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

COMMUNITY ASSOCIATION FOR
RESTORATION OF THE
ENVIRONMENT, INC., a Washington
Non-Profit Corporation

and

FRIENDS OF TOPPENISH CREEK, a
Washington Non-Profit Corporation,

Plaintiffs,

v.

SNIPES MOUNTAIN DAIRY, INC., a
Washington Corporation,

Defendant.

Case No. 1:17-CV-3067-TOR
CONSENT DECREE

WHEREAS, Plaintiffs Community Association for Restoration of the Environment and Friends of Toppenish Creek (collectively “Plaintiffs”) filed a Complaint in this Court seeking civil penalties, as well as declaratory and injunctive relief, against Defendant Snipes Mountain Dairy, Inc. on April 11, 2017, alleging violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.* (the “CWA” or the “Act”);

WHEREAS, prior to filing their initial Complaint, Plaintiffs sent to Snipes Mountain

1 Dairy, Inc. Notices of Intent to Sue dated February 8, 2017 and March 28, 2017 in which they
2 stated their intent to assert claims for alleged violations of CWA sections 301 and 402 , 33
3 U.S.C. § 1311 and 1342, and further assert that “Snipes Mountain’s discharges have been, and
4 continue to be, in violation to the effluent standards and limitations contained in its Concentrated
5 Animal Feeding Operation (CAFO) National Pollutant Discharge Elimination System (NPDES)
6 permit”;

6 **WHEREAS**, CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the unpermitted
7 discharge of any pollutants to waters of the United States and discharges in excess of permit
8 limits;

9 **WHEREAS**, Plaintiffs brought action against Snipes Mountain Dairy, Inc. for alleged
10 CWA violations pursuant to Section 505 of the Act, 33 U.S.C. § 1365;

11 **WHEREAS**, Snipes Mountain Dairy, Inc. is incorporated in the State of Washington,
12 and owned and operated the dairy known as Snipes Mountain Dairy. The dairy is located at or
13 near 211 Nichols Road in Outlook, Washington. Snipes Mountain Dairy is classified as a
14 concentrated animal feeding operation.

15 **WHEREAS**, Snipes Mountain Dairy, Inc. asserted defenses to the allegations contained
16 in the Complaint, expressly denied Plaintiffs’ allegations in their entirety, and admits no liability
17 by entering this Consent Decree;

18 **WHEREAS**, Snipes Mountain Dairy, Inc. was sold to another entity, SMD, LLC, in
19 March of 2018 and Snipes Mountain Dairy, Inc., and its shareholders no longer have any stake in
20 the ownership of the new dairy entity;

WHEREAS, the Parties recognize that this Consent Decree is a settlement of a contested
matter;

1 4. Parties Bound. This Consent Decree shall be binding upon Plaintiffs, Snipes Mountain
2 Dairy, Inc., and their respective officers, agents, servants, employees, successors, and assigns.

3 5. Counterparts. This Consent Decree may be signed in Counterparts, and such counterpart
4 signature page shall be given full force and effect.

5 6. DOJ and EPA Review. The Parties recognize that, under 33. U.S.C. § 1365(c)(3), this
6 Consent Decree can be entered only forty-five (45) days after the Attorney General of the United
7 States and the Administrator of the Environmental Protection Agency receive a copy of this
8 proposed Consent Decree. Plaintiffs shall serve copies of the executed Consent Decree upon the
9 Administrator of the United States Environmental Protection Agency, the Attorney General, and
10 the Regional Administrator for EPA Region 10, and Plaintiffs shall provide notice to the Court of
11 the foregoing requirements, as required pursuant to 40 C.F.R. § 135.5.

12 7. Final Judgment. Upon approval and entry of this Consent Decree by the Court, this
13 Consent Decree shall constitute a final, non-appealable judgment of the Court under Rules 54
14 and 58 of the Federal Rules of Civil Procedure.

15 **SUPPLEMENTAL ENVIRONMENTAL PROJECT**

16 8. Within twenty (20) days of execution of this Consent Decree, Defendant shall pay
17 \$20,000 made payable to the “CARE Clean Drinking Water Project”, c/o Law Offices of Charles
18 M. Tebbutt, P.C. The funds shall be used to test residential wells and provide clean drinking
19 water to individuals in the Lower Yakima Valley in the State of Washington. Plaintiffs shall
20 apply the funds as follows:

- a. To provide funds for individuals whose residential well drinking water meets or exceeds 10 parts per million nitrate to apply for, on a first-come, first-served basis,

1 assistance with alternative water sources through the Clean Drinking Water Project
2 (the “Program”). The funds may be used to:

- 3 i. Identify potentially eligible residences;
- 4 ii. Notify and educate potentially eligible individuals of the Program in English
and Spanish.
- 5 iii. Assist potentially eligible individuals to test their wells as part of the Program;
- 6 iv. Identify alternative water sources for eligible individuals;
- 7 v. Provide financial assistance, to the extent available, to eligible individuals
8 from the funds allocated for the Program to purchase and maintain alternative
9 water sources.

10 It is understood that the funds may not be sufficient for all potentially eligible
11 individuals to have permanent alternative water sources. Accordingly, the funds will
12 be allocated as effectively as possible. Plaintiffs shall sequester Program funds in a
separate, interest-bearing account held in trust for the project terms listed above.

13 **ATTORNEYS’ FEES AND COSTS**

14 9. Plaintiffs’ have incurred attorneys’ and expert fees and costs that substantially exceed the
15 amount agreed to be paid by Defendant. Given that Defendant has sold the business and
16 remaining funds are limited, Plaintiffs have agreed to substantially compromise the fees and
17 costs payable in this matter. Accordingly, Snipes Mountain Dairy, Inc. shall pay Plaintiffs’
18 attorneys \$55,000.00 for their attorneys’ and expert fees and costs. Payment shall be made in full
to the Law Offices of Charles M. Tebbutt within 30 days of entry of the Consent Decree.

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TERMINATION

10. Upon completion of the two payments required to be made by Snipes Mountain Dairy, Inc. pursuant to the terms of this Consent Decree, this Consent Decree shall terminate and all matters subject to the Complaint in this case shall be deemed resolved.

DATED: November 16, 2018

WE HEREBY CONSENT to the Entry of this Consent Decree.

Community Association for Restoration of the Environment, Inc.

By: Signature on file at ECF No. 22 at 7.

Friends of Toppenish Creek

By: Signature on file at ECF No. 22 at 8.

Plaintiffs

Snipes Mountain Dairy, Inc.

By: Signature on file at ECF No. 22 at 9.

Defendant

IT IS SO ORDERED THIS 31st DAY OF JANUARY, 2019. The Clerk of Court shall enter Judgment accordingly, provide copies to the parties and administratively close the file.



Thomas O. Rice
THOMAS O. RICE
Chief United States District Judge