

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.)
MURRAY PACIFIC CORPORATION, a Washington)
Corporation; PAN PACIFIC TRADING)
CORPORATION, a dissolved Washington)
Corporation whose successor is Murray Pacific)
Corporation; BOARDMAN BROWN; and MARY JANE)
ANDERSON,)
Defendants.)

No. C05-5473FDB

CONSENT DECREE

1 I. INTRODUCTION

2 The United States, on behalf of the National Oceanic and Atmospheric Administration
3 (“NOAA”) and the United States Department of the Interior; the State of Washington (the
4 “State”) through the Washington State Department of Ecology; the Puyallup Tribe of Indians;
5 and the Muckleshoot Indian Tribe (collectively, “Plaintiffs”), have filed a complaint in this case
6 against defendants Murray Pacific Corporation, a Washington corporation (“Murray Pacific”);
7 Pan Pacific Trading Corporation, a dissolved Washington corporation whose successor is
8 Murray Pacific; Boardman Brown; and Mary Jane Anderson (collectively, “Defendants”)
9 pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and
10 Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9607; the Model Toxics Control Act
11 (MTCA), chapter 70.105D RCW; Section 311 of the Clean Water Act (CWA), 33 U.S.C. §
12 1321; and Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. §
13 2702(b)(2)(A). This Consent Decree (the “Decree”) addresses the claims asserted in the
14 Complaint against Defendants for Natural Resource Damages (as defined below) in the
15 Commencement Bay Environment (as defined below).

16 II. RECITALS

17 A. The United States Department of Commerce, acting through NOAA; the
18 Department of the Interior; the Washington State Department of Ecology on behalf of the State
19 of Washington; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe (collectively,
20 the “Trustees” and, individually, a “Trustee”), under the authority of Section 107(f) of CERCLA,
21 42 U.S.C. § 9607(f), Section 1006(b) of OPA, 33 U.S.C. § 2706(b), and 40 C.F.R. Part 300,
22 subpart G, serve as trustees for natural resources for the assessment and recovery of damages for
23 injury to, destruction of, and loss of natural resources under their trusteeship.

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

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

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

1 the Hylebos Waterway in Commencement Bay, Washington; Mary R. Arkoosh, Ed Casillas,
2 Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects of Chemical Contaminants
3 from the Hylebos Waterway on Disease Resistance of Juvenile Salmon; Ed Casillas, Bich-Thuy
4 L. Eberhart, Frank C. Sommers, Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998,
5 Effects of Chemical Contaminants from the Hylebos Waterway on Growth of Juvenile Chinook
6 Salmon; and Ed Casillas, Bich-Thuy L. Eberhart, Tracy K. Collier, Margaret M. Krahn and John
7 E. Stein, 1998, Exposure of Juvenile Chinook Salmon to Chemical Contaminants Specific to the
8 Hylebos Waterway. Based on this research, the Plaintiffs and Defendants (collectively, the
9 “Parties” and, individually, a “Party”) agree that no further natural resource damage assessment
10 is required to effectuate the purposes of this Consent Decree, with respect to Defendants.

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

16 E. Plaintiffs allege in the Complaint that Defendants own or in the past owned and/or
17 operated real property or facilities from which storm water, surface water runoff, wastewater,
18 other process discharges, and/or groundwater have flowed to the Commencement Bay
19 Environment. Plaintiffs also allege that investigations by EPA and others have detected
20 concentrations of hazardous substances in soils, groundwater and sediments on or in those
21 properties or facilities. Some of these hazardous substances are found in the sediments of the
22 Commencement Bay Environment.

23 F. Plaintiffs further allege that hazardous substances have been or are being released
24 to the Commencement Bay Environment from properties or facilities owned and/or operated by
25 Defendants through direct discharge, surface water runoff, groundwater and seeps, and that those

1 hazardous substances have caused injury to, destruction of and loss of natural resources in the
2 Commencement Bay Environment under Plaintiffs' trusteeship, including fish, shellfish,
3 invertebrates, birds, marine sediments, and resources of cultural significance. Plaintiffs further
4 allege that each of them and the public have suffered the loss of natural resource services
5 (including ecological services as well as direct and passive human use losses) as a consequence
6 of those injuries.

7 G. Plaintiffs allege that each Defendant is (a) the owner and/or operator of a vessel
8 or a facility; (b) a person who at the time of disposal or release of any hazardous substance
9 owned or operated any facility at which such hazardous substances were disposed of; (c) a
10 person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged
11 with a transporter for transport for disposal or treatment, of hazardous substances owned or
12 possessed by such person, by any other party or entity, or otherwise generated any hazardous
13 substance disposed of or treated, at any facility or incineration vessel owned or operated by
14 another party or entity and containing such hazardous substances; and/or (d) a person who
15 accepts or accepted any hazardous substances for transport to disposal or treatment facilities,
16 incineration vessels or sites selected by such person from which there is a release or a threatened
17 release of a hazardous substance that causes the incurrence of response costs within the meaning
18 of 42 U.S.C. § 9607 and RCW 70.105D.040.

