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Hon. William L. Dwyer

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OCT 5 1999 MR

BY _____
WESTERN DISTRICT OF WASHINGTON DEPUTY

CC: TO JUDGE MR. G
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY _____ DEPUTY

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

NO. C90-395WD
AMENDED
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

City of Seattle

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Seattle, Washington 98115-0070

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

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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. Effective January 1, 1994, by the operation of law
4 the Municipality of Metropolitan Seattle (Metro) was consolidated
5 into King County, a home rule charter county of the State of
6 Washington. For a two-year transition period the functions
7 formerly performed by the Municipality of Metropolitan Seattle
8 were performed by King County through the Department of
9 Metropolitan Services. As of January 1, 1996, the metropolitan
10 water pollution control function formerly performed by Metro is
11 now performed by King County through its Department of Natural
12 Resources. Provisions herein regarding the rights and
13 obligations of Metro should be read to refer to King County.

14 C. The City, pursuant to statutory authority, owns and
15 maintains a basic collector sewer system which feeds into the
16 Metro trunk sewer lines, and also owns and maintains a storm
17 water system. The City pays Metro for sewage transmission,
18 treatment, and disposal services. As part of the sewer and storm
19 water systems, the City owns and maintains certain CSOs and storm
20 water outfalls that discharge to Elliott Bay and the Duwamish
21 River.

22 D. The United States on behalf of NOAA filed a complaint
23 in this action on March 19, 1990, under Section 107 of CERCLA, 42
24 U.S.C. § 9607(a), seeking, inter alia, recovery from Metro and
25 the City for damages for injury to, destruction of, and loss of

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1 natural resources resulting from releases of hazardous
2 substances, in particular chromium, cadmium, copper, lead, zinc,
3 pentachlorophenols (PCPs), polychlorinated biphenyls (PCBs),
4 polycyclic aromatic hydrocarbons (PAHs), and halogenated
5 hydrocarbons, into the environment in and around the Duwamish
6 River and Elliott Bay, for the costs of restoring, replacing or
7 acquiring the equivalent of the affected natural resources, and
8 for the costs of assessing the damage to the affected natural
9 resources.

10 E. The United States has alleged in its complaint in this
11 matter, prior to conducting a natural resource damage assessment
12 pursuant to 43 C.F.R. Part 11, that Metro and the City have
13 released hazardous substances into the environment, with
14 attendant injury to the United States' trust resources, and that
15 mitigation and remediation of substances Metro and the City are
16 alleged to have released would facilitate the recovery of such
17 resources.

18 F. Metro and the City maintain that effluent discharged
19 from their CSOs and storm water outfalls has presented little if
20 any potential for injury to the natural resources in Elliott Bay
21 and the Duwamish River; that their wastewater collection,
22 treatment and disposal programs have contributed substantially to
23 decreasing and/or minimizing injury and damage to natural
24 resources; that their water quality programs have made
25 improvements in the water quality of Elliott Bay and the Duwamish

1 River; that their pretreatment programs, along with on-site
2 monitoring, keep the contribution of industrial sources within
3 permitted discharge limits; and that the limited natural resource
4 damage from the CSOs and the storm water outfalls appears to have
5 originated equally from industrial, commercial, and residential
6 customers that discharge into the City and Metro systems.

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

21 H. This Decree contains terms embodying a cooperative
22 partnership among the United States, Metro, the City, the State
23 of Washington, the Muckleshoot Indian Tribe, and the Suquamish
24 Indian Tribe that will make improvements in Elliott Bay and the
25 Duwamish River and will allow these parties to make progress in

1 restoring and replacing damaged natural resources in the covered
2 area, as defined below.

3 I. Scientific research conducted on natural resources in
4 Elliott Bay and the Duwamish River indicates that the effects of
5 many urban and industrial activities, including CSOs and storm
6 water discharges, have contributed to the injury identified in
7 these studies. Based on this research, the parties have agreed
8 that, as to Metro and the City, no further natural resource
9 damage assessment is required to effectuate the purposes of this
10 Decree.

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

23 K. The parties understand that the source control,
24 sediment remediation and habitat development efforts undertaken
25 pursuant to this Decree are not intended to substitute for any

1 other efforts or obligations of these parties.

2 L. The parties recognize that the United States and the
3 State of Washington retain and reserve their authority that does
4 not relate to recovery of natural resource damages, including the
5 authority to issue orders requiring remedial action and to
6 recover costs associated with such orders pursuant to CERCLA and
7 the Model Toxics Control Act, Chapter 70.105D RCW, Chapter 90.48
8 RCW, and the authority to administer and enforce the State
9 Sediment Management Standards, Chapter 173 204 WAC.

