

CC TO JUDGE

Hon. William L. Dwyer

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DEC 23 1991

UNITED STATES DISTRICT COURT AT SEATTLE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
et al.,  
  
Plaintiffs,  
  
v.  
  
THE CITY OF SEATTLE, and  
MUNICIPALITY OF METROPOLITAN  
SEATTLE,  
  
Defendants.

NO. C90-395WD  
CONSENT DECREE

CONSENT DECREE

This Consent Decree is made and entered into by and between the United States of America, the State of Washington, the Suquamish Indian Tribe, the Muckleshoot Indian Tribe, the City of Seattle ("City") and the Municipality of Metropolitan Seattle ("Metro").

INTRODUCTION

The parties to this Consent Decree agree that settlement of the claims in this case against defendants the City and Metro is

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1 fair, adequate, reasonable, equitable and in the public interest  
2 and is made in good faith and after arms-length negotiations, and  
3 that entry of this Consent Decree is the most appropriate means  
4 to resolve the matters covered herein.

5 RECITALS

6 A. The Department of Commerce acting through the National  
7 Oceanic and Atmospheric Administration ("NOAA"), the United  
8 States Department of the Interior ("Interior"), the Washington  
9 Department of Ecology ("Ecology"), the Muckleshoot Indian Tribe,  
10 and the Suquamish Indian Tribe have been designated pursuant to  
11 Section 107(f) of the Comprehensive Environmental Response,  
12 Compensation, and Liability Act of 1980, as amended ("CERCLA"),  
13 42 U.S.C. Section 9607(f), and 40 C.F.R. Part 300, subpart G, to  
14 act on behalf of the public as trustees for natural resources for  
15 the assessment and recovery of damages for injury to, destruction  
16 of, or loss of natural resources under their trusteeships.

17 B. Metro, pursuant to statutory authority, is responsible  
18 for the construction, operation, and maintenance of trunk sewer  
19 lines, pumping facilities, and treatment plants serving over one  
20 million people including many industries and commercial  
21 enterprises in the greater Seattle area. Metro treats  
22 approximately 180 million gallons of wastewater per day at its  
23 five wastewater treatment plants, and discharges the treated  
24 effluent from a system of outfall pipes extending into Puget  
25 Sound. As a part of that system, combined sewer overflows

1 ("CSOs") are located on and discharge to Elliott Bay and the  
2 Duwamish River to handle extraordinary flows of storm water into  
3 the system.

4 C. The City, pursuant to statutory authority, owns and  
5 maintains a basic collector sewer system which feeds into the  
6 Metro trunk sewer lines, and also owns and maintains a storm  
7 water system. The City pays Metro for sewage transmission,  
8 treatment, and disposal services. As part of the sewer and storm  
9 water systems, the City owns and maintains certain CSOs and storm  
10 water outfalls that discharge to Elliott Bay and the Duwamish  
11 River.

12 D. The United States on behalf of NOAA filed a complaint  
13 in this action on March 19, 1990, under Section 107 of CERCLA, 42  
14 U.S.C. § 9607(a), seeking, inter alia, recovery from Metro and  
15 the City for damages for injury to, destruction of, and loss of  
16 natural resources resulting from releases of hazardous  
17 substances, in particular chromium, cadmium, copper, lead, zinc,  
18 pentachlorophenols (PCPs), polychlorinated biphenyls (PCBs),  
19 polycyclic aromatic hydrocarbons (PAHs), and halogenated  
20 hydrocarbons, into the environment in and around the Duwamish  
21 River and Elliott Bay, for the costs of restoring, replacing or  
22 acquiring the equivalent of the affected natural resources, and  
23 for the costs of assessing the damage to the affected natural  
24 resources.

1 E. The United States has alleged in its complaint in this  
2 matter, prior to conducting a natural resource damage assessment  
3 pursuant to 43 C.F.R. Part 11, that Metro and the City have  
4 released hazardous substances into the environment, with  
5 attendant injury to the United States' trust resources, and that  
6 mitigation and remediation of substances Metro and the City are  
7 alleged to have released would facilitate the recovery of such  
8 resources.

9 F. Metro and the City maintain that effluent discharged  
10 from their CSOs and storm water outfalls has presented little if  
11 any potential for injury to the natural resources in Elliott Bay  
12 and the Duwamish River; that their wastewater collection,  
13 treatment and disposal programs have contributed substantially to  
14 decreasing and/or minimizing injury and damage to natural  
15 resources; that their water quality programs have made  
16 improvements in the water quality of Elliott Bay and the Duwamish  
17 River; that their pretreatment programs, along with on-site  
18 monitoring, keep the contribution of industrial sources within  
19 permitted discharge limits; and that the limited natural resource  
20 damage from the CSOs and the storm water outfalls appears to have  
21 originated equally from industrial, commercial, and residential  
22 customers that discharge into the City and Metro systems.

23 G. Without admission or adjudication of any fact or issue  
24 of law in this matter, except as between the United States, Metro  
25 and the City as to the running of the statutes of limitation and  
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1 to certain interpretations of Section 13 of the Rivers and  
2 Harbors Act, 33 U.S.C. § 407, in settlement of this action Metro  
3 and the City have agreed to participate in a cooperative program  
4 of restoration and replacement of natural resources in Elliott  
5 Bay and the Duwamish River. In addition to the provision of  
6 expertise through the contribution of in-kind services, Metro and  
7 the City have agreed to provide funding for the operation of the  
8 Panel (as defined below), the evaluation of natural resource  
9 damages, the selection, design, and implementation of sediment  
10 remediation and habitat development projects, and the  
11 modification of planned source control programs.

12 H. This Decree contains terms embodying a cooperative  
13 partnership among the United States, Metro, the City, the State  
14 of Washington, the Muckleshoot Indian Tribe, and the Suquamish  
15 Indian Tribe that will make improvements in Elliott Bay and the  
16 Duwamish River and will allow these parties to make progress in  
17 restoring and replacing damaged natural resources in the covered  
18 area, as defined below.

19 I. Scientific research conducted on natural resources in  
20 Elliott Bay and the Duwamish River indicates that the effects of  
21 many urban and industrial activities, including CSOs and storm  
22 water discharges, have contributed to the injury identified in  
23 these studies. Based on this research, the parties have agreed  
24 that, as to Metro and the City, no further natural resource  
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1 damage assessment is required to effectuate the purposes of this  
2 Decree.

3 J. The programs and projects conducted pursuant to this  
4 Decree standing alone are not intended, nor could they be  
5 expected, to remedy all of the losses of or injuries to natural  
6 resources in Elliott Bay and the Duwamish River. The parties  
7 recognize the importance of dealing with the programs under this  
8 Decree in a comprehensive manner and of coordinating the  
9 activities undertaken pursuant to this Decree with actions by  
10 these and other parties in the Elliott Bay and Duwamish River  
11 area to maximize the benefits to the natural resources, as well  
12 as the residents, of the area. This includes coordinating  
13 ongoing Metro and City programs with efforts to maintain habitat  
14 development projects established pursuant to this Decree.

15 K. The parties understand that the source control,  
16 sediment remediation and habitat development efforts undertaken  
17 pursuant to this Decree are not intended to substitute for any  
18 other efforts or obligations of these parties.

19 L. The parties recognize that the United States and the  
20 State of Washington retain and reserve their authority that does  
21 not relate to recovery of natural resource damages, including the  
22 authority to issue orders requiring remedial action and to  
23 recover costs associated with such orders pursuant to CERCLA and  
24 the Model Toxics Control Act, Chapter 70.105D RCW, Chapter 90.48

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1 RCW, and the authority to administer and enforce the State  
2 Sediment Management Standards, Chapter 173-204 WAC.

