CONSENT DEGREE

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

RECITALS

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

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

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

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

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

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

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

G. Without admission or adjudication of any fact or issue of law in this matter, except as between the United States, Metro and the City as to the running of the statutes of limitation and

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to certain interpretations of Section 13 of the Rivers and Harbors Act, 33 U.S.C. § 407, in settlement of this action Metro and the City have agreed to participate in a cooperative program of restoration and replacement of natural resources in Elliott Bay and the Duwamish River. In addition to the provision of expertise through the contribution of in-kind services, Metro and the City have agreed to provide funding for the operation of the Panel (as defined below), the evaluation of natural resource damages, the selection, design, and implementation of sediment remediation and habitat development projects, and the modification of planned source control programs.

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

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

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

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

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

APPLICABILITY OF CONSENT DECREE

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

DEFINITIONS

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

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

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

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

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the Court in said case by the date of entry of this Decree.

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

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

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

e. "Sediment remediation" includes, but is not limited to, any program, technique, method, or other means of dredging, removing, cleansing, isolating, immobilizing, bioremediating, capping, or containing sediments beneath the waters of the Duwamish River and Elliott Bay that contain hazardous substances.
f. "Source control" means any program, technique, method, or other means of restricting or eliminating the discharge or other release of hazardous substances into Metro's and the City's CSO and/or storm water outfall systems.

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

DISTRICT COURT REGISTRY ACCOUNT

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

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

The U.S. Attorney shall immediately deposit such funds with the Registry of the Court. The party making payment shall cause copies of each check and of any transmittal letter accompanying the check to be sent to: Chief, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044; NOAA Damage Assessment Center, WSCI Room 212, 6001 Executive Boulevard, Rockville, Maryland 20852, Attention: Kathleen Anderson.
b. The Registry of the Court shall administer all amounts paid for natural resource damages under this Decree in an interest-bearing account ("Registry Account" or "Account") as provided in the Order Directing the Deposit of Natural Resource Damages Into the Registry of the Court ("Deposit Order") issued by this Court pursuant to Rule 67 of the Federal Rules of Civil Procedure, 28 U.S.C. § 2041, and Rule GR 6 of the Rules of the United States District Court for the Western District of Washington. The Deposit Order shall be attached to this Decree.

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

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for disbursement orders may be made only by the United States on
behalf of, and with the approval of, the Panel.

PROJECT AND ACCOUNT MANAGEMENT

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

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

7. The terms in this paragraph shall apply only if the
Suquamish Indian Tribe, the Muckleshoot Indian Tribe and the
State of Washington all choose to continue their consent to this
Decree and to participation in this settlement. The Parties to
this Decree expect and intend that most issues for decision by

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the Panel will be based upon objective criteria, and that most
decisions will be based on consensus. Where no consensus is
achieved, except as provided in paragraph 30 of this Decree, the
Panel will decide the issue by vote, with each member having one
vote, and the majority prevailing. The position of the majority
of the Trustees will prevail in the event of a tie vote. The
position of the United States will prevail in the event of a tie
vote in which the Trustees are evenly split. Any party may,
within thirty (30) days of notification of the results of voting,
petition the Court for review of any decision. The petitioner
shall bear the burden of proving that the decision is
inconsistent with the terms of this Decree. The Panel may adopt
in the form of bylaws any additional decision making procedures
it deems necessary.

8. The terms in this paragraph shall apply only if one or
more Trustees exercise their right to withdraw pursuant to
paragraph 53 of this Decree. Following entry of this Decree, the
Panel shall establish procedures for making decisions. Such
procedures shall conform to the following requirements:
(a) decisions shall if possible be based on consensus; (b) the
structure for deciding any issue by vote shall allow each group
to have a true voice in the process; (c) deference shall be given
to decisions by a majority of the trustee groups, even if they
are not in the numerical majority of the Panel on a given issue;
(d) any arrangement that would allow a group or groups to
deadlock voting shall be avoided; and (e) any aggrieved party shall have the right to petition the Court for review of any decision by the Panel. The Panel may adopt in the form of bylaws any additional decision making procedures it deems necessary. If the Panel fails to establish decision making procedures, which conform to the requirements herein, within ninety (90) days of entry of the Decree, any party to this Decree may immediately petition the Court to establish such procedures.

