

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

BOBBY WOLFORD TRUCKING &  
SALVAGE, INC., and KARL FREDERICK  
KLOCK PACIFIC BISON, LLC,

Defendants,

and

THE TULALIP TRIBES OF  
WASHINGTON,

Intervenor.

No. 2:18-cv-00747-TSZ

**CONSENT DECREE**

WHEREAS, the Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed the Complaint herein against Defendants Bobby Wolford Trucking & Salvage, Inc., (“Wolford Trucking”) and Karl Frederick Klock Pacific Bison, LLC, (“KFKPB”) (collectively, “Defendants”), alleging that Defendants violated Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a);

1 WHEREAS, the Complaint alleges that Defendants violated CWA Section 301(a) by  
2 discharging dredged or fill material and/or controlling and directing the discharge of dredged or  
3 fill material into waters of the United States at a site located in Snohomish County, Washington,  
4 (the “Site”) and more fully described in the Complaint, without authorization by the United  
5 States Department of the Army (“the Corps”);

6 WHEREAS, the Complaint seeks (1) to enjoin the discharge of pollutants into waters of  
7 the United States in violation of CWA Section 301(a), 33 U.S.C. § 1311(a); (2) to require  
8 Defendants, at their own expense and at the direction of EPA, to restore and/or mitigate the  
9 damages caused by their unlawful activities; and (3) to require Defendants to pay civil penalties  
10 as provided in 33 U.S.C. § 1319(d);

11 WHEREAS, the Tulalip Tribes of Washington (“Tulalip Tribes”), which has no liability  
12 for the alleged violations of the CWA in the Complaint filed herein, has been joined as a party in  
13 this matter for the purpose of facilitating the restoration and preservation of the Site by accepting  
14 transfer of property subject to the conditions herein and conducting restoration actions on that  
15 property as described herein;

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

18 WHEREAS, the United States, Defendants, and the Tulalip Tribes agree that settlement  
19 of this case is in the public interest and that entry of this Consent Decree is the most appropriate  
20 means of resolving the United States’ claims under the CWA against Defendants in this case;  
21 and

22 WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement  
23 of the United States’ claims against Defendants in this case, and that this Consent Decree  
24 adequately protects the public interest in accordance with the CWA and all other applicable  
25 federal law.

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

4                                   **I. JURISDICTION AND VENUE**

5           1.       This Court has jurisdiction over the subject matter of these actions and over the  
6 parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and CWA Section 309(b), 33 U.S.C.  
7 § 1319(b).

8           2.       Venue is proper in the Western District of Washington pursuant to CWA Section  
9 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c), because Defendants conduct  
10 business in this District, the subject property is located in this District, and the causes of action  
11 alleged herein arose in this District.

12           3.       The Complaint states claims upon which relief can be granted pursuant to CWA  
13 Sections 301, 309, and 404, 33 U.S.C. §§ 1311, 1319, and 1344.

14                                   **II. APPLICABILITY**

15           4.       The obligations of this Consent Decree shall apply to and be binding upon  
16 Defendants and Tulalip Tribes, their officers, directors, agents, employees and servants, and their  
17 successors and assigns and any person, firm, association, or corporation who is, or will be, acting  
18 in concert or participation with any of the Defendants or the Tulalip Tribes whether or not such  
19 person has notice of this Consent Decree. In any action to enforce this Consent Decree against a  
20 Defendant and/or the Tulalip Tribes, neither the Defendant nor the Tulalip Tribes shall raise as a  
21 defense the failure of any of its officers, directors, agents, employees, successors or assigns or  
22 any person, firm, or corporation acting in concert or participation with a Defendant and/or the  
23 Tulalip Tribes, to take any actions necessary to comply with the provisions hereof.

**III. SCOPE OF CONSENT DECREE**

5. This Consent Decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties alleged in the Complaint against Defendants and their officers, directors, shareholders, members, employees, and agents under CWA Section 301 concerning the Site.

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

7. Defendants' and the Tulalip Tribes' obligations under this Consent Decree are independent and set forth as to each Defendant and the Tulalip Tribes below.