19 H. Defendants deny all the allegations of the Complaint.

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

24 J. To facilitate resolving natural resource damage claims, the Trustees developed a
25 proposed allocation of Hylebos Waterway Natural Resource Damages liability among Hylebos

1 Waterway PRPs solely for settlement purposes. Relying upon the results of the
2 damage-assessment studies, remedial investigations, regulatory standards, and scientific
3 literature, the Trustees first developed an estimate of the amount of injury to natural resources
4 that had occurred as a result of releases of hazardous substances to the Hylebos Waterway. The
5 Trustees quantified the effects of the injuries in terms of the losses of ecological services over
6 affected areas of the waterway and over time, discounted to the current year. The Trustees used
7 the term discounted ecological service acre-years (DSAYs) to describe both the scale of the
8 injuries, and the amount of habitat restoration they are seeking to compensate for the injuries.
9 For the Hylebos Waterway, the Trustees are seeking to recover from all PRPs funds, property
10 and/or in-kind services needed to generate habitat restoration sufficient to compensate for the
11 loss of 1526.77 DSAYs.

12 K. Plaintiffs assert that hazardous-substance releases to the Hylebos Waterway have
13 become dispersed and commingled to the extent that the effects of one PRP's releases cannot be
14 readily distinguished from another's. Plaintiffs further assert that the circumstances of the
15 Hylebos Waterway contamination make all PRPs who contributed to the contamination jointly
16 and severally liable for all injuries to natural resources that have resulted from the
17 contamination. As a consequence, Plaintiffs assert the right to recover for the loss of all 1526.77
18 DSAYs from any Hylebos Waterway PRP. Without prejudice to their position, and solely for
19 purposes of facilitating settlement with individual PRPs, the Trustees have developed a proposal
20 for allocating liability for the 1526.77 DSAYs among the PRPs. Independent consultants hired
21 by the Trustees reviewed existing information from the files of EPA, the Washington State
22 Department of Ecology, and local public libraries to allocate liability among the various Hylebos
23 Waterway facilities that contributed to the contamination.

24 L. To insure that all PRPs had an equal opportunity to be informed of and to offer
25 their views on the Trustees' settlement proposal, in April 2002 the Trustees presented their

1 report on the proposed allocation to the public for notice and comment. The Trustees took
2 comments for 60 days, revised the report based upon the comments received, and made it
3 available to PRPs in final form.

4 M. The Trustees' report allocated liability for DSAY losses for settlement purposes
5 among the various industrial sites along the Hylebos Waterway. A number of the sites have been
6 owned or operated by different PRPs over the years, and consequently more than one PRP may
7 share responsibility for the losses allocated to such sites. The Trustees' report did not include a
8 formula for suballocating among the parties involved the DSAY losses attributed to such a site.
9 Plaintiffs allege that Defendants or some of Defendants at various times have owned or operated
10 facilities on or otherwise incurred liability for natural resource damages at four different Hylebos
11 Waterway sites either concurrently or sequentially with other PRPs. Those sites are identified in
12 the Trustees' report by the names Murray Pacific, Site 29; Port of Tacoma (3002 Taylor Way),
13 Site 13; US Gypsum, Site 18; and B&L Landfill, Site 8. To determine an appropriate settlement
14 with Defendants, the Trustees developed an approach for dividing the DSAY losses allocated to
15 these sites between Defendants and other PRPs whom the Trustees allege share responsibility for
16 hazardous-substance releases from the sites. The approach employed by the Trustees results in
17 allocating a total of 5.316 DSAYs to Defendants.

18 N. The Trustees quantified natural resource damages in their Hylebos Waterway
19 report in terms of DSAYs in order to encourage settling parties to resolve their liability by
20 constructing habitat restoration projects. For parties who prefer settling on a cash-damages
21 basis, the Trustees reviewed data from existing restoration projects and estimated it would cost
22 fifty-two thousand dollars (\$52,000.00) per DSAY if the Trustees themselves constructed the
23 required restoration projects. The cash damages equivalent of the 5.316 DSAYs allocated to
24 Defendants totals two hundred seventy-six thousand four hundred thirty-two dollars
25 (\$276,432.00). Parties liable for natural resource damages are also liable for the reasonable costs

1 of assessing the damages. 42 U.S.C. § 9607(a)(4)(C). The Trustees allocated to Defendants
2 liability for thirty thousand six hundred sixty-nine dollars and seventy cents (\$30,669.70) in
3 damage assessment costs. The dollar value of the Trustees' claim asserted against Defendants
4 totals three hundred seven thousand one hundred one dollars and seventy cents (\$307,101.70).
5 The Trustees have agreed to settle their natural resource damage claims against Defendants
6 associated with the Commencement Bay Environment for cash payments totaling three hundred
7 two thousand dollars (\$302,000.00) in natural resource damages and damage assessment costs.
8 Murray Pacific has agreed to pay the Trustees the identified sum in return for the Trustees'
9 covenants not to sue Defendants for Natural Resource Damages as provided below in Paragraph
10 12.

11 O. Defendants do not admit any liability to Plaintiffs arising out of the transactions
12 or occurrences alleged in the Complaint.