10 M. The Trustees have determined that the actions and
11 expenditures of Metro and the City under this Decree are an
12 appropriate contribution to efforts to redress the natural
13 resource damages that are the subject of this proceeding. This
14 determination is based in major part upon the following
15 considerations:

16 1. Metro has made a substantial public investment in
17 water quality. For example, Metro spent \$2,244,000 over the
18 period 1977 through 1989 on its program of regulating
19 commercial and industrial discharges into those portions of
20 its sewerage system related to Elliott Bay and the Duwamish
21 River area. Metro has spent an additional \$38,000,000 since
22 1961 on other programs specifically designed to enhance
23 Elliott Bay and the Duwamish River area. In addition to
24 funds made available pursuant to this Decree, Metro will
25 spend \$54,500,000 (in 1988 dollars) for CSO control projects

1 through the year 2006.

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

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

21 In particular, the CSO control efforts undertaken by Metro and
22 the City, combined with the expected sediment quality benefits
23 from adherence with the Sediment Management Standards program,
24 provide a substantial foundation for the efforts contemplated
25 under this Decree.

1 NOW, THEREFORE, before the taking of any testimony, before
2 the adjudication of the merits of this case, and without
3 admission of any issue of law, fact, liability, or responsibility
4 by the City or Metro, IT IS HEREBY ORDERED, ADJUDGED, AND
5 DECREED:

6 JURISDICTION AND VENUE

7 1. The Court has jurisdiction over the subject matter of
8 this action and the parties to this Consent Decree pursuant to 28
9 U.S.C. §§ 1331 and 1345, and Section 113(b) of CERCLA, 42 U.S.C.
10 § 9613. This Court also has personal jurisdiction over the City
11 and Metro which, solely for the purposes of this Consent Decree,
12 waive all objections and defenses that they may have to
13 jurisdiction of the Court or to venue in this District and to
14 service of process.

15 APPLICABILITY OF CONSENT DECREE

16 2. The provisions of this Consent Decree shall apply to
17 and be binding on the parties to this Consent Decree, their
18 agents, successors and assigns. Changes in the organizational
19 form or status of a party shall have no effect on its obligations
20 under this Consent Decree.

21 DEFINITIONS

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

1 a. "Covered area" means the embayment on Puget Sound
2 located between Alki Point and West Point and includes the
3 shoreline ten (10) meters upland from the mean high water line
4 ("Elliott Bay") and the Duwamish River from the point at which it
5 discharges into Elliott Bay to the head of navigation
6 (approximately river mile 10), including Harbor Island and the
7 East and West Waterways around Harbor Island ("Duwamish River").

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

1 claims under 33 U.S.C. § 407 for injunctive and other equitable
2 relief that could have been adjudicated had said case been
3 prosecuted to final judgment. For the purpose of determining if
4 claims could have been adjudicated, reference shall be made to
5 the facts and allegations disclosed in the documents filed with
6 the Court in said case by the date of entry of this Decree.

7 "Covered matters" shall not be construed to include any authority
8 of the United States or the State of Washington that does not
9 relate to injunctive or equitable relief under 33 U.S.C. § 407 or
10 to recovery of natural resource damages, including the authority
11 to issue orders requiring remedial action and to recover costs
12 associated with such orders pursuant to CERCLA and the Model
13 Toxics Control Act, Chapter 70.105D RCW, Chapter 90.48 RCW, and
14 the authority to administer and enforce the State Sediment
15 Management Standards, Chapter 173-204 WAC.

16 c. "Habitat development" includes acquiring living
17 natural resources for the purpose of habitat restoration and
18 replacement and any program, technique, method, or other means of
19 creating or enhancing aquatic or benthic habitat in the Duwamish
20 River or Elliott Bay.

21 d. "Natural resource damages" means damages for
22 injury to, destruction of, or loss of any and all natural
23 resources caused in whole or in part by releases of hazardous
24 substances into the environment

25 e. "Sediment remediation" includes, but is not

1 limited to, any program, technique, method, or other means of
2 dredging, removing, cleansing, isolating, immobilizing,
3 bioremediating, capping, or containing sediments beneath the
4 waters of the Duwamish River and Elliott Bay that contain
5 hazardous substances.