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

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

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

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

   d. Establish source control goals to protect natural resources and prevent recontamination of sites selected for sediment remediation or habitat development in the covered area;
e. Review and comment upon actions proposed by Metro and the City to achieve the Panel’s source control goals, determine if such actions are likely to achieve the Panel’s goals, and direct Metro and the City to take such actions approved by the Panel;

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

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

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

i. Develop guidelines for establishing the reasonable and necessary reimbursable costs of salary and travel incurred by the Trustees for their participation in the activities of the Panel and of the technical working groups, formed pursuant to paragraph 15 of this Decree; and
j. Perform any other activity specifically provided for elsewhere in this Decree or as directed or approved by the Court.

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

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

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

c. The remaining funds paid by Metro and the City
into the Registry Account, plus any sums not expended pursuant to
the preceding two subparagraphs, shall be spent on expenses of
project implementation. Expenses of project implementation
include, but are not limited to, costs of all on-the-ground

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operations, including acquiring, dredging, capping, filling, 
contouring, placing, removing, transporting, treating, or 
disposing of materials, other construction requirements, and 
planting of vegetation; construction management and inspection; 
costs of monitoring for the purpose of making project adjustments 
and determining whether project success has been achieved; 
acquiring sites for sediment remediation; and contracting for any 
services necessary to the accomplishment of any of said tasks.

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

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

13. Except as provided in paragraph 34 regarding source
control efforts, the Panel may allow Metro and the City, if
either of them so chooses, to fulfill their respective financial
obligations by providing in-kind services. By September 30 of
each year beginning in 1992 and ending in 1996, Metro or the City
or both of them shall submit to the Panel a proposal describing
those tasks or portions of tasks, identified in the budgets
prepared pursuant to paragraph 11 of this Decree, that Metro or
the City or both of them propose to perform utilizing in-kind
services. The proposal shall identify by grade, title, salary
and level of benefits the employees who are to perform the
specified services, and shall provide an employee-specific
analysis of the work to be performed and the value of that work,
including allied costs. The Panel may accept any such proposal
in its entirety or, to the extent practicable, may accept a
portion of a proposal and not accept other portions. As a
condition of acceptance of such a proposal, the Panel shall
specify such conditions as are necessary to insure adequate
oversight by the Panel of the services to be provided and
appropriate coordination with the efforts of contractors and
others. The Panel shall notify Metro and the City in writing of
its decision and shall specifically identify the tasks,
identified in the budget the Panel has approved, to be performed
through in kind services and those to be performed through cash payments, with a specific cost allocation to each. Within ninety (90) days after the close of each calendar year in which such in-kind services have been provided, Metro and the City shall cause an accounting of such services to be prepared and made available to all members of the Panel.

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

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

15. The Panel may establish one or more technical working
groups to assist the Panel in planning and designing sediment
remediation and habitat development projects and in establishing
goals regarding Metro's and the City's source control programs.
The Panel shall give each of the following entities the
opportunity to participate in any such working group: NOAA,
Interior, EPA, the U.S. Army Corps of Engineers, the Muckleshoot
Indian Tribe, the Suquamish Indian Tribe, the Washington
Department of Ecology, the Washington Department of Fisheries,
the Washington Department of Wildlife, the Washington Department
of Natural Resources, the Washington Department of Health, the
Port of Seattle, Metro, the City, and the Seattle-King County
Department of Health. The Panel may also allow in any such
working group other qualified individuals. All participants in
any such working group shall be capable of contributing
particular expertise applicable to that working group's tasks.
The Panel shall decide the manner in which any such working group
will perform its tasks and shall provide sufficient oversight to
ensure that the terms of this Decree are achieved. The Panel may
for any such working group disburse, expend, obligate, or
otherwise use funds from the Registry Account, but such funds shall be used only for the reasonable and necessary administrative and clerical expenses of any such working group. Except as provided in paragraph 10(a) regarding the participation of the Trustees, no member of a working group shall in any way receive directly or indirectly from the Registry Account any salary or travel expenses for his/her participation in such a working group.