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

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

19 III. JURISDICTION

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

1 IV. PARTIES BOUND

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

7 V. DEFINITIONS

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

12 a. "CERCLA" means the Comprehensive Environmental Response,
13 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

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

23 c. "Consent Decree" or "Decree" means this Consent Decree and all attached
24 appendices. In the event of conflict between this Decree and any appendix, the Decree will
25 control.

1 d. "Day" means a calendar day. In computing any period of time under this
2 Decree, where the last day falls on a Saturday, Sunday, or federal holiday, the period will run
3 until the close of business of the next working day.

4 e. "Defendants" mean Murray Pacific, Pan Pacific Trading Corporation,
5 Boardman Brown, and Mary Jane Anderson.

6 f. "DOJ" means the United States Department of Justice and any successor
7 departments, agencies, or instrumentalities of the United States.

8 g. "Interest" means interest at the rate specified for interest on investments of
9 the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded
10 annually on October 1 of each year in accordance with 42 U.S.C. § 9607(a). The applicable rate
11 of interest is the rate in effect at the time the interest accrues. The rate of interest is subject to
12 change on October 1 of each year.

13 h. "Natural Resources" has the meaning provided in section 101(16) of
14 CERCLA, 42 U.S.C. § 9601(16).

15 i. "Natural Resource Damages" means damages, including costs of damage
16 assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607; Chapter 70.105D
17 RCW; Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; and Section 1002(b)(2)(A)
18 of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A), for injury to, destruction of,
19 or loss of Natural Resources resulting from releases of hazardous substances or discharges of oil
20 at or from the Commencement Bay Nearshore/Tideflats Superfund Site.

21 j. "Paragraph" means a portion of this Decree identified by an Arabic
22 numeral or an upper or lower case letter.

23 k. "Parties" mean the United States, the State of Washington, the Puyallup
24 Tribe of Indians, the Muckleshoot Indian Tribe, Murray Pacific Corporation, Pan Pacific Trading
25 Corporation, Boardman Brown, and Mary Jane Anderson.

1 l. “Plaintiffs” mean the United States, the State, the Puyallup Tribe of
2 Indians, and the Muckleshoot Indian Tribe.

3 m. “Commencement Bay Restoration Account” means the Commencement
4 Bay Natural Resource Restoration Account authorized by the Order Directing the Deposit of
5 Natural Resource Damages into the Registry of the Court in United States v. Port of Tacoma,
6 No. C93-5462B (W.D. Wash. Oct. 8, 1993) (attached as Appendix A).

7 n. “Section” means a portion of this Consent Decree identified by a Roman
8 numeral.

9 o. “State” means the State of Washington.

10 p. “Trustees” mean the United States Department of Commerce, acting
11 through NOAA and the Department of the Interior; the Washington State Department of
12 Ecology, on behalf of the State of Washington; the Puyallup Tribe of Indians; and the
13 Muckleshoot Indian Tribe.

14 q. “United States” means the United States of America, including its
15 departments, agencies, and instrumentalities.

16 VI. PAYMENT OF NATURAL RESOURCE DAMAGES
17 AND DAMAGE ASSESSMENT COSTS

18 4. Within 30 days of entry of this Decree, Murray Pacific, for itself and on behalf of
19 the other Defendants, will pay to the Trustees two hundred seventy-one thousand eight hundred
20 thirty-nine dollars and eighty cents (\$271,839.80) for Natural Resource Damages. This payment
21 will be made by a certified check made payable to the Clerk of the Court. This check will be
22 deposited in the Commencement Bay Natural Resource Restoration Account.

23 5. Within 30 days of entry of this Decree, Murray Pacific, for itself and on behalf of
24 the other Defendants, will pay to the Trustees the sum of thirty thousand one hundred sixty
25 dollars and twenty cents (\$30,160.20) in damage assessment costs. This payment will be made

by certified checks, bearing the notation "Murray Pacific - Commencement Bay Assessment Costs" (or an alternate notation as specified below), in the amounts indicated and made payable and addressed as follows:

Trustee: National Oceanic and Atmospheric Administration
Amount: \$24,330.19
Payee: National Oceanic and Atmospheric Administration
Address: Chief, Damage Assessment Center
NOAA, N/ORCAx1
1305 East West Highway, Room 10218
Silver Spring, MD 20910

Trustee: U.S. Department of the Interior
Amount: \$4,067.67
Payee: Secretary of the Interior
Alternate
Notation: 14X5198 (NRDAR)
Commencement Bay Nearshore/Tideflats Superfund Site
Address: Chief, Division of Finance
U.S. Fish and Wildlife Service
4401 N. Fairfax Dr., Rm. 380
Arlington, VA 22203

Trustee: State of Washington
Amount: \$501.92
Payee: State of Washington/Department of Ecology
Address: State of Washington
Department of Ecology
Attention: Cashiering Section
P.O. Box 5128
Lacey, WA 98503-0210

