

Honorable Robert J. Bryan

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, STATE OF)
WASHINGTON, PUYALLUP TRIBE OF)
INDIANS and MUCKLESHOOT INDIAN TRIBE,)
Plaintiffs,)
vs.)
WEYERHAEUSER COMPANY,)
Defendant.)

CIVIL NO. C08-5220RJB
CONSENT DECREE

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I. INTRODUCTION

The United States of America (“United States”), on behalf of the National Oceanic and Atmospheric Administration (“NOAA”) and the United States Department of the Interior; the State of Washington (the “State”) through the Washington State Department of Ecology; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe (collectively, “Plaintiffs”), have filed a complaint in this case against defendant Weyerhaeuser Company (“Defendant”) pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9607; the Model Toxics Control Act (MTCA), chapter 70.105D RCW; Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; and Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A). This Consent Decree (the “Decree”) addresses the claims asserted in the Complaint against Defendant for Natural Resource Damages (as defined below) in the Commencement Bay Environment (as defined below).

II. RECITALS

A. The United States Department of Commerce, acting through NOAA; the United States Department of the Interior; the Washington State Department of Ecology on behalf of the State of Washington; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe (collectively, the “Trustees” and, individually, a “Trustee”), under the authority of Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), Section 1006(b) of OPA, 33 U.S.C. § 2706(b), and 40 C.F.R. Part 300, subpart G, serve as trustees for natural resources for the assessment and recovery of damages for injury to, destruction of, and loss of natural resources under their trusteeship.

B. Investigations conducted by the United States Environmental Protection Agency (“EPA”), the Trustees and others have detected hazardous substances in the sediments, soils and

1 groundwater of the Commencement Bay Environment, including but not limited to arsenic, antimony,
2 cadmium, chromium, copper, mercury, nickel, lead, zinc, bis(2-ethylhexyl)-phthalate,
3 hexachlorobenzene, hexachlorobutadiene, polycyclic aromatic hydrocarbons, and polychlorinated
4 biphenyls. Overall, the Trustees have documented the presence of over 30 hazardous substances in
5 the marine sediments of Commencement Bay's Hylebos Waterway.
6

7 C. The Trustees began assessing natural resource damages in the Commencement Bay
8 Environment in October 1991 by finding that hazardous substances had been released into the
9 Commencement Bay Environment; that public trust natural resources had likely been injured by the
10 releases; that data sufficient to pursue a natural resource damage assessment were available or could
11 likely be obtained at a reasonable cost; and that, without further action, implemented and planned
12 response actions would not adequately remedy the resource injuries. *See* Preassessment Screen of
13 Natural Resource Damages in the Commencement Bay Environment Due to Activities Taking Place
14 In and About the Commencement Bay/Nearshore Tidelands (CB/NT) Superfund Site (October 29,
15 1991). The Trustees notified representatives of known potentially responsible parties ("PRPs") of
16 their intent to conduct a damage assessment. The Trustees subsequently entered into a Funding and
17 Participation Agreement for Phase 1 of the Commencement Bay-Wide Natural Resource Damage
18 Assessment, dated February 10, 1993, with several of the major PRPs. The Trustees published a
19 report on the results of Phase 1 of the damage assessment process in June 1995. The PRPs did not
20 participate in subsequent stages of the damage assessment, and the Trustees continued the process
21 independently. The Trustees have now completed a series of studies during Phase 2 of the damage
22 assessment, focusing on impacts of contaminants on marine sediments, benthic organisms, flatfish and
23 salmonids. Results of those studies were published in a series of reports, consisting of
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1 Commencement Bay Natural Resource Trustees, 1996, Hylebos Waterway Data and Data Analysis
2 Report; Collier, T.K., L.L. Johnson, M.S. Myers, C.M. Stehr, M.M. Krahn, and J.E. Stein, 1998, Fish
3 injury in the Hylebos Waterway in Commencement Bay, Washington; Mary R. Arkoosh, Ed Casillas,
4 Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects of Chemical Contaminants
5 from the Hylebos Waterway on Disease Resistance of Juvenile Salmon; Ed Casillas, Bich-Thuy L.
6 Eberhart, Frank C. Sommers, Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects
7 of Chemical Contaminants from the Hylebos Waterway on Growth of Juvenile Chinook Salmon; and
8 Ed Casillas, Bich-Thuy L. Eberhart, Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998,
9 Exposure of Juvenile Chinook Salmon to Chemical Contaminants Specific to the Hylebos Waterway.
10 Based on this research, the Plaintiffs and Defendant (collectively, the “Parties” and, individually, a
11 “Party”) agree that no further natural resource damage assessment is required to effectuate the
12 purposes of this Consent Decree, with respect to Defendant.

