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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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)	
UNITED STATES OF AMERICA,)	
)	No.
Plaintiff,)	
)	
v.)	UNITED STATES' COMPLAINT
)	FOR INJUNCTIVE RELIEF AND
SUELLYN J. RADER, individually,)	CIVIL PENALTIES UNDER THE
SUELLYN J. RADER, in her capacity as)	CLEAN WATER ACT
the Personal Representative of the Estate of)	
Lyle J. Rader, and)	
UPTRAIL GROUP, LLC,)	
)	
Defendants.)	
_____)	

UNITED STATES' COMPLAINT

The United States of America ("United States"), through its undersigned attorneys, by the authority of the Attorney General, and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

NATURE OF THE ACTION

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2 1. This is a civil action commenced under Clean Water Act (“CWA” or “the Act”)
3 Section 309(b) and (d), 33 U.S.C. § 1319(b) and (d). The United States seeks injunctive relief
4 and civil penalties against Defendants Suellyn Rader individually in her capacity as the
5 Personal Representative of the Estate of Lyle J. Rader (collectively, “the Raders”), for violating
6 CWA Section 301(a), 33 U.S.C. § 1311(a), by discharging dredged or fill material into waters of
7 the United States situated on approximately ten acres of a 33-acre undeveloped parcel of land
8 located on Halverstick Road in Lynden, Washington (Tax Parcel No. 400301-363356) (the
9 “Site”), without a permit issued under CWA Section 404, 33 U.S.C. §§ 1344.
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12 2. In this action the United States seeks: (1) to require the Raders to pay civil
13 penalties under 33 U.S.C. § 1319(d); and (2) to require the Raders to restore the affected waters
14 of the United States to their pre-fill condition at their own expense and under the direction of
15 EPA and/or the United States Army Corps of Engineers.
16

17 3. The United States further seeks a court order that any restoration order is
18 enforceable against the ownership interests of Uprail Group LLC.
19

JURISDICTION AND VENUE

20 4. This Court has jurisdiction over the subject matter of this action under CWA
21 Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.
22

23 5. Venue is proper in the United States District Court for the Western District of
24 Washington under CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c),
25 because the subject property is located in this District and the cause of action alleged herein
26 arose in this District.
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STATUTORY BACKGROUND

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2 12. The CWA’s purpose is “to restore and maintain the chemical, physical, and
3 biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

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5 13. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any
6 pollutant, including dredged or fill material, by any person from any point source to navigable
7 waters unless that discharge is authorized by a permit issued under CWA Section 402 or 404, 33
8 U.S.C. §§ 1342 and 1344.

9
10 14. CWA Section 404(a), 33 U.S.C. § 1344(a), authorizes the Secretary of the Army,
11 acting through the Chief of Engineers, to issue permits for the discharge of dredged or fill
12 material to navigable waters at specified disposal sites, after notice and opportunity for public
13 comment.

14
15 15. CWA section 502(12), 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to
16 include “any addition of any pollutant to navigable waters from any point source.”

17
18 16. CWA section 502(6), 33 U.S.C. § 1362(6), defines “pollutant” to include, inter
19 alia, dredged spoil, rock, sand and cellar dirt.

20
21 17. CWA section 502(7), 33 U.S.C. § 1362(7), defines “navigable waters” as “the
22 waters of the United States, including the territorial seas.”

23
24 18. 33 C.F.R. § 328.3(a)(1), (2), (5) and (7), and 40 C.F.R. § 232.2, define “waters of
25 the United States” to include: (i) all waters which are currently used, were used in the past, or
26 may be susceptible to use in interstate or foreign commerce; (ii) all inter-state waters; (iii)
27 tributaries to such waters; and (iv) wetlands adjacent to such waters or their tributaries.

28
19. 33 C.F.R. § 328.3(b) and 40 C.F.R. §§ 122.2 and 232.2 define “wetlands” as
“those areas that are inundated or saturated by surface or ground water at a frequency and

1 duration sufficient to support, and that under normal circumstances do support, a prevalence of
2 vegetation typically adapted for life in saturated soil conditions.”

3 20. CWA section 502(14), 33 U.S.C. § 1362(14), defines “point source” to include
4 “any discernible, confined and discrete conveyance . . . from which pollutants are or may be
5 discharged.”
6

7 21. CWA section 502(5), 33 U.S.C. § 1362(5), defines “person” to include “an
8 individual [or] corporation.”

9 22. CWA Section 309(b), 33 U.S.C. § 1319(b), authorizes the commencement of a
10 civil action for appropriate relief, including a permanent or temporary injunction, against any
11 person who violates CWA Section 301(a).
12

13 23. In an action brought under CWA Section 309(b), 33 U.S.C. § 1319(b), Section
14 CWA Section 309(d), 33 U.S.C. § 1319(d), authorizes the district court to impose civil penalties
15 against any person who violates CWA Section 301(a).
16

17 **GENERAL ALLEGATIONS**

18 24. The Site contains approximately 10 acres of wetlands that are bordered on three
19 sides by ditches or stream channels and constitute “waters of the United States.”