8. Except as in accordance with this Consent Decree, Defendants, and Defendants' agents, successors, and assigns are enjoined from discharging any pollutant on or from the Site into waters of the United States, unless such discharge complies with the provisions of the CWA and its implementing regulations.

9. The parties acknowledge that Nationwide Permit 32, found at 82 Fed. Reg. 1,860 (Jan. 6, 2017), authorizes any fill that was placed as of the date of entry of this Consent Decree in the areas identified in Appendix A appended hereto, to remain in place, subject to the conditions provided in the Nationwide Permit and this Consent Decree. The parties further acknowledge that Nationwide Permit 32 authorizes the discharge of dredged or fill material insofar as such discharge is necessary to complete the work required to be performed pursuant to this Consent Decree. Any such discharge of dredged or fill material necessary for work required by this Consent Decree shall be subject to the conditions of the Nationwide Permit and this Consent

Decree. No later than thirty (30) days after entry of this Consent Decree, Wolford Trucking shall apply to the Corps for authorization under Nationwide Permit 32, and will timely respond to all requests for information by the Corps.

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

11. This Consent Decree in no way affects or relieves Defendants or the Tulalip Tribes of their responsibility to comply with any applicable federal, state, or local law, regulation, or permit.

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

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

14. With the exception of Paragraphs 1 and 2, nothing in this Consent Decree shall constitute an admission of fact or law by any party.

#### **IV. SPECIFIC PROVISIONS**

##### **Environmental Covenant**

15. KFKPB shall, within thirty (30) days of completion of the survey and lot line adjustment pursuant to Paragraph 19 of this Consent Decree, execute an Environmental Covenant in the form of Appendix B attached hereto and incorporated by reference, and shall

1 submit the Environmental Covenant to the Snohomish County Auditor for recording in the real  
2 property records of Snohomish County.

3 16. KFKPB shall comply with the terms and conditions of the Environmental  
4 Covenant as a requirement of this Consent Decree.

5 **Transfer of Property**

6 17. KFKPB shall transfer by quit claim deed the following real property (collectively  
7 “the Property”), free of any leasehold interest, together with any and all structures,  
8 improvements, and fixtures thereon to the Tulalip Tribes following the determination by the  
9 Tulalip Tribes that title is acceptable and that there are no hazardous substances on the property  
10 requiring removal or remediation:

- 11 A. All of Snohomish County Tax Parcel No. 27071000100100 consisting  
12 of 34.22 acres.
- 13 B. All of Snohomish County Tax Parcel No. 27071000100300 consisting  
14 of 2.4 acres.
- 15 C. All of Snohomish County Tax Parcel No. 27071000100200 consisting  
16 of 37.6 acres.
- 17 D. That portion of Snohomish County Tax Parcel No. 27071000200100  
18 east of line starting approximately 500 feet East from the Northwest  
19 corner of the parcel running south to a point approximately 500 feet  
20 East from the Southwest corner of the parcel consisting of 39.46 acres  
21 less that portion of the parcel west of said line.
- 22 E. That portion of Snohomish County Tax Parcel No. 27070300300500  
23 east of line starting approximately 800 feet East from the Northwest  
24 corner of the parcel running south to a point approximately 500 feet  
25 East from the Southwest corner of the parcel consisting of 84 acres  
less that portion of the parcel west of said line.
- 26 F. That portion of Snohomish County Tax Parcel No. 27070300300300  
east of line starting approximately 800 feet East from the Southwest  
corner of the parcel running North south to a point intersecting the  
North boundary of the parcel consisting of 26.75 acres less that portion  
of the parcel west of said line.

18. KFKPB shall within a reasonable time after entry of this Consent Decree, and at  
its own cost and expense, contract to have a survey performed to delineate the western boundary

1 of the parcels described in Paragraph 17 subparagraphs D, E, and F as illustrated in Appendix A  
2 to be transferred and to prepare a property description of the property to be transferred.

3 19. KFKPB shall within thirty (30) days of receiving a survey report and property  
4 description apply to Snohomish County to segregate and otherwise establish new tax parcels for  
5 the portions of Tax Parcel Nos 27070300300300, 27070300300500, and 27071000200100 that  
6 will be transferred to the Tulalip Tribes.