13
14
15 D. Plaintiffs have filed a complaint (the “Complaint”) pursuant to section 107 of
16 CERCLA, 42 U.S.C. § 9607; MTCA, chapter 70.105D RCW; CWA, 33 U.S.C. §§ 1251 et seq.; and
17 OPA, 33 U.S.C. §§ 2701 et seq., seeking recovery from Defendant of damages for injury to,
18 destruction of, and loss of natural resources resulting from releases of hazardous substances into the
19 Commencement Bay Environment, including the costs of assessing the damages.
20

21 E. Plaintiffs allege in the Complaint that Defendant owns and operates real property or
22 facilities, identified by the Trustees as the WEYERHAEUSER site, from which storm water, surface
23 water runoff, wastewater, other process discharges, and/or groundwater have flowed to the
24 Commencement Bay Environment. Plaintiffs allege that investigations by EPA and others have
25 detected concentrations of hazardous substances in sediments on, in or adjacent those properties or
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1 facilities. Plaintiffs also allege that some of these hazardous substances are found in the sediments
2 of the Commencement Bay Environment.

3 F. Plaintiffs allege that hazardous substances have been or are being released to the
4 Commencement Bay Environment from properties or facilities owned and/or operated by Defendant,
5 and that those hazardous substances have caused injury to, destruction of and loss of natural
6 resources in the Commencement Bay Environment under Plaintiffs' trusteeship, including fish,
7 shellfish, invertebrates, birds, marine sediments, and resources of cultural significance. Plaintiffs
8 further allege that each of them and the public have suffered the loss of natural resource services
9 (including ecological services as well as direct and passive human use losses) as a consequence of
10 those injuries.
11

12 G. Plaintiffs allege that the Defendant is (a) the owner and/or operator of a facility, and/or
13 (b) a person who at the time of disposal or release of any hazardous substance owned or operated
14 any facility at which such hazardous substances were disposed of, that caused the incurrence of
15 response costs within the meaning of 42 U.S.C. § 9607 and RCW 70.105D.040.
16

17 H. Defendant denies all the allegations asserted by Plaintiffs in the Complaint and this
18 Consent Decree.
19

20 I. Although the Trustees have initiated but not yet completed a natural resource damage
21 assessment for the Commencement Bay Environment, the Trustees have developed and analyzed
22 information sufficient to support a settlement that is fair, reasonable and in the public interest.
23

24 J. To facilitate resolving natural resource damage claims, the Trustees developed a
25 proposed allocation of Hylebos Waterway Natural Resource Damages liability among Hylebos
26 Waterway PRPs solely for settlement purposes. Relying upon the results of the damage-assessment
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1 studies, remedial investigations, regulatory standards, and scientific literature, the Trustees first
2 developed an estimate of the amount of injury to natural resources that had occurred as a result of
3 releases of hazardous substances to the Hylebos Waterway. The Trustees quantified the effects of
4 the injuries in terms of the losses of ecological services over affected areas of the waterway and over
5 time, discounted to the current year. The Trustees used the term discounted ecological service
6 acre-years (DSAYs) to describe both the scale of the injuries, and the amount of habitat restoration
7 they are seeking to compensate for the injuries. For the Hylebos Waterway, the Trustees are seeking
8 to recover from all PRPs funds, property and/or in-kind services needed to generate habitat
9 restoration sufficient to compensate for the loss of 1526.77 DSAYs.
10
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12 K. Plaintiffs assert that hazardous-substance releases to the Hylebos Waterway have
13 become dispersed and commingled to the extent that the effects of one PRP's releases cannot be
14 readily distinguished from another's. Plaintiffs further assert that the circumstances of the Hylebos
15 Waterway contamination make all PRPs who contributed to the contamination jointly and severally
16 liable for all injuries to natural resources that have resulted from the contamination. As a
17 consequence, Plaintiffs assert the right to recover for the loss of all 1526.77 DSAYs from any
18 Hylebos Waterway PRP. Without prejudice to their position, and solely for purposes of facilitating
19 settlement with individual PRPs, the Trustees have developed a proposal for allocating liability for
20 the 1526.77 DSAYs among the PRPs. Independent consultants hired by the Trustees reviewed
21 existing information from the files of EPA, the Washington State Department of Ecology, and local
22 public libraries to allocate liability among the various Hylebos Waterway facilities that contributed
23 to the contamination.
24
25

