

Honorable Robert J. Bryan

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, STATE OF)
WASHINGTON, PUYALLUP TRIBE OF)
INDIANS and MUCKLESHOOT INDIAN)
TRIBE,)
Plaintiffs,)
vs.)
BHP HAWAII, INC., as successor to PRI)
Northwest, Inc.,)
Defendant.)

CIVIL NO. C08-5221RJB
CONSENT DECREE

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I. INTRODUCTION

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

II. RECITALS

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

B. Investigations conducted by the United States Environmental Protection Agency

1 (“EPA”), the Trustees and others have detected hazardous substances in the sediments, soils and
2 groundwater of the Commencement Bay Environment, including but not limited to arsenic, antimony,
3 cadmium, chromium, copper, mercury, nickel, lead, zinc, bis(2-ethylhexyl)-phthalate,
4 hexachlorobenzine, hexachlorobutadiene, polycyclic aromatic hydrocarbons, and polychlorinated
5 biphenyls. Overall, the Trustees have documented the presence of over 30 hazardous substances in
6 the marine sediments of Commencement Bay’s Hylebos Waterway.
7

8 C. The Trustees began assessing natural resource damages in the Commencement Bay
9 Environment in October 1991 by finding that hazardous substances had been released into the
10 Commencement Bay Environment; that public trust natural resources had likely been injured by the
11 releases; that data sufficient to pursue a natural resource damage assessment were available or could
12 likely be obtained at a reasonable cost; and that, without further action, implemented and planned
13 response actions would not adequately remedy the resource injuries. *See* Preassessment Screen of
14 Natural Resource Damages in the Commencement Bay Environment Due to Activities Taking Place
15 In and About the Commencement Bay/Nearshore Tidelands (CB/NT) Superfund Site (October 29,
16 1991). The Trustees notified representatives of known potentially responsible parties (“PRPs”) of
17 their intent to conduct a damage assessment. The Trustees subsequently entered into a Funding and
18 Participation Agreement for Phase 1 of the Commencement Bay-Wide Natural Resource Damage
19 Assessment, dated February 10, 1993, with several of the major PRPs. The Trustees published a
20 report on the results of Phase 1 of the damage assessment process in June 1995. The PRPs did not
21 participate in subsequent stages of the damage assessment, and the Trustees continued the process
22 independently. The Trustees have now completed a series of studies during Phase 2 of the damage
23 assessment, focusing on impacts of contaminants on marine sediments, benthic organisms, flatfish and
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1 salmonids. Results of those studies were published in a series of reports, consisting of
2 Commencement Bay Natural Resource Trustees, 1996, Hylebos Waterway Data and Data Analysis
3 Report; Collier, T.K., L.L. Johnson, M.S. Myers, C.M. Stehr, M.M. Krahn, and J.E. Stein, 1998, Fish
4 injury in the Hylebos Waterway in Commencement Bay, Washington; Mary R. Arkoosh, Ed Casillas,
5 Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects of Chemical Contaminants
6 from the Hylebos Waterway on Disease Resistance of Juvenile Salmon; Ed Casillas, Bich-Thuy L.
7 Eberhart, Frank C. Sommers, Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects
8 of Chemical Contaminants from the Hylebos Waterway on Growth of Juvenile Chinook Salmon; and
9 Ed Casillas, Bich-Thuy L. Eberhart, Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998,
10 Exposure of Juvenile Chinook Salmon to Chemical Contaminants Specific to the Hylebos Waterway.
11