3 M. The Trustees have determined that the actions and  
4 expenditures of Metro and the City under this Decree are an  
5 appropriate contribution to efforts to redress the natural  
6 resource damages that are the subject of this proceeding. This  
7 determination is based in major part upon the following  
8 considerations:

9 1. Metro has made a substantial public investment in  
10 water quality. For example, Metro spent \$2,244,000 over the  
11 period 1977 through 1989 on its program of regulating  
12 commercial and industrial discharges into those portions of  
13 its sewerage system related to Elliott Bay and the Duwamish  
14 River area. Metro has spent an additional \$38,000,000 since  
15 1961 on other programs specifically designed to enhance  
16 Elliott Bay and the Duwamish River area. In addition to  
17 funds made available pursuant to this Decree, Metro will  
18 spend \$54,500,000 (in 1988 dollars) for CSO control projects  
19 through the year 2006.

20 2. The City has been actively engaged in programs to  
21 increase protection of waters receiving urban runoff.  
22 During the period 1970 through 1989, the City has expended  
23 more than \$150,000,000 in capital projects and other  
24 programs to enhance water quality in the Elliott  
25 Bay/Duwamish River area. (This figure does not include fees  
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1 and charges paid to Metro, although the City has  
2 historically contributed over one-half of Metro's operating  
3 revenue.) The City's capital projects and other programs  
4 have included controlling CSOs, identifying and reducing  
5 sources of contaminants in storm drains, educating  
6 commercial and industrial dischargers on storage and  
7 handling practices of hazardous substances, and cleaning  
8 streets, catch basins, and storm drain lines.

9 3. On April 17, 1991, the State of Washington adopted  
10 Sediment Management Standards, Chapter 173-204 WAC, an  
11 innovative program of sediment quality standards, source  
12 control, and cleanup, applicable to sediments in Elliott Bay  
13 and the Duwamish River.

14 In particular, the CSO control efforts undertaken by Metro and  
15 the City, combined with the expected sediment quality benefits  
16 from adherence with the Sediment Management Standards program,  
17 provide a substantial foundation for the efforts contemplated  
18 under this Decree.

19  
20 NOW, THEREFORE, before the taking of any testimony, before  
21 the adjudication of the merits of this case, and without  
22 admission of any issue of law, fact, liability, or responsibility  
23 by the City or Metro, IT IS HEREBY ORDERED, ADJUDGED, AND  
24 DECREED:

25 JURISDICTION AND VENUE

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27 CONSENT DECREE - 8

28 U.S. Department of Justice  
Environmental Enforcement Section  
c/o GC-DOJ DARC BIN C15700  
7600 Sand Point Way N.E.  
Seattle, Washington 98115-0070



1           1.    The Court has jurisdiction over the subject matter of  
2 this action and the parties to this Consent Decree pursuant to 28  
3 U.S.C. §§ 1331 and 1345, and Section 113(b) of CERCLA, 42 U.S.C.  
4 § 9613. This Court also has personal jurisdiction over the City  
5 and Metro which, solely for the purposes of this Consent Decree,  
6 waive all objections and defenses that they may have to  
7 jurisdiction of the Court or to venue in this District and to  
8 service of process.

9                                   APPLICABILITY OF CONSENT DECREE

10           2.    The provisions of this Consent Decree shall apply to  
11 and be binding on the parties to this Consent Decree, their  
12 agents, successors and assigns. Changes in the organizational  
13 form or status of a party shall have no effect on its obligations  
14 under this Consent Decree.

15                                   DEFINITIONS

16           3.    This Consent Decree incorporates the definitions  
17 set forth in Section 101 of CERCLA, 42 U.S.C. § 9601. In  
18 addition, whenever the following terms are used in this Consent  
19 Decree, they shall have the following meanings:

20           a.    "Covered area" means the embayment on Puget Sound  
21 located between Alki Point and West Point and includes the  
22 shoreline ten (10) meters upland from the mean high water line  
23 ("Elliott Bay") and the Duwamish River from the point at which it  
24 discharges into Elliott Bay to the head of navigation

1 (approximately river mile 10), including Harbor Island and the  
2 East and West Waterways around Harbor Island ("Duwamish River").

3 b. "Covered matters" means any civil or  
4 administrative liability to the United States, the State of  
5 Washington, the Suquamish Indian Tribe and the Muckleshoot Indian  
6 Tribe, for any claim under 42 U.S.C. § 9607(a), 33 U.S.C. § 407,  
7 Chapter 70.105D RCW, Chapter 90.48 RCW, or any other federal,  
8 state, or common law, except claims relating to treaties between  
9 the United States and the Suquamish and Muckleshoot Indian  
10 Tribes, for (1) natural resource damages within the covered area,  
11 including the costs of assessing natural resource damages; and  
12 (2) reimbursement of response costs incurred or to be incurred by  
13 any Trustee (as defined below) with respect to its claims for  
14 natural resource damages in the covered area, that could have  
15 been adjudicated had United States v. City of Seattle and  
16 Municipality of Metropolitan Seattle, Cause No. C90-395WD,  
17 W.D. Wash. (Mar. 19, 1990), been prosecuted to final judgment;  
18 "covered matters" shall also include any civil or administrative  
19 liability to the United States, the Suquamish Indian Tribe, the  
20 Muckleshoot Indian Tribe and the State of Washington for any  
21 claims under 33 U.S.C. § 407 for injunctive and other equitable  
22 relief that could have been adjudicated had said case been  
23 prosecuted to final judgment. For the purpose of determining if  
24 claims could have been adjudicated, reference shall be made to  
25 the facts and allegations disclosed in the documents filed with

1 the Court in said case by the date of entry of this Decree.  
2 "Covered matters" shall not be construed to include any authority  
3 of the United States or the State of Washington that does not  
4 relate to injunctive or equitable relief under 33 U.S.C. § 407 or  
5 to recovery of natural resource damages, including the authority  
6 to issue orders requiring remedial action and to recover costs  
7 associated with such orders pursuant to CERCLA and the Model  
8 Toxics Control Act, Chapter 70.105D RCW, Chapter 90.48 RCW, and  
9 the authority to administer and enforce the State Sediment  
10 Management Standards, Chapter 173-204 WAC.

11 c. "Habitat development" includes acquiring living  
12 natural resources for the purpose of habitat restoration and  
13 replacement and any program, technique, method, or other means of  
14 creating or enhancing aquatic or benthic habitat in the Duwamish  
15 River or Elliott Bay.

16 d. "Natural resource damages" means damages for  
17 injury to, destruction of, or loss of any and all natural  
18 resources caused in whole or in part by releases of hazardous  
19 substances into the environment.

20 e. "Sediment remediation" includes, but is not  
21 limited to, any program, technique, method, or other means of  
22 dredging, removing, cleansing, isolating, immobilizing,  
23 bioremediating, capping, or containing sediments beneath the  
24 waters of the Duwamish River and Elliott Bay that contain  
25 hazardous substances.

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1 f. "Source control" means any program, technique,  
2 method, or other means of restricting or eliminating the  
3 discharge or other release of hazardous substances into Metro's  
4 and the City's CSO and/or storm water outfall systems.

5 g. "Trustees" means NOAA, Interior, Ecology, the  
6 Suquamish Indian Tribe and the Muckleshoot Indian Tribe.

7 DISTRICT COURT REGISTRY ACCOUNT

8 4. a. Metro and the City shall, pursuant to the  
9 schedules and terms set forth herein, pay all financial  
10 contributions under this Consent Decree by certified or bank  
11 check. Each such check shall include on its face a statement  
12 that it is a payment for natural resource damages in Civil Action  
13 No. C90-395WD (W.D. Wash.), and, with the exception of those  
14 funds identified in paragraph 32 below, shall be sent to:

15 Office of the United States Attorney  
16 3600 SeaFirst Fifth Avenue Plaza  
17 800 Fifth Avenue  
Seattle, Washington 98104

18 The U.S. Attorney shall immediately deposit such funds with the  
19 Registry of the Court. The party making payment shall cause  
20 copies of each check and of any transmittal letter accompanying  
21 the check to be sent to: Chief, Environmental Enforcement  
22 Section, Department of Justice, P.O. Box 7611, Ben Franklin  
23 Station, Washington, D.C. 20044; NOAA Damage Assessment Center,  
24 WSC1 Room 212, 6001 Executive Boulevard, Rockville, Maryland  
25 20852, Attention: Kathleen Anderson.