7 20. KFKPB reserves its water right under Certificate No. 6 Page 2999 dated March  
8 24, 1948 (Certificate S1-\*06508CWRIS) which currently includes a portion of the real property  
9 to be transferred as an authorized place of use. Historic beneficial use of the water right has not  
10 occurred on the property to be transferred.

11 21. The Tulalip Tribes agrees that the transfer of property shall exclude and except  
12 any interest or right in the water right under Certificate No. 6 Page 2999 dated March 24, 1948  
13 (Certificate S1-\*06508CWRIS), which has never been exercised or applied for the beneficial use  
14 of water on the property described in Paragraph 17.

15 22. Under this Consent Decree, the Tulalip Tribes and its representatives (including  
16 environmental consultants, architects, and engineers) have been or will be afforded the right and  
17 opportunity to enter upon the property and to make inspections of the property that the Tulalip  
18 Tribes determines are necessary or desirable after consultation and agreement with KFKPB,  
19 which agreement shall not be unreasonably withheld, including the conduct of soil, water,  
20 environmental, and engineering tests. The Tulalip Tribes represents that it is knowledgeable in  
21 real estate matters and that, upon completion of the inspections contemplated or permitted by this  
22 Consent Decree, the Tulalip Tribes will have made all of the investigations and inspections the  
23 Tulalip Tribes determines are necessary in connection with its acceptance of the Property.  
24 KFKPB shall pay all real property taxes on the property up to the date of conveyance to the  
25 Tulalip Tribes. Any outstanding taxes will be prorated on an annual basis.

23. The Tulalip Tribes acknowledges that notwithstanding any prior or  
contemporaneous oral or written representations, statements, documents, or understandings, this

1 Consent Decree constitutes the entire understanding of the parties with respect to the subject  
2 matter hereof and supersedes any prior or contemporaneous oral or written representations,  
3 statements, documents, or understandings.

4 24. The Tulalip Tribes agrees that it is acquiring the Property to be transferred in  
5 wholly an "AS-IS" condition, at no cost to the Tulalip Tribes beyond the obligations undertaken  
6 in this Consent Decree and subject to the conditions in paragraph 26 below.

7 25. The parties agree that the Property shall be transferred in the form of a quit claim  
8 deed attached hereto as Appendix D subject to determination of the property description  
9 determined from the survey and lot segregation application described above.

10 26. KFKPB shall place the quit claim deed in escrow within thirty (30) days of  
11 receiving a property description and obtaining a lot line adjustment from Snohomish County.  
12 The escrow will be subject to instruction that the quit claim deed shall be recorded upon the  
13 Tulalip Tribes' written approval of title and acceptance of the deed, and a determination by the  
14 Tulalip Tribes that it has identified no hazardous substances on the Property requiring removal or  
15 remediation or that the Tribe has decided to accept ownership despite the presence of hazardous  
16 substances. KFKPB shall provide the United States with written notice of closing, at the  
17 addresses specified in Section IX of this Consent Decree. If the Tulalip Tribes determines that  
18 title is objectionable and title objections are not cleared, or that hazardous substances may be  
19 present on the Property, the Tulalip Tribes, in its sole discretion, may accept or reject ownership  
20 of the property. If the Tulalip Tribes has not accepted ownership of the Property within sixty  
21 (60) days from and after the date Wolford Trucking has completed its Restoration Obligations  
22 under Paragraph 29 of this Consent Decree and EPA has approved all Wolford Trucking  
23 Completion Reports pursuant to Paragraph 32, the escrow shall be terminated and the quit claim  
24 deed to the Tulalip Tribe shall be null and void.

25 27. The Tulalip Tribes agrees that it is acquiring title to the Property subject to the  
Environmental Covenant.



1           28.     The Tulalip Tribes shall comply with the terms and conditions of the  
2 Environmental Covenant as a requirement of this Consent Decree.

3                                   **Restoration and Rehabilitation**

4           29.     Wolford Trucking shall fully perform the restoration projects identified as  
5 Wolford Trucking's Restoration Obligations as set forth in Appendix C, appended hereto and  
6 incorporated herein by reference. For purposes of the identification requirement of Section  
7 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of  
8 restoration projects pursuant to this Paragraph is restitution or required to come into compliance  
9 with law.