12 Based on this research, the Plaintiffs and Defendant (collectively, the “Parties” and, individually, a
13 “Party”) agree that no further natural resource damage assessment is required to effectuate the
14 purposes of this Consent Decree, with respect to Defendant.
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17 D. Plaintiffs have filed a complaint (the “Complaint”) pursuant to section 107 of
18 CERCLA, 42 U.S.C. § 9607; MTCA, chapter 70.105D RCW; CWA, 33 U.S.C. §§ 1251 et seq.; and
19 OPA, 33 U.S.C. §§ 2701 et seq., seeking recovery from Defendant of damages for injury to,
20 destruction of, and loss of natural resources resulting from releases of hazardous substances into the
21 Commencement Bay Environment, including the costs of assessing the damages.
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23 E. Plaintiffs allege in the Complaint that PRI Northwest, Inc. in the past owned and/or
24 operated real properties or facilities, identified by the Trustees as the OCCIDENTAL site and the US
25 NAVAL RESERVE site, from which storm water, surface water runoff, wastewater, other process
26 discharges, and/or groundwater have flowed to the Commencement Bay Environment. Plaintiffs also
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1 allege that investigations by EPA and others have detected concentrations of hazardous substances
2 in soils, groundwater and/or sediments on or in those properties or facilities. Some of these hazardous
3 substances are found in the sediments of the Commencement Bay Environment.
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5 F. Plaintiffs further allege that hazardous substances have been or are being released to
6 the Commencement Bay Environment from properties or facilities owned and/or operated by PRI
7 Northwest, Inc. through direct discharge, surface water runoff, groundwater and/or seeps, and that
8 those hazardous substances have caused injury to, destruction of and loss of natural resources in the
9 Commencement Bay Environment under Plaintiffs' trusteeship, including fish, shellfish, invertebrates,
10 birds, marine sediments, and resources of cultural significance. Plaintiffs further allege that each of
11 them and the public have suffered the loss of natural resource services (including ecological services
12 as well as direct and passive human use losses) as a consequence of those injuries.
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14 G. Plaintiffs allege that the Defendant is the successor to PRI Northwest Inc., who was
15 (a) the owner and/or operator of a vessel or a facility; (b) a person who at the time of disposal or
16 release of any hazardous substance owned or operated any facility at which such hazardous
17 substances were disposed of; (c) a person who by contract, agreement, or otherwise arranged for
18 disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of
19 hazardous substances owned or possessed by such person, by any other party or entity, or otherwise
20 generated any hazardous substance disposed of or treated, at any facility or incineration vessel owned
21 or operated by another party or entity and containing such hazardous substances; and/or (d) a person
22 who accepts or accepted any hazardous substances for transport to disposal or treatment facilities,
23 incineration vessels or sites selected by such person from which there is a release or a threatened
24 release of a hazardous substance that causes the incurrence of response costs within the meaning of
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1 42 U.S.C. § 9607 and RCW 70.105D.040.

2 H. Defendant denies many of the allegations of the Complaint.

3 I. Although the Trustees have initiated but not yet completed a natural resource damage
4 assessment for the Commencement Bay Environment, the Trustees have developed and analyzed
5 information sufficient to support a settlement that is fair, reasonable and in the public interest.
6

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

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

14
15 M. The Trustees' report allocated liability for DSAY losses for settlement purposes
16 among the various industrial sites along the Hylebos Waterway. As a result of their allocation process,
17 the Trustees allocated a total of 0.908 DSAYs to PRI Northwest, Inc. The Trustees also allocated
18 a total of \$5,238.56 in damage assessment costs relating to the Hylebos Waterway to PRI Northwest,
19 Inc.

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21 N. The Trustees quantified natural resource damages in their Hylebos Waterway report
22 in terms of DSAYs in order to encourage settling parties to resolve their liability by constructing
23 habitat restoration projects. For parties who prefer settling on a cash-damages basis, the Trustees
24 reviewed data from existing restoration projects and estimated it would cost fifty-two thousand
25 dollars (\$52,000.00) per DSAY if the Trustees themselves constructed the required restoration
26 projects. The cash damages equivalent of the 0.908 DSAYs allocated to PRI Northwest, Inc. totals
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1 \$47,216.00. When combined with the damage assessment costs allocated to PRI Northwest, Inc., the
2 dollar value of the Trustees' claim asserted against Defendant, including any liability as the alleged
3 successor to PRI Northwest, Inc., totals \$52,454.56. The Trustees have agreed to settle their natural
4 resource damage claims against Defendant, including any liability as the alleged successor to PRI
5 Northwest, Inc., associated with the Commencement Bay Environment for cash payments totaling
6 \$51,761.33 in natural resource damages and damage assessment costs. Defendant has agreed to pay
7 the Trustees the identified sum in return for the Trustees' covenants not to sue Defendant or PRI
8 Northwest, Inc. for Natural Resource Damages as provided below in Paragraph 16.
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11 O. Defendant does not admit any liability to Plaintiffs arising out of the transactions or
12 occurrences alleged in the Complaint.