26 L. To insure that all PRPs had an equal opportunity to be informed of and to offer their
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1 views on the Trustees' settlement proposal, in April 2002 the Trustees presented their report on the
2 proposed allocation to the public for notice and comment. The Trustees took comments for 60 days,
3 revised the report based upon the comments received, and made it available to PRPs in final form.
4

5 M. The Trustees' report allocated liability for DSAY losses for settlement purposes
6 among the various industrial sites along the Hylebos Waterway. As a result of their allocation process,
7 the Trustees allocated a total of 14.017 DSAYs to the Defendant. The Trustees also allocated a total
8 of \$47,441.99 in damage assessment costs relating to the Hylebos Waterway to the Defendant.
9

10 N. The Trustees quantified natural resource damages in their Hylebos Waterway report
11 in terms of DSAYs in order to encourage settling parties to resolve their liability by constructing
12 habitat restoration projects. For parties who prefer settling on a cash-damages basis, the Trustees
13 reviewed data from existing restoration projects and estimated it would cost fifty-two thousand
14 dollars (\$52,000.00) per DSAY if the Trustees themselves constructed the required restoration
15 projects. The cash damages equivalent of the 14.017 DSAYs allocated to Defendant totals
16 \$728,884.00. When combined with the damage assessment costs allocated to the Defendant, the
17 dollar value of the Trustees' claim asserted against Defendant totals \$776,325.99. The Trustees have
18 agreed to settle their natural resource damage claims against Defendant associated with the
19 Commencement Bay Environment for cash payments totaling \$776,325.99 in natural resource
20 damages and damage assessment costs. Defendant has agreed to pay the Trustees the identified sum
21 in return for the Trustees' covenants not to sue Defendant for Natural Resource Damages as provided
22 below in Paragraph 15.
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25 O. Defendant does not admit any liability to Plaintiffs arising out of the transactions or
26 occurrences alleged in the Complaint.
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1 P. Plaintiffs and Defendant agree, and this Court by entering this Decree finds, that this
2 Decree has been negotiated by the Parties in good faith; that settlement of this matter will avoid
3 prolonged and complicated litigation between the Parties; and that this Decree is fair, reasonable, and
4 in the public interest.
5

6 THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED,
7 AND DECREED:

8 III. JURISDICTION AND VENUE

9
10 1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
11 §§ 1331, 1345 and 1367, 42 U.S.C. §§ 9607 and 9613(b) and 33 U.S.C. § 2717(b). The Court has
12 personal jurisdiction over the Parties. Solely for the purposes of this Decree and the underlying
13 Complaint, the Parties waive all objections and defenses that they may have to jurisdiction of the
14 Court or to venue in this District. The Parties may not challenge the terms of this Decree or this
15 Court's jurisdiction to enter and enforce this Decree.
16

17 IV. PARTIES BOUND

18 2. This Decree is binding upon the United States, the State, the Puyallup Tribe of
19 Indians, the Muckleshoot Indian Tribe and upon Defendant and its heirs, successors and assigns. Any
20 change in ownership or corporate or other legal status, including but not limited to any transfer of
21 assets or real or personal property, will in no way alter the status or responsibilities of Defendant
22 under this Decree.
23

24 V. DEFINITIONS

25 3. Unless otherwise expressly provided, terms used in this Decree that are defined in
26 CERCLA or in regulations promulgated under CERCLA have the meanings assigned to them in
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1 CERCLA or in such regulations. Whenever the terms listed below are used in this Decree or in any
2 attached appendix, the following definitions will apply:

3 a. "Commencement Bay Environment" means the waters of Commencement Bay,
4 State of Washington -- including the shoreline, intertidal areas, tributaries, drainage areas, estuaries
5 and bottom sediments -- lying south of a line drawn from Point Defiance to Dash Point. These
6 waters include the Thea Foss Waterway, Wheeler-Osgood Waterway, Middle Waterway, St. Paul
7 Waterway, Puyallup River from the mouth south to the present City limits, Milwaukee Waterway,
8 Sitcum Waterway, Blair Waterway, and Hylebos Waterway. This area includes but is not limited to
9 the Commencement Bay Nearshore/Tideflats Superfund Site, as identified or amended by the EPA,
10 including the B&L Landfill, and areas affected by releases of hazardous substances within the
11 Commencement Bay Nearshore/Tideflats Superfund Site.