Trustee: Puyallup Tribe of Indians
Amount: \$1,148.31
Payee: Puyallup Tribe of Indians
Address: Mr. William Sullivan
Environmental Protection Department
Puyallup Tribe of Indians
2002 E. 28th Street

Tacoma, WA 98404

Trustee: Muckleshoot Indian Tribe
Amount: \$112.12
Payee: Muckleshoot Indian Tribe
Address: Mr. Rob Otsea
Office of the Tribal Attorney
Muckleshoot Indian Tribe
39015 172nd Avenue S.E.
Auburn, WA 98002

6. At the time of each payment Murray Pacific will send notice that payment has been made to the Trustees and DOJ in accordance with Section XIII (Notices and Submissions). Such notice will reference Commencement Bay NRDA, DOJ case number 90-11-2-1049, and the civil action number.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

7. Interest on Late Payments. If Murray Pacific fails to make the payments under Paragraphs 4 and 5 by the required due date, Interest will continue to accrue on the unpaid balance through the date of payment.

8. Stipulated Penalties.

a. If any amounts due under Paragraphs 4 and 5 are not paid by the required date, Murray Pacific will be in violation of this Decree and will pay a stipulated penalty of \$1,000 per violation per day that such payment is late to the Commencement Bay Restoration Account in addition to the Interest required by Paragraph 7.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by a Trustee. All payments will be made by a certified check made payable to the Clerk of the Court. This check will be deposited in the Commencement Bay Restoration Account.

c. At the time of each payment, Murray Pacific will send notice that payment

1 has been made to the Trustees and DOJ in accordance with Section XIII (Notices and
2 Submissions). This notice will reference Commencement Bay NRDA, DOJ Case Number
3 90-11-2-1049, and the civil action number.

4 d. Penalties will accrue as provided in this Paragraph regardless of whether
5 the Trustees have notified Murray Pacific of the violation or made a demand for payment, but the
6 penalties need only be paid upon demand. All penalties will begin to accrue on the day after
7 payment is due and will continue to accrue through the date of payment. Nothing in this Decree
8 prevents the simultaneous accrual of separate penalties for separate violations of this Decree.

9 9. If Plaintiffs bring an action to enforce this Decree, Murray Pacific will reimburse
10 Plaintiffs for all costs of such action, including but not limited to costs of attorney time.

11 10. Payments made under this Section are in addition to any other remedies or
12 sanctions available to Plaintiffs by virtue of Murray Pacific's failure to comply with the
13 requirements of this Decree.

14 11. Notwithstanding any other provision of this Section, Plaintiffs may, in their
15 unreviewable discretion, waive payment of any portion of the stipulated penalties that have
16 accrued pursuant to this Decree. Payment of stipulated penalties does not excuse Murray Pacific
17 from payment as required by Section VI or from performance of any other requirement of this
18 Consent Decree.

19 VIII. COVENANT NOT TO SUE BY PLAINTIFFS

20 12. Except as specifically provided in Section IX (Reservations of Rights) below,
21 Plaintiffs covenant not to sue or to take administrative action against Defendants pursuant to
22 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a); Chapter 70.105D RCW; Section 311 of the
23 Clean Water Act (CWA), 33 U.S.C. § 1321; or Section 1002(a) of the Oil Pollution Act of 1990
24 (OPA), 33 U.S.C. § 2702(a), to recover Natural Resource Damages for releases of hazardous
25 substances into the Commencement Bay Environment. This covenant not to sue will take effect

1 upon receipt by the Registry of the Court of all payments required by Section VI, Paragraph 4
2 (Payment of Natural Resource Damages), receipt by each of the Trustees of all payments
3 required by Section VI, Paragraph 5, and any amount due under Section VII (Failure to Comply
4 with Consent Decree). This covenant not to sue is conditioned upon the satisfactory
5 performance by Defendants of their obligations under this Decree. This covenant not to sue
6 extends only to Defendants and their heirs, successors, and assigns, and does not extend to any
7 other person.

8 IX. RESERVATIONS OF RIGHTS

9 13. Plaintiffs reserve, and this Decree is without prejudice to, all rights against
10 Defendants with respect to all matters not expressly included within the Covenant Not to Sue by
11 Plaintiffs in Paragraph 12. Notwithstanding any other provision of this Decree, Plaintiffs reserve
12 all rights against Defendants, and this Decree is without prejudice to, all rights against
13 Defendants with respect to:

- 14 a. liability for failure of Defendants to meet a requirement of this Decree;
- 15 b. liability for costs of response incurred or to be incurred by Plaintiffs;
- 16 c. liability for injunctive relief or administrative order enforcement under Section 106 of
17 CERCLA, 42 U.S.C. § 9606; and
- 18 d. criminal liability to the United States or State.

19 X. REOPENERS

20 14. Notwithstanding any other provision of this Consent Decree, the Plaintiffs
21 reserve, and this Consent Decree is without prejudice to, the right to institute proceedings against
22 Defendants in this action or in a new action for:

- 23 a. Claims based on a failure of the Defendants to satisfy the requirements of this
24 Consent Decree; and
- 25 b. Additional claims for Natural Resource Damages if conditions, factors or

1 information in the Commencement Bay Environment, not known to the Trustees at the time of
2 entry of this Consent Decree, are discovered that, together with any other relevant information,
3 indicates that there is a threat to the environment, or injury to, destruction of, or loss of natural
4 resources of a type unknown, or of a magnitude significantly greater than was known, at the time
5 of entry of this Consent Decree, which are attributable to the Defendants.

