

ORIGINAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

COMMUNITY ASSOCIATION FOR
RESTORATION OF THE ENVIRONMENT
(CARE), a Washington non-profit corporation,

Plaintiff,

v.

DERUYTER BROTHERS DAIRY, a
Washington proprietorship and JAKE
DERUYTER, owner and operator of
DERUYTER BROTHERS DAIRY,

Defendants.

No. CY-98-3021-EFS

CONSENT DECREE

WHEREAS, plaintiff Community Association for Restoration of the Environment
("plaintiff") filed this action on February 20, 1998 against DeRuyter Brothers Dairy, a Washington
proprietorship and Jake DeRuyter, owner and operator of DeRuyter Brothers Dairy ("defendants");
and

WHEREAS, the action is a citizen-suit alleging various counts and allegations under the
federal and state Clean Water Act ("CWA") and alleging violations of terms and conditions of
Washington General National Pollutant Discharge Elimination System Permit No. WAG-01-5000
(hereafter "the permit") for Dairies relating to an animal feeding operation within a dairy located in
Outlook, Washington; and

WHEREAS, defendants deny liability for all counts and claims alleged by plaintiff in this
action; and

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1 WHEREAS, plaintiff and defendants have agreed that settlement of this matter is in the
2 public interest and in the best interests of the parties and that entry of this Consent Decree ("Decree")
3 without additional litigation is the most appropriate means of resolving this action; and

4 WHEREAS, plaintiff and defendants and their respective attorneys have consented to entry
5 of this Decree, without trial, adjudication, or admission of any issue of fact or law herein and without
6 admission of any fact, allegation, or legal argument contained in plaintiff's sixty-day notices,
7 complaint, or amended complaints in this action;

8 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as
9 follows:

10 1. This Court has jurisdiction over the parties and the subject matter of this action
11 pursuant to Section 505(a)(1)(A) of the Clean Water Act, 33 USC § 1365(a)(1)(A).

12 2. The provisions of this Decree shall apply to and be binding upon the parties to this
13 Decree and their principals, officers, directors, successors and assigns as now or hereafter
14 constituted.

15 3. Defendants shall comply with the dairy's Washington General National Pollutant
16 Discharge Elimination System Permit for Dairies No. WAG-01-5000 (the "permit") and all terms
17 contained in its Dairy Waste Management Plan, including its winter application requirements,
18 during the term of this Decree. After entry of this Decree, Plaintiff shall have the right to have two
19 (2) representatives visit and inspect DeRuyter Brothers Dairy up to but not exceeding four (4) times
20 per year, between the hours of 8:00 a.m. and 5:00 p.m. During these visits, Plaintiff shall have the
21 right, at its expense, to take winter soil temperature and moisture tests from dairy fields to which
22 solid or liquid manure is applied for purpose of determining compliance with the winter application
23 requirements of the dairy's Dairy Waste Management Plan. Prior to the site visits, Plaintiff's
24 representatives shall sign liability waivers releasing defendants from liability in connection with the
25 site visits. Plaintiff shall be accompanied on the site visit by defendants' representatives. Plaintiff
26 shall provide advance notice to Jake DeRuyter, in writing, at least 24 hours prior to the site visit,

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1 except visits on Saturday or Sunday shall require notice by 10:00 a.m. the preceding Thursday. If
2 plaintiff's representatives observe any conditions that they reasonably and in good faith believe
3 indicate non-compliance with terms of the permit or winter application requirements of the Dairy
4 Waste Management Plan, they shall advise Jake DeRuyter or Larry Carlisle of such conditions as
5 soon as is reasonably possible, but in no case later than 10 days after making such observation or
6 otherwise learning of such conditions. In such event, the parties shall make good faith efforts to
7 resolve the issue. If resolution is not reached, then either party may invoke the Dispute Resolution
8 Clause contained in paragraph 7.A. below. Both parties agree that it is their desire to mutually
9 resolve any concerns that may arise regarding defendants' compliance, either as a result of the site
10 visit or otherwise, without the necessity of involving the court.