12 b. "Commencement Bay Restoration Account" means the Commencement Bay
13 Natural Resource Restoration Account authorized by the Order Directing the Deposit of Natural
14 Resource Damages into the Registry of the Court in United States v. Port of Tacoma, No.
15 C93-5462B (W.D. Wash. Oct. 8, 1993) (attached as Appendix A).

16 c. "DSAYs" means discounted ecological service acre-years, the metric
17 established by the Trustees to determine the scale of Natural Resource Damages liability associated
18 with the Hylebos Waterway and the natural resource restoration efforts needed to compensate for
19 injury to, destruction or loss of natural resources giving rise to liability.

20 d. "Defendant" means Weyerhaeuser Company.

21 e. "Natural Resource Damages" means damages, including costs of damage
22 assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607; Chapter 70.105D RCW;
23

1 Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; and Section 1002(b)(2)(A) of the Oil
2 Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A), for injury to, destruction of, or loss of
3 natural resources resulting from releases of hazardous substances or discharges of oil to the
4 Commencement Bay Environment at or from sites along, adjacent to or draining to the Hylebos
5 Waterway.

7 f. "Parties" mean the United States, the State of Washington, the Puyallup Tribe
8 of Indians, the Muckleshoot Indian Tribe and Weyerhaeuser Company.

9 g. "Plaintiffs" mean the United States, the State, the Puyallup Tribe of Indians,
10 and the Muckleshoot Indian Tribe.

12 h. "Trustees" mean the United States Department of Commerce, acting through
13 NOAA; the Department of the Interior; the Washington State Department of Ecology, on behalf of
14 the State of Washington; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe.

15 **VI. GENERAL PROVISIONS**

16 4. The Complaint states claims upon which relief may be granted.

17 5. Nothing in this Consent Decree shall be construed as an admission of liability by the
18 Defendant for any claims or allegations made in the Complaint or in this Consent Decree.

19 **VII. PAYMENT OF NATURAL RESOURCE DAMAGES**

20 **AND DAMAGE ASSESSMENT COSTS**

21 6. Within 30 days of entry of this Decree, Defendant will pay to the Trustees
22 \$728,884.00 for Natural Resource Damages. This payment will be made by a certified check made
23 payable to the Clerk of the Court. This check will be deposited in the Commencement Bay Natural
24 Resource Restoration Account.
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1 7. Within 30 days of entry of this Decree, Defendant will pay to the Trustees sums
2 totaling \$47,441.99 in damage assessment costs. These sums shall be paid in the following amounts
3 and particulars:

4
5 Trustee: National Oceanic and Atmospheric Administration
6 Amount: \$38,271.38

7 Trustee: U.S. Department of the Interior
8 Amount: \$6,398.44

9 Payments to NOAA and the U.S. Department of the Interior shall be made by certified checks made
10 payable to “U.S. Department of Justice” bearing the notation “Weyerhaeuser Company -
11 Commencement Bay Assessment Costs,” and delivered to U.S. Attorney's Office, Western District
12 of Washington, Attn: Financial Litigation Unit, 700 Stewart Street, Suite #5220, Seattle, WA 98101.

13
14 Any payments received by the Department of Justice after 4:00 p.m. Eastern Standard Time shall be
15 credited on the next business day. Defendant shall provide at least five days notice to the Financial
16 Litigation Unit before making the transfer.

17 Payments to the other Trustees shall be made by certified checks, bearing the notation
18 “Weyerhaeuser Company - Commencement Bay Assessment Costs,” in the amounts indicated and
19 made payable and addressed as follows:

20
21 Trustee: State of Washington
22 Amount: \$789.52
23 Payee: State of Washington/Department of Ecology
24 Address: State of Washington
25 Department of Ecology
26 Attention: Cashiering Section
27 P.O. Box 5128
28 Lacey, WA 98503-0210

1 Trustee: Puyallup Tribe of Indians
2 Amount: \$1,806.29
3 Payee: Puyallup Tribe of Indians
4 Address: Mr. William Sullivan
5 Environmental Protection Department
6 Puyallup Tribe of Indians
7 3009 E. Portland Ave.
8 Tacoma, WA 98404

9 Trustee: Muckleshoot Indian Tribe
10 Amount: \$176.37
11 Payee: Muckleshoot Indian Tribe
12 Address: Mr. Rob Otsea
13 Office of the Tribal Attorney
14 Muckleshoot Indian Tribe
15 39015 172nd Avenue S.E.
16 Auburn, WA 98002

17 8. At the time of each payment Defendant will send notice that payment has been made
18 to the Trustees and DOJ in accordance with Section XIV (Notices and Submissions). Such notice
19 will reference Commencement Bay NRDA, DOJ case number 90-11-2-1049, and the civil action
20 number.

