



change in ownership of the Site shall alter Respondents' responsibilities under this Consent Order unless EPA, Respondents, and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, no later than 30 calendar days prior to such transfer, Respondents shall notify EPA at the address specified in paragraph 34, below.

#### **IV. STATEMENT OF THE PARTIES**

4. The following FINDINGS OF FACT AND VIOLATION are made solely by EPA. In signing this Consent Order, Respondents neither admit nor deny the FINDINGS OF FACT AND VIOLATION. As such, and without any admission of liability, Respondents consent to the issuance of this Consent Order and agree to abide by all of its conditions. Respondents waive any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondents may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Respondents further agree not to challenge the jurisdiction of EPA or the FINDINGS OF FACT AND VIOLATION below in any proceeding to enforce this Consent Order or in any action under this Consent Order.

#### **V. FINDINGS OF FACT AND VIOLATION**

5. Respondent Karl Lamb is an individual and a resident of Utah.
6. Respondent David Lamb is an individual and a resident of Utah.
7. At all relevant times, Respondents owned, managed, operated on, or otherwise controlled property adjacent to the Duchesne River at the Site.
8. The Duchesne River is a perennial waterway that flows into the Green River, which is a navigable, interstate waterway.
9. On July 29, 2019, Respondents used a track hoe to excavate materials from the Duchesne River and floodplain, as well as to partially construct a diversion channel that ran onto the neighboring parcel held in trust for the Ute Indian Tribe. Respondents' activities were undertaken in an effort to

prevent erosion and resulted in the redepositing and sidecasting of excavated material into the Duchesne River and adjacent floodplain.

10. The U.S. Army Corps of Engineers (Corps) called Respondents on September 6, 2019, and conducted a Site visit with EPA on September 18, 2019. The call and site visit confirmed the activities listed in paragraph 9.

11. On June 29, 2020, the Corps referred the case to EPA.

12. The activities described in paragraph 9 resulted in discharges of dredged or fill material into and along approximately 0.96 acres of the Duchesne River and floodplain, increasing the potential for erosion and sedimentation within the Duchesne River. The Duchesne River provides numerous functions and values including aquatic and wildlife habitat, runoff conveyance, groundwater recharge, recreation, and aesthetics.

13. The activities described in paragraph 9 were performed using common earthmoving vehicles and equipment.

14. Respondents are “person[s]” as defined in section 502(5) of the Act, 33 U.S.C. § 1362(5).

15. The material discharged at the Site and described in paragraphs 9 and 12 is and was at all relevant times “dredged material” or “fill material” as defined in 33 C.F.R. § 323.2(c) or 33 C.F.R. § 323.2(e), respectively, and “pollutants” as defined in section 502(6) of the Act, 33 U.S.C. § 1362(6).

16. The vehicles and equipment used in the activities described in paragraph 9 are and were at all relevant times each a “point source” as defined in section 502(14) of the Act, 33 U.S.C. § 1362(14).

17. The Duchesne River and Green River referenced in paragraph 8 are and were at all relevant times “waters of the United States” as defined in 33 C.F.R. § 328.3(a) and therefore “navigable waters” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).

18. The placement of dredged or fill material into the Duchesne River described in paragraph 9 constitutes the “discharge of pollutants” as defined in section 502(12) of the Act, 33 U.S.C. § 1362(12).

19. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with section 404 of the Act, 33 U.S.C. § 1344.

20. Section 404 of the Act, 33 U.S.C. § 1344, sets forth a permitting system authorizing the Secretary of the Army, acting through the Chief of Engineers of the Corps, to issue permits for the discharge of dredged or fill material into navigable waters, which are defined as waters of the United States.

21. According to 33 C.F.R. § 323.3(a), a permit issued by the Corps is required for the discharge of dredged or fill material into waters of the United States unless an exemption pursuant to 33 C.F.R. § 323.4 applies.

22. Respondents are not and never have been authorized by a permit issued pursuant to section 404 of the Act, 33 U.S.C. § 1344, to conduct any of the activities described in paragraph 9.

23. The activities conducted by Respondents and/or by persons acting on Respondents’ behalves as described in paragraph 9 violate section 301(a) of the Act, 33 U.S.C. § 1311(a). Each discharge of pollutants from a point source by Respondents into waters of the United States without the required permits issued pursuant to section 404 of the Act, 33 U.S.C. § 1344, constitutes a violation of section 301(a) of the Act, 33 U.S.C. § 1311(a). Each day the discharges remain in place without the required permits constitutes an additional day of violation of section 301(a) of the Act, 33 U.S.C. § 1311(a).

24. Activities to be carried out under this Consent Order are remedial, not punitive, and are necessary to achieve the Act’s objective “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” as specified in section 101(a) of the Act, 33 U.S.C. § 1251(a).