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

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

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

**REMEDIATION OF SEDIMENTS**

19. Metro and the City each agree to pay into the Registry
Account established under paragraph 4 of this Decree:
   a. The sum of six million dollars ($6,000,000); or
   b. As permitted by the Panel pursuant to
paragraph 13, a sum of funds that in combination with in-kind
services has a total value of six million dollars ($6,000,000),
to be applied to the costs of sediment remediation. The Panel
shall use these funds and services only for sediment remediation,
which shall include administering, planning, designing,
implementing, and monitoring the results of sediment remediation
projects, in Elliott Bay and the Duwamish River, except as
specifically provided in paragraph 22 of this Decree. The sums
provided for herein shall be paid in accordance with
paragraphs 20 and 21 of this Decree.

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

   1992 - $500,000 - Five Hundred Thousand Dollars;
   1993 - $1,000,000 - One Million Dollars;
   1994 - $1,500,000 - One Million Five Hundred Thousand Dollars;
   1995 - $1,500,000 - One Million Five Hundred Thousand Dollars;
   1996 - $1,500,000 - One Million Five Hundred Thousand Dollars;
   and
   1997 - Balance of Six Million Dollar contribution.

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

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

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

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

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

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

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

HABITAT DEVELOPMENT AND REAL ESTATE ACQUISITION

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

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

b. As permitted by the Panel pursuant to paragraph 13, a sum of funds that in combination with in-kind
services has a total value of two million five hundred thousand dollars ($2,500,000), to be applied to the costs of habitat development. The Panel shall use these funds and services only for habitat development, which includes acquiring living natural resources for the purpose of habitat restoration and replacement and administering, planning, designing, constructing, and monitoring the results of habitat development projects, in Elliott Bay and the Duwamish River. Solely for the purposes of habitat development, the Panel may consider the Duwamish River to include tributaries to the Duwamish River. The sums provided for herein shall be paid in accordance with paragraphs 28 and 29 of this Decree.

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

- 1992 - $200,000 - Two Hundred Thousand Dollars;
- 1993 - $200,000 - Two Hundred Thousand Dollars;
- 1994 - $500,000 - Five Hundred Thousand Dollars;
- 1995 - $800,000 - Eight Hundred Thousand Dollars;
- 1996 - $800,000 - Eight Hundred Thousand Dollars; and
- 1997 - Balance of Two Million Five Hundred Thousand Dollar contribution.

If Metro's or the City's annual payment in any given year is less than that year's annual maximum, its annual maximum in the successive year may be increased by the difference between the annual maximum and the annual payment from the preceding year. Metro and the City may at their discretion waive any one or all of their respective annual maximums by increasing the amount.
paid. Any such payments in excess of the amounts shown above
shall in no way increase the sum total of amounts to be paid by
either Metro or the City beyond its respective two million five
hundred thousand dollar ($2,500,000) obligation.