21 VIII. FAILURE TO COMPLY WITH CONSENT DECREE

22 9. Interest on Late Payments. If Defendant fails to make any payment under
23 Paragraphs 6 and 7 by the required due date, interest shall be assessed at the rate specified for interest
24 on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,
25 compounded annually on October 1 of each year in accordance with 42 U.S.C. § 9607(a). The
26 applicable rate of interest is the rate in effect at the time the interest accrues. The rate of interest is
27 subject to change on October 1 of each year. Interest will continue to accrue on the unpaid balance
28

1 through the date of payment.

2 10. Stipulated Penalties.

3 a. If any amounts due under Paragraphs 6 and 7 are not paid by the required date,
4 Defendant will be in violation of this Decree and, as a stipulated penalty, in addition to the interest
5 required by Paragraph 9, will increase the financial contributions it makes under this Consent Decree
6 to fund habitat restoration actions by paying the Trustees \$1,000 per violation per week that such
7 payment is late. After the second week that such payment is late, the stipulated penalty shall apply
8 to each additional day that the payment is late.
9

10 b. Stipulated penalties are due and payable within thirty (30) days of the date of
11 the demand for payment of the penalties by the Trustees. All payments to the Trustees under this
12 Paragraph will be made by a certified check made payable to the Clerk of the Court. This check will
13 be deposited in the Commencement Bay Restoration Account.
14

15 c. At the time of each payment, Defendant will send notice that payment has been
16 made to the Trustees and DOJ in accordance with Section XIV (Notices and Submissions). This
17 notice will reference Commencement Bay NRDA, DOJ Case Number 90-11-2-1049, and the civil
18 action number.
19

20 d. Penalties will accrue as provided in this Paragraph regardless of whether the
21 Trustees have notified Defendant of the violation or made a demand for payment, but the penalties
22 need only be paid upon demand. All penalties will begin to accrue on the day after payment is due
23 and will continue to accrue through the date of payment. Nothing in this Decree prevents the
24 simultaneous accrual of separate penalties for separate violations of this Decree.
25

26 11. If Plaintiffs bring an action to enforce this Decree, Defendant will reimburse Plaintiffs
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1 for all costs of such action, including but not limited to costs of attorney time.

2 12. Payments made under this Section are in addition to any other remedies or sanctions
3 available to Plaintiffs by virtue of Defendant's failure to comply with the requirements of this Decree.
4

5 13. Notwithstanding any other provision of this Section, Plaintiffs may, in their
6 unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued
7 pursuant to this Decree. Payment of stipulated penalties does not excuse Defendant from payment
8 as required by Section VII or from performance of any other requirement of this Consent Decree.
9

10 14. The Trustees may use sums paid as stipulated penalties under Paragraph 10 to pay
11 unreimbursed damage assessment costs and/or to fund or contribute to additional actions to restore
12 Commencement Bay natural resources.

13 IX. COVENANT NOT TO SUE BY PLAINTIFFS

14 15. Except as specifically provided in Section X (Reservations of Rights) below, Plaintiffs
15 covenant not to sue or to take administrative action against Defendant pursuant to Section 107(a) of
16 CERCLA, 42 U.S.C. § 9607(a); Chapter 70.105D RCW; Section 311 of the Clean Water Act
17 (CWA), 33 U.S.C. § 1321; or Section 1002(a) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C.
18 § 2702(a), to recover Natural Resource Damages. This covenant not to sue will take effect upon
19 receipt by the Registry of the Court and by each of the Trustees of all payments required by
20 Paragraphs 6 and 7 of Section VII. This covenant not to sue is conditioned upon the satisfactory
21 performance by Defendant of its obligations under this Decree. This covenant not to sue extends only
22 to Defendant and its heirs, successors, and assigns, and does not extend to any other person.
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25 X. RESERVATIONS OF RIGHTS