11 4. Defendants shall pay the sum of \$200,000 to the Heritage College, or another entity
12 to be agreed upon by the parties, for a groundwater study, which is a supplemental environmental
13 project in the lower Yakima Valley. The money shall be used by Heritage College or the parties'
14 alternative designee for work regarding southeast Zillah, Zillah, and the Grandview area of
15 Washington, all within the Yakima Basin. The project shall be designed to collect existing
16 groundwater data, establish monitoring stations for regular groundwater sampling and to determine
17 hydrological movement of contaminants, if any, over time. Should the data so indicate, and if funds
18 remain, such funds may be used to research and implement remedial measures. Heritage College or
19 the parties' alternative designee shall prepare a project protocol to be provided to the parties and
20 USEPA within 30 days of the entry of this Decree. Heritage College shall provide the the parties
21 and USEPA an annual progress report on fund expenditures and analytical results along with
22 projected activities for the following 12 months.

23 This payment shall be made within thirty (30) days from entry of the Decree. The check
24 shall be sent to Heritage College, 3240 Fort Road, Toppenish, WA 98948. A copy of the cover letter
25 and the check shall be sent simultaneously to CARE's counsel, Charles Tebbutt, Western
26 Environmental Law Center, 1216 Lincoln Street, Eugene, OR 97401. The parties agree that

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1 Defendants have received credit in the amount of \$250,000 against Plaintiff's initial settlement
2 demand for undertaking or having undertaken the various obligations described in Section 5 below.

3 5. Defendants have or shall implement the following measures, some of which may
4 exceed current requirements under the Clean Water Act and/or the dairy's Permit and Dairy Waste
5 Management Plan.

6 A. To avoid off-site tracking of manure on public roadways, defendants shall
7 continue to use, if necessary, a self-propelled sweeper, shovel, and a truck wash. Manure that is
8 spilled on the roadway shall be cleaned up as soon as is reasonably practicable. Defendants' efforts
9 to avoid manure tracking shall be included in the dairy's educational program, which is described in
10 paragraph 5.G below.

11 B. Within six (6) months from entry of this Decree, weather permitting,
12 defendants shall construct a 6" wide x 18" tall concrete berm across the front of the cattle pens
13 number 13 and 22 (approximately 752'), which front on Van Belle Road, which shall be sunk below
14 grade 6".

15 C. Any new lagoons constructed by the dairy shall be in the interior of the Dairy
16 and shall be set back a minimum of 15 feet from any property line fronting on public property. Any
17 new cattle pens constructed by the dairy shall be set back a minimum of 20 feet from any outside
18 property line fronting on public property.

19 D. By December 1, 1999, weather permitting, defendants shall remove the
20 underground concrete drain generally located northeast of Lagoon No. 3. Defendants warrant that
21 the drain has previously been severed and backfilled with concrete and the standpipes have been
22 previously removed.

23 E. By October 31, 2000, defendants shall construct a new lagoon (Lagoon No. 4)
24 with capacity between 8-10 million gallons. The lagoon shall be clay lined, certified by NRCS, and
25 certified as to design and as-built by a licensed, professional Washington engineer. The lagoon
26 shall also be certified by Dam Safety.

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1 F. Within 30 days from the date of entry of this Decree, Lagoon No. 1 and
2 Lagoon No. 2 shall be certified as structurally sound by a licensed, professional Washington
3 engineer.

4 G. Once each year, for a period of four years from the date of entry of this
5 Decree, defendants shall conduct employee education and training in proper implementation of
6 defendant's Dairy Waste Management Plan for those employees who are involved with waste
7 handling at the dairy. New employees involved in waste handling shall be trained within 30 days of
8 employment. The training program shall include, but not be limited to, written instructions on
9 avoiding tracking manure on the road and complying with the waste handling practices for solid and
10 liquid manure management as outlined in the Dairy Waste Management Plan. For four years
11 following entry of this Decree, either the owner or the facility manager for DeRuyter Brothers Dairy
12 shall certify in writing by December 31st, that covered employees have received the training
13 discussed in this paragraph and shall identify those employees who have received such training. A
14 copy of the training format shall be provided to CARE, which may provide any comments to
15 Defendants within 30 days.