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

30. In addition to the contribution specified in
paragraph 27 of this Decree, Metro and the City each shall make
permanently available real property with a value of up to two
million five hundred thousand dollars ($2,500,000) for use as
sites for habitat development projects selected by the Panel.
Metro and the City each shall receive credit toward its
respective maximum obligation under this paragraph for any
donation by Metro or the City of any right or access, lease,
easement, fee title, or any other real property interest,
sufficient to permanently secure a site for any habitat
development project under this Decree. The Panel shall attempt
to determine by consensus the value of any property interest made
available pursuant to this paragraph. If the Panel cannot so
determine the value of any such property, then the value of the
property shall be determined by the following procedure. The
Trustees and donor of the property shall each retain or select a
qualified real estate appraiser to determine the value of the
property. Within sixty (60) days thereafter, the two appraisers
shall attempt in good faith to reach agreement on the value of
the donated property. If these appraisers cannot agree, then
they shall within thirty (30) days select a third appraiser.
This third appraiser shall determine within thirty (30) days
which of the two appraisals most closely approximates the value
of the selected property and he or she shall select that
appraisal value as the value of the donated property. All
appraisers retained or selected shall be competent, impartial and
members of the American Institute of Real Property Appraisers (or
successor association or body of comparable standing). The
parties agree that the value established by this procedure shall
be final, and there shall be no further review or appeal. Full
public access to such areas shall be preserved to the maximum
extent practicable, except as restrictions are necessitated by
construction activities.
31. The Panel shall, to the greatest extent practicable consistent with the goal of creating or enhancing aquatic or benthic habitat for natural resources, select sites for habitat development projects that are geographically and physically associated with existing public facilities, such as parks and fishing piers, in Elliott Bay and the Duwamish River.

32. Metro and the City each agree to pay NOAA the sum of one hundred twenty-five thousand dollars ($125,000) within sixty (60) days of entry of this Consent Decree to reimburse NOAA for the costs of natural resource damage assessment and habitat restoration planning for Elliott Bay and the Duwamish River incurred prior to the entry of this Decree. NOAA will provide Metro and the City with documentation describing the manner in which the funds are applied.

SOURCE CONTROL

33. The Panel shall establish source control goals to protect natural resources and prevent recontamination of sites selected for sediment remediation or habitat development in the covered area. Metro and the City shall determine for their respective source control programs what actions or changes, if any, are needed in addition to, or from, their ongoing source control programs to achieve such goals. Metro and the City shall propose such additional actions or changes to the Panel for its review, comment and approval. Metro and the City shall then take such actions approved by the Panel. The Panel shall not require

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

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

INDEPENDENT CONTRACTOR

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

COVENANTS NOT TO SUE

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

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

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

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

RESERVATION OF RIGHTS

39. Notwithstanding any other provision of this Consent
Decree, the United States, the State of Washington, the Suquamish
Indian Tribe and Muckleshoot Indian Tribe reserve the right to
institute proceedings against Metro and the City in this action.

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or a new action for the following claims: (a) claims for
recovery of natural resource damages in the covered area based on
conditions resulting from a release of hazardous substances from
the CSO and/or storm water outfall systems after the effective
date of this Consent Decree and that are actionable under treaty,
federal, state or tribal law; (b) claims based on a failure by
Metro or the City to satisfy requirements of this Consent Decree;
and (c) claims for criminal liability.

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

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

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

CONTRIBUTION PROTECTION

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

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

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Seattle, Washington 98115-0070

CONSENT DECREE – 36
nazardous substances in the covered area and that the payments
and work satisfy the requirements of Section 122(j)(2) of CERCLA,

GENERAL

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

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

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

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

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

MODIFICATION

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

CONSENT DEGREE – 37
horoto, and approved by the Court as a modification to this
Consent Decree.

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

PUBLIC COMMENT

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

53. The Suquamish Indian Tribe, the Muckleshoot Indian
Tribe and the State of Washington each reserve the right to
withdraw their consent from this Decree and from participation in
this settlement if comments received during the public comment
period disclose facts or considerations which show that the
Decree is inappropriate, improper or inadequate as to the
Suquamish Indian Tribe, the Muckleshoot Indian Tribe and the
State of Washington, respectively. To exercise its right to
withdraw, each of these parties shall file with the Court a