26 16. Plaintiffs reserve, and this Decree is without prejudice to, all rights against Defendant
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1 with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiffs in
2 Paragraph 15. Notwithstanding any other provision of this Decree, Plaintiffs reserve, and this Decree
3 is without prejudice to, all rights against Defendant with respect to:

- 4 a. liability for failure of Defendant to meet a requirement of this Decree;
- 5 b. liability for costs of response incurred or to be incurred by Plaintiffs;
- 6 c. liability for injunctive relief or administrative order enforcement under Section 106 of
7 CERCLA, 42 U.S.C. § 9606, and
8
- 9 d. criminal liability to the United States or State.

10 XI. REOPENERS

11
12 17. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve, and
13 this Consent Decree is without prejudice to, the right to institute proceedings against Defendant in
14 this action or in a new action for:

- 15 a. Claims based on a failure of Defendant to satisfy the requirements of this Consent
16 Decree; and
- 17 b. Additional claims for Natural Resource Damages if conditions, factors or information
18 in the Commencement Bay Environment, not known to the Trustees at the time of entry of this
19 Consent Decree, are discovered that, together with any other relevant information, indicates that there
20 is injury to, destruction of, or loss of natural resources of a type unknown, or of a magnitude
21 significantly greater than was known, at the time of entry of this Consent Decree, which is attributable
22 to the Defendant.

23 XII. COVENANT NOT TO SUE BY DEFENDANT

24 18. Defendant covenants not to sue and agrees not to assert any claims or causes of action
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1 against the United States, the State, the Puyallup Tribe of Indians and the Muckleshoot Indian Tribe
2 or their contractors or employees, for any civil claims or causes of action relating to Natural Resource
3 Damages.
4

5 **XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

6 19. Nothing in this Consent Decree shall be construed to create any rights in, or grant any
7 cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly
8 reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims,
9 demands, and causes of action they each may have with respect to any matter, transaction, or
10 occurrence relating in any way to the Commencement Bay Environment against any person not a
11 Party hereto.
12

13 20. The Parties agree, and by entering this Consent Decree this Court finds, that
14 Defendant is entitled, as of the effective date of this Consent Decree, to protection from contribution
15 actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and RCW
16 70.105D.040(4)(d) for Natural Resource Damages.
17

18 21. Defendant agrees that it will notify the Trustees and the United States in writing no
19 later than sixty (60) days before bringing a suit or claim for contribution for Natural Resource
20 Damages. Defendant also agrees that it will notify the Trustees and the United States in writing within
21 ten (10) days of service of a complaint or claim upon Defendant relating to a suit or claim for
22 contribution for Natural Resource Damages. In addition, Defendant will notify the Trustees and the
23 United States within ten (10) days of service or receipt of any Motion for Summary Judgment and
24 within ten (10) days of receipt of any order from a court setting a case for trial for matters related to
25 this Decree.
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1 7600 Sand Point Way NE
2 Seattle, WA 98115-0070

3 As to the United States Department of the Interior:

4 Jeff Krausmann
5 U.S. Fish & Wildlife Service
6 510 Desmond Dr. SE, Suite 102
7 Lacey, WA 98503-1263

8 As to the State:

9 Craig Thompson
10 Toxics Cleanup Program
11 State of Washington
12 P.O. Box 47600
13 Olympia, WA 98504-7600

14 As to the Puyallup Tribe of Indians:

15 Bill Sullivan
16 Environmental Department
17 Puyallup Tribe of Indians
18 3009 E. Portland Ave.
19 Tacoma, WA 98404

20 As to the Muckleshoot Indian Tribe:

21 Mr. Rob Otsea
22 Office of the Tribal Attorney
23 Muckleshoot Indian Tribe
24 39015 172nd Avenue S.E.
25 Auburn, WA 98002

26 As to Defendant:

27 Weyerhaeuser Company
28 Attn.: Ms. Jennifer Hale, Environmental Manager

1 Environment Health & Safety – Standards, WTC-2G2
2 P.O. Box 9777
3 Federal Way, Washington 98063-9777

4 With a copy to

5 Weyerhaeuser Company Law Department, CH 1J28
6 Attn.: Vice President and General Counsel
7 P.O. Box 9777
8 Federal Way, Washington 98063-9777

9
10 XV. EFFECTIVE DATE

11 24. The effective date of this Consent Decree shall be the date upon which this Consent
12 Decree is entered by the Court, except as otherwise provided herein.