6 XI. COVENANT NOT TO SUE BY DEFENDANTS

7 15. Defendants covenant not to sue and agree not to assert any claims or causes of
8 action against the United States, the State, the Puyallup Tribe of Indians and the Muckleshoot
9 Indian Tribe or their contractors or employees, for any civil claims or causes of action relating to
10 Natural Resource Damages.

11 XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

12 16. Nothing in this Decree may be construed to create any rights in, or grant any
13 cause of action to, any person not a Party to this Decree. The Parties expressly reserve any and
14 all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and
15 causes of action that they may have with respect to any matter, transaction, or occurrence
16 relating in any way to the Commencement Bay Nearshore/Tideflats Superfund Site against any
17 third party

18 17. The Parties agree, and by entering this Decree this Court finds, that Defendants
19 are entitled as of the date of entry of this Decree to protection from contribution actions or
20 claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) and RCW
21 70.105D.040(4)(d) for Natural Resource Damages.

22 18. Defendants agree that they will notify the Trustees and DOJ in writing no later
23 than 60 days before bringing a suit or claim for contribution for natural resource damages in the
24 Commencement Bay Environment. Defendants also agree that they will notify the Trustees and
25 DOJ in writing within 10 days of service of a complaint or claim upon them relating to a suit or

1 claim for contribution for natural resource damages in the Commencement Bay Environment. In
2 addition, Defendants will notify the Trustees and DOJ within 10 days of service or receipt of any
3 Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a
4 case for trial for matters related to this Decree.

5 19. In any subsequent administrative or judicial proceeding initiated by Plaintiffs for
6 injunctive relief, recovery of response costs, or other relief relating to the Commencement Bay
7 Environment, Defendants may not assert waiver, res judicata, collateral estoppel claim-splitting,
8 or other defenses based upon any contention that the claims raised by the United States or the
9 Trustees in the subsequent proceeding were or should have been brought in the instant case
10 involving NRDA damages; provided, however, that nothing in this Paragraph affects the
11 enforceability of the Covenant Not to Sue by Plaintiffs set forth in Section VIII.

12 XIII. NOTICES AND SUBMISSIONS

13 20. Whenever notice is required to be given or a document is required to be sent by
14 one Party to another under the terms of this Decree, it will be directed to the individuals at the
15 addresses specified below, unless those individuals or their successors give notice of a change to
16 the other Parties in writing. Written notice as specified constitutes complete satisfaction of any
17 written notice requirement of the Decree for Plaintiffs and Defendants.

18 As to the United States and as to DOJ:
19 Chief, Environmental Enforcement Section
20 Environment and Natural Resources Division
21 U.S. Department of Justice (DJ # 90-11-2-1049)
22 P.O. Box 7611
Washington, D.C. 20044-7611
(DJ # 90-11-2-1049)

23 As to NOAA:
24 Robert A. Taylor
25 NOAA Office of General Counsel GCNR/NW
7600 Sand Point Way NE

1 Seattle, WA 98115-0070

2 As to the United States Department of the Interior:

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

7 As to the State:

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

13 As to the Puyallup Tribe of Indians:

14 Bill Sullivan
15 Environmental Department
16 Puyallup Tribe of Indians
17 1850 Alexander Avenue
18 Tacoma, WA 98421

19 As to the Muckleshoot Indian Tribe:

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

25 As to Defendants:

26 L.T. Murray III, President
27 Murray Pacific Corporation
28 1201 Pacific Avenue, Suite 1750
Tacoma, WA 98401

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U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

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XV. INTEGRATION/APPENDICES

22. 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).

23. 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. Defendants consent to the entry of this Decree without further notice.

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

25. The Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice and each undersigned representative of the State, the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe and the Defendants certifies that he or she is authorized to enter into the terms and conditions of this Decree and to execute

1 and bind legally the Party that he or she represents to this document.

2 26. Defendants agree not to oppose entry of this Decree by this Court or to challenge
3 any provision of this Decree unless any Plaintiff has notified Defendants in writing that it no
4 longer supports entry of the Decree.

5 27. Defendants will identify on the attached signature page the name and address of
6 an agent who is authorized to accept service of process by mail on behalf of that Party with
7 respect to all matters relating to this Decree. Defendants agree to accept service in that manner
8 and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil
9 Procedure and any applicable local rules of this Court, including but not limited to service of a
10 summons.

11 XVIII. FINAL JUDGMENT

12 28. Upon approval and entry of this Decree by the Court, this Decree will constitute
13 the final judgment between and among the United States, the State, the Puyallup Tribe of
14 Indians, the Muckleshoot Indian Tribe, and Defendants. The Court finds that there is no just
15 reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54
16 and 58.

17
18 SO ORDERED THIS ____ DAY OF _____ 2004.