Restoration is appropriate to address the actual and potential harm to water quality, aquatic habitat, and wildlife habitat, as well as other functions and values, caused by Respondents' unpermitted activities.

25. This Consent Order was issued after consultation and coordination with the Corps' Sacramento District, Bountiful, Utah, Regulatory Office.

#### **VI. ORDER FOR COMPLIANCE**

Based upon the foregoing FINDINGS OF FACT AND VIOLATION and pursuant to the authority vested in the Administrator of EPA pursuant to section 309(a) of the Act, 33 U.S.C. § 1319(a), as properly delegated to the undersigned official, it is hereby ORDERED:

26. Respondents shall immediately terminate all unauthorized discharges of dredged or fill material, now and in the future, into waters of the United States, unless specifically authorized by the Corps under a valid permit issued pursuant to section 404 of the Act, 33 U.S.C. § 1344. This prohibition includes all mechanical land clearing, dredging, filling, grading, leveling, installation of utilities, construction, and any other activities that result in a discharge of dredged or fill material into waters of the United States.

27. Within 14 days of receipt of a fully executed Consent Order, Respondents shall submit to EPA the name and qualifications, including professional resume, of a consultant experienced in stream restoration who must prepare a restoration plan (Plan) and directly supervise all work performed pursuant to the Plan, once it is approved by EPA.

28. Within 60 days of receipt of this Consent Order, Respondents shall submit to EPA for review, comment, and approval a Plan prepared by the consultant referenced in paragraph 27 for (1) the removal and restoration, of all dredged and fill material that was discharged into the waters of the United States at the Site and (2) monitoring of impacted areas.

29. The Plan shall be prepared in accordance with the "U.S. Environmental Protection Agency, Region 8 Clean Water Act § 404 Enforcement: Removal/Restoration Plans and Habitat Mitigation/Monitoring Proposals" guidelines attached as Exhibit A. The Plan shall include:

- a. A complete assessment of the impacts to the Duchesne River and adjacent floodplain due to Respondents' unauthorized discharges of dredged and fill material at the Site;
- b. A site map at an appropriate scale showing the entire area of unauthorized disturbance. The site map shall include existing undisturbed natural features that were not impacted and clearly identify all unauthorized man-made disturbances, fills, excavations, road crossings, culverts, structures, and any other work;
- c. A detailed description and schedule for all work and activities to be accomplished, including the application for any required permits, providing for completion of all aspects of the work no later than 60 days after EPA approves the Plan;
- d. Grading, planting, and monitoring plans; measurable criteria for the success of restoration; a schedule for submitting reports at the conclusion of each monitoring event; and provisions for proper disposal of any excess soils or other material generated during removal and restoration;
- e. Detailed professional drawings of the restoration site, including plan and profile drawings with control elevations for current conditions and proposed conditions;
- f. Engineered plans addressing long-term sustainability and minimization of the risk of flanking, undercutting, and potential failure of the bank stabilization; and
- g. A description of all costs to complete the restoration work, including the costs of all consultations, permits, construction, and monitoring.

30. EPA will review the Plan and approve it, approve it with modifications, or reject it with comments. If EPA rejects the Plan, Respondents shall, within 30 calendar days of receipt of EPA's rejection letter, submit a revised Plan that corrects the deficiencies identified by EPA.

31. Upon receiving EPA's written approval of the Plan, Respondents shall obtain all necessary permits to implement the Plan and then commence all activities in accordance with the approved Plan, including the Plan's timeframes and all granted permits. Respondents shall demonstrate that all necessary permits have been granted by providing copies of all such permits and permit amendments to EPA within seven calendar days of issuance of each permit or amendment.

32. All activities conducted pursuant to this Consent Order and involving the use of heavy construction equipment shall be undertaken under the direct, on-site supervision of the consultant retained pursuant to paragraph 27 unless otherwise approved in advance by EPA.

33. This Consent Order is not a permit or an authorization to place or discharge dredged or fill material in waters of the United States. Respondents shall consult with the Corps at the address and telephone number below to determine if any work to be performed pursuant to this Consent Order requires a permit from the Corps under section 404 of the Act. If any such permit is required, Respondents shall obtain such permit(s) and provide a copy or copies to EPA pursuant to paragraph 31, **Error! Reference source not found.** prior to initiating any work that is to be performed pursuant to this Consent Order.

Samuel Thomas Howe Bohannon  
Regulatory Project Manager  
US Army Corps of Engineers  
Sacramento District, Regulatory Divison  
533 West 2600 South, Suite 150  
Bountiful, UT 84010-7744  
Telephone: (801) 295-8380 ext 8313  
Email: Samuel.T.Bohannon@usace.army.mil

34. Respondents shall submit all notifications under this Consent Order and related correspondence to:

Barbara Conklin, 8ENF-W-NW  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129  
Telephone: (303) 312-6619

Email: Conklin.barbara@epa.gov

A copy of all notifications and related correspondence also shall be provided to:

Matt Castelli, 8ORC-LE-R  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129  
Telephone: (303) 312-6491  
Email: Castelli.matthew@epa.gov

35. In addition to the notification requirements set forth above, after issuance of any Corps authorization for the restoration work, Respondents shall submit all notifications and correspondence to the Corps in accordance with the terms and conditions in the Corps permit(s).