13 P. Plaintiffs and Defendant agree, and this Court by entering this Decree finds, that this
14 Decree has been negotiated by the Parties in good faith; that settlement of this matter will avoid
15 prolonged and complicated litigation between the Parties; and that this Decree is fair, reasonable, and
16 in the public interest.
17

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

20 III. JURISDICTION AND VENUE

21 1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
22 §§ 1331, 1345 and 1367, 42 U.S.C. §§ 9607 and 9613(b) and 33 U.S.C. § 2717(b). The Court has
23 personal jurisdiction over the Parties. Solely for the purposes of this Decree and the underlying
24 Complaint, the Parties waive all objections and defenses that they may have to jurisdiction of the
25 Court or to venue in this District. The Parties may not challenge the terms of this Decree or this
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1 Court's jurisdiction to enter and enforce this Decree.

2 IV. PARTIES BOUND

3 2. This Decree is binding upon the United States, the State, the Puyallup Tribe of
4 Indians, the Muckleshoot Indian Tribe and upon Defendant and their heirs, successors and assigns.
5 Any change in ownership or corporate or other legal status, including but not limited to any transfer
6 of assets or real or personal property, will in no way alter the status or responsibilities of Defendant
7 under this Decree.
8

9 V. DEFINITIONS

10 3. Unless otherwise expressly provided, terms used in this Decree that are defined in
11 CERCLA or in regulations promulgated under CERCLA have the meanings assigned to them in
12 CERCLA or in such regulations. Whenever the terms listed below are used in this Decree or in any
13 attached appendix, the following definitions will apply:
14

15 a. "Commencement Bay Environment" means the waters of Commencement Bay,
16 State of Washington -- including the shoreline, intertidal areas, tributaries, drainage areas, estuaries
17 and bottom sediments -- lying south of a line drawn from Point Defiance to Dash Point. These waters
18 include the Thea Foss Waterway, Wheeler-Osgood Waterway, Middle Waterway, St. Paul Waterway,
19 Puyallup River from the mouth south to the present City limits, Milwaukee Waterway, Sitcum
20 Waterway, Blair Waterway, and Hylebos Waterway. This area includes but is not limited to the
21 Commencement Bay Nearshore/Tideflats Superfund Site, as identified or amended by the EPA,
22 including the B&L Landfill, and areas affected by releases of hazardous substances within the
23 Commencement Bay Nearshore/Tideflats Superfund Site.
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25 b. "Commencement Bay Restoration Account" means the Commencement Bay
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1 Natural Resource Restoration Account authorized by the Order Directing the Deposit of Natural
2 Resource Damages into the Registry of the Court in United States v. Port of Tacoma, No.
3 C93-5462B (W.D. Wash. Oct. 8, 1993) (attached as Appendix A).

4
5 c. “DSAYs” means discounted ecological service acre-years, the metric
6 established by the Trustees to determine the scale of Natural Resource Damages liability associated
7 with the Hylebos Waterway and the natural resource restoration efforts needed to compensate for
8 injury to, destruction or loss of natural resources giving rise to liability.

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10 d. “Defendant” means BHP Hawaii, Inc.

11 e. “Natural Resource Damages” means damages, including costs of damage
12 assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607; Chapter 70.105D RCW;
13 Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; and Section 1002(b)(2)(A) of the Oil
14 Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A), for injury to, destruction of, or loss of
15 natural resources resulting from releases of hazardous substances or discharges of oil to the
16 Commencement Bay Environment at or from sites along, adjacent to or draining to the Hylebos
17 Waterway.

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19 f. “Parties” mean the United States, the State of Washington, the Puyallup Tribe
20 of Indians, the Muckleshoot Indian Tribe and BHP Hawaii, Inc.

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22 g. “Plaintiffs” mean the United States, the State, the Puyallup Tribe of Indians,
23 and the Muckleshoot Indian Tribe.

24 h. “Trustees” mean the United States Department of Commerce, acting through
25 NOAA; the Department of the Interior; the Washington State Department of Ecology, on behalf of
26 the State of Washington; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe.