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Seattle, Washington 98115-6070
written statement expressly indicating its intent to withdraw. These parties must exercise their right to withdraw before the United States Department of Justice files its motion to enter this Decree with the Court. Withdrawal by any one or all of these parties shall not in any way affect the rights and obligations of any other party to this Decree. If any one or all of these parties withdraws, any and all references to such a party or parties in the Decree, except those in paragraphs L, M(3), 15, 24, 25 and 26, shall by implication be stricken from the Decree and shall have no meaning or bearing on the operation of any term of this Decree. Withdrawal by any of these parties shall not impose any obligation on any other party to also withdraw nor shall any inference be made as to the propriety of any other party's continued consent to this Decree and participation in this settlement. If either or both the Suquamish Indian Tribe or the Muckleshoot Indian Tribe withdraws, the continued participation by the United States in this settlement is not intended to nor shall it constitute a settlement or waiver of any rights under statute, treaty or common law of such Tribe or Tribes.

VOIDABILITY

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

CONSENT DECREE - 39
party and the terms herein may not be used as evidence in any
litigation.

EFFECTIVE DATE

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

DENIAL OF LIABILITY

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

RETENTION OF JURISDICTION

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

U.S. Department of Justice
Environmental Enforcement Section
c/o GC-DOJ DARC-BIN CL5700
7600 Sand Point Way N.E.
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58. By signature below, all parties consent to this Decree.
FOR THE MUNICIPALITY OF METROPOLITAN SEATTLE

Richard K. Sandaas  
Executive Director  
Municipality of Metropolitan Seattle  
Exchange Building, M/S 94  
821 Second Avenue  
Seattle, Washington 98104

Date
August 6, 1991
FOR THE CITY OF SEATTLE

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

August 5, 1991
FOR THE SUQUAMISH INDIAN TRIBE

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

Date

AUG 7th 1971

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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
FOR THE STATE OF WASHINGTON

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

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

CONSENT DEGREE - 46
FOR THE UNITED STATES OF AMERICA

Barry M. Hartman 9/5/91
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

James L. Nicoll, Jr. 9-5-91
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
c/o NOAA GC/DOJ Damage Assessment Center
BIN C15700
7600 Sand Point Way N.E.
Seattle, Washington 98115

Susan L. Barnes 9-7-91
Assistant United States Attorney
3600 Seafirst Fifth Avenue Plaza
800 Fifth Avenue
Seattle, Washington 98104

CONSENT DECREE - 47
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
The thrust of some of the public comments is that more should be done, especially in controlling the sources of pollution. In this regard it is important to bear in mind that while this decree fairly resolves this litigation, the measures it requires need not be the only steps taken to clean up Elliott Bay and the Lower Duwamish River. As the decree itself states:

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

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

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

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


[Signature]
William L. Dwyer
United States District Judge

ORD GRANTING MTN TO ENTER CONSENT DECREE - 2
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
Presented by:

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

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

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

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

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

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

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

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

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

ORDER DIRECTING DEPOSIT OF
NATURAL RESOURCE DAMAGES - 2
accordance with the Consent Decree, the Clerk shall consult with
counsel for the United States regarding the allocation of the
proceeds of such Treasury Securities or such received funds between
the bank account or accounts identified in subparagraph a) and the
purchase of additional short-term Treasury Securities. The Clerk
may make any such purchases of additional Treasury Securities as
directed by counsel for the United States without further Order of
the Court; and it is

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

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

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

8. ORDERED that applications for orders for disbursements from
the U.S. v. Seattle and Metro NRD Account may be made only by the
United States, except that such application shall be refused
notwithstanding any vote of the Panel established by the Consent
Decree if the United States objects to the disbursement as being
inconsistent with its natural resource trustee responsibilities pursuant to 42 U.S.C. § 9607. If the United States objects to disbursement, any party may petition the Court for review of whether the United States' objection was inconsistent with 42 U.S.C. § 9607; and it is

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

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

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

DATED Dec. 23, 1991

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

ORDER DIRECTING DEPOSIT OF NATURAL RESOURCE DAMAGES - 4