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The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROSEMERE NEIGHBORHOOD
ASSOCIATION, COLUMBIA
RIVERKEEPER, and NORTHWEST
ENVIRONMENTAL DEFENSE CENTER,

Plaintiffs,

v.

CLARK COUNTY, EILEEN QUIRING
O'BRIEN¹, in her capacity as Chair of the Clark
County Council, TEMPLE LENTZ, in her
capacity as Clark County Councilor, JULIE
OLSON, in her capacity as Clark County
Councilor, KAREN BOWERMAN, in her
capacity as Clark County Councilor, and GARY
MEDVIGY, in his capacity as Clark County
Councilor,

Defendants.

Case No. 3:11-cv-05213-RBL

JOINT NOTICE OF COMPLIANCE
WITH CONSENT DECREE

¹ Please note that pursuant to Fed. R. Civ. P. 25(d)(1), Chair of the Clark County Council Eileen Quiring O'Brien, and Clark County Councilors Temple Lentz, Julie Olson, Gary Medvigg, and Karen Bowerman are hereby substituted as defendants for Clark County Commissioners Tom Mielke, David Madore, and Steve Stuart. On January 1, 2015, the Clark County Home Rule Charter became effective ("Charter"). The Charter replaced the three-member Clark County Board of County Commissioners with a five-member legislative body, currently named the Clark County Council. Former Commissioners Mielke, Madore and Stuart no longer hold office as elected Clark County officials.

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I. INTRODUCTION

Pursuant to Section V of the Consent Decree, approved by Order of this Court on March 7, 2014 (“Consent Decree”), Plaintiffs Rosemere Neighborhood Association, Columbia Riverkeeper, and Northwest Environmental Defense Center, and Defendants Clark County, Eileen Quiring O’Brien in her capacity as Chair of the Clark County Council, Temple Lentz, in her capacity as Clark County Councilor, Julie Olson, in her capacity as Clark County Councilor, and Gary Medvigy, in his capacity as Clark County Councilor (Defendants collectively referred to as “Clark County”) jointly file this Notice of Compliance with the Consent Decree.

Section V of the Consent Decree states as follows:

“TERMINATION OF CONSENT DECREE AND DISMISSAL OF CLAIMS

The Court shall retain jurisdiction to effectuate compliance with this Consent Decree until the Parties file a joint notice of compliance with the terms of this Consent Decree. Pending the filing of such notice, this Court shall have jurisdiction to enforce the terms of this Consent Decree on motion from either party.”²

This Joint Notice is to inform the Court that Clark County has complied with the terms of the Consent Decree, and that the Consent Decree has consequently terminated. The Court no longer has jurisdiction to hear a motion from any party to enforce the Consent Decree.

II. CLARK COUNTY HAS FULFILLED ITS OBLIGATIONS PURSUANT TO THE CONSENT DECREE; TERMINATION OF CONSENT DECREE

Section II of the Consent Decree imposed upon Clark County certain obligations with which it has complied.

A. Payments. Section II.A of the Consent Decree required Clark County to pay the Lower Columbia Fish Recovery Board (“LCFRB”) a total of \$3,000,000, in six (6) annual

² Consent Decree at p. 5. A copy of the Consent Decree is attached hereto as **Exhibit A**.

1 payments of \$500,000, starting June 15, 2015, and by June 15th of each following year through
2 June 15, 2020.³ Those payments were each timely made. Exhibits 2-7 to Declaration of Andrea
3 Logue, attached hereto as **Exhibit B**.

4 Section II.A mandated that funding of these payments to the LCFRB come from an
5 increase in the Clean Water Fee assessed to Clark County property owners, or from the general
6 fund, or from some source of funds other than the base charge for each lot in the County (“Clean
7 Water Fee”).⁴ On July 8, 2014, the Clark County Board of County Commissioners adopted
8 Ordinance No. 2014-07-08, which imposed a new, temporary Clean Water Fee surcharge of
9 \$5.00 per lot beginning in 2015 for the purpose of establishing a fund to make the required
10 payments to the LCFRB. Clark County Ord. No. 2014-07-08, Exhibit 1 to the Declaration of
11 Mark Gassaway, attached hereto as **Exhibit D**. The \$5.00 surcharge payments collected by Clark
12 County raised a total of \$3,529,924.49 from 2015 through 2018. Exhibit D, Gassaway Decl.,
13 Ex.2. The amount raised by the fee increase was thus more than sufficient to fully fund the
14 \$3,000,000.00 in required payments to the LCFRB.
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17 In addition, Clark County was required to pay Earthjustice \$600,000.00 in litigation fees,
18 costs, and expenses within sixty (60) days of entry of the Consent Decree.⁵ That payment was
19 timely made. **Exhibit B**, Logue Decl., Ex. 1.

20 From 2015 through 2020, Clark County timely made every required payment to the
21 LCFRB, totaling \$3,000,000, in accordance with the terms of the Consent Decree. These
22 payments were all funded by “new money,” in the form of the surcharge established by
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25 ³ Consent Decree, Obligations of Defendant, Sec. II.A at pp. 3-4.