16 H. No later than 30 days from the date of entry of the Decree, defendants shall
17 increase the height of the berm located along the Yakima Valley Highway at DeRuyter Brothers
18 Heifer Ranch by increasing the berm height to 18" above existing grade, with a minimum base width
19 of three feet and side slopes of 1:1, for a distance of approximately 1300 feet running westerly from
20 the east edge of the Heifer Ranch. Defendants shall use their best efforts to maintain the integrity of
21 the berms, particularly following land application, although the parties agree that the dairy is not
22 responsible for acts of vandalism or destruction by third parties over which the dairy has no control,
23 upon which defense the Dairy shall have the burden of proof.

24 I. Defendants agree to continue to have Soil Search Labs conduct the soil
25 sampling program they are currently conducting for the dairy for a period of four years from entry of
26 this Decree. Additionally, defendants shall take six (6) random samples per year of the manure that

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1 is applied to the Dairy's farm fields. The samples shall be taken during the application season, and
2 be sent to Soil Search Labs for analysis. A copy of that analysis shall be provided to plaintiff. As
3 discussed in paragraph 3 above, defendants shall comply with the winter application requirements
4 contained in their Dairy Waste Management Plan. In particular, defendants agree that wastes shall
5 not be applied to saturated, frozen, or snow covered soils.

6 J. Within 30 days after entry of the Decree, defendants shall maintain records of
7 liquid and solid manure that is land applied or sold to third parties in the form attached as Exhibit
8 "A."

9 K. For a period of four (4) years from entry of the Decree, except as otherwise in
10 subparagraph (iii) below, defendants will pay for Cascade Analytical, Inc., to sample and analyze
11 the water in joint drain 32.0 for the following parameters: TKN, BOD, fecal coliform, and ammonia.
12 The sampling shall follow the following protocols:

13 (i). Sampling shall occur at two points along joint drain 32.0: one at the
14 manhole immediately west of Fordyce Road near the northeast corner of the dairy
15 (point "A") and the other at the manhole in the southwest corner of the dairy near the
16 intersection of Van Belle Road and Chute Road (point "B"). Cascade Analytical shall
17 take and analyze all samples and then fax and send the sample results to the parties at
18 the following addresses:

19 Jake DeRuyter
20 DeRuyter Brothers Dairy
21 P.O. Box 338
22 Outlook, WA 98938
23 FAX: (509) 839-2678

24 AND TO

25 Lori A. Terry
26 Preston Gates & Ellis, LLP
5000 Columbia Center
701 Fifth Avenue
Seattle, Washington 98104-7078
FAX: (206) 623-7022

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1 AND TO

2 Helen Reddout
3 CARE
4 P.O Box 367
5 Outlook, WA 98938
6 FAX: (509) 854-2645

7 AND TO

8 Charles M. Tebbutt
9 Western Environmental Law Center
10 1216 Lincoln Street
11 Eugene, OR 97401
12 FAX: (541)485-2457

13 The sampler and testing laboratory shall bill DeRuyter Brothers Dairy directly
14 for their services.

15 (ii). The parties agree that if the test results from point B show a minimum
16 "threshold" increase from those at point A a second set of samples shall be taken
17 within 48 hours. A "threshold" increase shall be defined as: (a) an increase in the
18 level of fecal coliform of at least one order of magnitude if the level at point A is
19 equal to or less than 1,000 colony forming units (cfu's) per 100 ml, or of at least five
20 (5) times as great if the level at point A is greater than 1,000 cfu's per 100 ml,
21 together with (b) increases in the concentration levels of TKN and ammonia at point
22 B that are greater than 150% of the concentration levels at at point A $[A + (A/2)]$. If
23 the second sample also shows a "threshold" increase between points A and B, the
24 defendants shall have 72 hours to attempt to identify the source or cause of the
25 increase, and to resolve the same if it is from the Dairy. Defendants shall provide to
26 Plaintiff a written detail of their investigative efforts no later than 72 hours after the
second test results are received. If defendants are unable to determine the cause of
the increase, then, at defendant's expense, a mutually agreed upon Washington
Engineer shall conduct an evaluation to determine the cause(s) of the increase.