1           b.    The Registry of the Court shall administer all  
2 amounts paid for natural resource damages under this Decree in an  
3 interest-bearing account ("Registry Account" or "Account") as  
4 provided in the Order Directing the Deposit of Natural Resource  
5 Damages Into the Registry of the Court ("Deposit Order") issued  
6 by this Court pursuant to Rule 67 of the Federal Rules of Civil  
7 Procedure, 28 U.S.C. § 2041, and Rule GR 6 of the Rules of the  
8 United States District Court for the Western District of  
9 Washington. The Deposit Order shall be attached to this Decree.

10           c.    All funds and all interest accrued thereon in the  
11 Registry Account shall be held in the name of the "Clerk, United  
12 States District Court," for the benefit of the Trustees. Monies  
13 in the Registry Account may be used to fund the planning,  
14 implementing, and overseeing of actions to restore, replace, or  
15 acquire the equivalent of natural resources that have been  
16 injured, destroyed, or lost as a result of the release of  
17 hazardous substances into the environment in the covered area, in  
18 accordance with 42 U.S.C. § 9607(f)(1). The Panel shall use all  
19 interest earned on funds paid into the Account for sediment  
20 remediation only for expenses of project implementation for  
21 sediment remediation and all interest earned on funds paid into  
22 the Account for habitat development only for expenses of project  
23 implementation for habitat development. All disbursements from  
24 the Registry Account shall be made by order of the Court in  
25 accordance with the provisions of 28 U.S.C. § 2042. Applications  
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1 for disbursement orders may be made only by the United States on  
2 behalf of, and with the approval of, the Panel.

3 PROJECT AND ACCOUNT MANAGEMENT

4 5. A panel of managers ("Panel" or "Managers") shall be  
5 formed to direct the source control, sediment remediation and  
6 habitat development project activities contemplated herein to be  
7 performed utilizing funds deposited in the Registry Account. The  
8 Panel shall consist of the following groups: (a) NOAA and  
9 Interior, for the United States; (b) Ecology, for the State of  
10 Washington; (c) the Suquamish Indian Tribe; (d) the Muckleshoot  
11 Indian Tribe; (e) Metro; and (f) the City. The Panel shall have  
12 no independent legal status and shall have only that authority  
13 conferred upon it by this Decree.

14 6. Each member group of the Panel, as identified in the  
15 preceding paragraph, may as necessary select in what ever manner  
16 it deems appropriate one or more representatives from its  
17 respective agencies or subgroups to serve collectively as its  
18 Manager. Irrespective of the number of representatives from any  
19 group, each of the groups identified in the preceding paragraph  
20 shall have only a single vote on the Panel.

21 7. The terms in this paragraph shall apply only if the  
22 Suquamish Indian Tribe, the Muckleshoot Indian Tribe and the  
23 State of Washington all choose to continue their consent to this  
24 Decree and to participation in this settlement. The Parties to  
25 this Decree expect and intend that most issues for decision by  
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1 the Panel will be based upon objective criteria, and that most  
2 decisions will be based on consensus. Where no consensus is  
3 achieved, except as provided in paragraph 30 of this Decree, the  
4 Panel will decide the issue by vote, with each member having one  
5 vote, and the majority prevailing. The position of the majority  
6 of the Trustees will prevail in the event of a tie vote. The  
7 position of the United States will prevail in the event of a tie  
8 vote in which the Trustees are evenly split. Any party may,  
9 within thirty (30) days of notification of the results of voting,  
10 petition the Court for review of any decision. The petitioner  
11 shall bear the burden of proving that the decision is  
12 inconsistent with the terms of this Decree. The Panel may adopt  
13 in the form of bylaws any additional decision making procedures  
14 it deems necessary.

15 8. The terms in this paragraph shall apply only if one or  
16 more Trustees exercise their right to withdraw pursuant to  
17 paragraph 53 of this Decree. Following entry of this Decree, the  
18 Panel shall establish procedures for making decisions. Such  
19 procedures shall conform to the following requirements:

20 (a) decisions shall if possible be based on consensus; (b) the  
21 structure for deciding any issue by vote shall allow each group  
22 to have a true voice in the process; (c) deference shall be given  
23 to decisions by a majority of the trustee groups, even if they  
24 are not in the numerical majority of the Panel on a given issue;  
25 (d) any arrangement that would allow a group or groups to  
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1 deadlock voting shall be avoided; and (e) any aggrieved party  
2 shall have the right to petition the Court for review of any  
3 decision by the Panel. The Panel may adopt in the form of bylaws  
4 any additional decision making procedures it deems necessary. If  
5 the Panel fails to establish decision making procedures, which  
6 conform to the requirements herein, within ninety (90) days of  
7 entry of the Decree, any party to this Decree may immediately  
8 petition the Court to establish such procedures.

9 9. For the purposes of this Decree, the Panel has the  
10 authority to:

11 a. Establish such procedures and practices as are  
12 necessary to the operation and deliberations of the Panel,  
13 including, but not limited to, provisions for collecting and  
14 disseminating information, convening and conducting meetings, and  
15 resolving disputes;

16 b. Gather data in Elliott Bay and the Duwamish River  
17 regarding damages to natural resources occasioned by releases of  
18 hazardous substances into the environment that have resulted in  
19 injury to, destruction of, or loss of natural resources;

20 c. Plan projects for sediment remediation and habitat  
21 development in the covered area;

22 d. Establish source control goals to protect natural  
23 resources and prevent recontamination of sites selected for  
24 sediment remediation or habitat development in the covered area;

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1 e. Review and comment upon actions proposed by Metro  
2 and the City to achieve the Panel's source control goals,  
3 determine if such actions are likely to achieve the Panel's  
4 goals, and direct Metro and the City to take such actions  
5 approved by the Panel;

6 f. Coordinate and provide for the dissemination of  
7 information to the public on the selection and design of sediment  
8 remediation and habitat development projects;

9 g. Ensure the collection from, and dissemination to,  
10 each group that is a member of the Panel all information  
11 necessary to an informed discussion and resolution of all issues  
12 related to sediment remediation, habitat development and source  
13 control;

14 h. Decide all issues related to selecting study  
15 activities and other data gathering efforts, and to selecting,  
16 planning, and managing sediment remediation and habitat  
17 development projects, including establishing performance  
18 standards and contingency plans for habitat development projects;

19 i. Develop guidelines for establishing the reasonable  
20 and necessary reimbursable costs of salary and travel incurred by  
21 the Trustees for their participation in the activities of the  
22 Panel and of the technical working groups, formed pursuant to  
23 paragraph 15 of this Decree; and

1 j. Perform any other activity specifically provided  
2 for elsewhere in this Decree or as directed or approved by the  
3 Court.

4 No action of the Panel may be inconsistent with the Trustees'  
5 duties and responsibilities under 42 U.S.C. § 9607.

6 10. a. The parties to this Decree agree that the funds  
7 paid by Metro and the City into the Registry Account shall be  
8 used only for sediment remediation and habitat development, as  
9 defined herein, and for expenses of Panel functions support and  
10 planning and design support as specified below. No more than two  
11 million dollars (\$2,000,000) shall be spent on expenses of Panel  
12 functions support. The Panel shall apportion such expenses  
13 between the sediment remediation and habitat development  
14 programs. Expenses of Panel functions support include, but are  
15 not limited to, salary and overhead for an administrative  
16 director; costs associated with administering the Registry  
17 Account; costs of public review and participation; costs of  
18 disseminating information; and costs of contracting for any  
19 services necessary to the accomplishment of any of said tasks.  
20 Expenses of Panel functions support also include the reasonable  
21 and necessary costs, as determined on the basis of guidelines  
22 established by the Panel, associated with participation by  
23 personnel of the Trustees in Panel meetings and deliberations and  
24 technical working groups, including salary and travel, provided  
25 that such costs are not otherwise chargeable to Metro or the City

1 in connection with the review of any required permit, application  
2 or other approval.