19
20 _____
21 United States District Judge
22
23
24
25

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in United States v. Murray
2 Pacific Corp., et al.

3 FOR THE UNITED STATES OF AMERICA

4
5 Date: 7/1/05

Kelly A Johnson

6 Kelly A. Johnson
7 Acting Assistant Attorney General
8 Environment and Natural Resources Division
9 U.S. Department of Justice
10 Washington, D.C. 20530

11
12 FOR THE STATE OF WASHINGTON

13 Date: _____

14 Date : _____

15 Assistant Attorney General
16 State of Washington

17 FOR THE PUYALLUP TRIBE OF INDIANS

18
19 Date: _____

20
21
22 FOR THE MUCKLESHOOT INDIAN TRIBE

23
24 Date: _____

25
26
27 CONSENT DECREE - Page 21

28
U.S. Department of Justice
NOAA GC - DOJ DARC
7600 San Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in United States v. Murray
2 Pacific Corp., et al.

3 FOR THE UNITED STATES OF AMERICA

4
5 Date: _____

6 Thomas L. Sansonetti
7 Assistant Attorney General
8 Environment and Natural Resources Division
9 U.S. Department of Justice
Washington, D.C. 20530

10 FOR THE STATE OF WASHINGTON

11
12 Date: 1/25/05

Polly Zehn

13
14 Date: _____

15 Assistant Attorney General
16 State of Washington

17 FOR THE PUYALLUP TRIBE OF INDIANS

18
19 Date: _____

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22 FOR THE MUCKLESHOOT INDIAN TRIBE

23
24 Date: _____

25
26
27 CONSENT DECREE - Page 21

28 U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in United States v. Murray
2 Pacific Corp., et al.

3 FOR THE UNITED STATES OF AMERICA

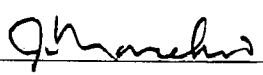
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5 Date: _____

6 Thomas L. Sansonetti
7 Assistant Attorney General
8 Environment and Natural Resources Division
9 U.S. Department of Justice
Washington, D.C. 20530

10 FOR THE STATE OF WASHINGTON

11
12 Date: _____

13
14 Date : 2/3/05


15 Assistant Attorney General
16 State of Washington

17 FOR THE PUYALLUP TRIBE OF INDIANS

18
19 Date: _____

20
21
22 FOR THE MUCKLESHOOT INDIAN TRIBE

23
24 Date: _____

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27 CONSENT DECREE - Page 21

28
U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in United States v. Murray
2 Pacific Corp., et al.

3 FOR THE UNITED STATES OF AMERICA

4
5 Date: _____

6 Thomas L. Sansonetti
7 Assistant Attorney General
8 Environment and Natural Resources Division
9 U.S. Department of Justice
10 Washington, D.C. 20530

11
12 FOR THE STATE OF WASHINGTON

13
14 Date: _____

15
16 Date: _____

17 Assistant Attorney General
18 State of Washington

19 FOR THE PUYALLUP TRIBE OF INDIANS

20
21 Date: 1/21/05



22 FOR THE MUCKLESHOOT INDIAN TRIBE

23
24 Date: _____

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27 CONSENT DECREE - Page 21

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U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in United States v. Murray
2 Pacific Corp., et al.

3 FOR THE UNITED STATES OF AMERICA
4

5 Date: _____

6 Thomas L. Sansonetti
7 Assistant Attorney General
8 Environment and Natural Resources Division
9 U.S. Department of Justice
10 Washington, D.C. 20530

11 FOR THE STATE OF WASHINGTON

12 Date: _____

13
14 Date : _____

15 Assistant Attorney General
16 State of Washington

17 FOR THE PUYALLUP TRIBE OF INDIANS

18
19 Date: _____

20
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22 FOR THE MUCKLESHOOT INDIAN TRIBE

23
24 Date: 1-28-05



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27 CONSENT DECREE - Page 22

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U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 FOR MURRAY PACIFIC CORPORATION

2
3 Date: 2/3/05

H.T. Murray
PRESIDENT

4
5
6 FOR PAN PACIFIC TRADING CORPORATION, by Murray Pacific Corporation, its Successor
7 in Interest.

8
9 Date: 2/3/05

H.T. Murray
PRESIDENT

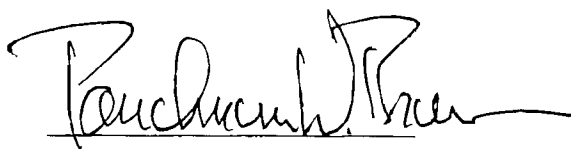
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13 Agent authorized to receive service of process by mail on behalf of Murray Pacific Corporation
14 with respect to all matters relating to this Decree:

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27 CONSENT DECREE - Page 22

28
U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 FOR BOARDMAN BROWN

2
3 Date: 27 Feb 2005



4
5
6 Agent authorized to receive service of process by mail on behalf of Boardman Brown with
7 respect to all matters relating to this Decree:*

8
9 FOR MARY JANE ANDERSON

10
11 Date: _____

12
13
14
15 Agent authorized to receive service of process by mail on behalf of Mary Jane Anderson with
16 respect to all matters relating to this Decree: *