1 Defendants shall provide a copy of the Engineer's investigative report to Plaintiff
2 upon receipt. If the cause of the threshold increase is, in the engineer's professional
3 opinion, a discharge of manure waste from DeRuyter Brother's Dairy, then
4 defendants shall implement reasonable measures to eliminate the source or cause of
5 the increase. Within five days of completion of any corrective action, Defendants
6 shall provide a written report to Plaintiff detailing any measures taken. If the source
7 or cause of a threshold increase is not DeRuyter Brothers Dairy, or if the source or
8 cause of the threshold increase cannot be determined with reasonable certainty under
9 appropriate professional standards, then no further evaluation or action is required.

10 The parties also agree that there are several known third party sources of
11 water into the drain between points A and B which could affect the sample results at
12 point B. If any of those sources are running at the time of sampling, Defendants may
13 request that a sample be taken from one or more of them. If such a sample indicates
14 that the third party source water contains Fecal Coliform, ammonia and TKN at
15 concentrations which would exceed the threshold standards set forth in the preceding
16 paragraph of this subparagraph (ii), exceedance of the threshold at point B shall not
17 trigger a second sampling event.

18 (iii). Sampling shall occur once per month for the first year on a random
19 basis. Thereafter, sampling shall be decreased to quarterly for the following three
20 years. However, if the sampling during the first three years does not trigger the
21 engineering evaluation discussed in subparagraph 5.K(ii) above, sampling shall be
22 discontinued after the third year.

23 (iv). The parties agree that they do not intend this sampling to generate
24 additional litigation, but rather to confirm whether or not DeRuyter Brothers Dairy is
25 discharging contaminated wastewater into Joint Drain 32.0. For this reason, the
26 parties agree to work together to resolve any issues that may develop during

1 implementation of this provision of the Decree. Plaintiff agrees that it shall not seek
2 stipulated penalties for a discharge discovered pursuant to this sampling program
3 unless Defendants have failed to implement reasonable measures to eliminate the
4 cause of the increase.

5 (v). The parties further agree that the data generated by this sampling
6 program shall be shared only with the parties, their experts, and counsel, except as
7 disclosure by the Dairy may be required by law or is otherwise required by this Court
8 after notice to the parties.

9 L. Defendants shall install one Orkin walk through fly control trap or other
10 similar type of fly control trap, for use in one cattle alley of the dairy. The trap shall be used for a
11 period of six (6) months during one fly season (May through October).

12 M. Defendants shall not increase herd size at the dairy above 10% of the herd size
13 identified in their Dairy Waste Management Plan unless a licensed, professional Washington
14 engineer certifies that there is sufficient storage and land to handle the additional waste generated
15 from the increased herd size.

16 N. Defendants have previously installed two agitators in the dairy's lagoons to
17 aid in odor control and solids settling. Additionally, for a period of three years following entry of
18 the Decree, defendants shall sample Lagoons No. 1, 2, and 3 for BOD and TSS. The sampling shall
19 occur quarterly for the first year and semi-annually for the second and third year. Sampling shall be
20 conducted by the independent sampler that is mutually agreed upon by the parties. The independent
21 sampler shall send the test results to both plaintiff and defendants at the addresses set forth in
22 Section 5.K(i) above. The sampling results shall be shared only with the parties, their experts, and
23 legal counsel, except as disclosure by the Dairy may be required by law or is otherwise required by
24 this Court after notice to the parties.
25
26

1 O. Defendants warrant that they have located and removed all known drain tiles
2 within the dairy property. Any other drain tiles discovered during the term of this Decree shall be
3 filled or removed within a 30 days after they are discovered, at defendants' option.

4 6. The parties agree that enforcement of this Consent Decree by a motion for contempt,
5 or, alternatively, by application for payment of the following stipulated penalties, shall be the
6 plaintiff's exclusive remedy for alleged violations of the Consent Decree, the Clean Water Act or the
7 dairy's NPDES permit during the term of this Decree:

8 A. Upon a failure of defendants to comply with the terms of this Decree, which
9 failure results in a discharge of pollutants to JD 32.0, the Snipes Lateral or any other ditch or
10 conveyance which leads to JD 32.0 or the Snipes lateral or another Joint Drain, defendants shall
11 make stipulated payments as set forth below:

12	First Violation --	\$3,000
13	Second Violation --	\$7,500
14	Third Violation --	\$21,250
15	Fourth and Subsequent	\$27,500

16 Provided, however, that if the Defendants have only a single violation, and then go 24
17 months or more without another violation, this payment schedule shall revert to the "First
18 Violation" level for purposes of determining the payment amount for a subsequent violation.

