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7 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
8

9 COMMUNITY ASSOCIATION FOR
RESTORATION OF THE
10 ENVIRONMENT, INC., a Washington
Non-Profit Corporation; FRIENDS OF
11 TOPPENISH CREEK, a Washington Non-
Profit Corporation,

12 *and*

13 CENTER FOR FOOD SAFETY, INC., a
Washington D.C. Non-Profit Corporation,
14 Plaintiffs,

15 *v.*

16 AUSTIN JACK DECOSTER, an individual,
17 DECOSTER ENTERPRISES, LLC, a
Delaware limited liability company,
18 AGRICULTURAL INVESTMENT-FUND
II, a Delaware limited liability company,
19 IDAHO AGRI INVESTMENTS, LLC, an
Idaho limited liability company, IDAHO
20 DAIRY HOLDINGS, LLC, and Idaho
21 limited liability company, DRY CREEK
DAIRIES, LLC, an Idaho limited liability
22 company, WASHINGTON DAIRY
HOLDINGS, LLC, a Washington limited
23 liability company; WASHINGTON AGRI
INVESTMENTS, LLC, a Washington

Case No. 1:19-cv-3110-TOR

[PROPOSED] CONSENT DECREE

1 limited liability company; DBD
2 WASHINGTON, LLC, a Washington
3 limited liability company; *and* SMD, LLC, a
4 Washington limited liability company,
5 Defendants.

6 **WHEREAS**, Plaintiffs Community Association for Restoration of the
7 Environment, Friends of Toppenish Creek, and Center for Food Safety (collectively
8 “Plaintiffs”) filed a Complaint on May 23, 2019, and a First Amended Complaint on
9 November 8, 2021, in this Court seeking declaratory and injunctive relief, as well as
10 attorney and expert witness fees and costs, against DBD Washington, LLC, SMD,
11 LLC, Washington Dairy Holdings, LLC, Washington Agri Investments, LLC,
12 Austin Jack DeCoster, DeCoster Enterprises, LLC, Agricultural Investment Fund-
13 II, LLC, Idaho Agri Investments, LLC, Idaho Dairy Holdings, LLC, and Dry Creek
14 Dairies, LLC (collectively “Defendants,” “DBD,” or the “Dairies”), alleging
15 violations of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*
16 (“RCRA”). Plaintiffs’ Complaint for alleged RCRA violations was brought under
17 the citizen suit provisions of Section 7002 of the Act, 42 U.S.C. § 6972(a)(1)(A) and
18 (B);

19
20
21 **WHEREAS**, prior to filing their Complaints, Plaintiffs sent to Defendants
22 Notices of Intent to Sue dated February 11, 2019, April 15, 2019, April 3, 2020, and
23 December 23, 2020, in which they stated their intent to assert claims that Defendants

1 have violated and continue to violate Section 7002(a) of RCRA by contributing to
2 the past and present handling, storage, treatment, transportation, and/or disposal of
3 solid and hazardous waste in such a manner that may present an imminent and
4 substantial endangerment to health and the environment. 42 U.S.C. § 6972(a);
5

6 **WHEREAS**, Plaintiffs further assert that Defendants employ, and have
7 employed, improper manure management practices that constitute the “open
8 dumping” of solid waste in violation of Section 4005(a) of RCRA. 42 U.S.C. §
9 6945(a);

10 **WHEREAS**, DBD Washington, LLC and SMD, LLC, Washington Agri
11 Investments, LLC, and Washington Dairy Holdings, LLC are registered as limited
12 liability companies in the State of Washington; Dry Creek Dairy, Idaho Dairy
13 Holdings, LLC, and Idaho Agri Investments, LLC, are registered as limited liability
14 companies in the State of Washington; DeCoster Enterprises, LLC and Agricultural
15 Investment Fund-II, LLC are registered Delaware limited liability companies. These
16 Defendants, along with Austin Jack DeCoster, collectively own and operate the
17 dairies known as “DBD Washington,” “SMD,” and the “Heifer Ranch.” DBD
18 Washington is located at or near 5111 Van Belle Road in Outlook, Washington;
19 SMD is located at or near 211 Nichols Road in Outlook, Washington; and the “Heifer
20 Ranch” is located across from SMD on the south side of Outlook Road;
21
22

23 **WHEREAS**, Defendants deny all claims, including that they violated and

1 continue to violate Section 7002(a) of RCRA by contributing to the past and present
2 handling, storage, treatment, transportation, and/or disposal of solid and hazardous
3 waste in such a manner that may present an imminent and substantial endangerment
4 to health and the environment. 42 U.S.C. § 6972(a).

5
6 **WHEREAS**, Defendants further deny that they employ, and have employed,
7 improper manure management practices that constitute the “open dumping” of solid
8 waste in violation of Section 4005(a) of RCRA. 42 U.S.C. § 6945(a); Defendants
9 DBD and SMD further allege that they have at all times relevant to this matter held
10 Concentrated Animal Feeding Operation Permits, and that all conduct during the
11 relevant time frames has been subject to oversight, regulation and enforcement of
12 such Permits by the Washington State Department of Ecology.

13
14 **WHEREAS**, after consultation with their respective counsel, Plaintiffs and
15 Defendants (collectively the “Parties”) hereby wish to settle this lawsuit to avoid the
16 risks of further litigation and appeal and to resolve the controversy between them;
17 and

18
19 **WHEREAS**, the Parties acknowledge that this Consent Decree has been
20 negotiated by the Parties in good faith and will avoid further litigation, and the Court,
21 in entering this Consent Decree, finds that this Decree is fair, reasonable, and in the
22 public interest.

23 **NOW, THEREFORE**, without the admission of any issue of fact or law

1 except as provided in General Provisions, and upon consideration of the mutual
2 promises contained herein, it is **ADJUDGED, ORDERED, AND DECREED** as
3 follows:

4 **GENERAL PROVISIONS**

5
6 1. This Court has jurisdiction over the Parties and the subject matter of
7 this lawsuit pursuant to 42 U.S.C. § 6972(a) and 28 U.S.C. § 1331. Venue is proper
8 in this Court pursuant to 42 U.S.C. § 6972(a) and 28 U.S.C. § 13912(b). This Court
9 shall have continuing jurisdiction over this lawsuit for the purposes of interpretation,
10 enforcement, and, if necessary, modification of this Consent Decree.

11
12 2. The undersigned representative for each Party certifies that he/she is
13 fully authorized by the Party whom he/she represents to enter into the terms and
14 conditions of this Consent Decree and to legally bind the Party to it.

15
16 3. The terms “Dairies’ Facilities” and/or “Dairies” shall refer to the
17 facilities commonly known as DBD, SMD, and the “Heifer Ranch,” as depicted on
18 the maps attached hereto as Exhibit 1, and such property that may be acquired as part
19 of Dairy Operations (defined below). These operations are collectively referred to
20 herein as “DBD.”

