

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ACQUEST TRANSIT LLC, ACQUEST
DEVELOPMENT LLC, AND WILLIAM L.
HUNTRESS,

Defendants.

No. 09-cv-55 (WMS) (and
consolidated case 12-cv-1146)

NOTICE OF LODGING PROPOSED CONSENT DECREE

The United States hereby notifies the Court that it is lodging a proposed consent decree that has been signed by all parties. The proposed consent decree, which is attached to this notice, contains the terms of a proposed settlement that, if approved, will resolve all claims in these consolidated cases.

The proposed consent decree should not be signed or entered by the Court at this time. Instead, the United States respectfully requests that the Court withhold consideration of the proposed consent decree while the United States provides an opportunity for public comment pursuant to 28 C.F.R. § 50.7. Subsequent to this filing, the United States will submit a notice of the proposed consent decree for publication in the Federal Register stating that the proposed consent decree has been lodged with the Court. The notice will solicit public comment for a period of 30 days. Consistent with 28 C.F.R. § 50.7(b) and as set forth in the proposed consent decree, the United States has reserved the right to withdraw or withhold consent to the proposed consent decree if public comments “disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper, or inadequate.”

No action is required of the Court at this time. The United States will, promptly after evaluating any public comments received during the public comment period, make an appropriate motion for the Court to enter the proposed consent decree, unless it is determined under 28 C.F.R. § 50.7(b) that consent should be withheld.

Respectfully submitted,

TODD KIM
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division

/s/ Tsuki Hoshijima
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TSUKI HOSHIJIMA
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Counsel for the United States

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2021, I filed the foregoing using the Court's CM/ECF system, which will electronically serve all counsel of record registered to use the CM/ECF system.

/s/ Tsuki Hoshijima

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ACQUEST TRANSIT LLC, ACQUEST
DEVELOPMENT LLC, AND WILLIAM L.
HUNTRESS,

Defendants.

Nos. 09-cv-55, 12-cv-1146 (WMS)

CONSENT DECREE

WHEREAS, Plaintiff the United States filed its First Amended Complaint in this action on April 6, 2011, against Defendants Acquest Transit, LLC, Acquest Development, LLC, and William L. Huntress (collectively, “Defendants”), alleging violations of Sections 301 and 309(d) of the Clean Water Act, 33 U.S.C. §§ 1311, 1319(d);

WHEREAS, the First Amended Complaint alleges that Defendants violated Clean Water Act Section 301 by discharging pollutants into waters of the United States without permits issued pursuant to Sections 402 and 404 of the Clean Water Act, 33 U.S.C. §§ 1342, 1344, and that Defendants violated Clean Water Act Section 309 by failing to comply with an administrative order issued by the U.S. Environmental Protection Agency;

WHEREAS, Defendants do not admit those allegations in the First Amended Complaint and do not admit any liability arising out of the transactions or occurrences alleged in the First Amended Complaint and deny both the factual and the legal basis of all allegations in the First Amended Complaint;

WHEREAS, the United States and Defendants (together, “the Parties”) agree that settlement of the United States’ claims against Defendants without further litigation is in the interests of the public and all parties to this action; and

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States’ claims in the First Amended Complaint and to terminate the action without further litigation; and

WHEREAS, the Parties agree, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and that this Consent Decree is fair, reasonable, and in the public interest;

NOW THEREFORE, without adjudication or admission of any issue of fact or law except as provided in Paragraph 1, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. PAYMENT

1. The Court has subject matter jurisdiction to enter this Consent Decree, and personal jurisdiction over the parties. Venue is proper in this judicial district. Defendants consent to the Court’s jurisdiction over this Consent Decree and any action that is necessary to enforce this Consent Decree.

2. Within thirty days of the Court’s entry of this Consent Decree, Defendants shall make a payment to New York State Department of Environmental Conservation Natural Resource Damages Fund in the sum of five hundred thousand dollars (\$500,000). Defendants’ obligations under this Paragraph are joint and several.

3. The payment described in Paragraph 2 shall be made by check payable to “NYSDEC Natural Resources Damages Fund” and mailed to the following address:

New York State Dept. of Environmental Conservation
Office of General Counsel
ATTN: Andrew Guglielmi, Esq.
625 Broadway, 14th Floor
Albany, NY 12233-1500

The check will be deposited into the “Damages fund,” which is within the Natural Resource Damages Fund held at the New York State Department of Environmental Conservation (NYSDEC). The funds will be used for wetland projects in the Tonawanda Creek watershed, including, if feasible, components of the Ellicott Island Creek Project, located in Tonawanda New York. NYSDEC is accepting this payment of funds under this Consent Decree for the limited purpose of undertaking wetland restoration and wetlands mitigation work in the Tonawanda Creek watershed, New York, and NYSDEC does not take any position on the dispute between the Defendants and the United States, nor on the proposed resolution between the Parties to this Consent Decree.