19 B. Upon a failure of defendants to comply with the terms of this Decree which
20 does not result in a discharge of pollutants to JD 32.0, the Snipes Lateral or any other ditch or
21 conveyance which leads to JD 32.0 or the Snipes lateral or another Joint Drain, defendants
22 shall make stipulated payments as set forth below:

23	First Violation --	\$1,750
24	Second Violation --	\$3,750
25	Third Violation --	\$10,000
26	Fourth and Subsequent	\$17,500

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1 For purposes of this subsection, escalating payments shall only result from repeat
2 violations of the same provision of this Decree. If the Defendants have only a single violation
3 of any provision, and then go 24 months or more without another violation of that provision,
4 this payment schedule shall revert to the "First Violation" level for purposes of determining
5 the payment amount for a subsequent violation of the provision.

6 C. For the purposes of subparagraphs A and B of this Section 6 each day of
7 violation shall constitute a separate violation except as otherwise provided herein. For
8 purposes of subparagraph B of this Section 6, a delay in compliance with the timeline
9 requirements of subparagraphs F, G, and J of Section 5 of this Decree, which failure does not
10 result in a discharge of pollutants, shall count as "separate" violations as follows: a delay in
11 compliance of three (3) days or less shall count as a "first" violation; a delay of four (4) to
12 seven (7) days shall count as a "second" violation; a delay of eight (8) to fourteen (14) days
13 shall count as a "third" violation, and a delay of fifteen (15) to twenty-one (21) days shall
14 count as a "fourth" violation.

15 D. Stipulated payments shall bear interest at the then current federal rate for
16 prejudgment interest from the due date until paid. The Court shall have continuing
17 jurisdiction to enforce any such payment obligation.

18 E. Nothing herein shall prevent the simultaneous accrual of separate stipulated
19 payments for separate violations of this Consent Decree. Any agency enforcement action for
20 any of the violations listed in this paragraph which results in imposition and payment of
21 penalties prior to the date on which stipulated payments would be due shall be offset against
22 the payment amounts referenced in this Section.

23 F. Defendants shall notify CARE in writing of any violation of the Consent
24 Decree for which stipulated payments may be due as soon as defendants have knowledge of
25 such violation. Defendants shall make the stipulated payment to Heritage College in the
26 manner specified in Section 4 of this Decree within 15 days of the date the payment

1 obligation becomes final, whether by agreement or order of the court, together with a letter to
2 CARE summarizing the violation(s) for which the payment is made.

3 G. CARE may demand payment of a stipulated payment upon a good faith
4 determination by CARE that a violation described above has occurred. Upon receipt of such
5 demand, Defendants must make the stipulated payment within thirty (30) days of receipt of
6 CARE's written demand for payment, unless defendants invoke the Dispute Resolution
7 procedures set forth in Section 7 below.

8 H. The parties agree that a discharge which does not constitute a violation of the
9 Dairy's permit or the Clean Water Act, will not constitute a violation of this Decree.

10 7. The parties agree that any disputes as to the meaning, application or enforcement of
11 this Decree shall be resolved in accordance with the following subsection A, which shall be the
12 exclusive mechanism to resolves such disputes.