10          30.     The Tulalip Tribes shall oversee Wolford Trucking's restoration projects as set  
11 forth in Appendix C. The Tulalip Tribes shall fully perform the restoration projects identified as  
12 Tulalip Tribes' Restoration Obligations as set forth in Appendix C, appended hereto and  
13 incorporated herein by reference, subject to the conditions in paragraph 26. Under no  
14 circumstance shall the Tulalip Tribes be responsible for completing Wolford Trucking's  
15 obligations under this Consent Decree or the costs associated therewith, either before or after  
16 transfer of the property.

17          31.     KFKPB shall allow Wolford Trucking and the Tulalip Tribes limited access to the  
18 Property for the sole and exclusive purpose of implementing restoration work set forth in  
19 Appendix C and performing any other activities undertaken to comply with federal, state, or  
20 county law. The Tulalip Tribes agrees that it shall not access the Property for any other purpose  
21 including access to conduct environmental site assessments in accordance with paragraph 22 of  
22 this Consent Decree without prior notice to and consent by KFKPB. Access for Tulalip Tribes  
23 consultants to conduct environmental site assessments in accordance with paragraph 22 of this  
24 Consent Decree shall not be unreasonably withheld. The Tulalip Tribes agrees that it assumes all  
25 risk of injury or damage resulting from access to the property and waives and releases KFKPB

1 from any and all claims that result from its access to the Property. Wolford Trucking shall  
2 provide proof of insurance within minimum coverage of \$1 million per instance and \$3 million  
3 for total coverage naming KFKPB as an additional insured for any damages, claims or injuries  
4 resulting from site investigation and implementing restoration work. Wolford Trucking assumes  
5 all risk of damages and liability incurred during access to the property for the purposes of  
6 implementing the restoration work set forth in Appendix C and further agree to waive,  
7 indemnify, and defend KFKPB from any and all claims against KFKB related to the restoration  
8 work. The scope of Wolford Trucking's defense and indemnity obligations to KFKPB shall be  
9 limited to the insurance coverage required under this paragraph.

10 32. Within thirty (30) days of completing the restoration activities described in Appendix  
11 C, Wolford Trucking and the Tulalip Tribes shall each provide EPA with a separate Completion  
12 Report, which shall include photographs of the Site conditions before and after implementation  
13 of Wolford Trucking and the Tulalip Tribes' respective restoration activities described in  
14 Appendix C. EPA will review and, if appropriate, approve each Completion Report. If EPA  
15 determines that Wolford Trucking and/or the Tulalip Tribes have not fully satisfied the  
16 requirements of the restoration activities described in Appendix C, EPA will provide Wolford  
17 Trucking and/or the Tulalip Tribes with a written description of the actions necessary to fully  
18 satisfy the requirements of Appendix C. EPA's approval of each Completion Report or written  
19 description of the actions necessary to fully satisfy the requirements of Appendix C will be  
20 provided to Wolford Trucking and the Tulalip Tribes within a reasonable time, not to exceed  
21 thirty (30) days from receipt of Wolford Trucking and the Tulalip Tribes' submission.

23 33. To ensure that all parcels of land identified in Paragraph 17 remain undisturbed,  
24 KFKPB shall, within thirty (30) days of receiving a property description and obtaining a lot line  
25 adjustment from Snohomish County, record a certified copy of this Consent Decree with the

Auditor's Office, in Snohomish County, Washington. Thereafter, each deed, title, or other instrument conveying an interest in any property identified in Paragraph 17 shall contain a notice stating that the property is subject to this Consent Decree, and to the Environmental Covenant, and shall reference the recorded location of the Consent Decree and Environmental Covenant and any restrictions applicable to the property under this Consent Decree.

### **Civil Penalties**

34. Wolford Trucking shall pay a civil penalty to the United States in the amount of three hundred thousand dollars (\$300,000.00), within thirty (30) days of entry of this Consent Decree.