21
22 4. The term “Dairy Operations” includes all aspects of the commercial
23 production of milk from cows, including but not limited to the related operations of
heifer raising, compost, manure management, manure application, manure storage in

1 lagoons and catch basins, the production and storage of silage and other animal feed
2 materials, and the production of agricultural commodities that use manure products
3 from the foregoing aspects of the commercial production of milk from cows.

4 5. The Dairy Operations are operated jointly and constitute a large
5 Concentrated Animal Feeding Operation (CAFO) under state and federal law.

6 6. This Consent Decree shall apply to and be binding upon the Parties to
7 this lawsuit and upon all successors and assigns of the Parties until termination. This
8 provision is intended to require compliance with this Consent Decree so long as any
9 portion of the Dairies is used by any person or entity in the course of conducting
10 Dairy Operations or any other CAFO operation or manure processing or treatment
11 facility. However, nothing herein shall prevent Defendants from discontinuing any
12 or all Dairy Operations (whether independently or together) or from transferring any
13 of the Dairies' Facilities to other owners for uses other than for CAFO Operations;
14 this Consent Decree shall no longer apply to real property that is not being used for
15 CAFO Operations or other agriculturally-related operations that involve the treatment
16 and/or storage of manure. DBD, or any of their successors or assigns, may sell the
17 Dairies' Facilities, or any of the real property upon which the Dairies or their
18 operations may currently be conducted, without Plaintiffs' consent and without
19 approval of the Court; provided, however, that DBD provide a copy of the Consent
20 Decree to the new owner and provide written notice to Plaintiffs of the sale within
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22
23

1 thirty (30) days of closing.

2 7. This Consent Decree constitutes the final, complete, and exclusive
3 agreement and understanding of the Parties with respect to the settlement embodied
4 in this Consent Decree and the subject matter of this lawsuit. The Parties hereby
5 acknowledge that there are no representations or understandings relating to the
6 lawsuit or its settlement other than those expressly contained within this Consent
7 Decree. This Consent Decree expressly supersedes, extinguishes, and replaces all
8 prior stipulations and agreements between the Parties.
9

10 8. This Consent Decree may not be modified in any material respect
11 except by explicit written agreement of the Parties that is approved by the Court.
12 Non-material modifications may be made by the Parties upon written consent.
13

14 9. This Consent Decree constitutes the full and complete settlement of all
15 claims, rights, demands, and causes of action of any kind, alleged or unalleged,
16 known or unknown, relating to DBD's Dairy Operations, through the date of entry of
17 the Consent Decree, that Plaintiffs asserted or could have asserted against DBD in
18 this lawsuit. Plaintiffs hereby release all such claims and covenant not to sue DBD in
19 connection with them. This covenant not to sue in no way releases DBD from
20 compliance with this Consent Decree or future compliance with other applicable law.
21 Furthermore, this covenant not to sue shall in no way limit Plaintiffs' ability to
22 enforce the terms of this Consent Decree or any future violations of law committed
23

1 by DBD.

2 10. Each Party acknowledges and represents that it has relied on the legal
3 advice of its attorneys, all listed at the end of the Consent Decree, who are the
4 attorneys of its own choice, and that the terms of this Consent Decree have been
5 completely explained to the Party by its attorney(s), and that the terms are fully
6 understood and voluntarily accepted.
7

8 11. In the event that any part of this Consent Decree is deemed by a court
9 of competent jurisdiction to be unlawful, void, or for any reason unenforceable, and
10 if that part is severable from the remainder of the Consent Decree without frustrating
11 its essential purpose or imposing an inequitable result on any party, then the
12 remaining parts of the Consent Decree shall remain valid, binding, and enforceable.
13

14 12. If for any reason the Court should decline to approve this Consent
15 Decree in the form presented, then the Parties agree to continue negotiations in good
16 faith in an attempt to cure the objection(s) raised by the Court to entry of this Consent
17 Decree.
18

19 13. This Consent Decree may be signed in counterparts, and such
20 counterpart signature page shall be given full force and effect.

21 14. The Dairies meet the federal and state law definitions of a large
22 concentrated animal feeding operation or "CAFO." 40 CFR § 122.23. In operating
23 the Dairy Facilities, DBD shall abide by this Consent Decree, their combined CAFO

1 permit, Dairy Nutrient Management Plans (“DNMP”), and the Washington Dairy
2 Nutrient Management Act, RCW 90.64, *et seq.* If any of the terms of this Consent
3 Decree are stricter than the aforementioned laws, then the terms of this Consent
4 Decree shall control. If any of these laws are stricter than the terms of the Consent
5 Decree, either now or in the future, such stricter laws shall apply. Notwithstanding
6 the foregoing, the Parties agree that nothing in this Consent Decree may be construed
7 to obligate DBD to violate any law or regulation. In the event of any perceived
8 conflict, the Parties agree to submit the matter to the dispute resolution process
9 described in Paragraph 59.

11 LAGOONS

12
13 15. Defendants hereby agree to either double-line or abandon DBD Lagoon
14 Nos. 1, 2, 3, 4, and 5, SMD Lagoon No. 3, and any new lagoons constructed on the
15 property. DBD agrees that all lined lagoons under this Consent Decree must use a
16 drain liner that meets GRI – GM13 Standard Specification (e.g., AGRU “Drain
17 Liner”) overlain by a 60-mil textured HDPE liner, with incorporated leak detection,
18 as described in Exhibit 2. DBD agrees that lagoons to be abandoned shall strictly
19 comply with the lagoon decommissioning specifications detailed in Paragraph 20.

20
21 16. DBD Lagoon No. 5 and SMD Lagoon No. 3 are currently empty with
22 manure liquid and solids removed and will remain empty until lined. DBD shall line
23 DBD Lagoon No. 5 and SMD Lagoon No. 3, with such lining to be completed no

1 later than 6/30/24.