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

10 g. "Trustees" means NOAA, Interior, Ecology, the
11 Suquamish Indian Tribe and the Muckleshoot Indian Tribe.

12 DISTRICT COURT REGISTRY ACCOUNT

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

20 Office of the United States Attorney
21 3600 SeaFirst Fifth Avenue Plaza
22 800 Fifth Avenue
23 Seattle, Washington 98104

24 The U.S. Attorney shall immediately deposit such funds with the
25 Registry of the Court. The party making payment shall cause
26 copies of each check and of any transmittal letter accompanying

1 the check to be sent to: Chief, Environmental Enforcement
2 Section, Department of Justice, P.O. Box 7611, Ben Franklin
3 Station, Washington, D.C. 20044; NOAA Damage Assessment Center,
4 WSC1 Room 212, 6001 Executive Boulevard, Rockville, Maryland
5 20852, Attention: Kathleen Anderson.

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

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

1 no independent legal status and shall have only that authority
2 conferred upon it by this Decree.

3 6. Each member group of the Panel, as identified in the
4 preceding paragraph, may as necessary select in what ever manner
5 it deems appropriate one or more representatives from its
6 respective agencies or subgroups to serve collectively as its
7 Manager. Irrespective of the number of representatives from any
8 group, each of the groups identified in the preceding paragraph
9 shall have only a single vote on the Panel.

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

1 inconsistent with the terms of this Decree. The Panel may adopt
2 in the form of bylaws any additional decision making procedures
3 it deems necessary.

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

9 (a) decisions shall if possible be based on consensus; (b) the
10 structure for deciding any issue by vote shall allow each group
11 to have a true voice in the process; (c) deference shall be given
12 to decisions by a majority of the trustee groups, even if they
13 are not in the numerical majority of the Panel on a given issue;

14 (d) any arrangement that would allow a group or groups to
15 deadlock voting shall be avoided; and (e) any aggrieved party
16 shall have the right to petition the Court for review of any
17 decision by the Panel. The Panel may adopt in the form of bylaws
18 any additional decision making procedures it deems necessary. If
19 the Panel fails to establish decision making procedures, which
20 conform to the requirements herein, within ninety (90) days of
21 entry of the Decree, any party to this Decree may immediately
22 petition the Court to establish such procedures.

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

25 a. Establish such procedures and practices as are

1 necessary to the operation and deliberations of the Panel,
2 including, but not limited to, provisions for collecting and
3 disseminating information, convening and conducting meetings, and
4 resolving disputes;

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

9 c. Plan projects for sediment remediation and habitat
10 development in the covered area;

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

14 e. Review and comment upon actions proposed by Metro
15 and the City to achieve the Panel's source control goals,
16 determine if such actions are likely to achieve the Panel's
17 goals, and direct Metro and the City to take such actions
18 approved by the Panel;

19 f. Coordinate and provide for the dissemination of
20 information to the public on the selection and design of sediment
21 remediation and habitat development projects;

22 g. Ensure the collection from, and dissemination to,
23 each group that is a member of the Panel all information
24 necessary to an informed discussion and resolution of all issues
25 related to sediment remediation, habitat development and source
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1 control;

2 h. Decide all issues related to selecting study
3 activities and other data gathering efforts, and to selecting,
4 planning, and managing sediment remediation and habitat
5 development projects, including establishing performance
6 standards and contingency plans for habitat development projects;

7 i. Develop guidelines for establishing the reasonable
8 and necessary reimbursable costs of salary and travel incurred by
9 the Trustees for their participation in the activities of the
10 Panel and of the technical working groups, formed pursuant to
11 paragraph 15 of this Decree; and

12 j. Perform any other activity specifically provided
13 for elsewhere in this Decree or as directed or approved by the
14 Court.

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

17 10. a. The parties to this Decree agree that the funds
18 paid by Metro and the City into the Registry Account shall be
19 used only for sediment remediation and habitat development, as
20 defined herein, and for expenses of Panel functions support and
21 planning and design support as specified below. No more than two
22 million dollars (\$2,000,000) shall be spent on expenses of Panel
23 functions support. The Panel shall apportion such expenses
24 between the sediment remediation and habitat development
25 programs. Expenses of Panel functions support include, but are

1 not limited to, salary and overhead for an administrative
2 director; costs associated with administering the Registry
3 Account; costs of public review and participation; costs of
4 disseminating information; and costs of contracting for any
5 services necessary to the accomplishment of any of said tasks.
6 Expenses of Panel functions support also include the reasonable
7 and necessary costs, as determined on the basis of guidelines
8 established by the Panel, associated with participation by
9 personnel of the Trustees in Panel meetings and deliberations and
10 technical working groups, including salary and travel, provided
11 that such costs are not otherwise chargeable to Metro or the City
12 in connection with the review of any required permit, application
13 or other approval.