20 25. On the east and west sides of the Site, wetlands abut and have a continuous
21 surface hydrological connection with ditches which flow south into a channel that has the
22 contours of a natural stream (“South Channel”) that borders the southern side of the Site.
23

24 26. Wetlands on the Site abut and have a continuous surface hydrological connection
25 with the South Channel, which is a perennial or seasonal stream that flows east and then
26 southeast for approximately 930 feet to its confluence with Pangborn Creek.
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1 27. Pangborn Creek is a perennial stream that flows east and then southeast for
2 approximately 2.14 miles to its confluence with Johnson Creek.

3 28. Johnson Creek is a perennial stream that flows for approximately 8.3 miles in a
4 meandering path to its confluence with the Sumas River
5

6 29. The Sumas River is a traditional navigable water that is navigable-in-fact; is used
7 or could be used in foreign commerce, is or could be used by interstate or foreign travelers for
8 recreational or other purposes. The Sumas River flows northeast approximately 1.4 miles to
9 where it crosses the U.S. border into Canada, from which point it flows approximately 18 miles
10 northeast to its confluence with the Fraser River, a navigable waterway in Canada.
11

12 30. The wetlands on the Site, either alone or in combination with similarly situated
13 lands in the region, contribute to maintaining the chemical, physical, and biological integrity of
14 the South Channel, Pangborn Creek, Johnson Creek and the Sumas River.
15

16 31. The wetlands, among other things, provide or provided flood control and/or flood
17 storage, pollutant trapping and/or filtering functions, nutrient transport; and/or maintain or
18 maintained the chemical composition of the water, natural discharge patterns, and water quality
19 functions that contributed to the aquatic and wildlife habitat of the South Channel, Pangborn
20 Creek, Johnson Creek and the Sumas River.
21

22 32. The wetlands contribute or contributed water flow and associated chemical and
23 biological materials, including nitrogen and dissolved organic carbon, to the South Channel,
24 Pangborn Creek, Johnson Creek and the Sumas River.
25

26 33. The wetlands provide or provided habitat for a diverse array of organisms that are
27 transported downstream to the South Channel, Pangborn Creek, Johnson Creek and the Sumas
28 River, and are capable of moving throughout these connected waters.

1 persons acting on their behalf, at their direction, or with their consent and/or knowledge,
2 discharged, made the decision to discharge, and/or directed the discharge of dredged or fill
3 material into approximately 10 acres of wetlands on the Site.

4
5 40. The dredged or fill material discharged included, among other things, dirt, spoil,
6 rock and sand, all of which constitute “pollutants” as defined in CWA section 502(6), 33 U.S.C.
7 § 1362(6).

8 41. The mechanized land-clearing and earth-moving equipment that the Raders
9 and/or persons acting on their behalf, at their direction, or with their consent and/or knowledge,
10 used, made the decision to use, and/or directed to be used to discharge the dredged or fill
11 material constitute “point sources” as defined in CWA section 502(14), 33 U.S.C. § 1362(14).

12 42. The Raders did not obtain a permit from the Secretary of the Army, acting
13 through the Chief of Engineers, for the discharges of dredged or fill material, in violation of
14 CWA Sections 301(a) and 404, 33 U.S.C. §§ 1311(a), 1344.

15 43. The discharges of dredged or fill material violated and continue to violate CWA
16 Section 301(a), 33 U.S.C. § 1311(a).

17 44. Each day that the dredged or fill material remains in the streams and wetlands
18 constitutes a separate violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

19 45. Under CWA Sections 309(b) and (d), 33 U.S.C. §§ 1319(b) and (d), the Debt
20 Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. § 19.4, the Raders are
21 liable for a civil penalty of up to \$32,500 per day for each violation of CWA Section 301(a), 33
22 U.S.C. § 1311(a).

23 46. Unless this court compels Defendants to restore the streams and wetlands to their
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1 pre-fill condition, Defendants are likely to allow dredged or fill material to remain in the
2 wetlands in violation of CWA Section 301, 33 U.S.C. § 1311.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, the United States of America, respectfully requests that this
6 Court order the following relief:

7 1. Permanently enjoin Defendants from discharging dredged or fill material or other
8 pollutants to any water of the United States except in compliance with a CWA permit;

9 2. Order Defendant Suellyn Rader, individually and in her capacity as personal
10 representative of the Estate of Lyle J. Rader, to undertake measures to completely restore the
11 waters of the United States at the Site to their pre-fill condition at those Defendants' own
12 expense and under the direction of EPA and/or the United States Army Corps of Engineers;

13 3. Order Defendant Uptrail Group LLC to allow the performance of measures to
14 completely restore the waters of the United States at the Site to their pre-fill condition under the
15 direction of EPA and/or the United States Army Corps of Engineers;

16 4. Order Defendant Suellyn Rader, individually and in her capacity as personal
17 representative of the Estate of Lyle J. Rader, to pay civil penalties, pursuant to CWA Section
18 309(d), 33 U.S.C. § 1319(d), per day for each violation of CWA Section 301(a);

19 5. Award the United States costs and disbursements, including expert witness fees,
20 incurred in this action; and

21 6. Grant such other relief as the Court may deem just and proper.
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26 Dated: August 29, 2013

27 Respectfully submitted,
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