



Rob McKenna

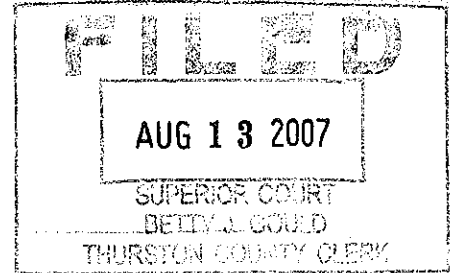
ATTORNEY GENERAL OF WASHINGTON

Utilities and Transportation Division

1400 S Evergreen Park Drive SW • PO Box 40128 • Olympia WA 98504-0128 • (360) 664-1183

August 13, 2007

Clerk
Thurston County Superior Court
2000 Lakeridge Drive SW
Olympia, WA 98502



Re: *Washington Utilities and Transportation Commission v. Talerico Construction, Inc.*
Case No. 07-2-00582-7

Dear Sir/Madam:

Enclosed for filing in the referenced case are the original and 2 copies of a Consent Decree and Motion for Entry of Consent Decree. Please have the documents signed by the judge, and return a copy to me in the enclosed self-addressed, stamped envelope. If you have any questions regarding this matter, please contact Sally Brown at (360) 664-1193. Thank you for your assistance.

Sincerely,

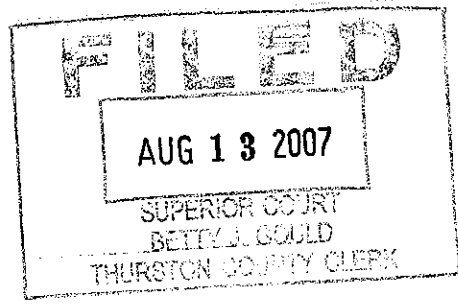
MICHAEL A. FASSIO
Assistant Attorney General

MAF/emd

Enclosures

cc: Klaus Snyder





EXPEDITE

Hearing is set:
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STATE OF WASHINGTON
 THURSTON COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

 Plaintiff,

 v.
 TALERICO CONSTRUCTION, INC.,

 Defendant.

NO. 07-2-00587-8

**MOTION FOR ENTRY OF
 CONSENT DECREE**

Plaintiff, State of Washington, and Defendant, Talerico Construction, Inc., respectfully move this Court to approve, sign, and enter as final judgment the attached Consent Decree presented jointly by the Plaintiff and the Defendant. The Consent Decree resolves the action brought by Plaintiff against Defendant in this proceeding. The Consent Decree enjoins and restrains the Defendant from activities that would violate the Underground Utilities Act, Chapter 19.122 RCW.


1 The Consent Decree requires the Defendant to pay \$15,000 of the \$45,000 penalty
2 assessed for alleged violations of the Underground Utilities Act. The remaining \$30,000 will
3 be deferred and due only upon violation of the Consent Decree.
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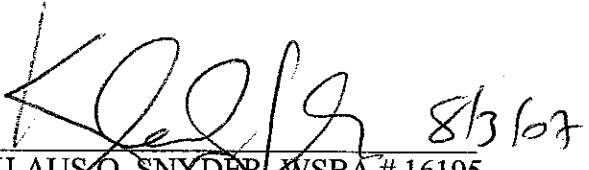
5 The Consent Decree also requires the Defendant to obtain training regarding the
6 Underground Utilities Act and use of the one-call locator service through the Utilities
7 Underground Location Center. The Defendant is required to provide documentation of the
8 training received to the Washington Utilities and Transportation Commission on request.

9 Plaintiff and Defendant believe that the Consent Decree is a fair, just, adequate, and
10 equitable resolution of the issues in this case. Accordingly, Plaintiff and Defendant jointly
11 request that the Court sign and enter the attached Consent Decree.
12

13 Dated this 10th day of AUGUST, 2007.

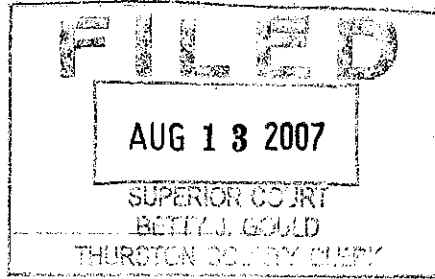
14 ROBERT M. MCKENNA
15 Attorney General

16 
17 MICHAEL A. FASSIO # 37139
18 Assistant Attorney General
19 Attorney for Plaintiff
20 State of Washington

21 
22 KLAUS O. SNYDER, WSBA # 16195
23 Snyder Law Firm
24 Attorney for Defendant
25 Talerico Construction, Inc.
26

1 SO ORDERED this _____ day of AUGUST, 2007.

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4 JUDGE/COURT COMMISSIONER
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EXPEDITE

Hearing is set:
 Date:
 Time:
 Judge/Calendar:

STATE OF WASHINGTON
 THURSTON COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
 Plaintiff,
 v.
 TALERICO CONSTRUCTION, INC.
 Defendant.