2 17. DBD Lagoon Nos. 1, 2, and 4 are currently utilized for manure storage.
3 DBD Lagoons 1 and 2 will be emptied with solids removed by 6/1/2023. DBD
4 Lagoon 4 will continue to be used until Lagoon 5's lining has been completed and
5 put into service. Lagoon 4 shall be emptied and solids removed no later than
6 9/30/2024. Following the removal of its contents, DBD Lagoons 2 and 4 shall remain
7 empty until lined or abandoned pursuant to Paras. 15, 18 and 19. DBD shall crop
8 DBD Lagoons 1, 2, and 4 with Triticale or Alfalfa, with no nutrient addition, and
9 DBD shall take reasonable measures to timely remove accumulations of rainwater or
10 runoff. DBD Lagoon 1 will be closed no later than December 31, 2025.
11

12 18. DBD Lagoon No. 3 is currently empty with manure liquid and solids
13 removed and shall remain empty until lined or abandoned. DBD shall crop DBD
14 Lagoon 3 and plant with Triticale or Alfalfa, with no nutrient addition, in 2023. DBD
15 shall take responsible measures to timely remove accumulations of rainwater or
16 runoff. DBD Lagoon 3 shall remain empty until lined or abandoned pursuant to
17 Paragraphs 15, 18 and 19. At DBD's option, Lagoon 3 may be combined with Lagoon
18 2 prior to any lining. All further decisions on lining, including those of Lagoon Nos.
19 2, 3 and 4, shall take into account whether the enzyme or oxygenation treatments, or
20 both, used in the Pilot Projects shall be applied to those specific areas. No enzyme or
21 oxygenation treatment shall be required if: 1) the average composite samples from
22
23

1 seven (7) borings in the soils above the water table do not exceed 45 ppm nitrate plus
2 ammonium and ground water downgradient from the lagoon does not exceed 10 ppm
3 nitrate plus ammonia or 1 ppm nitrite; 2) the soils exceeding 45 ppm nitrate plus
4 ammonium are excavated and land applied properly; or 3) if the cropping removes
5 the excess of 45 ppm nitrate plus ammonium. Upon completion of the Remediation
6 Investigation, the Parties shall confer about whether excavation, pump and treat,
7 enzymatic treatment, oxygenation treatment, or some combination thereof, are best
8 suited for each area. Under any of the above scenarios, ground water concentrations
9 of ammonia plus nitrate must be less than 10 ppm and nitrite less than 1 ppm.

11 19. Prior to lining, all liquids and organic solids shall be removed from the
12 lagoons. Following removal of manure liquids and solids from the lagoons all lagoons
13 being cropped will be irrigated with the enzyme technology.

15 *Lagoon Decommissioning*

16 20. All Lagoon abandonment projects and closures shall be completed
17 according to all the following terms:

- 18 a) *Lagoon Closure – Permanent Decommissioning* requirements of
19 Section S4.B.1.f of the January 18, 2017, CAFO General Permit
20 (combined), which is also S4.C.4.E. of the January 6, 2023, permit,
21 issued by the Washington State Department of Ecology, or
22 whatever more stringent protocol may be in place at the time;
23

- 1 b) Guidance provided by *NRCS Conservation Practice Standard*
2 *360 – Waste Facility Closure (NRCS, WA September 2018* or other
3 guidance then in effect);
4
5 c) Conduct topographic surveys extending to a minimum of 50 feet
6 beyond the edge of each lagoon, or to adjacent roads or lagoons,
7 whichever is closest, and containing the location of existing
8 utilities;
9
10 d) Removal of all liquids and organic solids from the lagoons;
11
12 e) Following removal of liquids and solids from the lagoons, DBD
13 shall remove material from floor of the lagoon until undisturbed
14 (“pre-construction”) soils are encountered. The decommissioned
15 lagoons shall be cropped with the purpose of extracting excess soil
16 nutrients while the parties conduct the pilot studies contemplated
17 by Paras.21-23, below;
18
19 f) All piping infrastructure to and from abandoned lagoons shall
20 be removed or, if not practicable, cut and capped in place.

21 21. All information collected and analyzed pursuant to Paragraph 20 shall
22 be provided to Plaintiffs contemporaneously with receipt by DBD, but in no case
23 more than five (5) business days from receipt by DBD.

Groundwater Pilot Programs

1 22. The Parties have jointly devised a focused Pilot Program to determine
2 the feasibility and efficacy of their respective visions for potential remediation of the
3 excess nitrate and ammonium contamination of the soil and groundwater beneath the
4 Dairy lagoons, excluding DBD Lagoon 5 and SMD Lagoon 3, each of which shall be
5 double-lined. Plaintiffs envision oxidating the variable levels of ammonium in the
6 soil profile in order to transform it into nitrate, speeding up leaching it into the aquifer,
7 and then pumping it out as irrigation water. DBD envisions an enzyme/electrokinetic
8 trial that may reduce or eliminate nitrate altogether. Plaintiffs have prepared a
9 Remediation Investigation Plan (RI) that is attached hereto as Exhibit 3. DBD agrees
10 to allow and cooperate with the provisions of the RI, subject to the following
11 limitations: 1) the RI will not begin unless first permitted and authorized by
12 Department of Ecology. The parties shall have one hundred-eighty (180) days from
13 the entry of this Consent Decree to complete the RI; 2) the RI cost, to be paid by
14 Defendants, shall not exceed \$80,000; and 3) the parties shall provide each other all
15 the data, field notes, and analyses collected under the RI within thirty (30) days of
16 receipt of such information, but in no case no later than 9/30/23 (unless delays
17 contemplated by this Decree occur). Defendants shall provide all data collected
18 during investigation or sampling activities at the Dairies.

22 23. Each Party's Pilot Program shall be conducted during 2023 through
23 2025 with the expectation that the Pilot Programs may be able to be completed by the

1 end of 2024. DBD shall pay for Plaintiffs' implementation of its proposed Pilot
2 Project. Plaintiffs shall undertake no Pilot Program activities, including no activities
3 contemplated under the RI, unless first authorized and permitted by the Department
4 of Ecology. Plaintiffs' representatives may visit their pilot area as often as reasonably
5 necessary, provided that: Plaintiffs shall provide twenty-four (24) hours' notice
6 before visiting their respective pilot area, including the names of the visitors and the
7 approximate hours of visitation. No agents of Plaintiffs shall remain on the Dairy
8 Facility before 8:00 a.m. or after 5:00 p.m., or on weekends, without the advance
9 written permission from DBD. All costs for Plaintiffs' pilot program, separate from
10 the RI, shall not exceed \$220,000 at DBD or SMD, such sum to be paid by
11 Defendants. The Parties shall exchange the results of their respective Pilot Programs
12 within ninety (90) days of completion, but in no case later than 12/31/2025. DBD
13 shall additionally submit a report no later than such date analyzing the results of its
14 other control, containment, and retrieval methods, including but not limited to its
15 cropping of empty lagoons and its efforts to uptake ammonium through cropping.
16
17

18 24. After exchanging the results of their respective Pilot Programs, the
19 Parties shall confer in good faith for a period of no more than ninety (90) days, as
20 implementation of possible results of the Pilot Program may lead to earlier
21 remediation of the ongoing contamination, about whether either Pilot Program should
22 be utilized at the Dairies' Facilities to remediate the nitrate and ammonium
23