35. Wolford Trucking shall make the above-referenced payments by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with instructions provided to Wolford Trucking by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Western District of Washington after entry of this Consent Decree. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Wolford Trucking shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Connie Sue M. Martin  
Schwabe Williamson & Wyatt  
U.S. Bank Centre  
1420 Fifth Avenue, Suite 3400  
Seattle, Washington 98101

on behalf of Wolford Trucking. Any payments received by the U.S. Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

36. Upon payment of the civil penalty required by this Consent Decree, Wolford Trucking shall provide written notice, at the addresses specified in Section IX of this Consent Decree, that such payment was made in accordance with Paragraphs 34 and 35.

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

## V. NOTICES AND OTHER SUBMISSIONS

38. Within thirty (30) days after the deadline for completing any task set forth in Appendix C of this Consent Decree, Wolford Trucking shall provide the United States with written notice, at the addresses specified in Section IX of this Consent Decree, of whether or not that task has been completed.

39. If the required task has been completed, the notice shall specify the date when it was completed. If the task was not or has not been completed within the scheduled time for such completion required by the Consent Decree, the notice shall explain the reasons for any delay in completion and state the anticipated date of completion.

40. In all notices, documents or reports submitted to the United States pursuant to this Consent Decree, the submitting party shall, by signature of a senior management official, certify such notices, documents and reports as follows:

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

**VI. RETENTION OF RECORDS AND RIGHT OF ENTRY**

41. Until ten (10) years after entry of this Consent Decree, Wolford Trucking and the Tulalip Tribes shall preserve and retain all records and documents now in their possession or control or which come into their possession or control that relate in any manner to the performance of the tasks in Appendix C regardless of any corporate retention policy to the contrary. Until ten (10) years after entry of this Consent Decree, Wolford Trucking and the Tulalip Tribes shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in Appendix C.

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

43. A. Until termination of this Consent Decree, the United States and its authorized representatives and contractors shall have authority at all reasonable times to enter the Property described in Paragraph 17 to:

- 1 1) Monitor the activities required by this Consent Decree;
- 2 2) Verify any data or information submitted to the United States;
- 3 3) Obtain samples;
- 4 4) Inspect and evaluate Wolford Trucking's and the Tulalip Tribes'
- 5 restoration and/or mitigation activities; and
- 6 5) Inspect and review any records required to be kept under the terms and
- 7 conditions of this Consent Decree and the CWA.

8 B. This provision of this Consent Decree is in addition to, and in no way limits or  
9 otherwise affects, the statutory authorities of the United States to conduct inspections, to require  
10 monitoring and to obtain information from Defendants and the Tulalip Tribes as authorized by  
11 law.

## 12 VI. DISPUTE RESOLUTION

13 44. Any dispute that arises with respect to the meaning or requirements of this  
14 Consent Decree shall be, in the first instance, the subject of informal negotiations between the  
15 United States, Defendants, and/or the Tulalip Tribes affected by the dispute to attempt to resolve  
16 such dispute. The period for informal negotiations shall not extend beyond thirty (30) days  
17 beginning with written notice by one party to the other affected party or parties that a dispute  
18 exists, unless agreed to in writing by those parties. If a dispute between the United States and  
19 Defendants cannot be resolved by informal negotiations, then the position advanced by the  
20 United States shall be considered binding unless, within fourteen (14) days after the end of the  
21 informal negotiations period, Defendants file a motion with the Court seeking resolution of the  
22 dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution.  
23 The United States shall have thirty (30) days to respond to the motion and propose an alternate  
24 resolution. In resolving any such dispute, Defendants shall bear the burden of proving by a  
25 preponderance of the evidence that the United States' position is not in accordance with the

1 objectives of this Consent Decree and the CWA, and that Defendants' position will achieve  
2 compliance with the terms and conditions of this Consent Decree and the CWA.

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

11 46. The filing of a motion asking the Court to resolve a dispute shall not extend or  
12 postpone any obligation of Defendants under this Consent Decree, except as provided in  
13 Paragraph 55 below regarding payment of stipulated penalties.

14 47. Any dispute with the Tulalip Tribes shall be subject to the 30-day informal  
15 dispute resolution process as set forth above. If the dispute is not resolved through informal  
16 negotiations, either party may file a motion requesting that the Court resolve the dispute.