4. Upon making the payment described in Paragraph 2, Defendants shall send written notice to the following persons:

Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Re: DJ# 90-5-1-1-18377
With a copy by email to Tsuki Hoshijima at: tsuki.hoshijima@usdoj.gov

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Re: DJ# 90-5-1-1-18377
With a copy by email to Addie Fiske at: addie.fiske@usdoj.gov

Douglas McKenna, Chief
Water Compliance Branch
Enforcement and Compliance Assurance Division

U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007

Such notice shall include the following information: documentation of the transmittal of payment, the amount of the payment that was made, the case name “Acquest Transit – Amherst, NY matter,” the civil action number, and the DOJ case number 90-5-1-1-18377. In addition, and after seeking the United States’ concurrence, Defendants will provide notice to the Court that they have made payment in accordance with Paragraph 2.

II. STIPULATED PENALTIES

5. If the payment described in Paragraph 2 is not made in full by the date required in Paragraph 2, Defendants shall be jointly and severally liable to the United States for stipulated penalties of one thousand dollars per day for each day that payment is delayed beyond the due date. Interest shall continue to accrue on the unpaid balance of the payment required under Paragraph 2 at the statutory judgment rate established by 28 U.S.C. § 1961. Stipulated penalties are due and payable within thirty days of the date of the demand for payment of the penalties by the United States. Penalties shall accrue as provided in this Paragraph regardless of whether the United States has notified Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment.

6. Defendants shall make any payment of a stipulated penalty required under Paragraph 5 by FedWire Electronic Funds Transfer (“EFT” or wire transfer) to the U.S. Department of Justice account in accordance with instructions to be provided to Defendants by the United States Department of Justice, referencing EPA Region 2 and DOJ case number 90-5-

1-1-09359/1. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

7. Any stipulated penalties that must be paid under Paragraph 5 are penalties within the meaning of Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), and 26 C.F.R. § 1.162-21(a)(3)(i), and Defendants shall not deduct any such penalties paid in calculating its federal income tax.

III. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

8. Defendants deny liability for any of the claims in the First Amended Complaint, and Defendants do not admit any of the allegations in the First Amended Complaint. This Consent Decree shall not constitute or be construed as an admission of liability or of any issue of fact or law, including but not limited to an admission of EPA jurisdiction over Defendants' land, or the applicability of any law, rule, regulation or policy, or any alleged violation of any law, rule, regulation, or policy by any of the Parties.

9. Full payment by Defendants under this Consent Decree shall fully resolve the claims of the United States alleged in the First Amended Complaint through the date of lodging of the signed Consent Decree with the Court. Full payment by Defendants under this Consent Decree shall also fully resolve any other civil claims for violation of Clean Water Act Sections 301, and 309(d), 33 U.S.C. §§ 1311, 1319(d), at the property at issue in this case from the date of the First Amended Complaint, as well as any civil claims for violations of the Preliminary Injunction entered by the Court on July 15, 2009, through the date of lodging of the Consent Decree.

10. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree in the event of Defendants' noncompliance with the agreed payments specified in paragraphs 2-6 above.

11. This Consent Decree shall not be construed to limit the rights of the United States to obtain any relief under any federal laws, regulations, or permit conditions regarding any events after this Consent Decree is lodged. Nor shall this Consent Decree be construed to limit the rights of Defendants to challenge or defend against any such claims for relief by the United States, and Defendants expressly reserve any and all defenses to such claims.

12. Defendants, and all their associated entities and agents, waive and agree not to assert any claims or causes of action under any state or federal law, including but not limited to the Federal Tort Claims Act, against the United States, any federal agencies, or any federal officials, employees, or contractors past or present, based upon or arising from the United States' filing and litigation of this action.

13. This Consent Decree does not limit or affect the rights of the United States or of Defendants against any third parties that are not a party to this Consent Decree.

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

IV. COSTS

15. Each party to this Consent Decree shall bear its own costs and attorney fees in this action, with the exception that Defendants shall be liable for any attorney fees and costs incurred by the United States in any litigation to collect any amounts due under this Consent Decree but not paid by Defendants within the time period specified in this Consent Decree.

V. PUBLIC PARTICIPATION

16. Once this Consent Decree is signed by all the Parties, the Parties will lodge the signed Consent Decree with the Court. The Parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the public comment requirements of 28 C.F.R. § 50.7, pursuant to which the United States reserves the right to withdraw or withhold its consent to the proposed judgment if the comments, views and allegations concerning the judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree unless the United States has notified Defendants in writing that it no longer supports entry of this Consent Decree. However, in the event the government withdraws its support for the Consent Decree, the Defendants shall automatically be deemed to have withdrawn their consent, and the Consent Decree shall be void *ab initio*.