1 contamination of the soils and groundwater underlying the Dairies' lagoon footprints.
2 If the Parties are unable to agree, then the Parties shall submit their dispute to a neutral
3 arbitrator for resolution. Should the Parties be unable to agree on a willing and
4 available arbitrator within such ninety (90) days, they shall apply to the Court to
5 appoint one. DBD shall pay the fees of the arbitrator. In evaluating the Parties'
6 proposals, the Parties request that the arbitrator base their decision on the scientific
7 results achieved by the respective Pilot Programs, the nitrogen levels still remaining
8 beneath the respective footprints of the lagoons, and the relative costs of the proposed
9 remediation. The mediator shall have discretion to award fees to Plaintiffs if they are
10 the substantially prevailing party on any arbitrated issues. Should the Pilot Programs
11 be delayed for good cause (such as permitting delays), the dates for lagoon lining and
12 reporting may be adjusted by the Parties as minor modifications to this Consent
13 Decree without approval of the Court.
14
15

16 GROUNDWATER MONITORING

17 25. DBD has installed thirteen (13) groundwater monitoring wells at
18 locations generally depicted on the map attached hereto as Exhibit 4. Additional RI
19 wells shall be installed by the Plaintiffs. DBD shall monitor these wells on the same
20 schedule until the Pilot Project is complete. The Dairies shall quarterly sample and
21 analyze the wells within the Monitoring Well Network on the following schedule:
22 June, September, December, and March. Following the first eight quarterly samples,
23

1 sampling at the Monitoring Well Network shall occur on a semi-annual basis (twice
2 per year; June and December) until four consecutive testing events show the average
3 nitrate concentration in each well, calculated from the prior four sampling events
4 from each well, is below the Maximum Contaminant Levels (MCL) of 10 ppm nitrate
5 and 1 ppm nitrite. For purposes of the nitrate MCL number, “nitrate” shall include
6 nitrate and ammonia together.
7

8 26. The quarterly sampling for the Monitoring Well Network includes
9 solely the parameters identified below:

10 Laboratory Parameters

- 11 • Nitrate (as nitrogen) by U.S. Environmental Protection Agency (EPA)
12 Method 300.0
- 13 • Nitrite (as nitrogen) by EPA Method 300.0
- 14 • Chloride by EPA Method 300.0
- 15 • Ammonia (as nitrogen) by EPA Method 350.1 or Standard Method 4500-
16 NH3 G (methods are equivalent)
- 17 • Total phosphorus by EPA Method 365.1 or Standard Method 4500-P E
18 (methods are equivalent)
- 19 • Total Kjeldahl nitrogen by EPA Method 351.2 or Standard Method 4500-
20 Norg C using colorimetric detection (methods are equivalent)
- 21
- 22

23 Field Parameters

- pH, dissolved oxygen, groundwater elevation, oxidation reduction potential, specific conductivity (using a field meter to determine when water is ready to be sampled).

27. DBD agrees to provide to Plaintiffs, in electronic form, the laboratory results of each groundwater sampling event within fifteen (15) days of the date DBD receives the results. Results from the Dairies' selected, certified laboratory shall be the official results for determining compliance with the Consent Decree, unless a sampling or laboratory error makes the results inaccurate. In the event that the Dairies choose to use a different laboratory for monitoring well data capture, the Dairies shall so notify Plaintiffs. So long as the Dairies' selected laboratory is certified by the State of Washington Department of Ecology, Plaintiffs shall not unreasonably withhold agreement for DBD to change laboratories.

MANURE APPLICATION AND FIELD MANAGEMENT

28. The provisions of this Section shall apply only to Application Fields owned, leased, or otherwise controlled by Defendants, including any Application Fields Defendants own, lease, or otherwise control after the Effective Date and during the term of this Decree. All such Application Fields owned, leased, or otherwise controlled by Defendants shall be addressed in Defendants' DNMP.

29. For purposes of this Decree, Defendants shall be deemed to "control" an Application Field to which manure is applied when (a) the manure is applied by

1 Defendants’ employees or Defendants’ contractors using Defendants’ or
2 Defendants’ contractor’s trucks or application equipment; (b) when the
3 amounts/rates of application are not dictated by the recipient; and (c) when
4 Defendants are not meaningfully compensated for such manure. For purposes of
5 this subparagraph, reimbursement for fuel costs is not considered meaningful
6 compensation.
7

8 30. With respect to nitrogen, Defendants shall adhere to the following
9 beginning in the Fall of 2023:

10 a. Defendant shall make nitrogen applications at or below
11 agronomic rates based on Application Field-specific nutrient management budgets
12 prepared by an agronomist.
13

14 b. No later than January 31, 2025, Defendants shall have their
15 agronomist conduct a retroactive review of their agronomic rate calculations and
16 field nutrient performance data for crop years 2022-2024 and document that review
17 in a report (“Agronomic Rate Report”). This review shall assess whether, taken as a
18 whole, the agronomic rate calculations have adequately projected nutrient utilization
19 within the bounds of good agronomic practice with the parallel goal of minimizing
20 leaching potential to groundwater.
21

22 c. Defendants’ agronomist’s review of nutrient utilization shall
23 include the mineralization of residual soil nitrogen, the availability of nitrogen from

1 applied manure, the extraction of nitrogen by crops and the status and trends of
2 residual nitrogen in the Application Fields.

3 d. In the event that Defendants' management of manure in crop
4 years 2022-2024 has followed its agronomist's recommendations based on
5 agronomic rate calculations, evidence requiring adjustments to the agronomic rate
6 calculations shall include excessive amounts of residual soil nitrogen (greater than
7 15 ppm) occurring consistently in some application fields or failure to reach 15 ppm
8 in twenty-five percent (25%) or more of Defendants' Application Fields.

9
10 e. Defendants shall submit to Plaintiffs in accordance with the
11 Notice provisions in Paragraph 62 a draft of the Agronomic Rate Report for
12 Plaintiffs' review and comment no later than April 30, 2025. Defendants shall
13 consider any comments Plaintiffs submit to Defendants on the draft Agronomic Rate
14 Report if Plaintiffs deliver such comments to Defendants in accordance with the
15 Notice provisions in Paragraph 62 no later than forty-five (45) calendar days after
16 Defendants provide Plaintiffs with the draft Agronomic Rate Report. Defendants
17 shall finalize the Agronomic Rate Report no later than July 30, 2025, and send a
18 copy to Plaintiffs upon completion. If the conclusions of the finalized Agronomic
19 Rate Report indicate a need to adjust the agronomic rate calculation assumptions,
20 such conclusions shall be implemented by Defendants beginning with crop year
21 2026 summer crop and through the termination of this Decree.
22
23

f. Defendants shall restrict their manure application in the manner described in the following Table 1:

Table 1. Manure Application Restrictions for Nitrogen Control

Fall Average Residual N in Upper 2 feet (NH ₄ -N+NO ₃ -N)	Nitrogen Application Restrictions Based on Measured Fall Average Residual Soil Nitrogen Levels (NH ₄ -N+NO ₃ -N)				Split Application Schedule for Manure Applied by Irrigation (Crop Year 2025+ Only)	
	Crop Year 2024 (Fall 2023)	Crop Year 2025 (Fall 2024)	Crop Year 2026 (Fall 2025)	Crop Year 2027+ (Fall 2026)	Portion of winter crop application made in fall (Oct-T200)	Portion of winter crop application made in spring (After T200)
≤ 15 mg N/kg	100% of agr. rate	100% of agr.	100% of agr.	100% of agr.	≤ 100%	Balance
15.1-25 mg N/kg	100% of agr. rate	100% of agr. rate	95% of agr. rate	90% of agr. rate	≤ 66%	Balance
25.1-35 mg N/kg	95% of agr. rate	85% of agr. rate	80% of agr. rate	75% of agr. rate	≤ 33%	Balance
35.1-45 mg N/kg	90% of agr. rate	80% of agr. rate	70% of agr. rate	60% of agr. rate	0%	Balance
> 45 mg N/kg	No appl.	No appl.	No appl.	No appl.	—	—

g. For purposes of interpreting Table 1:

i. Nitrogen agronomic rate limitation shall apply to both the winter and summer crop, unless follow-up soil nitrogen measurements fall into a lower category, or crop tissue (basal stem and leaf sampling) measurements show a deficiency in the crop tissue for nitrogen.

ii. For crop year 2025 and thereafter, winter manure

1 applications will be split into a fall and early spring application as indicated in Table
2 1 for fields to which manure is applied by irrigation.

3 iii. If a given Application Field exceeds 25 mg N/kg for three
4 (3) years in a row after crop year 2025, then Defendants shall reduce the application
5 limit for that field from 75% to 50% until the nitrogen level drops below 15 mg
6 N/kg.

7
8 iv. If a given Application Field exceeds 35 mg N/kg for two
9 (2) years in a row after crop year 2025, then Defendants shall apply no manure to
10 that field until the nitrogen level drops below 15 mg N/kg.

11 h. Nitrogen levels used to determine compliance with Table 1 shall
12 be measured by the average of nitrate-nitrogen plus ammonium-nitrogen in each of
13 the top two feet of the soil column based on Fall post-harvest sampling results.

14 i. Agronomic rate adjustments shown in Table 1 shall be applied
15 after completing the standard agronomic rate calculation. For example, if a standard
16 agronomic rate calculation indicates a need for 2.0 million gallons of manure, and if
17 the restricted rate in Table 1 is “90 percent of agronomic rate”, then the maximum
18 manure application for that Application Field will be 1.8 million gallons (2.0 million
19 gallons x 90% = 1.8 million gallons).

20 j. For the Application Fields to which Defendants apply manure via
21 irrigation or blending, Defendants shall split the winter manure application into a
22
23

1 fall and early spring application. The amount of the split shall be adjusted based on
2 Fall residual soil nitrogen level as indicated in Table 1 for crop year 2025 and
3 beyond.

4 31. With respect to phosphorus, Defendants shall adhere to the following
5 beginning on the Effective Date:
6

7 a. Defendants shall measure available phosphorus at the 0-1-foot
8 and 1-2-foot levels in its Application Fields in parallel with fall soil nitrogen testing.

9 b. Defendants shall maintain their Application Fields in the low-
10 risk category as measured using the current NRCS approved phosphorus index
11 procedures.

12 c. Defendants shall maintain phosphorus levels in its feed ration at
13 a level less than 0.4% phosphorus measured on a total ration dry matter basis.

14 d. Defendants shall continue physical manure solids separation for
15 enhanced solids recovery, as well as composting and exports to reduce on-Dairy
16 applications of manure and wastewater.
17

18 32. With respect to phosphorus, in addition to the requirements in
19 Paragraph 31 above, and beginning in the crop season that commences after
20 Defendants' Fall 2026 post-harvest sampling, Defendants shall restrict their manure
21 application in the manner described in the following Table 2:
22
23

1 **Table 2. Manure Application Restrictions for Phosphorus Control**

2

Fall Average Available P in Upper 2 feet (mg Olsen P/kg)	Total annual application based on P (Crop Year 2027+)
< 40 mg P/kg	Control for N
41-100 mg P/kg	90% of crop extraction
101-180 mg P/kg	80% of crop extraction
181-300 mg P/kg	25% of crop extraction
> 300 mg P/kg	No application

3
4
5
6
7

8 a. Defendants shall apply the requirements in Table 2 to each of
9 their Application Fields based on the average fall post-harvest measurements of
10 available phosphorus measured in the top 2 feet of the soil column in each
11 Application Field.

12 b. Defendants shall adhere to the requirements in Table 2 during the
13 crop year following the Fall compliance measurements or until resampling has
14 shown that the requirements in Table 2 are no longer required (e.g., an Application
15 Field measuring 45 ppm P in fall is retested in spring and measures 38 ppm P).

16 c. Based on the Fall available phosphorus measurements, the
17 requirements in Table 2 shall be implemented and followed for the duration of the
18 Consent Decree.
19

20 d. For purposes of Table 2, phosphorus extraction rate limitation
21 shall apply to the full crop year, unless follow-up soil available phosphorus
22 measurements fall into a lower category.
23

1 e. The annual limits on phosphorus application listed in Table 2 are
2 expressed as a function of the estimated annual phosphorus extraction rate of the
3 crops (extraction rate = tons crop/acre x P content/ton crop) grown on each field
4 during the crop year. The annual application amount will be based on the fall
5 available P levels and will be split in most cases into multiple applications, with the
6 total annual amount applied limited to the Table 2 values.
7

8 33. Defendants shall implement a soil moisture monitoring program at the
9 Application Fields in accordance with the following requirements:

10 a. For purposes of this paragraph, a “Soil Moisture Monitoring
11 Period” begins two weeks prior to Defendants’ first irrigation or manure application
12 event in each Application Field through at least two weeks after Defendants’ final
13 irrigation or manure application event in each field. During most years, the Soil
14 Moisture Monitoring Period will extend from mid-March through early November.
15

16 b. During the Soil Moisture Monitoring Periods in 2023, 2024 and
17 2025 (the “Three Year Test Period”), Defendants shall install and operate a set of
18 irrigation sensors to monitor soil moisture levels in eight (8) representative
19 Application Fields as illustrated in Exhibits 5a-c. For Application Fields that contain
20 soils with significantly different nitrate leaching potential or water holding capacity,
21 as indicated by the Natural Resources Conservation Service (“NRCS”), Defendants
22 shall deploy and operate soil moisture sensors in each of two representative soil
23

1 series. The locations of the soil moisture sensors are shown on the maps attached
2 hereto as Exhibit 6.