26 ⁴ Consent Decree, Obligations of Defendant, Sec. II.A at p.4.

⁵ Consent Decree, Obligations of Defendant, Sec. II.C at p. 4.

1 Ordinance 2014-07-08. In 2014, Clark County paid the litigation fees, expenses, and costs of the
2 plaintiffs. Clark County has thereby met the payment requirements of the Consent Decree.

3 **B. Permit Compliance.** The Consent Decree required Clark County to comply in all
4 respects with its Phase I municipal stormwater permit issued by the Washington State
5 Department of Ecology under the National Pollutant Discharge Elimination System of the federal
6 Clean Water Act (“NPDES”).⁶

7
8 Annually, Clark County reports to the Washington State Department of Ecology on
9 compliance with its stormwater permit, and those reports demonstrate the County’s compliance
10 with the terms of the permit. Declaration of Rod Swanson, attached hereto as **Exhibit C**. Since
11 entry of the Consent Decree, Clark County has complied in all respects with its applicable
12 NPDES Phase I stormwater permit, and this requirement is satisfied. *Id.* Neither the Plaintiffs nor
13 any other entity has alleged that Clark County has failed to comply with the stormwater permit in
14 any respect since the Consent Decree was issued.

15
16 **C. Grant Funded Activities.** Section II.A provided that Clark County’s
17 \$3,000,000.00 of payments to the LCFRB were for the purpose of funding grants by the LCFRB
18 “to pay for third party water quality enhancement and habitat improvement projects” within
19 certain watersheds in Clark County (“Clean Water Grants”).⁷ According to the Consent Decree,
20 Clark County was eligible to apply for Clean Water Grants, but grant funding from the LCFRB
21 was not available for any activity required by Clark County’s NPDES stormwater permit.⁸ The
22 Consent Decree also prohibited Clark County from holding out as compliance with the County’s
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25 ⁶ Consent Decree, Obligations of Defendant, Sec. II.B at p. 4.

26 ⁷ Consent Decree, Obligations of Defendant, Sec. II.A at pp. 3-4.

⁸ *Id.* at p.4.

1 NPDES permit any project funded with LCFRB Clean Water Grants.⁹

2 Clark County did apply for and received LCFRB Clean Water Grants, which are all
3 shown on Exhibit 8 to the Declaration of Andrea Logue, attached hereto as **Exhibit B**. The
4 activities funded by those grants were not required by the County's NPDES Permit. **Exhibit C**,
5 Swanson Decl., pp. 3-4, §§ 13-17. Furthermore, Clark County has not held out those LCFRB
6 grant-funded activities as compliance with the permit. *Id.*

7
8 **D. Other Annual Reporting.** Section IX of the Consent Decree¹⁰ required Clark
9 County to file with this Court an annual report describing its compliance with the terms of the
10 Consent Decree.

11 Although Clark County has inadvertently neglected to file these reports with the Court, it
12 has complied in all other respects with the Consent Decree. Further, Clark County has inarguably
13 filed Annual Reports with the Washington Department of Ecology demonstrating that it has
14 complied with its NPDES Phase I municipal stormwater permit, as required by Sec. II. B of the
15 Consent Decree.¹¹ These reports are publicly available. Clark County respectfully requests that
16 the Court deem the annual reports filed with the Department of Ecology, along with this notice,
17 as sufficient to demonstrate compliance with the reporting requirements of the Consent Decree.
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19 **III. CONCLUSION.**

20 The Parties agree and jointly notify the Court that Clark County has fully complied with
21 the Consent Decree. Therefore, the Parties agree that the Consent Decree has terminated in
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⁹ *Id.*

¹⁰ Consent Decree, Annual Reports, p. 6.

¹¹ Note 5, above.

1 accordance with Section V and no longer binds Clark County.

2 DATED this 20th day of September 2021.

3 EARTHJUSTICE

CLARK COUNTY

4
5 *s/ Jan Hasselman*

Janette K. Brimmer, WSBA #41271

6 Jan Hasselman, WSBA #29107

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Attorneys for Plaintiffs

10
11 *s/ Christine M. Cook*

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12 Senior Deputy Prosecuting Attorney

13 Clark County Prosecutor's Office, Civil Div.

14 PO Box 5000

15 Vancouver WA 98666-5000

16 Tele: (564) 397-2478

17 Email: christine.cook@clark.wa.gov

18 *Attorney for Defendants*

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October 2021, I electronically filed the foregoing **Joint Notice of Compliance with Consent Decree** along with the subjoined **Exhibit A – Consent Decree, Exhibit B - Declaration of Andrea Logue with Exhibits 1-8, Exhibit C - Declaration of Rod Swanson with Exhibits 1-7, and Exhibit D – Declaration of Mark Gassaway with Exhibits 1-2** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following registered CM/ECF users for this case:

Janette K. Brimmer, WSBA #41271
Jan Hasselman, WSBA #29107
705 Second Avenue, Suite 203
Seattle WA 98104-1711
Tele: (206) 343-7340
Emails: jbrimmer@earthjustice.org and jhasselman@earthjustice.org

And I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

None

s/ Pamela Hamilton
Pamela Hamilton, Paralegal

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