36. The Plan and any other deliverables, reports, specifications, schedules, permits, and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with the Plan, deliverables, reports, specifications, schedules, permits, or attachments shall be deemed a failure to comply with this Consent Order and shall be subject to EPA enforcement.

37. Until termination of this Consent Order, EPA, the Corps, and their authorized representatives and contractors shall have the authority at all reasonable times to enter the Site to:

- a. Inspect and monitor progress of the activities required by this Consent Order;
- b. Inspect and monitor compliance with this Consent Order;
- c. Inspect and review any records relevant to this Consent Order; and
- d. Verify and evaluate data and other information submitted to EPA or the Corps.

This Consent Order shall in no way limit or otherwise affect EPA's authority or the authority of any other governmental agency to enter the Site; conduct inspections; have access to records; issue notices and orders for enforcement, compliance, or abatement purposes; or monitor compliance pursuant to any statute, regulation, permit, or court order.

38. This Consent Order shall be effective upon receipt by Respondents of a fully executed copy.

39. Issuance of this Consent Order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for violations giving rise to the Consent Order.

40. EPA agrees to submit all notifications and correspondence to:

Karl Lamb  
PO Box 332  
Myton, UT 84052  
Email: kdwarehouse@ubtanet.com

Gayle Mckeachie  
PO Box 340  
Vernal, UT 84078  
Email: gmckeachie@mckeachie.com

Eric Major, PE  
520 W Hwy 40  
Roosevelt, UT 84066  
Email: eric.m@jonesanddemille.com

41. Any party hereto may, by notice, change the address to which future notices shall be sent or the identities of the persons designated to receive notices hereunder.

42. If an event causes or may cause delay in the achievement of the requirements of this Consent Order, Respondents shall notify EPA orally as soon as possible and in writing within ten working days from the date Respondents first knew of such event or should have known of such event by exercise of due diligence, whichever is earlier. Respondents' written notice shall specify the length of the anticipated delay, the cause(s) of the delay, the measures taken or to be taken by Respondents to minimize the delay, and a timetable by which those measures will be or have been implemented. Notification to EPA pursuant to this paragraph of any anticipated delay, by itself, shall not excuse the delay or the obligation of Respondents to comply with the requirements and deadlines of this Consent Order, unless EPA grants in writing an extension of the applicable requirement or deadline.

43. If Respondents demonstrate to EPA's satisfaction that the delay or anticipated delay has been or will be entirely caused by circumstances beyond Respondents' control (or the control of any of Respondents' agents) that Respondents could not have foreseen and prevented despite due diligence and that Respondents have taken all reasonable measures to prevent or minimize such delay, EPA may excuse performance or extend the time for performance of such requirement for a period not to exceed the actual delay resulting from such circumstances. EPA's determination on these matters shall be made as soon as possible, and in writing within ten working days, after the receipt of Respondents' written notification of the event. The parties agree that changed economic circumstances shall not be considered circumstances beyond the control of Respondents.

44. Each party shall bear its own costs and attorneys' fees in connection with this matter.

45. Respondents understand and acknowledge the following:

- a. Section 309(d) of the Act, 33 U.S.C. § 1319(d), as adjusted for inflation by 40 C.F.R. § 19.4, authorizes civil penalties of up to \$56,460 per day for each violation of an order issued by the Administrator of EPA under section 309(a) of the Act, 33 U.S.C. § 1319(a).
- b. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve Respondents of their obligations to comply with any applicable federal, state, or local law or regulation.
- c. Failure by Respondents to complete the tasks described herein in the manner and time frame specified pursuant to this Consent Order may subject Respondents to a civil action under section 309 of the Act, 33 U.S.C. § 1319, for violation of this Consent Order.

46. This Consent Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA following compliance with all requirements of this Consent Order and the Plan. Respondents may petition EPA to terminate this Consent Order upon completion of

the requirements in this Consent Order and the Plan, as well as demonstrated compliance with the Act. EPA, in its sole discretion, will determine whether to grant such a petition from Respondents.

Administrative Order on Consent

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8**

Date: May 13, 2021

By: \_\_\_\_\_  
Colleen Rathbone, Chief  
Water Enforcement Branch  
Enforcement and Compliance  
Assurance Division

**KARL LAMB**

Date: 5-11-21

By: *Karl Lamb*  
Karl Lamb

**DAVID LAMB**

Date: 5-11-21

By: *David Lamb*  
David Lamb