3 c. Defendants shall install sensors in each location at the following
4 three approximate depths (variable by +/- two inches): 0.5-foot, 1.5-feet and 2.5-
5 feet. If rocky or indurated soil properties in any location preclude effective
6 placement of the 2.5-foot sensor after three independent boring attempts, Defendants
7 shall not be required to install the 2.5-foot sensor in that location(s), but shall
8 document for each of those location(s) the total depth of soil to the point of boring
9 refusal.
10

11 d. To verify field capacity estimates, Defendants shall calibrate
12 sensors at the time of installation using a gravimetric sample approach where soil
13 water is measured on a weight basis. Soil bulk density measurements used in
14 calibration shall be confirmed for each sensor location at each depth. Calibration
15 shall be reported in the first Annual Report (described in Paragraph 33(h)) along
16 with Application Field capacity estimates for each monitoring location at each depth.
17

18 e. Defendants shall calibrate any replacement sensors in a similar
19 manner as in Paragraph 33(d), and these calibrations shall be reported in the Annual
20 Report (described in Paragraph 33(h)) for the year in which the sensors were
21 replaced. Defendants shall have at least two (2) replacement sensors available at the
22 Dairy in case of failure of installed sensors.
23

1 f. Defendants shall use best efforts to maintain the sensors in an
2 operational condition throughout the Soil Moisture Monitoring Period. Defendants
3 shall implement necessary maintenance, repairs or replacement of the sensors with
4 the goal of minimizing operational down-times to twenty-one (21) days for the two
5 shallowest depths and fifteen (15) days for the sensors at 2.5 feet.
6

7 g. During the Three-Year Test Period, Defendants shall use the soil
8 moisture sensors to validate and, if necessary, adjust its irrigation rates to meet crop
9 needs while minimizing exceedances of Application Field capacity in the 2.5-foot
10 soil level as follows:

11 i. Defendants shall obtain weekly irrigation needs estimates
12 from an agronomist using the Evapotranspiration method.
13

14 ii. Defendants shall irrigate their Application Fields
15 consistent with the recommended values unless soil moisture sensors indicate an
16 exceedance of field capacity at the 2.5-foot level.

17 iii. If soil sensors from the prior week indicate exceedances of
18 Application Field capacity at the 2.5-foot level, Defendants shall adjust the
19 recommendation for future irrigation rates downward from what would otherwise be
20 provided using the Evapotranspiration method, with the goal of decreasing and
21 maintaining soil moisture levels below field capacity at the 2.5 feet level. Defendants
22 shall track both the original and any adjusted recommendations on a weekly basis
23

1 throughout the Three-Year Test Period.

2 iv. For the first two fields with an irrigation-related
3 exceedance of Application Field capacity at the 2.5 feet level during the Three-Year
4 Test Period, Defendants’ Fall soil monitoring shall include a one-time sampling on
5 each such Application Field that shall extend to the 5-foot depth in that Application
6 Field (or to the depth of refusal). For each sample, Defendants shall analyze at 3
7 feet, 4 feet, and 5 feet for ammonia-N and nitrate-N and Olsen P. The resulting
8 sampling data shall be provided to Plaintiffs consistent with the Notice provisions.
9

10 h. No later than February 28 in the year after the end of each Soil
11 Moisture Monitoring Period during the Three-Year Test Period (i.e., for the 2023
12 Soil Moisture Monitoring Period, this date would fall on February 28, 2024),
13 Defendants shall provide Plaintiffs pursuant to the Notice provisions in Paragraph
14 62 with an Annual Report containing Defendants’ initial and adjusted weekly
15 recommendations and the monitoring data for each soil moisture sensor in tabular
16 format. Monitoring data provided for each sensor location shall consist of a complete
17 digital file (.xlsx, .xls, or .csv) and a graphical readout showing measured moisture
18 levels for the 0.5-foot, 1.5-foot and 2.5-foot sensors throughout each Soil Moisture
19 Monitoring Period, with notes summarizing any encountered sensor performance
20 issues, any completed repairs, and notes documenting the dates, amounts, and rates
21 (gallons/acre) of irrigation water and manure applications in the Application Field
22
23

1 where the sensor is located. Defendants shall also provide in the Annual Report
2 local daily precipitation data for the year using publicly available weather data from
3 the nearest reliable weather station.

4 i. If during the 2025 Soil Moisture Monitoring Period the moisture
5 sensor readings show a pattern of ongoing irrigation-related exceedances of field
6 capacity at the 2.5-foot depth (i.e., three or more exceedances, not counting
7 exceedances immediately following precipitation events), then Defendants shall
8 maintain moisture sensors in the Application Field where such sensor exceedances
9 were reported until no more than one (1) exceedance is recorded in that field during
10 the Soil Moisture Monitoring Period.
11

12 34. Beginning on the Effective Date, Defendants shall for the duration of
13 this Decree maintain application records of (a) any manure it hauls to and applies to
14 an Application Field; and (b) any manure it applies to Application Fields through
15 irrigation or blending. Such records shall include the Application Field ID; the
16 manure quantity (volume); characteristics (blended or straight); date of application;
17 and a link to the manure nutrient testing information. Defendants shall keep separate
18 application records in the event they conduct multiple applications on different days.
19

20 35. No later than January 31 of each year beginning in 2024 and for each
21 year for the duration of the Consent Decree, Defendants shall provide to Plaintiffs
22 PDF copies of manure management records for the prior crop year via electronic
23

1 mail (at the addresses listed in Paragraph 62). Records that Defendants shall provide
2 pursuant to this paragraph are listed in Exhibit 7.

3 36. Any manure management records routinely generated by Defendants in
4 compliance with its CAFO permit and similar regulatory requirements shall be kept
5 on-site at the Dairy for five (5) years from the date of generation. No more than once
6 per calendar year, Plaintiffs shall have the right to request access to conduct an on-
7 site review of the manure management records for which they have not been
8 provided copies pursuant to Paragraph 35.

9
10 37. Defendants shall use flow meters on all Application Fields to which
11 they apply lagoon water through irrigation or blending.
12

13 **UNDERGROUND CONVEYANCE INSPECTION**

14 38. No later than December 31, 2024, DBD shall inspect the wastewater
15 and manure lines being utilized between the sump, settling basins, milking parlors
16 and the lagoons at the Dairies as attached hereto as Exhibit 8. If the inspection shows
17 that repairs need to be made in any of those lines, Defendants shall make the
18 necessary repairs, which could include cutting and permanently capping such lines,
19 no later than December 31, 2024.
20

21 39. Inspection and any required repair work shall be performed by an
22 experienced and qualified contractor.
23

40. For gravity draining lines, the following equipment shall be used:

- Lines 6-inch or greater – jet and “crawler” camera
- Lines less than 6-inch – use a push camera.

41. Once inspection and any required repairs are completed, Defendants shall submit to Plaintiffs a written description of the activities Defendants undertook pursuant to Paras. 41-43, which shall include documentation of the lines inspected and the exact location(s) of any repair(s) made.