14 h. No more than three million dollars
15 (\$3,000,000) shall be spent on expenses of planning and design
16 support except as described in paragraph 4(d), and except that
17 unspent funds from the two million dollars (\$2,000,000)
18 authorized for Panel functions support under paragraph 10(a) may,
19 through the Panel's budget process, be reallocated to planning
20 and design support. The Panel shall apportion such expenses
21 between the sediment remediation and habitat development
22 programs. Expenses of planning and design support include, but
23 are not limited to, costs of studies needed to set goals and
24 establish priorities for sediment remediation, habitat
25 development, and source control projects; costs of analysis as

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1 required for comparison of candidate sites and site selection;
2 costs of site characterization as required to support detailed
3 technical/-engineering studies; costs of project design,
4 specifications, selection of equipment, materials, and
5 procedures; costs associated with NEPA/SEPA review, analysis, and
6 reporting; costs associated with permitting; costs of selection
7 of monitoring parameters and design of monitoring programs; costs
8 of technical support for the Suquamish and Muckleshoot Indian
9 Tribes; final report preparation; and costs of contracting for
10 any services necessary to the accomplishment of any of said
11 tasks.

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

25 11. The Panel shall provide to Metro and the City within
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1 one hundred twenty (120) days of entry of this Decree an annual
2 budget for the calendar year 1992. By March 31 of each year
3 prior to a year in which Panel activities are contemplated, the
4 Panel shall provide to Metro and the City an annual budget for
5 the following calendar year (e.g., by March 31, 1992, for
6 calendar year 1993, etc.). The Panel must consider in each
7 year's budget any unspent funds from previous years and any
8 unspent interest earned on funds in the Account. The Panel may
9 include in each such budget a figure for contingency funds in an
10 amount of up to ten percent (10%) of the total amount budgeted,
11 so long as the sum of the total amount budgeted and the requested
12 contingency fund does not exceed the annual maximums set forth in
13 paragraphs 20 and 28 of this Decree.

14 11.5 The Panel has adopted a document titled "Elliott
15 Bay/Duwamish Restoration Program Final Scope, Schedule and
16 Budget" (copy attached hereto and incorporated by reference)
17 which addresses actions and expenditures for the remainder of
18 Panel activities. This document shall provide the basis for
19 Panel activities, with further refinements or alterations to be
20 made through the annual budget process as provided in paragraph
21 11.

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
25 least on an annual basis, which report shall be made available to

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1 all members of the Panel.

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

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

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

1 employee or agent of any party to this Decree. Nothing in the
2 preceding sentence shall preclude a current employee of any party
3 to this Decree from serving as Director, to the extent consistent
4 with applicable laws and regulations.

5 15. The Panel may establish one or more technical working
6 groups to assist the Panel in planning and designing sediment
7 remediation and habitat development projects and in establishing
8 goals regarding Metro's and the City's source control programs.

9 The Panel shall give each of the following entities the
10 opportunity to participate in any such working group: NOAA,
11 Interior, EPA, the U.S. Army Corps of Engineers, the Muckleshoot
12 Indian Tribe, the Suquamish Indian Tribe, the Washington
13 Department of Ecology, the Washington Department of Fisheries,
14 the Washington Department of Wildlife, the Washington Department
15 of Natural Resources, the Washington Department of Health, the
16 Port of Seattle, Metro, the City, and the Seattle-King County
17 Department of Health. The Panel may also allow in any such
18 working group other qualified individuals. All participants in
19 any such working group shall be capable of contributing
20 particular expertise applicable to that working group's tasks.

21 The Panel shall decide the manner in which any such working group
22 will perform its tasks and shall provide sufficient oversight to
23 ensure that the terms of this Decree are achieved. The Panel may
24 for any such working group disburse, expend, obligate, or
25 otherwise use funds from the Registry Account, but such funds

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

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

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

21 18. The Panel shall provide for public participation in the
22 process by which the Panel selects and designs sediment
23 remediation and habitat development projects. Public
24 participation includes, but is not limited to, public review
25 pursuant to any required environmental review, and public review

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28 CONSENT DECREE - 25

U.S. Department of Justice
Environmental Enforcement Section
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Seattle, Washington 98115-0070