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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR SPOKANE COUNTY

STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )  
 )  
Plaintiff, ) No. 94-2-05788-4  
 )  
v. )  
 ) AMENDED  
THE WASHINGTON WATER POWER COMPANY ) CONSENT DECREE  
 )  
Defendant. )

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1 I. INTRODUCTION

2 A. On November 8, 1994, WWP entered into a Consent Decree  
3 in this matter with Ecology to perform a remedial investigation  
4 and feasibility study under MTCA. The Consent Decree entered in  
5 1994 shall be referred to hereafter as the "Original Consent  
6 Decree."

7 B. In entering into this Amended Consent Decree (Amended  
8 Decree), the mutual objective of the Washington State Department  
9 of Ecology (Ecology), and The Washington Water Power Company  
10 (WWP or Defendant) is to provide for remedial action at the  
11 Washington Water Power Central Steam Plant Site where there has  
12 been a release or threatened release of hazardous substances.  
13 This Amended Decree requires the Defendant to undertake the  
14 remedial action identified in the Cleanup Action Plan (CAP)  
15 described in Exhibit B. Ecology has determined that these  
16 actions are necessary to protect public health and the  
17 environment.

18 C. The Complaint in this action was filed simultaneously  
19 with the Original Consent Decree. An answer was not filed, and  
20 there has not been a trial on any issue of fact or law in this  
21 case. A remedial investigation (RI) and feasibility study (FS)  
22 were completed under the Original Consent Decree and reports  
23 were submitted on behalf of WWP. The parties wish to resolve  
24 the issues raised by Ecology's complaint and to remediate the  
25 contamination identified in the RI/FS reports. In addition, the  
26 parties agree that settlement of these matters without

1 litigation is reasonable, is in the public interest and that  
2 entry of this Amended Consent Decree is the most appropriate  
3 means of resolving these matters.

4 D. In signing this Amended Decree, Defendant agrees to  
5 its entry and agrees to be bound by its terms.

6 E. By entering into this Amended Decree, the parties do  
7 not intend to discharge nonsettling parties from any liability  
8 they may have with respect to matters alleged in the complaint.  
9 The parties retain the right to seek reimbursement, in whole or  
10 in part, from any liable persons for sums expended under the  
11 Original Consent Decree and in this Amended Decree.

12 F. This Amended Decree shall not be construed as proof of  
13 liability or responsibility for any releases of hazardous  
14 substances or cost for remedial action nor an admission of any  
15 facts; provided, however, that the Defendant shall not challenge  
16 the jurisdiction of Ecology in any proceeding to enforce this  
17 Amended Decree.

18 G. The Court is fully advised of the reasons for entry of  
19 this Amended Decree, and good cause having been shown: IT IS  
20 HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

21 II. JURISDICTION

22 A. This Court has jurisdiction over the subject matter  
23 and over the parties pursuant to Chapter 70.105D RCW, the Model  
24 Toxics Control Act (MTCA).

25 B. Authority is conferred upon the Washington State  
26 Attorney General by RCW 70.105D.040(4)(a) to agree to a

1 settlement with any potentially liable person if, after public  
2 notice and hearing, Ecology finds the proposed settlement would  
3 lead to a more expeditious cleanup of hazardous substances. RCW  
4 70.105D.040(4)(b) requires that such a settlement be entered as  
5 a consent decree issued by a court of competent jurisdiction.

6 C. Ecology has determined that a release or threatened  
7 release of hazardous substances has occurred at the Site which  
8 is the subject of this Amended Decree.

9 D. Defendant has accepted status as a potentially liable  
10 person for the Site, as set forth in RCW 70.105D.020(8).

11 E. The actions to be taken pursuant to this Amended  
12 Decree are necessary and appropriate to protect public health,  
13 welfare, and the environment.

14 F. Defendant has agreed to undertake the actions  
15 specified in this Amended Decree and consents to the entry of  
16 this Amended Decree under the MTCA.

### 17 III. PARTIES BOUND

18 This Amended Decree shall apply to and be binding upon the  
19 signatories to this Amended Decree (parties), their successors  
20 and assigns. The undersigned representative of each party  
21 hereby certifies that he or she is fully authorized to enter  
22 into this Amended Decree and to execute and legally bind such  
23 party to comply with the Amended Decree. Defendant agrees to  
24 undertake all actions required by the terms and conditions of  
25 this Amended Decree and not to contest state jurisdiction  
26 regarding this Amended Decree. No change in ownership or

1 corporate status shall alter the responsibility of the defendant  
2 under this Amended Decree. Defendant shall provide a copy of  
3 this Amended Decree to all agents, contractors and  
4 subcontractors retained to perform work required by this Amended  
5 Decree and shall ensure that all work undertaken by such  
6 contractors and subcontractors will be in compliance with this  
7 Amended Decree.