## 17 **VII. FORCE MAJEURE**

18 48. Defendants and the Tulalip Tribes shall perform the actions required under this  
19 Consent Decree within the time limits set forth or approved herein, unless the performance is  
20 prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure  
21 event is defined as any event arising from causes beyond the control of Defendants, including  
22 their employees, agents, consultants and contractors, which could not be overcome by due  
23 diligence and which delays or prevents the performance of an action required by this Consent  
24 Decree within the specified time period. A Force Majeure event does not include, *inter alia*,  
25 increased costs of performance, changed economic circumstances, changed labor relations,

normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state or local permits.

49. If Defendants and/or the Tulalip Tribes believe that a Force Majeure event has affected Defendants' and/or the Tulalip Tribes' ability to perform any action required under this Consent Decree, Defendants and/or the Tulalip Tribes shall notify the United States in writing within seven (7) calendar days after the event at the addresses listed in Section IX. Such notice shall include a discussion of the following:

- A. what action has been affected;
- B. the specific cause(s) of the delay;
- C. the length or estimated duration of the delay; and
- D. any measures taken or planned by Defendants and/or the Tulalip Tribes to prevent or minimize the delay and a schedule for the implementation of such measures.

Defendants and/or the Tulalip Tribes may also provide to the United States any additional information that they deem appropriate to support their conclusion that a Force Majeure event has affected their ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

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



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

52. Defendants and/or the Tulalip Tribes shall bear the burden of proving (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of Defendants and/or the Tulalip Tribes and any entity controlled by Defendants and/or the Tulalip Tribes, including their contractors and consultants; (2) that Defendants and/or the Tulalip Tribes or any entity controlled by Defendants and/or the Tulalip Tribes could not have foreseen and prevented such noncompliance; and (3) the number of days of noncompliance that were caused by such circumstances.

#### VIII. STIPULATED PENALTIES

53. After entry of this Consent Decree, if a Defendant fails to timely fulfill any requirement applicable to that Defendant under the Consent Decree (including Appendix C), the nonperforming Defendant shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

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

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued. Tulalip Tribes shall not be subject to stipulated penalties.

1           54. Any disputes concerning the amount of stipulated penalties, or the underlying  
2 violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant  
3 to the Dispute Resolution provisions in Section VI and/or the Force Majeure provisions in  
4 Section VII shall be resolved upon motion to this Court as provided in Paragraphs 44 and 45.

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

11           56. To the extent that a Defendant demonstrates to the Court that a delay or other  
12 non-compliance was due to a Force Majeure event (as defined in Paragraph 48 above) or  
13 otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that  
14 delay or non-compliance.

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

19           58. A Defendant liable for stipulated penalties shall make any payment of a stipulated  
20 penalty by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department  
21 of Justice account in accordance with instructions provided to Defendants by the Financial  
22 Litigation Unit of the United States Attorney's Office for the Western District of Washington.  
23 The payment instructions provided by the FLU will include a Consolidated Debt Collection  
24 System ("CDCS") number, which Defendants shall use to identify all payments required to be  
25

made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Connie Sue M. Martin  
Schwabe Williamson & Wyatt  
U.S. Bank Centre  
1420 Fifth Avenue, Suite 3400  
Seattle, Washington 98101

and

James A. Tupper, Jr.  
Tupper Mack Wells, PLLC  
2025 First Avenue, Suite 1100  
Seattle, Washington 98121

on behalf of Defendants. Any payments received by the U.S. Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, upon payment of any stipulated penalties, the Defendant making payment shall provide written notice, at the addresses specified in Section IX of this Decree.