1 VI. GENERAL PROVISIONS

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

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

5 6. All rights obtained by Defendant through this Consent Decree shall apply to both
6 Defendant and PRI Northwest, Inc., as the alleged predecessor of BHP Hawaii, Inc.

7 VII. PAYMENT OF NATURAL RESOURCE DAMAGES

8 AND DAMAGE ASSESSMENT COSTS

9 7. Within 30 days of entry of this Decree, Defendant will pay to the Trustees \$46,592.00
10 for Natural Resource Damages. This payment will be made by a certified check made payable to the
11 Clerk of the Court. This check will be deposited in the Commencement Bay Natural Resource
12 Restoration Account.

13 8. Within 30 days of entry of this Decree, Defendant will pay to the Trustees sums
14 totaling \$5,169.33 in damage assessment costs. These sums shall be paid in the following amounts
15 and particulars:

16 Trustee: National Oceanic and Atmospheric Administration

17 Amount: \$4,170.09

18 Trustee: U.S. Department of the Interior

19 Amount: \$697.18

20 Payments to NOAA and the U.S. Department of the Interior shall be made by certified checks made
21 payable to "U.S. Department of Justice," bearing the notation "BHP Hawaii, Inc. - Commencement
22 Bay Assessment Costs," and delivered to United States Attorney's Office; Western District of
23

1 Washington; Attn: Financial Litigation Unit; 700 Stewart Street, Suite #5220; Seattle, WA 98101.

2 Any payments received by the Department of Justice after 4:00 p.m. Eastern Standard Time shall be
3 credited on the next business day.
4

5 Payments to the other Trustees shall be made by certified checks, bearing the notation "BHP
6 Hawaii, Inc. - Commencement Bay Assessment Costs," in the amounts indicated and made payable
7 and addressed as follows:

8 Trustee: State of Washington
9 Amount: \$86.03
10 Payee: State of Washington/Department of Ecology
11 Address: State of Washington
12 Department of Ecology
13 Attention: Cashiering Section
14 P.O. Box 5128
Lacey, WA 98503-0210

15 Trustee: Puyallup Tribe of Indians
16 Amount: \$196.82
17 Payee: Puyallup Tribe of Indians
18 Address: Mr. William Sullivan
19 Environmental Protection Department
20 Puyallup Tribe of Indians
3009 E. Portland Ave.
Tacoma, WA 98404

21 Trustee: Muckleshoot Indian Tribe
22 Amount: \$19.22
23 Payee: Muckleshoot Indian Tribe
24 Address: Mr. Rob Otsea
25 Office of the Tribal Attorney
26 Muckleshoot Indian Tribe
39015 172nd Avenue S.E.
27 Auburn, WA 98002
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1 c. At the time of each payment, Defendant will send notice that payment has been
2 made to the Trustees and DOJ in accordance with Section XIV (Notices and Submissions). This
3 notice will reference Commencement Bay NRDA, DOJ Case Number 90-11-2-1049, and the civil
4 action number.
5

6 d. Penalties will accrue as provided in this Paragraph regardless of whether the
7 Trustees have notified Defendant of the violation or made a demand for payment, but the penalties
8 need only be paid upon demand. All penalties will begin to accrue on the day after payment is due and
9 will continue to accrue through the date of payment. Nothing in this Decree prevents the
10 simultaneous accrual of separate penalties for separate violations of this Decree.
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12 12. If Plaintiffs bring an action to enforce this Decree, Defendant will reimburse Plaintiffs
13 for all costs of such action, including but not limited to costs of attorney time.

14 13. Payments made under this Section are in addition to any other remedies or sanctions
15 available to Plaintiffs by virtue of Defendant's failure to comply with the requirements of this Decree.
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17 14. Notwithstanding any other provision of this Section, Plaintiffs may, in their
18 unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued
19 pursuant to this Decree. Payment of stipulated penalties does not excuse Defendant from payment
20 as required by Section VII or from performance of any other requirement of this Consent Decree.
21