3           b. No more than three million dollars  
4 (\$3,000,000) shall be spent on expenses of planning and design  
5 support. The Panel shall apportion such expenses between the  
6 sediment remediation and habitat development programs. Expenses  
7 of planning and design support include, but are not limited to,  
8 costs of studies needed to set goals and establish priorities for  
9 sediment remediation, habitat development, and source control  
10 projects; costs of analysis as required for comparison of  
11 candidate sites and site selection; costs of site  
12 characterization as required to support detailed technical/-  
13 engineering studies; costs of project design, specifications,  
14 selection of equipment, materials, and procedures; costs  
15 associated with NEPA/SEPA review, analysis, and reporting; costs  
16 associated with permitting; costs of selection of monitoring  
17 parameters and design of monitoring programs; costs of technical  
18 support for the Suquamish and Muckleshoot Indian Tribes; final  
19 report preparation; and costs of contracting for any services  
20 necessary to the accomplishment of any of said tasks.

21           c. The remaining funds paid by Metro and the City  
22 into the Registry Account, plus any sums not expended pursuant to  
23 the preceding two subparagraphs, shall be spent on expenses of  
24 project implementation. Expenses of project implementation  
25 include, but are not limited to, costs of all on-the-ground  
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1 operations, including acquiring, dredging, capping, filling,  
2 contouring, placing, removing, transporting, treating, or  
3 disposing of materials, other construction requirements, and  
4 planting of vegetation; construction management and inspection;  
5 costs of monitoring for the purpose of making project adjustments  
6 and determining whether project success has been achieved;  
7 acquiring sites for sediment remediation; and contracting for any  
8 services necessary to the accomplishment of any of said tasks.

9 11. The Panel shall provide to Metro and the City within  
10 one hundred twenty (120) days of entry of this Decree an annual  
11 budget for the calendar year 1992. By March 31 of each year  
12 beginning in 1992 and ending in 1996, the Panel shall provide to  
13 Metro and the City an annual budget for the following calendar  
14 year (e.g., by March 31, 1992, for calendar year 1993, etc.).  
15 The Panel must consider in each year's budget any unspent funds  
16 from previous years and any unspent interest earned on funds in  
17 the Account. The Panel may include in each such budget a figure  
18 for contingency funds in an amount of up to ten percent (10%) of  
19 the total amount budgeted, so long as the sum of the total amount  
20 budgeted and the requested contingency fund does not exceed the  
21 annual maximums set forth in paragraphs 20 and 28 of this Decree.

22 12. The Panel shall implement an accounting mechanism to  
23 track expenditures from the Registry Account. The Panel shall  
24 cause an accounting report of such expenditures to be made at  
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1 least on an annual basis, which report shall be made available to  
2 all members of the Panel.

3 13. Except as provided in paragraph 34 regarding source  
4 control efforts, the Panel may allow Metro and the City, if  
5 either of them so chooses, to fulfill their respective financial  
6 obligations by providing in-kind services. By September 30 of  
7 each year beginning in 1992 and ending in 1996, Metro or the city  
8 or both of them shall submit to the Panel a proposal describing  
9 those tasks or portions of tasks, identified in the budgets  
10 prepared pursuant to paragraph 11 of this Decree, that Metro or  
11 the City or both of them propose to perform utilizing in-kind  
12 services. The proposal shall identify by grade, title, salary  
13 and level of benefits the employees who are to perform the  
14 specified services, and shall provide an employee-specific  
15 analysis of the work to be performed and the value of that work,  
16 including allied costs. The Panel may accept any such proposal  
17 in its entirety or, to the extent practicable, may accept a  
18 portion of a proposal and not accept other portions. As a  
19 condition of acceptance of such a proposal, the Panel shall  
20 specify such conditions as are necessary to insure adequate  
21 oversight by the Panel of the services to be provided and  
22 appropriate coordination with the efforts of contractors and  
23 others. The Panel shall notify Metro and the City in writing of  
24 its decision and shall specifically identify the tasks,  
25 identified in the budget the Panel has approved, to be performed

1 through in-kind services and those to be performed through cash  
2 payments, with a specific cost allocation to each. Within ninety  
3 (90) days after the close of each calendar year in which such  
4 in-kind services have been provided, Metro and the City shall  
5 cause an accounting of such services to be prepared and made  
6 available to all members of the Panel.

7 14. The Panel may elect to delegate the day-to-day  
8 administrative affairs of the Panel to an administrative  
9 director. Such an administrative director ("Director") shall be  
10 qualified to perform all the tasks delegated to him/her by the  
11 Panel and shall have only that authority specifically delegated  
12 to the Director by the Panel. The Panel shall not delegate to  
13 the Director the authority to disburse, expend, obligate, or  
14 otherwise use funds from the Registry Account or perform any task  
15 of the Panel as set forth in paragraph 9 of this Decree. The  
16 Panel may direct that an account be established into which the  
17 Panel may have funds placed for the day-to-day affairs of the  
18 Panel. The Director may at his/her discretion disburse, expend,  
19 obligate or otherwise use any funds placed into such an account  
20 for the reasonable and necessary expenses incurred in performing  
21 the administrative tasks assigned to the Director by the Panel.  
22 The Director shall provide to the Panel in writing on a quarterly  
23 basis a report of his/her activities and an accounting of all of  
24 his/her expenses for that quarter. The Director shall serve at  
25 the will and discretion of the Panel, and shall not, solely as a

1 consequence of his/her service as Director, be considered an  
2 employee or agent of any party to this Decree. Nothing in the  
3 preceding sentence shall preclude a current employee of any party  
4 to this Decree from serving as Director, to the extent consistent  
5 with applicable laws and regulations.

6 15. The Panel may establish one or more technical working  
7 groups to assist the Panel in planning and designing sediment  
8 remediation and habitat development projects and in establishing  
9 goals regarding Metro's and the City's source control programs.  
10 The Panel shall give each of the following entities the  
11 opportunity to participate in any such working group: NOAA,  
12 Interior, EPA, the U.S. Army Corps of Engineers, the Muckleshoot  
13 Indian Tribe, the Suquamish Indian Tribe, the Washington  
14 Department of Ecology, the Washington Department of Fisheries,  
15 the Washington Department of Wildlife, the Washington Department  
16 of Natural Resources, the Washington Department of Health, the  
17 Port of Seattle, Metro, the City, and the Seattle-King County  
18 Department of Health. The Panel may also allow in any such  
19 working group other qualified individuals. All participants in  
20 any such working group shall be capable of contributing  
21 particular expertise applicable to that working group's tasks.  
22 The Panel shall decide the manner in which any such working group  
23 will perform its tasks and shall provide sufficient oversight to  
24 ensure that the terms of this Decree are achieved. The Panel may  
25 for any such working group disburse, expend, obligate, or

1 otherwise use funds from the Registry Account, but such funds  
2 shall be used only for the reasonable and necessary  
3 administrative and clerical expenses of any such working group.  
4 Except as provided in paragraph 10(a) regarding the participation  
5 of the Trustees, no member of a working group shall in any way  
6 receive directly or indirectly from the Registry Account any  
7 salary or travel expenses for his/her participation in such a  
8 working group.

9 16. The Panel shall provide to the Suquamish Indian Tribe  
10 and to the Muckleshoot Indian Tribe sufficient funds to support  
11 for each tribe one full-time equivalent (1.0 FTE) of technical  
12 support annually for 1992 through 1997. The Tribes shall use  
13 such funds only for technical support related to the source  
14 control, sediment remediation and habitat development programs  
15 conducted pursuant to this Decree.

16 17. The Panel shall cause to be erected or placed in a  
17 prominent location a placard or sign to commemorate each sediment  
18 remediation or habitat development project performed under this  
19 Decree. Any such placard or sign shall indicate the financial  
20 contributions of Metro and the City and the participation of  
21 these Trustees.

22 18. The Panel shall provide for public participation in the  
23 process by which the Panel selects and designs sediment  
24 remediation and habitat development projects. Public  
25 participation includes, but is not limited to, public review  
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1 pursuant to any required environmental review, and public review  
2 of any application for a permit, license, or other approval.

