claim that the delay was attributable to a force majeure.

46. Failure to submit a timely or complete notice or claim under Paragraph 44 or 45 regarding an event precludes Defendant from asserting any claim of force majeure regarding that event, provided, however, that EPA may, in its unreviewable discretion, excuse such failure if it is able to assess to its satisfaction whether the event is a force majeure, and whether Defendant has exercised its best efforts, under Paragraph 43.

47. After receipt of any claim of force majeure, EPA will notify Defendant of its determination whether Defendant is entitled to relief under Paragraph 43, and, if so, the excuse of, or the extension of time for, performance of the obligations affected by the force majeure. An

excuse of, or extension of the time for performance of, the obligations affected by the force majeure does not, of itself, excuse or extend the time for performance of any other obligation.

48. If Defendant elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendant has the burden of proving that it is entitled to relief under Paragraph 43, that its proposed excuse or extension was or will be warranted under the circumstances, and that it complied with the requirements of Paragraphs 44-45. If Defendant carries this burden, the delay or non-performance at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

X. DISPUTE RESOLUTION

49. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section concerning an issue of which it had notice and an opportunity to dispute under this Section prior to an action by the United States to enforce any obligation of Defendant arising under this Decree precludes Defendant from raising any such issue as a defense to any such enforcement action.

50. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends DOJ and EPA a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations,

then the position advanced by the United States shall be considered binding unless, within 14 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

51. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending DOJ and EPA a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

52. The United States will send Defendant its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position is binding on Defendant unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

53. Judicial Dispute Resolution. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States a motion requesting judicial resolution of the dispute. The motion (a) must be filed within ten Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph; (b) may not raise any issue not raised in informal dispute resolution pursuant to Paragraph 50, unless the United States raises a new issue of law or fact in the Statement of Position; (c) shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and (d) shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

54. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

55. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 53 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work, including with respect to the Mitigation Actions, undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 53, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the Objectives of the Consent Decree.

56. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 38. If

Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

57. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

58. Upon request, Defendant shall provide to EPA or its authorized representatives splits of any samples taken by Defendant. Upon request, EPA shall provide to Defendant splits of any samples taken by EPA.

59. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or

procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

60. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

61. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

62. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain

documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

63. This Consent Decree resolves only the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

64. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 63. The United States further reserves all legal and equitable remedies to address any conditions if there is or may be an imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

65. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim preclusion (*res judicata*), issue preclusion (*collateral estoppel*), 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, except with respect to claims that have been specifically resolved pursuant to Paragraph 63.

66. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations,

and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. § 1251, et seq., or with any other provisions of federal, State, or local laws, regulations, or permits.

67. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

68. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIII. COSTS

69. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XIV. NOTICES

70. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent by mail or email, with a preference for email, addressed as follows:

As to DOJ by email (preferred): eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-1-1-12509

As to DOJ by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-12509

As to EPA: Steven Potokar
U.S. Environmental Protection Agency
Region 10, Mailstop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
potokar.steven@epa.gov
Telephone: (206) 553-5364

Cara Steiner-Riley
Steiner-riley.cara@epa.gov

As to Defendant: Michele Tyler, Vice President, General Counsel
PotlatchDeltic Corporation
601 W. 1st Avenue, Suite 1600
Spokane, Washington 99201
Michele.Tyler@PotlatchDeltic.com

Ashlee Cribb, Vice President, Wood Products
PotlatchDeltic Corporation
601 W. 1st Avenue, Suite 1600
Spokane, Washington 99201
Ashlee.Cribb@PotlatchDeltic.com

71. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

72. Notices submitted pursuant to this Section shall be deemed submitted upon mailing or transmission by email, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

73. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVI. RETENTION OF JURISDICTION

74. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X and XVII, or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

75. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

76. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 55, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVIII. TERMINATION

77. After Defendant has completed the requirements of Section VI (Injunctive Relief), and thereafter maintained satisfactory compliance with this Consent Decree and Defendant's 2022 Individual Permit until it expires on August 31, 2027, and has complied with all other requirements of this Consent Decree, including full implementation of the Mitigation

Actions required by Paragraphs 18 and 20, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

78. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally for at least thirty (30) days concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

79. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section X. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until 30 Days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

80. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

81. Each undersigned representative of Defendant and the Deputy Section Chief for the Environment and Natural Resources Division of the Department of Justice identified on the DOJ signature page below, certifies that that person is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party that person represents to this document.

82. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXI. INTEGRATION

83. This Consent Decree constitutes the entire agreement among the Parties regarding the subject matter of the Decree and supersedes all prior representations, agreements, and understandings, whether oral or written, concerning the subject matter of the subject matter of the Decree herein.

XXII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

84. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), the payment made pursuant to Section V (Civil Penalty), Paragraph 9, and the performance of: Section VI (Injunctive Relief), Paragraphs 13-15, 18, and 20; Section VII (Reporting

Requirements), Paragraph 25, and Section IX (Information Collection and Retention), Paragraphs 58-59, is restitution, remediation, or required to come into compliance with law.

XXIII. HEADINGS

85. Headings to the Sections and Subsections of this Consent Decree are provided for convenience and do not affect the meaning or interpretation of the provisions of this Consent Decree.

XXIV. FINAL JUDGMENT

86. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXV. APPENDICES

87. The following Appendices are attached to and part of this Consent Decree:
- “Appendix A” is the Combined Outfall Plan;
 - “Appendix B” is the Mitigation Work Plan; and
 - “Appendix C” is the Conservation Easement.

Dated and entered this ___ day of _____, 20__

UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

1/24/24

Date

SUSAN M. AKERS
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

/s Erika M. Wells

ERIKA M. WELLS
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
7600 Sand Point Way, NE, c/o NOAA
Seattle, Washington 98115

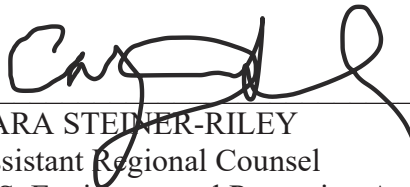
JOSHUA D. HURWIT
United States Attorney
District of Idaho

Nicholas J. Woychick
Civil Chief
United States Attorney's Office
District of Idaho

FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:

BEVERLY LI  Digitally signed by BEVERLY LI
Date: 2024.01.24 09:11:24 -08'00'

Beverly Li
Regional Counsel
U.S. Environmental Protection Agency, Region 10



CARA STEINER-RILEY
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
Office of Regional Counsel

FOR DEFENDANT POTLATCHDELTIC LAND &
LUMBER, LLC:

1/9/2024

Date



MICHELE TYLER
Vice President, General Counsel