#### **IX. ADDRESSES**

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

A. TO EPA:

Patrick Johnson  
U.S. EPA, Region 10  
Office of Regional Counsel  
1200 Sixth Ave, Suite 155  
Mail Stop 11-C07  
Seattle, Washington 98101  
[johnson.patrick@epa.gov](mailto:johnson.patrick@epa.gov)

Krista Rave-Perkins  
U.S. EPA, Region 10  
Enforcement and Compliance Assurance Division  
1200 Sixth Avenue, Suite 155  
Mail Stop 20-C04  
Seattle, Washington 98101

[rave-perkins.krista@epa.gov](mailto:rave-perkins.krista@epa.gov)

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE

Section Chief  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044

C. TO DEFENDANT KARL FREDERICK KLOCK PACIFIC BISON LLC:

James A. Tupper, Jr.  
Tupper Mack Wells, PLLC  
2025 First Avenue, Suite 1100  
Seattle, Washington 98121

D. TO DEFENDANT BOBBY WOLFORD TRUCKING AND SALVAGE, INC.:

Connie Sue Martin  
Schwabe, Williamson & Wyatt  
1420 Fifth Avenue, Suite 3400  
Seattle, Washington 98101

E. TO THE TULALIP TRIBES:

Tulalip Office of Reservation Attorney  
Attn: Tim Brewer  
6406 Marine Drive  
Tulalip, Washington 98271

Brett Shattuck  
Tulalip Natural Resources Department  
6406 Marine Drive  
Tulalip, Washington 98271

**X. COSTS OF SUIT**

60. Each party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should a Defendant subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, that Defendant shall be liable for any costs or

1 attorneys' fees incurred by the United States in any action against Defendant for noncompliance  
2 with or enforcement of this Consent Decree.

3 **XI. PUBLIC COMMENT**

4 61. The parties acknowledge that after the lodging and before the entry of this  
5 Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R.  
6 § 50.7, which provides for public notice and comment. The United States reserves the right to  
7 withhold or withdraw its consent to the entry of this Consent Decree if the comments received  
8 disclose facts which lead the United States to conclude that the proposed judgment is  
9 inappropriate, improper, or inadequate. Defendants and the Tulalip Tribes agree not to withdraw  
10 from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United  
11 States has notified Defendants and the Tulalip Tribes in writing that it no longer supports entry  
12 of the Consent Decree.

13 **XII. CONTINUING JURISDICTION OF THE COURT**

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

19 **XIII. MODIFICATION**

20 63. Upon its entry by the Court, this Consent Decree shall have the force and effect of  
21 a final judgment. Any modification of this Consent Decree shall be in writing and shall not take  
22 effect unless signed by the United States, Defendants, and the Tulalip Tribes and approved by  
23 the Court.

24 **XIV. TERMINATION**

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

1           A. Defendants, the Tulalip Tribes, and the United States may at any time make  
2 a joint motion to the Court for termination of this Consent Decree or any portion of it; or

3           B. Defendants may make a unilateral motion to the Court seeking to terminate  
4 that Defendant's obligations under this Consent Decree after each of the following has occurred:

5                 1. As to each Defendant, when that Defendant has obtained and  
6 maintained compliance with all provisions of this Consent Decree applicable to  
7 the Defendant and the CWA for twelve (12) consecutive months;

8                 2. As to each Defendant, when that Defendant has paid all penalties  
9 and other monetary obligations hereunder and no penalties or other monetary  
10 obligations are outstanding or owed to the United States;

11                3. As to each Defendant, the Defendant has certified compliance  
12 pursuant to subparagraphs 1 and 2 above to the Court and all Parties; and

13                4. EPA, within forty-five (45) days of receiving such certification from  
14 a Defendant or Defendants, has not contested in writing that such compliance has  
15 been achieved. If EPA disputes a Defendant's full compliance, this Consent  
16 Decree shall remain in effect pending resolution of the dispute by the Parties or  
17 the Court, pursuant to section VI.

18           C. The Tulalip Tribes may make a unilateral motion to the Court seeking to  
19 terminate the Tulalip Tribes' obligations under this Consent Decree after:

20                 1. The Tulalip Tribes has certified either its compliance with its  
21 obligations under this Consent Decree or its inability to comply with such  
22 obligations due to any Defendant's failure to comply with this Consent Decree;  
23 and

24                 2. EPA, within forty-five (45) days of receiving such certification from  
25 the Tulalip Tribes, has not contested in writing that such compliance has been or

1 cannot be achieved. If EPA disputes the Tulalip Tribes' certification, this  
2 Consent Decree shall remain in effect pending resolution of the dispute by the  
3 Parties or the Court, pursuant to section VI.