3 REMEDIATION OF SEDIMENTS

4 19. Metro and the City each agree to pay into the Registry  
5 Account established under paragraph 4 of this Decree:

6 a. The sum of six million dollars (\$6,000,000); or  
7 b. As permitted by the Panel pursuant to  
8 paragraph 13, a sum of funds that in combination with in-kind  
9 services has a total value of six million dollars (\$6,000,000),  
10 to be applied to the costs of sediment remediation. The Panel  
11 shall use these funds and services only for sediment remediation,  
12 which shall include administering, planning, designing,  
13 implementing, and monitoring the results of sediment remediation  
14 projects, in Elliott Bay and the Duwamish River, except as  
15 specifically provided in paragraph 22 of this Decree. The sums  
16 provided for herein shall be paid in accordance with  
17 paragraphs 20 and 21 of this Decree.

18 20. This Decree obligates Metro and the City each to pay  
19 only up to the following amounts in each of the identified  
20 calendar years for the costs of sediment remediation, except as  
21 otherwise provided for in this paragraph:

22 1992 - \$ 500,000 - Five Hundred Thousand Dollars;  
23 1993 - \$1,000,000 - One Million Dollars;  
24 1994 - \$1,500,000 - One Million Five Hundred Thousand Dollars;  
25 1995 - \$1,500,000 - One Million Five Hundred Thousand Dollars;  
26 1996 - \$1,500,000 - One Million Five Hundred Thousand Dollars;  
27 and  
28 1997 - Balance of Six Million Dollar contribution.

1 If Metro's or the City's annual payment in any given year is less  
2 than that year's annual maximum, its annual maximum in the  
3 successive year may be increased by the difference between the  
4 annual maximum and the annual payment from the preceding year.  
5 Metro and the City may at their discretion waive any one or all  
6 of their respective annual maximums by increasing the amount  
7 paid. Any such payments in excess of the amounts shown above  
8 shall in no way increase the sum total of amounts to be paid by  
9 either Metro or the City beyond its respective six million dollar  
10 (\$6,000,000) obligation.

11 21. Metro and the City agree to each pay a minimum sum of  
12 one hundred fifty thousand dollars (\$150,000) into the Account on  
13 January 15 and on July 15 in each of the years 1992, 1993, 1994,  
14 1995 and 1996 for funding costs of sediment remediation. Such  
15 payments shall constitute partial payment of the maximum amounts  
16 as set forth in paragraph 19 of this Decree. Metro and the City  
17 shall pay any additional amount for sediment remediation, over  
18 and above the minimum sum referenced herein, only as the Panel  
19 budgets for such expenses. Metro and the City shall pay any such  
20 additional amount into the Account on January 15 of the calendar  
21 year for which the Panel plans to incur such an expense.

22 22. The Panel may use funds paid into the Account for  
23 sediment remediation for expenses of habitat development,  
24 including costs of monitoring, if such habitat development is  
25 incidental to sediment remediation projects, or is specifically  
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1 required as conditions of permits for sediment remediation  
2 projects. Such habitat development could include that resulting  
3 from using sediment remediation projects as pilot projects for  
4 techniques or other methodologies of habitat development.

5 23. The Panel shall, to the greatest extent practicable,  
6 select sites for sediment remediation projects that are  
7 geographically and physically associated with Metro or City CSOs  
8 or storm drain outfalls.

9 24. The Panel shall use, if available, Ecology's list of  
10 sites requiring sediment cleanup as a basis for selecting sites  
11 for sediment remediation projects under this Decree, but shall  
12 not be bound by any priorities developed by Ecology for  
13 addressing the list of sites. Metro and the City shall provide  
14 to Ecology all information in their possession useful and  
15 relevant to Ecology's hazard assessment of station clusters of  
16 potential concern.

17 25. For each sediment remediation project, the Panel shall  
18 conduct a site cleanup study, determine the site-specific cleanup  
19 standard, and select a site cleanup action. In no event shall  
20 the Panel set a site specific cleanup standard for a project that  
21 is less stringent than the minimum cleanup level as set forth in  
22 the State of Washington's Sediment Management Standards,  
23 Chapter 173-204 WAC, as that standard exists at the time the  
24 Panel selects a project. In establishing site-specific cleanup  
25 standards, the Panel shall, consistent with the purposes of this  
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1 Decree, set a cleanup objective of no adverse effects pursuant to  
2 WAC 173-204-570(2). If the State of Washington's Sediment  
3 Management Standards, Chapter 173-204 WAC, cease to exist or  
4 otherwise become unenforceable, the Panel may use other  
5 appropriate sediment standards or develop such standards for  
6 sediment remediation as are necessary to carry out the terms of  
7 this Decree.

8 26. The Panel may grant Metro and the City credit against  
9 their respective financial obligations under paragraph 19 for the  
10 Pier 53 sediment remediation project, so long as the site would  
11 otherwise have been on Ecology's list of sites requiring sediment  
12 cleanup, the site would otherwise have been selected as a site  
13 for sediment remediation by the Panel, and the level of  
14 remediation meets the cleanup standard selected by the Panel for  
15 that site. If the Panel decides to grant credit, and after  
16 review of detailed operational and financial information  
17 regarding this project, the Panel shall determine the amount of  
18 credit to be applied.

19 HABITAT DEVELOPMENT AND REAL ESTATE ACQUISITION

20 27. Metro and the City each agree to pay into the Registry  
21 Account, established under paragraph 4 of this Decree:

22 a. The sum of two million five hundred thousand  
23 dollars (\$2,500,000); or

24 b. As permitted by the Panel pursuant to  
25 paragraph 13, a sum of funds that in combination with in-kind

1 services has a total value of two million five hundred thousand  
2 dollars (\$2,500,000), to be applied to the costs of habitat  
3 development. The Panel shall use these funds and services only  
4 for habitat development, which includes acquiring living natural  
5 resources for the purpose of habitat restoration and replacement  
6 and administering, planning, designing, constructing, and  
7 monitoring the results of habitat development projects, in  
8 Elliott Bay and the Duwamish River. Solely for the purposes of  
9 habitat development, the Panel may consider the Duwamish River to  
10 include tributaries to the Duwamish River. The sums provided for  
11 herein shall be paid in accordance with paragraphs 28 and 29 of  
12 this Decree.

13 28. This Decree obligates Metro and the City each to pay  
14 only up to the following amounts in each of the identified  
15 calendar years:

16 1992 - \$200,000 - Two Hundred Thousand Dollars;  
17 1993 - \$200,000 - Two Hundred Thousand Dollars;  
18 1994 - \$500,000 - Five Hundred Thousand Dollars;  
19 1995 - \$800,000 - Eight Hundred Thousand Dollars;  
20 1996 - \$800,000 - Eight Hundred Thousand Dollars; and  
21 1997 - Balance of Two Million Five Hundred Thousand  
22 Dollar contribution.

23 If Metro's or the City's annual payment in any given year is less  
24 than that year's annual maximum, its annual maximum in the  
25 successive year may be increased by the difference between the  
26 annual maximum and the annual payment from the preceding year.  
27 Metro and the City may at their discretion waive any one or all  
28 of their respective annual maximums by increasing the amount

1 paid. Any such payments in excess of the amounts shown above  
2 shall in no way increase the sum total of amounts to be paid by  
3 either Metro or the City beyond its respective two million five  
4 hundred thousand dollar (\$2,500,000) obligation.

5 29. Metro and the City agree to each pay a minimum sum of  
6 sixty-two thousand five hundred dollars (\$62,500) into the  
7 Account on January 15 and on July 15 in each of the years 1992,  
8 1993, 1994, 1995 and 1996 for funding costs of habitat  
9 development. Such payments shall constitute partial payment of  
10 the maximum amounts as set forth in paragraph 27 of this Decree.  
11 Metro and the City shall pay any additional amount for habitat  
12 development, over and above the minimum sum referenced herein,  
13 only as the Panel budgets for such expenses. Metro and the City  
14 shall pay any such additional amount into the Account on  
15 January 15 of the calendar year for which the Panel plans to  
16 incur such an expense.