13 A. Any dispute that arises with respect to the meaning, application or
14 enforcement of this Decree shall initially be subject to a period of informal negotiations, which
15 period shall not extend beyond thirty (30) days from the date the dispute arises, unless the parties
16 otherwise mutually agree in writing to an extension of the period. A dispute shall be considered to
17 have arisen on the date a party receives written notification from the other that a dispute has arisen,
18 which notice shall specifically reference this Section of the Decree. In the event the parties are
19 unable to resolve the dispute informally, the Party invoking the dispute resolution process shall serve
20 a written statement of its position upon the other party. That statement shall be considered final and
21 binding unless, within thirty (30) days after receipt of the statement, the other party shall file with the
22 Court and serve upon counsel for the other party a petition for judicial resolution of the dispute. The
23 petition shall refer to this Section of the Decree and shall set forth the nature of the dispute, the
24 efforts made by the parties to resolve the dispute, the evidence upon which the party's position is
25 based (if any), and a proposal for its resolution. Within thirty (30) days following receipt of a
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1 petition the other party may file a responsive memorandum, setting forth that party's position, the
2 evidence upon which the party's position is based (if any), and a proposal for its resolution. The
3 party filing the petition may file a reply memorandum within fifteen days after receipt of the
4 responsive memorandum. Each party shall bear the burden of proving any disputed fact upon which
5 it bases its position by a preponderance of the evidence. The filing of a petition for dispute
6 resolution shall not, in itself, relieve either party of its obligations under this Decree.

7 8. Defendants shall pay plaintiff's reasonable attorneys' fees and costs incurred in this
8 matter in the amount of \$57,500, which sum includes oversight fees and costs through the
9 termination date of this Decree. Defendants shall make this payment within thirty (30) days from
10 entry of the Decree. The check for said fees and costs shall be made payable and sent to the Western
11 Environmental Law Center, 1216 Lincoln Street, Eugene, OR 97401.

12 9. This Decree is intended to be and shall constitute the exclusive remedy and a
13 complete and final settlement of any and all claims which have or might have been alleged against
14 defendants or DeRuyter Brothers Heifer Ranch by plaintiff, its members, officers, and directors
15 under state and federal Clean Water Act law up to and through the termination date of this Decree.
16 Enforcement of this Decree shall be the exclusive remedy of the plaintiff, its officers, directors, and
17 members for any alleged violations of its terms.

18 10. This Decree is determined to be in the public interest and an appropriate resolution of
19 the allegations in plaintiff's complaint and amended complaints.

20 11. This Decree is a settlement of disputed facts and law and shall not constitute an
21 admission or adjudication with respect to any allegation in the 60-day notices, the complaint or
22 amended complaint, or an admission or evidence of any wrongdoing or misconduct or liability on
23 the part of defendants. This Decree shall not constitute evidence for any purpose in any court or
24 other proceeding or be introduced as evidence by any person in any court or other proceeding
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1 without permission of all parties, other than a proceeding before this Court concerning this Decree.

2 12. This Court shall retain jurisdiction to enforce the terms of this Decree and to resolve
3 any disputes arising hereunder until the Decree has been terminated.

4 13. This Decree may be modified only upon the written consent of the parties and
5 approval of the Court.

6 14. This Decree shall take effect on the date that it is entered by the Court.

7 15. This Decree shall terminate four (4) years after the Court's entry of the Decree.

8 16. Defendants shall comply with all requirements of this Decree within the time periods
9 specified herein. If any event occurs that is outside of the reasonable control of defendants (a "force
10 majeure event" as further defined below), which causes a delay in performing tasks required by this
11 Decree, the delay shall not constitute a failure to comply with the terms of this Decree, provided that
12 defendants have submitted written notification to plaintiff no later than fifteen (15) days after the
13 date that defendants first conclude that such event has caused or will cause non-compliance,
14 describing the length or anticipated length of non-compliance, the precise circumstances causing
15 non-compliance, and the measures taken or to be taken to prevent or minimize non-compliance, and
16 a schedule for implementation of the measures to be taken. Defendants shall have the burden of
17 establishing any such force majeure.

18 A force majeure event shall include, but not be limited to the following:

19 A. Acts of God, war, insurrection, or civil disturbance;

20 B. earthquakes, landslides, floods;

21 C. unanticipated breakage or accident in machinery, equipment, or lines of pipe
22 that occur despite reasonably diligence maintenance and which are not caused by a lack of proper
23 maintenance, or any fire or explosion, despite the exercise of reasonable diligence by defendants;

24 D. adverse weather conditions or unusual delay in transportation;

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- 1 E. restraint by court order or order of public authority;
2 F. inability despite Defendants' best efforts to obtain necessary permits,
3 authorizations, easements, licenses, or approvals;
4 G. challenges or appeals of necessary authorizations, easements, licenses,
5 permits, or approvals or any other litigation, arbitration, or mediation that causes delay;
6 H. delay caused by applicable statutes or regulations.