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

25 IX. COVENANT NOT TO SUE BY PLAINTIFFS

26 16. Except as specifically provided in Section X (Reservations of Rights) below, Plaintiffs
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1 covenant not to sue or to take administrative action against Defendant or PRI Northwest, Inc.
2 pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a); Chapter 70.105D RCW; Section 311
3 of the Clean Water Act (CWA), 33 U.S.C. § 1321; or Section 1002(a) of the Oil Pollution Act of
4 1990 (OPA), 33 U.S.C. § 2702(a), to recover Natural Resource Damages. This covenant not to sue
5 will take effect upon receipt by the Registry of the Court and by each of the Trustees of all payments
6 required by Paragraphs 7 and 8 of Section VII. This covenant not to sue is conditioned upon the
7 satisfactory performance by Defendant of its obligations under this Decree. This covenant not to sue
8 extends only to Defendant and PRI Northwest, Inc. and their heirs, successors, and assigns, and does
9 not extend to any other person.
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12 X. RESERVATIONS OF RIGHTS

13 17. Plaintiffs reserve, and this Decree is without prejudice to, all rights against Defendant
14 or PRI Northwest, Inc. with respect to all matters not expressly included within the Covenant Not
15 to Sue by Plaintiffs in Paragraph 16. Notwithstanding any other provision of this Decree, Plaintiffs
16 reserve, and this Decree is without prejudice to, all rights against Defendant or PRI Northwest, Inc.
17 with respect to:
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- 19 a. liability for failure of Defendant to meet a requirement of this Decree;
- 20 b. liability for costs of response incurred or to be incurred by Plaintiffs;
- 21 c. liability for injunctive relief or administrative order enforcement under Section 106 of
22 CERCLA, 42 U.S.C. § 9606, and
- 23 d. criminal liability to the United States or State.
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25 XI. REOPENERS

26 18. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve, and
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1 this Consent Decree is without prejudice to, the right to institute proceedings against Defendant
2 and/or PRI Northwest, Inc. in this action or in a new action for:

3 a. Claims based on a failure of Defendant to satisfy the requirements of this Consent
4 Decree; and
5

6 b. Additional claims for Natural Resource Damages if conditions, factors or information
7 in the Commencement Bay Environment, not known to the Trustees at the time of entry of this
8 Consent Decree, are discovered that, together with any other relevant information, indicates that there
9 is injury to, destruction of, or loss of natural resources of a type unknown, or of a magnitude
10 significantly greater than was known, at the time of entry of this Consent Decree, which is attributable
11 to the Defendant or PRI Northwest, Inc.
12

13 **XII. COVENANT NOT TO SUE BY DEFENDANT**

14 19. Defendant, for itself and as successor to PRI Northwest, Inc., covenants not to sue
15 and agrees not to assert any claims or causes of action against the United States, the State, the
16 Puyallup Tribe of Indians and the Muckleshoot Indian Tribe or their contractors or employees, for
17 any civil claims or causes of action relating to Natural Resource Damages.
18

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

20 20. Except as otherwise provided herein, nothing in this Consent Decree shall be
21 construed to create any rights in, or grant any cause of action to, any person not a Party to this
22 Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited
23 to, any right to contribution), defenses, claims, demands, and causes of action they each may have
24 with respect to any matter, transaction, or occurrence relating in any way to the Commencement Bay
25 Environment against any person not a Party hereto.
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1 Party to another under the terms of this Decree, it will be directed to the individuals at the addresses
2 specified below, unless those individuals or their successors give notice of a change to the other
3 Parties in writing. Written notice as specified constitutes complete satisfaction of any written notice
4 requirement of the Decree for Plaintiffs, Defendant and PRI Northwest, Inc.
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6 As to the United States and as to DOJ:

7 Chief, Environmental Enforcement Section
8 Environment and Natural Resources Division
9 U.S. Department of Justice
10 P.O. Box 7611
11 Washington, D.C. 20044-7611
12 (DJ # 90-11-2-1049)

13 As to NOAA:

14 Robert A. Taylor
15 NOAA Office of General Counsel GCNR/NW
16 7600 Sand Point Way NE
17 Seattle, WA 98115-0070

18 As to the United States Department of the Interior:

19 Jeff Krausmann
20 U.S. Fish & Wildlife Service
21 510 Desmond Dr. SE, Suite 102
22 Lacey, WA 98503-1263

23 As to the State:

24 Craig Thompson
25 Toxics Cleanup Program
26 State of Washington
27 P.O. Box 47600
28 Olympia, WA 98504-7600

1 As to the Puyallup Tribe of Indians:

2 Bill Sullivan
3 Environmental Department
4 Puyallup Tribe of Indians
5 3009 E. Portland Ave.
6 Tacoma, WA 98404

7 As to the Muckleshoot Indian Tribe:

8 Mr. Rob Otsea
9 Office of the Tribal Attorney
10 Muckleshoot Indian Tribe
11 39015 172nd Avenue S.E.
12 Auburn, WA 98002