17 30. In addition to the contribution specified in  
18 paragraph 27 of this Decree, Metro and the City each shall make  
19 permanently available real property with a value of up to two  
20 million five hundred thousand dollars (\$2,500,000) for use as  
21 sites for habitat development projects selected by the Panel.  
22 Metro and the City each shall receive credit toward its  
23 respective maximum obligation under this paragraph for any  
24 donation by Metro or the City of any right of access, lease,  
25 easement, fee title, or any other real property interest,  
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1 sufficient to permanently secure a site for any habitat  
2 development project under this Decree. The Panel shall attempt  
3 to determine by consensus the value of any property interest made  
4 available pursuant to this paragraph. If the Panel cannot so  
5 determine the value of any such property, then the value of the  
6 property shall be determined by the following procedure. The  
7 Trustees and donor of the property shall each retain or select a  
8 qualified real estate appraiser to determine the value of the  
9 property. Within sixty (60) days thereafter, the two appraisers  
10 shall attempt in good faith to reach agreement on the value of  
11 the donated property. If these appraisers cannot agree, then  
12 they shall within thirty (30) days select a third appraiser.  
13 This third appraiser shall determine within thirty (30) days  
14 which of the two appraisals most closely approximates the value  
15 of the selected property and he or she shall select that  
16 appraisal value as the value of the donated property. All  
17 appraisers retained or selected shall be competent, impartial and  
18 members of the American Institute of Real Property Appraisers (or  
19 successor association or body of comparable standing). The  
20 parties agree that the value established by this procedure shall  
21 be final, and there shall be no further review or appeal. Full  
22 public access to such areas shall be preserved to the maximum  
23 extent practicable, except as restrictions are necessitated by  
24 construction activities.





1 Metro and the City to use or undertake any type or manner of  
2 source control that is beyond Metro's and the City's authority,  
3 or otherwise inconsistent with law.

4 34. Metro and the City each shall make available in-kind  
5 services with a value of up to one million dollars  
6 (\$1,000,000) to cover the costs of the additional actions or  
7 changes needed to achieve the Panel's goals and to monitor the  
8 effectiveness of such source control efforts. Metro and the City  
9 each may fulfill its entire and respective obligation under this  
10 paragraph by providing in-kind services. Within ninety (90) days  
11 after the close of each calendar year in which such in-kind  
12 services have been provided, Metro and the City shall cause an  
13 accounting of such services to be prepared and made available to  
14 all members of the Panel.

15 INDEPENDENT CONTRACTOR

16 35. It is understood and agreed that Metro, the City, and  
17 the agents, officers, employees, and contractors of either of  
18 them, in the performance of the work and services provided under  
19 this Decree as in-kind contributions shall act as independent  
20 contractors and not as agents or employees of any other party to  
21 this Decree.

22 COVENANTS NOT TO SUE

23 36. Except as specifically provided in paragraphs 39 and  
24 40, the United States, the State of Washington, the Suquamish  
25 Indian Tribe and the Muckleshoot Indian Tribe covenant not to sue  
26

1 or to take any other civil or administrative action against the  
2 City or Metro for covered matters.

3 37. Except as specifically provided in paragraph 41, the  
4 City and Metro hereby covenant not to sue or to take any other  
5 civil or administrative action against the United States, the  
6 State of Washington, the Suquamish Indian Tribe and the  
7 Muckleshoot Indian Tribe for any claims relating to or arising  
8 from the filing of the United States' complaint referenced  
9 herein, the conduct of this litigation, including but not limited  
10 to any claims for contribution or indemnification, and the  
11 negotiation, terms, approval, and implementation of this Consent  
12 Decree.

13 38. These covenants not to sue and the following  
14 reservation of rights shall take effect upon entry of this  
15 Consent Decree by the Court, subject to the parties' rights to  
16 void the Consent Decree pursuant to paragraph 54 if the Court  
17 declines to approve the Consent Decree as presented. These  
18 covenants not to sue remain in effect so long as the City and  
19 Metro are fulfilling or have fulfilled their obligations under  
20 this Consent Decree.

21 RESERVATION OF RIGHTS

22 39. Notwithstanding any other provision of this Consent  
23 Decree, the United States, the State of Washington, the Suquamish  
24 Indian Tribe and Muckleshoot Indian Tribe reserve the right to  
25 institute proceedings against Metro and the City in this action  
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1 or a new action for the following claims: (a) claims for  
2 recovery of natural resource damages in the covered area based on  
3 conditions resulting from a release of hazardous substances from  
4 the CSO and/or storm water outfall systems after the effective  
5 date of this Consent Decree and that are actionable under treaty,  
6 federal, state or tribal law; (b) claims based on a failure by  
7 Metro or the City to satisfy requirements of this Consent Decree;  
8 and (c) claims for criminal liability.

9 40. Notwithstanding any other provision of this Consent  
10 Decree, the State of Washington reserves its right to institute  
11 proceedings against Metro and the City for claims pursuant to the  
12 Model Toxics Control Act, Chapter 70.105D RCW, based, in whole or  
13 in part, on factors not known at the time of entry of this  
14 Consent Decree that indicate a previously unknown threat to human  
15 health or the environment.

16 41. Notwithstanding any other provision of this Consent  
17 Decree, Metro and the City reserve the right to institute  
18 proceedings against the United States, the State of Washington,  
19 the Suquamish Indian Tribe and the Muckleshoot Indian Tribe for  
20 the following claims: (a) claims based on a failure by the  
21 United States, the State of Washington, the Suquamish Indian  
22 Tribe and the Muckleshoot Indian Tribe to fulfill their  
23 obligations under this Decree; and (b) claims based on a  
24 challenge to any decision by the Panel. Metro's and the City's  
25 reservations of rights pursuant to this paragraph do not include  
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1 claims against the Trustees for monetary relief. Nothing in this  
2 paragraph is intended to constitute a waiver of any sovereign  
3 immunity defense that may be available to any of the Trustees.

4 42. The United States' consent to this Decree and  
5 participation in this settlement is solely on its own behalf and  
6 not as a trustee for any Indian Tribe.

7 CONTRIBUTION PROTECTION

8 43. The United States, the State of Washington, the  
9 Suquamish Indian Tribe and the Muckleshoot Indian Tribe  
10 acknowledge and agree that the payments to be made and commitment  
11 of work by Metro and the City pursuant to this Decree represent a  
12 good faith settlement and compromise of disputed claims and that  
13 the settlement represents a fair, reasonable and equitable  
14 discharge of liability for covered matters. Metro and the City  
15 shall have the benefits of Section 113(f) of CERCLA, 42 U.S.C. §  
16 9613(f), and any other applicable statute or other law limiting  
17 or extinguishing their liability to persons not a party to this  
18 Decree or affording them rights of contribution or other rights  
19 to recover from such persons costs or damages.

20 44. The United States, the State of Washington, the  
21 Suquamish Indian Tribe and the Muckleshoot Indian Tribe certify  
22 that the payments to be made and the work to be undertaken by  
23 Metro and the City pursuant to this Decree will be appropriate  
24 actions necessary to protect and restore the natural resources  
25 allegedly damaged by the release by Metro and the City of

1 hazardous substances in the covered area and that the payments  
2 and work satisfy the requirements of Section 122(j)(2) of CERCLA,  
3 42 U.S.C. § 9622(j)(2).

4 GENERAL

5 45. If for any reason the Court should decline to approve  
6 this Consent Decree in the form presented, any statements made in  
7 negotiation and the terms herein may not be used as evidence in  
8 any litigation or administrative proceeding.

9 46. This Consent Decree shall not be construed in any way  
10 to relieve the parties to this Decree or any other person or  
11 entity from the obligation to comply with any federal, state or  
12 local law.

13 47. This Consent Decree does not relieve or otherwise  
14 satisfy any obligation or liability of any person or entity not  
15 party to this Decree.

16 48. The Consent Decree may be executed in any number of  
17 counterparts and each executed counterpart shall have the same  
18 force and effect as an original instrument.

19 49. Each undersigned representative of the parties to the  
20 Consent Decree certifies that he or she is fully authorized to  
21 enter into the terms and conditions of the Consent Decree and to  
22 legally execute, and bind such party to, this Consent Decree.

23 MODIFICATION

24 50. The terms of this Consent Decree may be modified only  
25 by a subsequent written agreement by all of the parties signatory  
26

1 hereto, and approved by the Court as a modification to this  
2 Consent Decree.