13 XVI. RETENTION OF JURISDICTION

14 25. This Court will retain jurisdiction over this matter for the purpose of interpreting and
15 enforcing the terms of this Decree.

16
17 XVII. INTEGRATION/APPENDICES

18 26. This Decree and its appendices constitute the final, complete, and exclusive agreement
19 and understanding with respect to the settlement embodied in this Decree. The Parties acknowledge
20 that there are no representations, agreements, or understandings relating to the settlement other than
21 those expressly contained in this Decree. The following appendices are attached to and incorporated
22 into this Consent Decree:

23
24 Appendix A is the Order Directing the Deposit of Natural Resource Damages into the
25 Registry of the Court in United States v. Port of Tacoma, No. C93-5462B (W.D. Wash. Oct. 8,
26 1993).

1 XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

2 27. This Decree will be lodged with the Court for a period of not less than thirty (30) days
3 for public notice and comment. The Plaintiffs each reserve the right to withdraw or withhold their
4 consent if the comments regarding the Decree disclose facts or considerations that indicate this
5 Decree is inappropriate, improper, or inadequate. Defendant consents to the entry of this Decree
6 without further notice.

7
8 28. If for any reason this Court declines to approve this Decree in the form presented, this
9 agreement may be voided at the sole discretion of any Party, and the terms of the agreement may not
10 be used as evidence in any litigation between the Parties.

11
12 XIX. SIGNATORIES/SERVICE

13 29. The Assistant Attorney General for the Environment and Natural Resources Division
14 of the United States Department of Justice and each undersigned representative of the State, the
15 Puyallup Tribe of Indians, the Muckleshoot Indian Tribe and Defendant certifies that he or she is
16 authorized to enter into the terms and conditions of this Decree and to execute and bind legally the
17 Party that he or she represents to this document.

18
19 30. Defendant agrees not to oppose entry of this Decree by this Court or to challenge any
20 provision of this Decree unless any Plaintiff has notified Defendant in writing that it no longer
21 supports entry of the Decree.


22
23 31. Defendant will identify on the attached signature page the name and address of an
24 agent who is authorized to accept service of process by mail on behalf of it with respect to all matters
25 relating to this Decree. Defendant agrees to accept service in that manner and to waive the formal
26 service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable

1 local rules of this Court, including but not limited to service of a summons.

2 XX. FINAL JUDGMENT

3 32. Upon approval and entry of this Decree by the Court, this Decree will constitute the
4 final judgment between and among the United States, the State, the Puyallup Tribe of Indians, the
5 Muckleshoot Indian Tribe, and Defendant. The Court finds that there is no just reason for delay and
6 therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.
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9 SO ORDERED THIS 13th DAY OF JUNE, 2008.

10 
11 ROBERT J. BRYAN
12 United States District Judge
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in United States, et al. v.
2 Weyerhaeuser Company

3 FOR THE UNITED STATES OF AMERICA
4

5 Date: _____
6 _____

7 Ronald J. Tenpas
8 Assistant Attorney General
9 Environment and Natural Resources Division
10 U.S. Department of Justice
11 Washington, D.C. 20530

12 FOR THE STATE OF WASHINGTON
13

14 Date: 12/18/07 /s/ _____

15 Director
16 Department of Ecology

17 Date : 12/21/07 /s/ _____

18 Assistant Attorney General
19 State of Washington

20 FOR THE PUYALLUP TRIBE OF INDIANS
21

22 Date: 1/9/08 /s/ _____
23
24
25
26
27
28

1 FOR THE MUCKLESHOOT INDIAN TRIBE

2

3 Date: 1/31/08 /s/ _____

4

5

6

7 FOR WEYERHAEUSER COMPANY

8

9 Date: 10/26/07 /s/ _____

10

11

Sara Schreiner Kendall
Vice President
Environment, Health & Safety

12

13

14 Agent authorized to receive service of process by mail on behalf of Weyerhaeuser Company with
15 respect to all matters relating to this Decree:

16

17

Weyerhaeuser Company
Attention: Corporate Secretary
18 Mail to: PO Box 9777
Mail Stop: CH 1N27
19 Federal Way, Washington 98063-9777
20 Ship-to: 33663 Weyerhaeuser Way South
Mail Stop: CH 1N27
21 Federal Way, Washington 98003

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