13 As to Defendant and PRI Northwest, Inc.:

14 Jan Potts, Esq.
15 BHP Billiton
16 1360 Post Oak Boulevard
17 Suite 150
18 Houston, TX 77056-3020

19 With a copy to:
20 Mark Schneider, Esq.
21 Perkins Coie LLP
22 1201 Third Avenue
23 Suite 4800
24 Seattle, WA 98101
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XV. EFFECTIVE DATE

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

XVI. RETENTION OF JURISDICTION

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

XVII. INTEGRATION/APPENDICES

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

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

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

28. This Decree will be lodged with the Court for a period of not less than 30 days for public notice and comment. The Plaintiffs each reserve the right to withdraw or withhold their consent if the comments regarding the Decree disclose facts or considerations that indicate this Decree is inappropriate, improper, or inadequate. Defendant, for itself and as successor to PRI Northwest, Inc., consents to the entry of this Decree without further notice.

29. If for any reason this Court declines to approve this Decree in the form presented, this

1 agreement may be voided at the sole discretion of any Party, and the terms of the agreement may not
2 be used as evidence in any litigation between the Parties.

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4 **XIX. SIGNATORIES/SERVICE**

5 30. The Assistant Attorney General for the Environment and Natural Resources Division
6 of the United States Department of Justice and each undersigned representative of the State, the
7 Puyallup Tribe of Indians, the Muckleshoot Indian Tribe and Defendant certifies that he or she is
8 authorized to enter into the terms and conditions of this Decree and to execute and bind legally the
9 Party or Parties that he or she represents to this document.

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11 31. Defendant, for itself and as successor to PRI Northwest, Inc., agrees not to oppose
12 entry of this Decree by this Court or to challenge any provision of this Decree unless any Plaintiff has
13 notified Defendant in writing that it no longer supports entry of the Decree.

14 32. Defendant will identify on the attached signature page the name and address of an
15 agent who is authorized to accept service of process by mail on behalf of it and PRI Northwest, Inc.
16 with respect to all matters relating to this Decree. Defendant and PRI Northwest, Inc. agree to accept
17 service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal
18 Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to
19 service of a summons.
20

21 **XX. FINAL JUDGMENT**

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23 33. Upon approval and entry of this Decree by the Court, this Decree will constitute the
24 final judgment between and among the United States, the State, the Puyallup Tribe of Indians, the
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1 Muckleshoot Indian Tribe, and Defendant. The Court finds that there is no just reason for delay and
2 therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.
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5 SO ORDERED THIS 13th DAY OF JUNE, 2008.
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9 ROBERT J. BRYAN
10 United States District Judge
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in United States, et al. v. BHP
2 Hawaii, Inc. as successor to PRI Northwest, Inc.

3
4
5 FOR THE UNITED STATES OF AMERICA

6
7 Date: _____

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

13 FOR THE STATE OF WASHINGTON

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

16 Director
17 Washington State Department of Ecology

18
19 Date : 12/21/07 /s/ _____

20 Assistant Attorney General
21 State of Washington

22
23 FOR THE PUYALLUP TRIBE OF INDIANS

24
25 Date: 12/27/07 /s/ _____

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1 FOR THE MUCKLESHOOT INDIAN TRIBE

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3 Date: 12/14/07 /s/ _____
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5
6
7 FOR BHP HAWAII, INC. AND PRI NORTHWEST, INC.

8
9 Date: 11/29/07 /s/ _____
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13 Agent authorized to receive service of process by mail on behalf of BHP Hawaii, Inc. and PRI
14 Northwest, Inc. with respect to all matters relating to this Decree:
15

16 Jan Potts, Esq.
17 BHP Billiton
18 1360 Post Oak Boulevard
19 Suite 150
20 Houston, TX 77056-3020
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