3 51. If a court of competent jurisdiction finds unlawful any  
4 provision of this Consent Decree, including subparagraphs a-c of  
5 paragraph 4, the parties shall return the Decree to the Court for  
6 reformation consistent with the intent of the parties at the time  
7 they lodged the Decree with the Court.

8 PUBLIC COMMENT

9 52. This Decree will be subject to a 30-day public comment  
10 period in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C.  
11 § 9622(d)(2), and 28 C.F.R. 50.7. The United States reserves the  
12 right to withdraw its consent to the Decree if comments received  
13 disclose facts or considerations which show that the Decree is  
14 inappropriate, improper or inadequate. Metro and the City  
15 consent to the entry of this Consent Decree without further  
16 notice.

17 53. The Suquamish Indian Tribe, the Muckleshoot Indian  
18 Tribe and the State of Washington each reserve the right to  
19 withdraw their consent from this Decree and from participation in  
20 this settlement if comments received during the public comment  
21 period disclose facts or considerations which show that the  
22 Decree is inappropriate, improper or inadequate as to the  
23 Suquamish Indian Tribe, the Muckleshoot Indian Tribe and the  
24 State of Washington, respectively. To exercise its right to  
25 withdraw, each of these parties shall file with the Court a  
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1 written statement expressly indicating its intent to withdraw.  
2 These parties must exercise their right to withdraw before the  
3 United States Department of Justice files its motion to enter  
4 this Decree with the Court. Withdrawal by any one or all of  
5 these parties shall not in any way affect the rights and  
6 obligations of any other party to this Decree. If any one or all  
7 of these parties withdraws, any and all references to such a  
8 party or parties in the Decree, except those in paragraphs L,  
9 M(3), 15, 24, 25 and 26, shall by implication be stricken from  
10 the Decree and shall have no meaning or bearing on the operation  
11 of any term of this Decree. Withdrawal by any of these parties  
12 shall not impose any obligation on any other party to also  
13 withdraw nor shall any inference be made as to the propriety of  
14 any other party's continued consent to this Decree and  
15 participation in this settlement. If either or both the  
16 Suquamish Indian Tribe or the Muckleshoot Indian Tribe withdraws,  
17 the continued participation by the United States in this  
18 settlement is not intended to nor shall it constitute a  
19 settlement or waiver of any rights under statute, treaty or  
20 common law of such Tribe or Tribes.

21 VOIDABILITY

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

1 party and the terms herein may not be used as evidence in any  
2 litigation.

3 EFFECTIVE DATE

4 55. This Consent Decree shall be effective upon the date of  
5 its entry by the Court.

6 DENIAL OF LIABILITY

7 56. Metro and the City both deny each of the allegations of  
8 the complaint filed by the United States and further deny  
9 responsibility for the natural resources damages and any other  
10 costs or relief sought by the Trustees. The parties agree that  
11 actions undertaken by the City and Metro in accordance with this  
12 Consent Decree do not constitute an admission of any violation of  
13 treaty, federal or state law or an admission of any liability by  
14 the City or Metro to the United States, the State of Washington,  
15 the Suquamish Indian Tribe and Muckleshoot Indian Tribe. Nor  
16 shall this Consent Decree be used as evidence or as collateral  
17 estoppel against any party to this Decree in any action or  
18 proceeding other than an action or proceeding to enforce the  
19 terms of this Consent Decree.

20 RETENTION OF JURISDICTION

21 57. The Court shall retain jurisdiction of this matter for  
22 purposes of entering such further orders, direction, or relief as  
23 may be appropriate for the construction, implementation, or  
24 enforcement of this Decree.

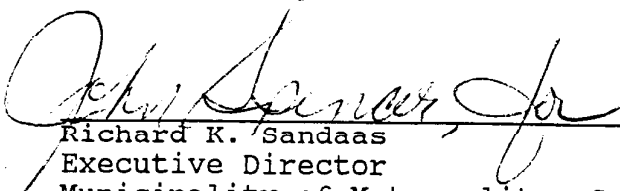


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58. By signature below, all parties consent to this Decree.

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FOR THE MUNICIPALITY OF METROPOLITAN SEATTLE

  
Richard K. Sandaas  
Executive Director

August 6, 1991  
Date

Municipality of Metropolitan Seattle  
Exchange Building, M/S 94  
821 Second Avenue  
Seattle, Washington 98104

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FOR THE CITY OF SEATTLE

Mark H. Sidran  
Mark H. Sidran  
City Attorney  
City of Seattle  
Municipal Building, 10th Floor  
600 Fourth Avenue  
Seattle, Washington 98104

August 5, 1991  
Date

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FOR THE SUQUAMISH INDIAN TRIBE

*Lyle Emerson George*

*AUG 7<sup>th</sup> 1991*

Lyle Emerson George  
Vice-Chairman  
Suquamish Indian Tribe  
Post Office Box 498  
Suquamish, Washington 98392

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FOR THE MUCKLESHOOT INDIAN TRIBE

Virginia Cross  
Chairperson  
Muckleshoot Indian Tribe  
39015 172nd Avenue S.E.  
Auburn, Washington 98002

August 7, 1991  
Date

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FOR THE STATE OF WASHINGTON

*Fred Olson*

Fred A. Olson  
Deputy Director  
Washington Department of Ecology  
Mail Stop PV-11  
Olympia, Washington 98503

August 6, 1991  
Date

~~*Jeffrey S. Myers*~~

Jeffrey S. Myers  
Assistant Attorney General  
State of Washington, Ecology Division  
Mail Stop QA-44  
4407 Woodview Drive S.E.  
Olympia, Washington 98504

August 6, 1991  
Date

1 FOR THE UNITED STATES OF AMERICA

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3 Barry M. Hartman  
4 Barry M. Hartman Date  
5 Acting Assistant Attorney General  
6 Environment and Natural Resources Division  
7 U.S. Department of Justice  
8 Washington, D.C. 20530

9 Charles E. Di Tora for  
10 James L. Nicoll, Jr. Date  
11 Senior Counsel  
12 Environmental Enforcement Section  
13 Environment and Natural Resources Division  
14 U.S. Department of Justice  
15 c/o NOAA GC/DOJ Damage Assessment Center  
16 BIN C15700  
17 7600 Sand Point Way N.E.  
18 Seattle, Washington 98115

19 Susan L. Barnes  
20 Susan L. Barnes Date  
21 Assistant United States Attorney  
22 3600 SeaFirst Fifth Avenue Plaza  
23 800 Fifth Avenue  
24 Seattle, Washington 98104

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28  
29 So ordered.

December 23, 1991.

William L. Dwyer  
U.S. District Judge

CONSENT DECREE - 47

U.S. Department of Justice  
Environmental Enforcement Section  
c/o GC-DOJ DARC BIN C15700  
7600 Sand Point Way N.E.  
Seattle, Washington 98115-0070

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LODGED RECEIVED

DEC 23 1991

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 THE CITY OF SEATTLE, and )  
 MUNICIPALITY OF METROPOLITAN )  
 SEATTLE, )  
 )  
 Defendants. )

NO. C90-395WD  
ORDER GRANTING MOTION  
TO ENTER CONSENT DECREE

The United States has moved for the entry of a consent decree resolving this lawsuit. All other parties have joined in the motion. The materials submitted by counsel, the public comments on the proposed decree, and all other relevant parts of the record have been fully considered.

In view of the nature of the claims and defenses, the risks and costs of litigation, and all other relevant factors, the court finds that the consent decree is fair, reasonable, adequate, and in the public interest.

ORD GRANTING MTN TO  
ENTER CONSENT DECREE - 1

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1           The thrust of some of the public comments is that more should  
2 be done, especially in controlling the sources of pollution. In  
3 this regard it is important to bear in mind that while this decree  
4 fairly resolves this litigation, the measures it requires need not  
5 be the only steps taken to clean up Elliott Bay and the Lower  
6 Duwamish River. As the decree itself states:

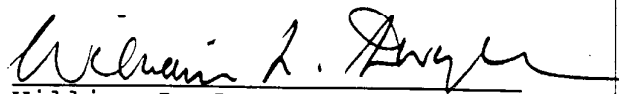
7           K. The parties understand that the source  
8 control, sediment remediation and habitat development  
9 efforts undertaken pursuant to this Decree are not  
intended to substitute for any other efforts or obligations  
of these parties.