4 IT IS SO ORDERED.

5 Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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8 \_\_\_\_\_  
9 THE HONORABLE THOMAS S. ZILLY  
10 United States District Court Judge  
11 Western District of Washington  
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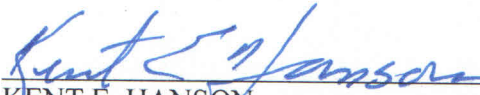
1 The undersigned consents to the entry of this Consent Decree in *United States v. Bobby*  
2 *Wolford Trucking & Salvage, Inc., et al.*, subject to the public notice requirements of 28 C.F.R.  
3 § 50.7:  
4

5 FOR THE UNITED STATES OF AMERICA:

6 United States Department of Justice  
7 Environment and Natural Resources Division

8  
9 DATE

10/19/2020

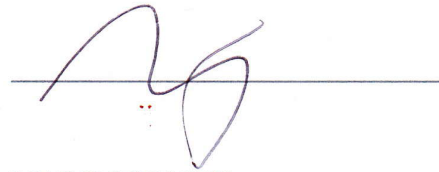
11   
12 KENT E. HANSON  
13 Environmental Defense Section  
14 Environment and Natural Resources Division  
15 United States Department of Justice  
16 P.O. Box 7611  
17 Washington, D.C. 20026  
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1 The undersigned consents to the entry of this Consent Decree in *United States v. Bobby*  
2 *Wolford Trucking & Salvage, Inc., et al.*, subject to the public notice requirements of 28 C.F.R.  
3 § 50.7:  
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5 FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:  
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7  
8 Date: 10-13-2020

A handwritten signature in blue ink, appearing to read 'MP', is written over a horizontal line.

9  
10 MARK POLLINS

11 Division Director

12 Water Enforcement Division

13 Office of Civil Enforcement

14 Office of Enforcement and Compliance Assurance

15 U.S. Environmental Protection Agency  
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2 *Wolford Trucking & Salvage, Inc., et al.*, subject to the public notice requirements of 28 C.F.R.

3 § 50.7:

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11 October 14, 2020

12 DATE

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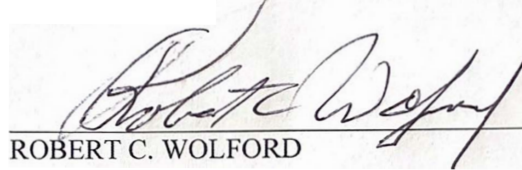
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FOR BOBBY WOLFORD TRUCKING &  
SALVAGE, INC.:



ROBERT C. WOLFORD

Governor

Bobby Wolford Trucking & Salvage, Inc.



CONNIE SUE M. MARTIN

Schwabe Williamson & Wyatt


U.S. Bank Centre


1420 Fifth Avenue, Suite 3400

Seattle, Washington 98101

1           The undersigned consents to the entry of this Consent Decree in *United States v. Bobby*  
2 *Wolford Trucking & Salvage, Inc., et al.*, subject to the public notice requirements of 28 C.F.R.  
3 § 50.7:

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8           10/18/2020  
9           DATE  
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12           FOR KARL FREDERICK KLOCK PACIFIC  
13           BISON, LLC:  
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DEREK KLOCK  
Managing Member  
Karl Frederick Klock Pacific Bison, LLC

  
JAMES A. TUPPER, JR.  
Tupper Mack Wells, PLLC  
2025 First Avenue, Suite 1100  
Seattle, Washington 98121

1  
2 The undersigned consents to the entry of this Consent Decree in *United States v. Bobby*  
3 *Wolford Trucking & Salvage, Inc., et al.*, subject to the public notice requirements of 28 C.F.R.  
4 § 50.7:

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8 10/14/2020

9 DATE

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13 10.14.20

14 DATE

FOR THE TULALIP TRIBES OF  
WASHINGTON:

DocuSigned by:

Teri Gobin

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TERI GOBIN

Tulalip Tribes Chairwoman  
6406 Marine Drive  
Tulalip, Washington 98271

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TIM BREWER

Tulalip Tribes Reservation Attorney  
6406 Marine Drive  
Tulalip, Washington 98271