VI. INTEGRATION

17. This Consent Decree constitutes the entire agreement between the United States and Defendants and supersedes any prior or contemporaneous agreements, discussions, or representations, oral or written, with respect to the resolution of this case.

VII. SIGNATORIES

18. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the party that he or she represents to this document.

19. This Consent Decree may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

VIII. TERMINATION AND DISMISSAL WITH PREJUDICE

20. Following approval and entry of this Consent Decree as an order of the Court, the Court shall retain jurisdiction to enforce the Decree only until such time as Defendants comply with paragraphs 2, 4, and 5.

21. Upon notice of Defendants' compliance with paragraphs 2, 4, and 5, the Court shall enter final judgment in this matter in the form attached hereto as Exhibit A, thereby dismissing these consolidated cases with prejudice and terminating the parties' obligations under this Consent Decree.

SO ORDERED this ____ day of _____, 20__.

WILLIAM M. SKRETNY
UNITED STATES DISTRICT JUDGE

The undersigned party enters into this Consent Decree in the matter of *United States v. Acquest Transit LLC et al.*, Nos. 09-cv-55, 12-cv-1146 (WMS) (W.D.N.Y).

FOR THE UNITED STATES OF AMERICA:

Todd Kim
Assistant Attorney General
Environment and Natural Resources Division

Dated: 8/30/2021



Mark Walters
Tsuki Hoshijima
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section

Dated: 8/30/2021



Catherine Adams Fiske
Rachel Evans King
Elias L. Quinn
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section

The undersigned party enters into this Consent Decree in the matter of *United States v. Acquest Transit LLC et al.*, Nos. 09-cv-55, 12-cv-1146 (WMS) (W.D.N.Y).

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Dated: 8/28/21

ROSEMARIE
KELLEY

Digitally signed by ROSEMARIE
KELLEY
Date: 2021.08.28 15:14:23 -04'00'

ROSEMARIE KELLEY

Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Of Counsel:

ANDREW CHERRY

Attorney-Adviser

Water Enforcement Division

Office of Civil Enforcement

Office of Enforcement and Compliance Assurance

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW

Washington, DC 20460

The undersigned party enters into this Consent Decree in the matter of *United States v. Acquest Transit LLC et al.*, Nos. 09-cv-55, 12-cv-1146 (WMS) (W.D.N.Y).

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Dated: _____

Schaaf, Eric

Digitally signed by Schaaf, Eric
Date: 2021.08.23 13:29:32
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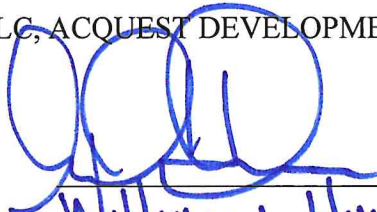
ERIC SCHAAF
Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866

Of Counsel:
CHRISTOPHER SAPORITA
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866

The undersigned parties enter into this Consent Decree in the matter of *United States v. Acquest Transit LLC et al.*, Nos. 09-cv-55, 12-cv-1146 (WMS) (W.D.N.Y.).

FOR DEFENDANTS ACQUEST TRANSIT LLC, ACQUEST DEVELOPMENT LLC, AND
WILLIAM L. HUNTRESS

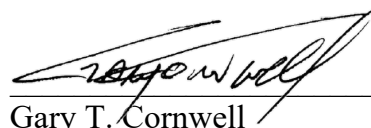
9/3/21
Date



William L. Huntress,
Acquest Development, LLC
Acquest Transit LLC

August 30, 2021
Date

THE CORNWELL LAW FIRM



Gary T. Cornwell
Texas Bar No. 04837000
900 N. Rainbow Ranch Road
Wimberley, Texas 78676
Tel: (409) 659-7788
Fax: (713) 583-9020

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Nos. 09-cv-55, 12-cv-1146 (WMS)
ACQUEST TRANSIT LLC, ACQUEST	)	
DEVELOPMENT LLC, AND WILLIAM L.	)	
HUNTRESS,	)	
	)	
Defendants.	)	
	)	

FINAL ORDER DISMISSING THE CASE WITH PREJUDICE

Pursuant to the agreement of the parties, as noted in their agreed Consent Decree,

IT IS HEREBY ORDERED that:

1. The Preliminary Injunction entered by the Court on July 15, 2009, is hereby dissolved;
2. The Consent Decree previously entered by this Court is hereby terminated; and
3. These consolidated cases are hereby dismissed with prejudice, in their entirety, without costs to any party.

SO ORDERED.

WILLIAM M. SKRETNY
UNITED STATES DISTRICT JUDGE