10           There is nothing to prevent the governmental agencies and  
11 other parties involved from doing more than the settlement  
12 requires to protect these natural resources, and to remedy damage  
13 done in the past.

14           The motion is granted, and the consent decree will be  
15 entered.

16           The clerk is directed to send copies of this order to all  
17 counsel of record.

18           Dated: December 23, 1991.

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21 William L. Dwyer  
22 United States District Judge  
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Hon. William L. Dwyer

FILED ENTERED  
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NOV 15 1991  
AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON DEPUTY

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LODGED RECEIVED

DEC 28 1991

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA, )  
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Plaintiff, )  
 )  
v. )  
 )  
THE CITY OF SEATTLE, and )  
MUNICIPALITY OF METROPOLITAN )  
SEATTLE, )  
 )  
Defendants. )

Civil Action No. C90-395WD

ORDER JOINING  
ADDITIONAL PARTIES

The United States has moved pursuant to F. R. Civ. P. 19 to join as plaintiffs the State of Washington, the Muckleshoot Indian Tribe and the Suquamish Indian Tribe. The other parties have joined this motion by stipulation. The additional parties are signatories to the consent decree settling this case, and they have agreed to be joined in order to effectuate the decree. Having considered this motion, and the other pertinent records in this case,

IT IS ORDERED that the motion to join additional parties is granted, and that the State of Washington, the Muckleshoot Indian Tribe and the Suquamish Indian Tribe are joined as plaintiffs in

CC TO JUDGE

187

1 this action.

*Dated: December 23, 1991*

*William L. Dwyer*  
Hon. William L. Dwyer  
United States District Judge

5 Presented by:

7 James L. Nicoll, Jr.  
8 Senior Attorney  
9 U.S. Department of Justice  
10 Environmental Enforcement Section  
11 NOAA GC-DOJ DARC BIN C15700  
12 7600 Sand Point Way NE  
13 Seattle, Washington 98115

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C. P. J., re: to B.R., K.L.

Hon. William L. Dwyer

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DEC 29 1991

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
et al.,  
  
Plaintiffs,  
  
v.  
  
THE CITY OF SEATTLE, and  
MUNICIPALITY OF METROPOLITAN  
SEATTLE,  
  
Defendants.

NO. C90-395WD

ORDER DIRECTING THE DEPOSIT OF  
NATURAL RESOURCE DAMAGES INTO  
THE REGISTRY OF THE COURT

Pursuant to Rule 67 of the Federal Rules of Civil Procedure, 28 U.S.C. § 2041, and Local Rule GR 6, and in accordance with the terms of the Consent Decree in the above captioned matter between Plaintiff the United States and Defendants City of Seattle and Municipality of Metropolitan Seattle ("Defendants"), it is hereby

1. ORDERED that Defendants, following entry of the Consent Decree and in accordance with the payment schedules established therein, pay to the Clerk of the Court all sums specified in paragraph 19 and paragraph 27 of the Consent Decree, which sums

ORDER DIRECTING DEPOSIT OF  
NATURAL RESOURCE DAMAGES - 1

U.S. Department of Justice  
Environmental Enforcement Section  
c/o GC-DOJ DARC BIN C15700  
7600 Sand Point Way N.E.  
Seattle, Washington 98115-0070

ATTACHMENT 1

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1 constitute recovery for natural resource damages in accordance with  
2 42 U.S.C. § 9607(f)(1); and it is

3 2. ORDERED that Settling Defendants shall make the  
4 aforementioned payments by checks made payable to the Clerk of the  
5 Court in accordance with the procedures specified in subparagraph  
6 a. of paragraph 4 of the Consent Decree; and it is

7 3. ORDERED that an account shall be established in the  
8 Registry specifically for, and only for, payments received in the  
9 above captioned matter and shall be titled "U.S. v. Seattle and  
10 Metro Natural Resource Damages Account" ("U.S. v. Seattle and Metro  
11 NRD Account"); and it is

12 4. ORDERED that the Clerk of the Court, consistent with  
13 subparagraph b. of paragraph 4 of the Consent Decree, shall  
14 administer the funds so received as follows:

15 a) the first \$100,000 received shall be deposited in an  
16 interest-bearing commercial bank account or accounts;

17 b) the balance of the first payment received shall be  
18 used to purchase 91-day Treasury Securities;

19 c) any portion of the first payment received above  
20 \$100,000 that as a consequence of the denominations of the Treasury  
21 Securities available are not used to purchase Treasury Securities  
22 shall be deposited in the bank account or accounts identified in  
23 subparagraph a); and

24 d) upon maturity of the Treasury Securities referred to  
25 in subparagraph b), and upon the receipt of subsequent payments in

26  
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28 ORDER DIRECTING DEPOSIT OF  
NATURAL RESOURCE DAMAGES - 2

U.S. Department of Justice  
Environmental Enforcement Section  
c/o GC-DOJ DARC BIN C15700  
7600 Sand Point Way N.E.  
Seattle, Washington 98115-0070

1 accordance with the Consent Decree, the Clerk shall consult with  
2 counsel for the United States regarding the allocation of the  
3 proceeds of such Treasury Securities or such received funds between  
4 the bank account or accounts identified in subparagraph a) and the  
5 purchase of additional short-term Treasury Securities. The Clerk  
6 may make any such purchases of additional Treasury Securities as  
7 directed by counsel for the United States without further Order of  
8 the Court; and it is

9 5. ORDERED that all income earned as interest on funds so  
10 invested or deposited shall be credited to the U.S. v. Seattle and  
11 Metro NRD Account; and it is

12 6. ORDERED that the Clerk shall prepare quarterly reports on  
13 the status and activity of the U.S. v. Seattle and Metro NRD  
14 Account showing payments received, disbursements made, income  
15 earned, maturity dates of securities held, and principal balance,  
16 and shall distribute the reports to counsel for the United States;  
17 and it is

18 7. ORDERED that funds in the U.S. v. Seattle and Metro NRD  
19 Account shall remain in the Registry until further order of this  
20 Court; and it is

21 8. ORDERED that applications for orders for disbursements from  
22 the U.S. v. Seattle and Metro NRD Account may be made only by the  
23 United States, except that such application shall be refused  
24 notwithstanding any vote of the Panel established by the Consent  
25 Decree if the United States objects to the disbursement as being  
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27 ORDER DIRECTING DEPOSIT OF  
28 NATURAL RESOURCE DAMAGES - 3

U.S. Department of Justice  
Environmental Enforcement Section  
c/o GC-DOJ DARC BIN C15700  
7600 Sand Point Way N.E.  
Seattle, Washington 98115-0070

1 inconsistent with its natural resource trustee responsibilities  
2 pursuant to 42 U.S.C. § 9607. If the United States objects to  
3 disbursement, any party may petition the Court for review of  
4 whether the United States' objection was inconsistent with 42  
5 U.S.C. § 9607; and it is

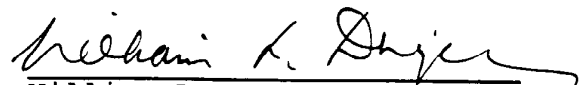
6 9. ORDERED that counsel for the United States shall serve as  
7 the point of contact on behalf of the parties to this Decree for  
8 the Clerk, and shall distribute copies of the reports referred to  
9 in paragraph 6 of this Order to the other parties to this Decree;  
10 and it is

11 10. ORDERED that the Clerk is authorized and directed by this  
12 Order to deduct for maintaining funds in the Registry Account the  
13 fee as authorized in the Federal Register Vol. 55, No. 206 at page  
14 42867 (October 24, 1990); and it is

15 11. ORDERED that a certified copy of this Order shall be  
16 served upon the Clerk of this Court.

17  
18 Dated

Dec. 23, 1991

  
William L. Dwyer, Judge  
United States District Court  
Western District of Washington