#### 8 IV. DEFINITIONS

9 Except for as specified herein, all definitions in WAC 173-  
10 340-200 apply to the terms in this Amended Decree.

11 A. Site: The Site, referred to as the Central Steam  
12 Plant, is located within Section 19, T. 25 N., R. 43 E.W.M.,  
13 Spokane, Washington. The Site is more particularly shown in  
14 Exhibit A to this Amended Decree which is a detailed site  
15 diagram and described in section V. A. of this Amended Decree.  
16 The Site is a "facility" within the meaning of the Model Toxics  
17 Control Act (MTCA), RCW 70.105D.020(3).

18 B. Parties: Refers to the Washington State Department of  
19 Ecology and The Washington Water Power Company.

20 C. Defendant: Refers to The Washington Water Power  
21 Company.

22 D. Amended Consent Decree or Amended Decree: Refers to  
23 this Amended Consent Decree and each of the exhibits to the  
24 Amended Decree. All exhibits are integral and enforceable parts  
25 of this Amended Consent Decree. The terms "Amended Consent  
26

1 Decree" or "Amended Decree" shall include all Exhibits to the  
2 Amended Consent Decree.

3 V. STATEMENT OF FACTS

4 Ecology makes the following finding of facts without any  
5 express or implied admissions by Defendant.

6 A. The Site, referred to as Washington Water Power Central  
7 Steam Plant, is located within Section 19, T. 25 N., R. 43  
8 E.W.M., Spokane County, Washington. The Site, further  
9 identified in Exhibit A of this Amended Decree and in section V.  
10 C., is located within the City of Spokane business district.  
11 The Site is illustrated in Exhibit A and is defined in Exhibit B  
12 in the CAP as the area in which the identified hazardous  
13 substances have come to be located.

14 B. The Central Steam Plant was built in 1915 and was  
15 designed to burn coal to produce steam and electric power. In  
16 the late 1930s, equipment was installed that allowed the plant  
17 to burn sawdust and wood shavings. In the mid-1960's sawdust  
18 and coal were phased-out as fuels and all plant boilers were  
19 converted from coal to a petroleum product by 1970. Any waste  
20 associated with the burning of coal, sawdust, and wood shavings  
21 at the plant has not been identified on-site. Reportedly, small  
22 amounts of diesel were added to the petroleum product that was  
23 used as fuel at the steam plant. PCB containing oil was burned  
24 on one occasion. WWP owned and operated the Central Steam Plant  
25 from 1916 through 1986.  
26

1 C. Seven concrete underground storage tanks were  
2 constructed at the facility, referred to as tanks A, B, C, D, F,  
3 G, and H. The tank locations are shown in Exhibit A. Tanks A  
4 and B have a storage capacity of approximately 75,000 gallons  
5 each and were constructed on the west side of the steam plant in  
6 1966. Tanks C and D also have a storage capacity of  
7 approximately 75,000 gallons each and were constructed in 1972  
8 immediately south of Tanks A and B. Tanks F, G, and H were  
9 constructed on the east side of the steam plant in 1975 and have  
10 a capacity of approximately 100,000 gallons each. In addition,  
11 Tank E, a 15,000 gallon steel diesel fuel storage tank, is also  
12 located at the Site.

13 D. Tanks A, B, C, and D were the operating tanks that  
14 supplied petroleum to the boilers. The larger storage tanks  
15 (Tanks F, G, and H) were used to store the petroleum. Fuel was  
16 unloaded directly to Tanks A and B between 1966 and 1975 and to  
17 Tanks C and D between 1972 and 1975. Once constructed, tanks F,  
18 G, and H were used as the storage tanks for fuel unloading. The  
19 fuel was transferred from the storage tanks (F, G, and H) to the  
20 operating tanks (A, B, C, and D) on an as-needed basis for plant  
21 operation. In April 1982, fuel in Tanks F, G and H was  
22 transferred to Tanks A, B, C and D and Tanks F, G and H were  
23 taken out of service.