17
18
19 *Inger C. Brockman
20 Montgomery Purdue Blankinship & Austin PLLC
21 5500 Bank of America Tower
22 Seattle, WA 98104-7096
23 Phone: (206) 682-7090
24 Fax: (206) 625-9534

25
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27 CONSENT DECREE - Page 23

28
U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 FOR BOARDMAN BROWN

2
3 Date: _____
4
5

6 Agent authorized to receive service of process by mail on behalf of Boardman Brown with
7 respect to all matters relating to this Decree:*

8
9 FOR MARY JANE ANDERSON

10 Date: 1/26/05

Mary Jane B. Anderson

12
13
14
15 Agent authorized to receive service of process by mail on behalf of Mary Jane Anderson with
16 respect to all matters relating to this Decree:*

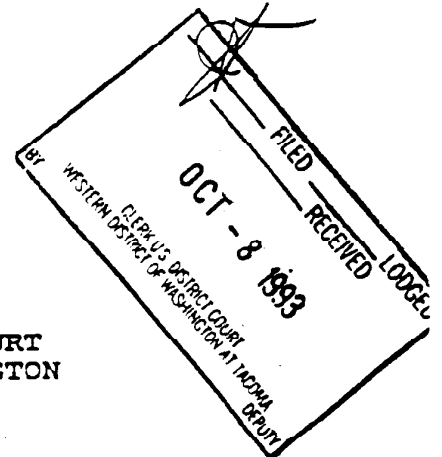
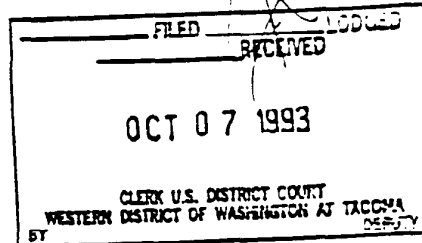
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19 *Inger C. Brockman
20 Montgomery Purdue Blankinship & Austin PLLC
21 5500 Bank of America Tower
22 Seattle, WA 98104-7096
23 Phone: (206) 682-7090
24 Fax: (206) 625-9534
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27 CONSENT DECREE - Page 23
28

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

APPENDIX A

Hon. Robert J. Bryan



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
ENTERED
ON DOCKET

OCT 8 1993

By Deputy

UNITED STATES OF AMERICA,
ON BEHALF OF THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY,
THE UNITED STATES DEPARTMENT OF
THE INTERIOR, AND THE NATIONAL
OCEANIC AND ATMOSPHERIC
ADMINISTRATION;
STATE OF WASHINGTON;
PUYALLUP TRIBE OF INDIANS;
MUCKLESHOOT INDIAN TRIBE;

Plaintiffs,

v.

PORT OF TACOMA

Defendant

Civil No. C93-5462B

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

This Order is entered in furtherance of a Consent Decree in the above captioned matter between Plaintiffs the United States of America, State of Washington, Puyallup Tribe of Indians and Muckleshoot Indian Tribe and Defendant the Port of Tacoma ("Settling Defendant"). Under the Consent Decree, Settling Defendant has agreed, among other matters, to pay \$12,000,000

U.S.
Environment:
ORDER DIRECTING DEPOSIT OF P.O. Box 7611
NATURAL RESOURCE DAMAGES - 1 Wt

EXH. A

1 (twelve million dollars), in installments as identified in the
2 Consent Decree, to the Natural Resource Trustees (National
3 Oceanic and Atmospheric Administration of the U.S. Department of
4 Commerce, the U.S. Department of the Interior, the Washington
5 Department of Ecology (on behalf of the Washington Department of
6 Fisheries, the Washington Department of Natural Resources, and
7 the Washington Department of Wildlife), the Puyallup Tribe of
8 Indians, and the Muckleshoot Indian Tribe) in settlement of
9 Settling Defendant's liability for Natural Resource Damages
10 caused by releases of hazardous substances from property owned,
11 managed or operated by Settling Defendant within the Commencement
12 Bay Environment, as defined in the Consent Decree. This Order
13 addresses handling and investment of those funds by the Registry
14 of the Court.

15 Pursuant to Rule 67 of the Federal Rules of Civil
16 Procedure, 28 U.S.C. § 2041, and Local Rule GR 6, and in
17 accordance with the terms of the Consent Decree, it is hereby

18 1. ORDERED that Settling Defendant, following entry of the
19 Consent Decree and in accordance with the payment schedules
20 established therein, pay to the Clerk of the Court all sums
21 specified in paragraph 51.b. of the Consent Decree, which sums
22 constitute recovery for Natural Resource Damages and Future
23 Trustee Assessment Costs, as defined in the Consent Decree; and
24 it is

25

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ORDER DIRECTING DEPOSIT OF
NATURAL RESOURCE DAMAGES - 2

U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

1 2. ORDERED that Settling Defendant shall make the
2 aforementioned payments by checks made payable to the Clerk of
3 the Court, bearing the notation Civil Action No. C93-5462B
4 (W.D. Wash.), which checks shall be sent to:

5 Office of the United States Attorney
6 3600 SeaFirst Fifth Avenue Plaza
7 800 Fifth Avenue
8 Seattle, Washington 98104

9 The U.S. Attorney shall immediately deposit such funds with the
10 Registry of the Court. The Settling Defendant shall cause
11 photocopies of each check and of any transmittal letter
12 accompanying the check to be sent to: Chief, Environmental
13 Enforcement Section, Department of Justice, P.O. Box 7611, Ben
14 Franklin Station, Washington, D.C. 20044; and to Robert A.
15 Taylor, NOAA Damage Assessment and Restoration Center, 7600 Sand
16 Point Way NE, BIN C15700, Seattle, WA 98115; and it is

17 3. ORDERED that an account shall be established in the
18 Registry for payments received in the above captioned matter and
19 for such other payments as may be received from time to time in
20 connection with restoration and protection of the ecosystem of
21 the Commencement Bay watershed, and that the account shall be
22 titled Commencement Bay Natural Resource Restoration Account
23 ("Commencement Bay Restoration Account"); and it is

24 4. ORDERED that the Clerk of the Court shall administer the
25 funds so received as follows:

26
27 ORDER DIRECTING DEPOSIT OF
28 NATURAL RESOURCE DAMAGES - 3

U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

1 a) \$100,000 of the funds received shall be deposited in
2 such interest-bearing federally insured commercial bank account
3 or accounts as the Clerk deems appropriate;

4 b) the balance of the funds received shall be used to
5 purchase 91-day Treasury Securities, at the highest prevailing
6 interest rate available for such Treasury Securities;

7 c) upon maturity of the Treasury Securities referred to
8 in subparagraph b), the Clerk shall consult with counsel for the
9 United States regarding the allocation of the proceeds of such
10 Treasury Securities between the bank account or accounts
11 identified in subparagraph a) and the purchase of additional
12 short-term Treasury Securities. Counsel for the United States
13 shall consult with representatives of the Natural Resource
14 Trustees and, depending upon the Natural Resource Trustees'
15 anticipated funding needs, shall advise the Clerk regarding the
16 desired allocation of such proceeds between the bank account or
17 accounts and reinvestment in Treasury Securities. The Clerk may
18 make any such allocations of funds as directed by counsel for the
19 United States without further Order of the Court; and it is

20 5. ORDERED that all income earned as interest on funds so
21 invested or deposited shall be credited to the Commencement Bay
22 Restoration Account; and it is

23 6. ORDERED that the Natural Resource Trustees may apply to the
24 Court for an Order establishing an investment procedure or
25 vehicle alternative to that identified in paragraph 4 above that

1 provides a comparable level of security and earnings potential,
2 which application may be acted upon by the Court without notice
3 to or consent by Settling Defendant; and it is

4 7. ORDERED that the Clerk shall prepare quarterly reports on
5 the status and activity of the Commencement Bay Restoration
6 Account showing payments received, disbursements made, income
7 earned, maturity dates of securities held, and principal balance,
8 and shall distribute the reports to counsel for the United
9 States; and it is

10 8. ORDERED that funds in the Commencement Bay Restoration
11 Account shall remain in the Registry until further order of this
12 Court; and it is

13 9. ORDERED that the Natural Resource Trustees shall establish
14 such decision making procedures regarding expenditures of funds
15 from the Commencement Bay Restoration Account as they deem
16 appropriate. Applications for orders for disbursements from the
17 Commencement Bay Restoration Account shall be made by the United
18 States on behalf of the Natural Resource Trustees. The
19 application shall be supported by a certification of the Natural
20 Resource Trustees that their determination to make such
21 disbursement was in compliance with said decision making
22 procedures and is consistent with the terms of the Consent Decree
23 and other applicable law. Such applications may be acted upon by
24 the Court without notice to or consent by Settling Defendant.
25 Any of the Natural Resource Trustees may petition the Court for
26

27 ORDER DIRECTING DEPOSIT OF
28 NATURAL RESOURCE DAMAGES - 5

U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

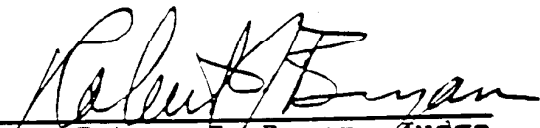
1 review of a decision by the United States to seek or not to seek
2 an application for an order for disbursement, provided that the
3 party or parties seeking review have complied with any dispute
4 resolution provisions adopted as part of the decision making
5 procedures referred to above; and it is

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

11 11. ORDERED that the Clerk is authorized and directed by this
12 Order to deduct for maintaining funds in the Registry Account the
13 fee as authorized in the Federal Register Vol. 56, No. 213 at
14 page 56356 (November 4, 1991); and it is

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

17
18 Dated 8 October 1993


Hon. Robert J. Bryan, Judge
United States District Court
Western District of Washington

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28 ORDER DIRECTING DEPOSIT OF
NATURAL RESOURCE DAMAGES - 6

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Washington, D.C. 2004