7 Provided that defendants comply with the notice provision of this section, then in the event
8 that defendants fail to comply or anticipate failing to comply with the requirements of this Decree
9 because of a force majeure event, defendants' failure to comply shall not be a violation of this
10 Decree and shall not result in any liability or other sanctions. In such event, the milestone date(s)
11 shall be extended for a reasonable period of time following the force majeure event.

12 17. The parties agree that this Decree is subject to the notice requirements of 33 USC §
13 1365(c)(3); 28 CFR § 50.7; and 40 CFR § 135.5 and shall not be entered until at least forty-five (45)
14 days after the date of lodging with the Court.

15 18. The undersigned representative of each party to this Decree certifies that he or she is
16 fully authorized by the party he or she represents to enter into the terms and conditions of this Decree
17 and to legally execute and bind such party to this Decree.

18 19. Each party acknowledges and represents that they have relied on the legal advice of
19 their attorney, who is the attorney of their own choice and that the terms of this Decree have been
20 completely read and explained to them by their attorney, and that the terms are fully understood and
21 voluntarily accepted. Plaintiff has been represented by Charles M. Tebbutt of the Western
22 Environmental Law Center and Corrie Yackulic of Schroeter, Goldmark & Bender. Defendants have
23 been represented by Lori A. Terry and John R. Nelson of Preston Gates & Ellis, LLP. The rule of
24 construing ambiguities against the drafting party shall not apply to this Decree.

25 20. If, for any reason, the Court should decline to approve this Decree in the form
26 presented, this Decree and the settlement embodied herein shall be voidable at the sole discretion of

CONSENT DECREE - 15

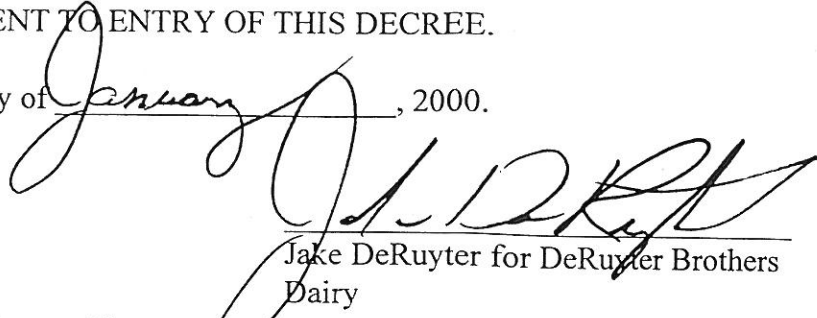
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PRESTON GATES & ELLIS, LLP
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SEATTLE, WASHINGTON 98104-7078
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1 either party. The parties agree to continue negotiations in good faith in an attempt to cure any
2 objection raised by the court to entry of this Decree.


3 WE HEREBY CONSENT TO ENTRY OF THIS DECREE.

4 DATED this 21st day of January, 2000.

5
6 
7 Jake DeRuyter for DeRuyter Brothers
Dairy

8 DATED this 19th day of January, 2000.

9
10 PRESTON GATES & ELLIS LLP

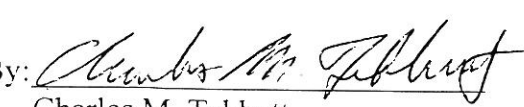
11 By: 
12 John Ray Nelson
13 Lori A. Terry
14 Attorneys for DeRuyter Brothers
Dairy

15 DATED this 27th day of January, 2000.

16
17 
18 Helen Reddout for C.A.R.E.

19 DATED this 31st day of January, 2000.

20 WESTERN ENVIRONMENTAL LAW
21 CENTER

22 By: 
23 Charles M. Tebbutt
24 Attorneys for C.A.R.E.
25
26

CONSENT DECREE - 16

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