24 E. In May 1982, steam plant workers noticed that petroleum  
25 was seeping through small cracks in the steam plant basement  
26 wall into the sump for the elevator shaft. Weekly monitoring of

1 the Lincoln Street tanks detected a drop in the surface of  
2 approximately 1.5 inches in Tank C over a period of 20 days.  
3 The contents of Tank C were transferred into Tanks A and B and  
4 use of Tank C was discontinued. Tanks F, G, and H were emptied  
5 in 1982, and were hydrocleaned in 1985.

6 F. WWP reported the release to Ecology in June 1982. On  
7 July 26, 1982, Ecology issued Order No. DE 82-438 to WWP to  
8 investigate and mitigate the release. Investigations in  
9 response to the leakage of petroleum from the underground  
10 storage tanks were conducted in 1982 - 1984. Data from these  
11 investigations confirmed that a release of "hazardous  
12 substances", as defined in RCW 70.105D.020(5), to the soil had  
13 occurred on the Site. Petroleum is a hazardous substance as  
14 defined in WAC 173-340-200. In April 1984, Ecology determined  
15 that all requirements of the Order had been fulfilled, and the  
16 decision was made to discontinue monitoring.

17 The reports are found in the following references:

18 Hart Crowser, 1983, Final Report Bunker C Oil Seepage  
19 Study, The Washington Water Power Company, Spokane Steam  
Plant, February 4, 1983.

20 Hart Crowser, 1984, Hydrogeologic Evaluation of Monitoring  
21 Data, December 1982 to February 1984 Spokane Steam Plant,  
March 9, 1984.

22 G. The Central Steam Plant was closed by WWP in December  
23 1986. Tanks A, B, D, and E were emptied in 1987, and Tanks A,  
24 B, C, D, and E were hydrocleaned in early 1988.

25 H. In 1991 WWP began to conduct additional investigations  
26 to determine if the petroleum product had migrated. The

1 independent remedial investigations conducted from 1982 to 1994  
2 included drilling 39 soil borings, the installation of  
3 monitoring wells in 13 of the soil borings, collecting soil and  
4 ground water samples and conducting chemical analyses on those  
5 samples, conducting a geophysical survey, and tank integrity  
6 assessments. Data from these studies confirmed the presence of  
7 petroleum product containing PAHs in soil and petroleum product  
8 in ground water, and that the contamination had migrated since  
9 the original studies conducted in 1982 - 1984. The  
10 concentrations of PAHs in one soil sample were above Method A  
11 cleanup levels.

12 These studies are found in the following references:

13 ReTec, 1993, Status Report on Site Investigation Central  
14 Steam Plant Facility, Spokane, Washington, December 1993.

15 ReTec, 1994, Work Plan for an Independent Remedial  
16 Investigation, The Central Steam Plant Site, Spokane,  
17 Washington, February 1994.

18 ReTec, 1994, Groundwater Elevation Data, Groundwater  
19 Contour Map, Hydrocarbon Occurrence, Monitoring Well  
20 Evaluation Survey Data, Soil Boring Logs, Groundwater  
21 Analysis Results, Soil Analytical Results, February 7,  
22 1994.

23 I. Other studies conducted at the Site are found in the  
24 following references:

25 RZA-AGRA, 1993, Analytical Test Results on Groundwater  
26 Monitoring Well MW-10, November 29, 1993.

RZA-AGRA, 1993, Review of Washington Water Power Data,  
Central Steam Plant-Bunker C Release, Spokane, Washington,  
December 20, 1993.

These reports were prepared for Mr. Young K. Choi of the  
Travelodge Motel and not for WWP.

1 J. The remedial investigations conducted by WWP to date  
2 were appropriate and necessary and constitute remedial actions  
3 as defined in RCW 70.105D.020(11).

4 K. On December 28, 1993, WWP entered into an agreement  
5 with Ecology and voluntarily requested negotiations for an  
6 Amended Consent Decree. As owners of property where a release  
7 or potential release of hazardous substances has occurred or may  
8 occur, WWP accepted status as a potentially liable person under  
9 the Model Toxic Control Act.