NO. 07-2-00587-8
 CONSENT DECREE

I. JUDGMENT SUMMARY

- 1.1 Judgment Creditor: State of Washington
- 1.2 Judgment Debtor: Talerico Construction, Inc.
- 1.3 Attorneys Fees and Costs: Each party to bear own fees and costs
- 1.4 Total Judgment: \$45,000.00 (\$15,000.00 due upon entry; \$30,000.00 due upon failure to comply with consent decree requirements)
- 1.5 Post-judgment Interest Rate: 12.0% per annum
- 1.6 Attorney for Judgment Creditor: **Michael A. Fassio**
 Assistant Attorney General
 1400 S. Evergreen Park Drive SW
 Olympia, WA 98504-0128
 (360) 664-1192

1 1.7 Attorney for Judgment Debtor: **Klaus O. Snyder**
2 Snyder Law Firm, LLC
3 920 Alder Avenue, Suite 201
 Sumner, WA 98390-1406
 (253) 863-2889

4 1.8 Plaintiff, State of Washington, having commenced this action on March 22,
5 2007, pursuant to Chapter 19.122 RCW, the Underground Utilities Act; and defendant,
6 Talerico Construction, Inc., having been personally served with copies of the Summons and
7 Complaint on December 22, 2006; and
8

9 1.9 Plaintiff having appeared by and through its attorneys, Robert M. McKenna,
10 Attorney General, and Michael A. Fassio, Assistant Attorney General; and defendant having
11 appeared through its attorneys, Snyder Law Firm, LLC, and Klaus O. Snyder, attorney and
12

13 1.10 Plaintiff and defendant having agreed on a basis for the settlement of the
14 matters alleged in the Complaint, and to the entry of this Consent Decree against defendant
15 without the need for trial or adjudication of any issue of law or fact; and

16 1.11 Plaintiff and defendant having agreed that this Consent Decree does not
17 constitute evidence or an admission regarding the existence or non-existence of any issue,
18 fact, or violation of any law alleged by plaintiff; and

19 1.12 Defendant recognizes and states that this Consent Decree is entered into
20 voluntarily and that no promises or threats have been made by the Attorney General's Office
21 or any member, officer, agent, or representative thereof to induce defendant to enter into this
22 Consent Decree, except as provided herein; and
23

24 1.13 Defendant waives any right it may have to appeal from this Consent Decree;
25 and
26

1 1.14 Defendant further agrees that it will not oppose the entry of this Consent
2 Decree on the grounds that it fails to comply with Rule 65(d) of the rules of Civil Procedure,
3 and hereby waives any objections based thereon; and
4

5 1.15 Plaintiff and defendant having agreed upon a basis for adjudication of the
6 contested matters alleged in the Complaint, and to the entry of this Consent Decree pursuant
7 to CR 54; and

8 1.16 The Court having determined that there is no just reason for delay in the entry
9 of final judgment against defendant, and being fully advised, the Court hereby makes and
10 enters the following:

11 **II. GENERAL**

12 2.1 This Court has jurisdiction of the subject matter of this action and of the
13 parties. Plaintiff's Complaint in this matter states claims upon which relief may be granted
14 under the provisions of the Underground Utilities Act, Chapter 19.122 RCW.
15

16 2.2 For purposes of this Consent Decree, the term "plaintiff" shall mean the State
17 of Washington, and the term "defendant" shall mean Talerico Construction, Inc.
18

19 **III. JUDGMENT AND DECREE**

20 It is hereby ADJUDGED, ORDERED, AND DECREED AS FOLLOWS:

21 3.1 Defendant shall immediately inform all successors, assigns, transferees,
22 officers, agents, servants, employees, representatives, and all other persons or entities in
23 active concert or participation with defendant of the terms and conditions of this Consent
24 Decree.

25 3.2 Defendant and all successors, assigns, transferees, officers, agents, servants,
26 employees, representatives, and all other persons or entities in active concert or participation

1 with defendant are hereby enjoined and permanently restrained in the State of Washington
2 from directly or indirectly engaging in any of the following conduct:

- 3 a. Failing to provide notice of any excavation to all owners of underground
4 facilities through the one-number locator service as required by RCW 19.122.030(1).
5
6 b. Failing to provide notice of any excavation to all owners of underground
7 facilities not less than two business days and not more than ten business days prior to
8 commencement of excavation as required by RCW 19.122.030(2).
9
10 c. Failing to use reasonable care to avoid damaging underground facilities and
11 failing to plan the excavation to avoid damage or minimize interference with
12 underground facilities in and near the excavation area. RCW 19.122.040(2)(b).
13
14 d. Failing to notify the utility owning or operating an underground facility and
15 the one-number locator service upon any contact with underground facilities. RCW
16 19.122.050.
17
18 e. Failing to notify the appropriate local public safety agency if any contact with
19 an underground facility causes an emergency situation and failing to take all
20 appropriate steps to ensure the public safety. RCW 19.122.050.
21
22 f. Engaging in any conduct which violates Chapter 19.122 RCW, the
23 Underground Utilities Act.