SILAGE AREA

42. DBD shall store all silage harvested in 2023 or after on asphalt or concrete pads at all times throughout the duration of the Consent Decree. DBD shall ensure that the silage pads are sloped to drain to a lined collection sump.

SITE DRAINAGE

43. DBD agrees to complete a Stormwater budget and Site Drainage Plan for SMD, the Nichols and Van Belle containment pens, and the Heifer Ranch facilities by no later than 6/30/24, and shall complete the site drainage improvements no later than 6/30/25, which shall include at least one lined lagoon at the heifer ranch to capture all site runoff.

44. DBD shall provide to Plaintiffs copies of the site improvement plans for each facility within fifteen (15) days of completion. Plaintiffs shall have forty-five (45) days to review and provide comments on the drainage plans. DBD shall incorporate Plaintiffs reasonable comments into the improvement plans. Any

1 disagreements shall be subject to the Paragraph 59 Dispute Resolution process.

2 **COMPOST AREAS**

3 45. Defendants shall compost manure only on the compost area (the
4 “Area”), attached hereto as Exhibit 9.

5
6 46. No later than December 31, 2023, DBD shall complete the following
7 elements:

- 8 a) Survey the Area topography to 1-foot vertical contours.
- 9 b) Design a grading plan to provide and maintain a two (2) percent
10 average slope for drainage over the Area with no negative slopes
11 measured on a 10-foot distance and route stormwater and other
12 liquids to specific collection locations such as ditches, swales,
13 and/or sumps. The Parties acknowledge and agree that
14 maintenance of windrows and normal operations may over time
15 impact the slope in isolated points. Defendants nevertheless
16 commit to the normal and customary maintenance of such area,
17 and to timely identify and eliminate, as weather and conditions
18 allow, any instances where the slope is lost and water is allowed
19 to pond.
- 20 c) Collect five (5) bulk samples of soil from random
21 locations within the Area for laboratory analysis. Samples will be
22
23

1 collected from the 0- to 12-inch depth interval below the final
2 grade surface based on the grading plan. Final grade, and samples,
3 shall be of native soils only.

4 d) Samples will be analyzed for: (1) particle size by ASTM D6913 –
5 *Standard Test Methods for Particle-Size Distribution (Gradation)*
6 *of Soils Using Sieve Analysis* and ASTM D 7928 – *Standard Test*
7 *Method for Particle-Size Distribution (Gradation) of Fine-*
8 *Grained Soils Using the Sedimentation (Hydrometer) Analysis*
9 and; (2) compaction characteristics (“Proctor”) by ASTM D1557
10 – *Standard Test Methods for Laboratory Compaction*
11 *Characteristics of Soil Using Modified Effort (56,000 ft-lbf/ft³*
12 *(2,700 kN-m/m³)).*

13 e) Following analysis, the five samples will be remolded and
14 compacted to 95 percent of standard Proctor; the remolded
15 samples will be analyzed for hydraulic conductivity by ASTM
16 D5084 – *Standard Test Methods for Measurement of Hydraulic*
17 *Conductivity of Saturated Porous Materials Using a Flexible Wall*
18 *Permeameter* to determine if the soils achieve a permeability of
19 less than 1×10^{-4} cm/s at 95 percent compaction.
20
21
22

23 47. Prior to December 31, 2024, the Area will be graded according to plan

1 and compacted to meet specifications.

2 48. During compaction, soils will be tested in-place by ASTM D6938 –
3 Standard Test Method for In-Place Density and Water Content of Soil and Soil-
4 Aggregate by Nuclear Methods (Shallow Depth) at a frequency of one (1) test per
5 25,000 sq. ft. of area to verify 95 percent compaction.
6

7 49. Verification of a two percent average grade will be based on completion
8 of post-grading survey at one-foot contour level.

9 50. Following grading, lined or asphalt concrete collection ditches or strip
10 drains, and lined or concrete collection sumps, will be installed at approximately the
11 locations depicted in Exhibit 10.
12

13 51. Once completed, DBD shall submit to Plaintiffs a written description
14 prepared by a Washington State licensed professional engineer of the activities DBD
15 undertook with respect to this work. The Licensed engineer shall certify and stamp
16 that the site meets slope and compaction requirements of this agreement.
17

18 **CLEAN DRINKING WATER PROJECT**

19 52. The purpose of the Clean Drinking Water Project (“CDWP”) payment
20 is to provide alternative clean drinking water to residents in the area near the Dairies.
21 All aspects of the program shall be managed by the CDWP; the Dairies’ only
22 obligation is to provide the agreed-upon funding. Should anyone contact the Dairies
23 regarding alternative water supplies they shall be redirected to the CDWP, who will

1 bear the sole responsibility for any such alternative supplies (except for properties
2 owned by the Dairies, in which case the Dairies shall be solely responsible).

3 53. Defendants shall make a one-time payment of \$25,000 to CDWP within thirty
4 (30) days of entry of this Decree.
5

6 **ATTORNEYS' AND EXPERT WITNESS FEES AND COSTS**

7 54. Plaintiffs shall be considered the prevailing party for purposes of settlement.
8 DBD shall wire Plaintiffs \$250,000 to the Law Offices of Charles M. Tebbutt, P.C.,
9 941 Lawrence St., Eugene, Oregon 97401, ATTN: Charles Tebbutt, within seven (7)
10 days of entry of this decree; provided Tebbutt has provided copies of billing records
11 sufficient to establish fees and expenses of at least that amount. Within sixty (60)
12 days of entry of this consent decree, at DBD's option, it may either pay Tebbutt the
13 remaining sum owed consistent with the billing records heretofore provided and
14 thereby resolve all costs and fees that could have been sought by Plaintiffs; or
15 alternatively, DBD may demand that Plaintiffs file a motion for an award of
16 attorneys' fees, expert witnesses' fees and costs incurred in this litigation. The Dairies
17 shall have the right to respond to Plaintiffs' submission in the ordinary course and as
18 per the Federal Rules of Civil Procedure and the Court's local rules. Any award of
19 fees and costs to the Plaintiffs shall be reduced by the \$350,000 in payments already
20 made by the Defendants with the balance due within thirty (30) days of the Court's
21 order.
22
23

55. DBD shall, in addition to payments made pursuant to Paragraph 54 above, pay Plaintiffs to monitor implementation of this Decree (“Monitoring Costs”) as indicated in the following Table 3:

Table 3. Monitoring Costs

Date	Amount DBD Shall Pay to Plaintiffs
Within seven (7) days of entry of this Decree, for the remainder of 2023	\$30,000
1/01/2024	\$40,000
1/01/2025	\$40,000
1/01/2026	\$30,000
1/1/2027	\$30,000
1/1/2028	\$15,000
By 1/1 each year thereafter if termination has not occurred	\$ 2,000

56. Such Monitoring Costs do not include work performed by Plaintiffs’ experts with regard to the Remediation Investigation and the oxygenation Pilot Project, or implementation thereof. Defendants shall fund \$300,000 in an escrow account for payment of Plaintiffs’ RI and oxygenation Pilot Project within ten (10) days of approval of the work by Department of Ecology. The escrow funds shall be paid to and managed by the Law Offices of Charles M. Tebbutt. Payments for services shall be made from the escrow account within thirty (30) days of receipt of invoices unless

1 Defendants object in writing to specific payment concerns. Any disputes shall be
2 resolved through the Dispute Resolution process set forth in Paragraph 59. By
3 January 15 of each year commencing in 2025, the Parties shall confer to determine
4 whether additional escrow payments, and the amount thereof, shall be deposited until
5 implementation of the Pilot Project decisions are complete. If the Parties cannot
6 agree, the matter shall be submitted to Dispute Resolution per Paragraph 59.

8 57. The Parties shall use best efforts to minimize Plaintiffs' Monitoring Costs.
9 For instance, the Parties shall maintain open communication with each other; DBD
10 shall provide required documentation in a timely manner to Plaintiffs; and Plaintiffs
11 shall attempt to bundle activities and associated site visits where possible.

13 **TERMINATION**

14 58. This Consent Decree and all obligations set forth herein shall terminate on
15 December 31, 2028, if all determinative wells meet the requirements, and except for
16 those obligations specifically noted herein to terminate at other times, including
17 obligations based on construction schedules defined herein. Termination may occur
18 earlier than 2027 if the determinative wells from all remediated areas show
19 groundwater at less than 10 mg/l for nitrate (including ammonia) and 1 mg/L nitrite.

21 **DISPUTE RESOLUTION**

22 59. In the event of any dispute regarding implementation, interpretation, or
23 compliance with this Consent Decree, the Parties shall first attempt to informally

1 resolve the dispute through meetings of the Parties. Any Party to this Consent Decree
2 may initiate the informal dispute resolution process by serving, through its counsel,
3 written notice of a request for a dispute resolution on the other Party's counsel. The
4 Parties will attempt to have the Court appoint an arbitrator to resolve disputes that
5 may arise as part of the implementation of this Consent Decree. Any costs of the
6 arbitrator shall be borne by Defendants. If an arbitrator is agreed upon, then the
7 Parties may each submit their respective positions to the arbitrator within thirty (30)
8 days of a writing by either side that the Parties were unable to reach a resolution
9 among themselves or as otherwise instructed by the arbitrator. If no arbitrator is
10 agreed upon, and resolution of a dispute is not reached within thirty (30) calendar
11 days of the date of that notice of a request for dispute resolution is served, then the
12 Parties may resolve the dispute by filing motions with the Court.
13
14

15 **EFFECTIVE DATE**

16 60. The effective date of this Consent Decree shall be the date upon which
17 the Court enters in the civil docket a copy of this Consent Decree signed by the Court.
18

19 **FINAL JUDGMENT**

20 61. Upon approval and entry of this Consent Decree by the Court, this
21 Consent Decree shall constitute a final, non-appealable judgment of the Court under
22 Rules 54 and 58 of the Federal Rules of Civil Procedure.
23

1 **NOTICES**

2 62. Whenever notice is required to be given or a document is required to be
3 sent by one party to another under the terms of this Consent Decree, it shall be
4 directed to the individuals at the addresses specified below, unless prior notice of a
5 change has been given to the other Party. Notice under this Consent Decree shall be
6 effective on the date of service through electronic mail.
7

8 For Plaintiffs: Charles M. Tebbutt, charlie@tebbuttlaw.com
9 Jon Frohnmayer, jon@tebbuttlaw.com
10 Daniel C. Snyder, dsnyder@publicjustice.net
11

12 For DBD: Jay Carroll, jcarroll@hnw.law
13 Scott Stephen, scott.stephen@agrimgt.com
14 John Glessner, jwglessner@aol.com
15 Drboffice@embarqmail.com
16 Drboffice2@embarqmail.com
17

18 Any Party may change either the notice recipient or the address for providing
19 notice to it by serving the other Parties with a notice setting forth such new notice
20 recipient or address.
21

22 ///

23 ///

1 **WE HEREBY CONSENT to the Entry of this Consent Decree.**

2

3 **Community Association for Restoration of the Environment, Inc.**

4

By: _____

5

Name: _____

6

7

8 **Friends of Toppenish Creek, Inc.**

9

By: _____

10

Name: _____

11

12

13 **Center for Food Safety, Inc.**

13

14

By: _____

15

Name: _____

16

Plaintiffs

17

18

19 **DBD Washington, LLC**

19

20

By: _____

21

Name: _____

22

23

1 **SMD, LLC**

2 By: _____

3 Name: _____

5
6 **AUSTIN JACK DECOSTER**

7 By: _____

9 **DECOSTER ENTERPRISES, INC.**

10 By: _____

11 Name: _____

15 IT IS SO ORDERED THIS _____ DAY OF _____, 2023.

18 _____
THOMAS O. RICE
United States District Judge

20 Respectfully submitted this _____ day of May, 2023.

21 /s/ Charles M. Tebbutt
22 Charles M. Tebbutt, WSBA #47255
Jon Frohnmayer, *pro hac vice*
23 Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence St.

1 Eugene, OR 97401
charlie@tebbuttlaw.com

2 jon@tebbuttlaw.com

3 Tel: (541) 344-3505

4 Fax: (541) 344-3516

5 /s/ Daniel C. Snyder

Daniel C. Snyder, *pro hac vice*

6 PUBLIC JUSTICE

1620 L Street NW, Suite 630

7 Washington, DC 20036

Tel: (202) 861-5251

8 dsnyder@publicjustice.net

9 /s/ Andrea K. Rodgers

10 Andrea K. Rodgers, WSBA #38683

Law Offices of Andrea K. Rodgers

11 3026 NW Esplanade

Seattle, WA 98117

12 andrearodgers42@gmail.com

13 Tel: (206) 696-2851

14 /s/ Toby J. Marshall

Toby J. Marshall, WSBA #32726

15 Blythe H. Chandler, WSBA #43387

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16 936 North 34th Street, Suite 300

17 Seattle, Washington 98103-8869

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18 bchandler@terrellmarshall.com

19 Tel: (206) 816-6603

20 *Counsel for Plaintiffs*

21 J. Jay Carroll, WSBA #17424

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1 Telephone: 509-248-6030

Facsimile: 509-453-6880

2 Email: jcarroll@hnw.law

3 /s/ Gary H. Baise

4 Gary H. Baise, *pro hac vice*

D.C. Bar ID 194878

5 2201 Great Falls Street

Falls Church, VA 22043-1626

6 202-320-6336

7 Email: vthedgerow@aol.com

8
9 *Counsel for Austin Jack DeCoster and DBD, et al.*

10

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