24 3.3 As a condition to satisfaction of this Consent Decree, defendant agrees that its
25 employees will successfully complete training regarding an excavator's responsibility under
26 Chapter 19.122 RCW and the use of the one-call locator service. Such training must be
obtained from the Utilities Underground Location Center. Defendant shall contact Don
Evans of the Utilities Underground Location Center at 1-877-668-4001 (ext. 3307) to arrange

1 for the training. Training must be completed within six months of entry of this Consent
2 Decree and upon employment for any employee hired after initial training is completed.
3 Defendant must retain a record of the completed training. Defendant shall provide
4 documentation of completed training to the Washington Utilities and Transportation
5 Commission (WUTC) upon request. Failure to do so will be considered a violation of this
6 Consent Decree. The training shall include, but not be limited to, 1) all key elements of the
7 Underground Utilities Law (Chapter 19.122 RCW); 2) use of the one-call number for locates;
8 3) use of reasonable care, including planning excavations around existing underground
9 facilities; 4) procedures for conducting post-accident/damage investigations to determine
10 how accidents/damage could have been prevented. Defendant shall revise its company
11 procedures accordingly. Defendant shall provide for an annual refresher training course on
12 the Underground Utilities Law for excavation employees, and provide documentation of
13 completed annual training to the WUTC upon request. Defendant shall provide information
14 regarding the Underground Utilities Law in a manual for employees.
15

17 IV. CIVIL PENALTIES

18 4.1 Pursuant to RCW 19.122.055(1) and RCW 19.122.070, plaintiff and
19 defendant stipulate that a liquidated civil penalty of \$15,000.00 shall be assessed against
20 defendant. An additional liquidated civil penalty of \$30,000.00 shall be assessed against
21 defendant for future failure to comply with the terms of this Consent Decree during the
22 period of time of two (2) years following the entry date of this Decree, provided that such
23 civil penalty shall not be exclusive, and that an additional civil penalty may be awarded by
24 the court. Violation of any of the terms of this Decree shall constitute a violation of an
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1 injunction for which civil penalties pursuant to RCW 19.122.055(1) and RCW 19.122.070
2 may be sought.

3 **V. ATTORNEY'S FEES AND COSTS**

4 5.1 Each party shall pay their own attorney's costs and fees incurred in pursuing
5 this matter.

6 5.2 Defendant shall bear plaintiff's reasonable costs, including reasonable
7 attorneys' fees, for enforcing this Consent Decree in any successful action to enforce any of
8 its provisions.

9 **VI. ENFORCEMENT**

10 6.1 The violation of any of the terms of this Decree shall constitute a violation of
11 the Underground Utilities Act, Chapter 19.122 RCW.

12 6.2 Jurisdiction is retained for the purpose of enabling any party to this Decree,
13 with or without the prior consent or approval of the other party, to apply to the Court for the
14 enforcement of compliance therewith, the punishment of violations thereof, or the
15 modification or clarification thereof, upon proper notice of not less than thirty (30) days to
16 the other party.

17 6.3 Nothing in this Decree shall be construed as to limit or to bar any other
18 governmental entity or any other citizen in the pursuit of other remedies against defendant.

19 6.4 Pursuant to RCW 19.86.140, any violation of the terms of this Decree within
20 two (2) years from the date of its entry may form the basis for further enforcement
21 proceedings, including, but not limited to, (1) contempt of court proceedings; (2) forfeiture of
22 a civil penalty of \$30,000.00 for violations committed after the date of this Decree; and (3)
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1 forfeiture of a civil penalty pursuant to RCW 19.122.055(1) and RCW 19.122.070 for
2 violations committed after the date of this Decree.

3 6.5 Under no circumstances shall this Decree or the names of the State of
4 Washington or the Office of the Attorney General or any of its employees or representatives
5 be used by defendant's agents or employees in connection with the promotion of any product
6 or service or an endorsement or approval of defendant's practices.
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8 6.6 The Court finding no just reason for delay, hereby expressly directs entry of
9 this Judgment and Decree.

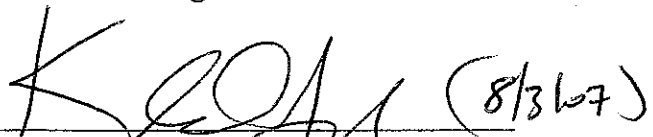
10 SO ORDERED this 1 day of AUGUST, 2007.
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14 JUDGE/COURT COMMISSIONER

15 Presented by:

16 ROBERT M. MCKENNA
17 Attorney General

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19 
20 MICHAEL A. FASSIO, WSBA # 37139
21 Assistant Attorney General
22 Attorney for Plaintiff
23 State of Washington

24  (8/3/07)
25 KLAUS O. SNYDER, WSBA # 16195
26 Snyder Law Firm, LLC
Attorney for Defendant
Talerico Construction, Inc.