10 L. On November 8, 1994 WWP entered into the Original  
11 Consent Decree (No. 94-2-05778-4) with Ecology to perform a  
12 Remedial Investigation/Feasibility Study (RI/FS) under MTCA.  
13 The purpose of the RI/FS was to characterize the nature and  
14 extent of petroleum hydrocarbons in soil and ground water  
15 resulting from activities at the Central Steam Plant, and to  
16 develop and evaluate cleanup action alternatives to address the  
17 Steam Plant release. During the course of the investigation an  
18 additional 37 borings were installed, 16 of which were  
19 constructed as monitoring wells. Physical and chemical  
20 characteristics of soil and petroleum product were studied, and  
21 systematic ground water sampling and analysis were performed  
22 during the RI. The FS developed and evaluated 6 cleanup  
23 alternatives and identified a recommended alternative. These  
24 studies are found in the following references:

25 Landau Associates, Inc., Remedial Investigation WWP Central  
26 Steam Plant, Spokane, Washington, June 1996.

1 Landau Associates, Inc., Feasibility Study WWP Central  
2 Steam Plant, Spokane, Washington, June 1996.

3 M. The results of the RI indicated an estimated 75,000  
4 gallons of petroleum product leaked from the Central Steam  
5 Plant. The hazardous substances are petroleum hydrocarbons,  
6 chiefly Bunker C with minor amounts of diesel. The Bunker C  
7 contains polynuclear aromatic hydrocarbons (PAHs). The  
8 petroleum and PAHs are located in soils as shown on Exhibit A.  
9 Free phase petroleum also is present in some of the monitoring  
10 wells in the area of contaminated soil.

11 N. The Feasibility Study identified combined cleanup  
12 technologies of bioventing, shallow soil excavation, barrier  
13 wall, paving, surface water diversion, product recovery, tank  
14 closure, monitoring, and institutional controls as the preferred  
15 cleanup alternative for the site.

16 O. In 1996 WWP transferred the Central Steam Plant  
17 property to its subsidiary, Water Power Finance Company, which  
18 in turn conveyed the property to Steam Plant Square L.L.C. WWP  
19 provided notice of such transfer to Ecology pursuant to the  
20 Original Consent Decree.

21 P. In order to address the hazardous substances released  
22 from the Central Steam Plant, WWP has agreed to enter into this  
23 Amended Consent Decree with Ecology.

24 VI. WORK TO BE PERFORMED

25 This Amended Decree contains a program designed to protect  
26 public health, welfare and the environment from the known

1 release, or threatened release, of hazardous substances or  
2 contaminants at, on, or from the Site. Ecology prepared a Draft  
3 Cleanup Action Plan which is attached as Exhibit B based upon  
4 the RI/FS report.

5 A. WWP shall implement the cleanup action selected in the  
6 Cleanup Action Plan as shown in Exhibit B, which is by this  
7 reference made a part hereof as though set out in full. In  
8 general, WWP shall excavate soils containing hazardous  
9 substances in the vicinity of the former storage tanks, A, B, C,  
10 and D, close all underground storage tanks found on the Site,  
11 recover free-phase petroleum product where practicable, treat  
12 site soils using bioventing technology to the maximum extent  
13 practicable, install a subsurface barrier wall to ensure  
14 containment of hazardous substances, and control surface water  
15 through paving and stormwater diversion, as needed.

16 WWP will also perform required long term monitoring to  
17 ensure that the cleanup standards are met and to confirm that  
18 the containment system is performing as required. Finally, WWP  
19 will ensure that a restrictive covenant is entered on property  
20 now owned by Steam Plant Square L.L.C. that is similar in form  
21 to the example attached in Exhibit D and will obtain appropriate  
22 restrictions on the use of other property at the Site.

23 B. Within one hundred twenty (120) days of entry of this  
24 Amended Decree, WWP shall submit to Ecology for approval, an  
25 institutional control plan, compliance monitoring plan,  
26 engineering design report and schedule, construction plans and

1 specifications, operation and maintenance plan, and health and  
2 safety plan for the cleanup action phase. These work plans  
3 shall become an integrated and enforceable part of the CAP and  
4 be subject to the terms specified herein.

5 C. Ecology shall be responsible for providing public  
6 notice of the Amended Decree with the attached Cleanup Action  
7 Plan. Prior to entry of this Amended Decree, Ecology reserves  
8 the right to modify or withdraw any provisions of this Amended  
9 Decree should public comments disclose facts or consideration  
10 which indicated that the Amended Decree is inadequate or  
11 improper in any respect.

12 D. Ecology will evaluate and determine the  
13 appropriateness of the institutional control plan, compliance  
14 monitoring plan, engineering design report, construction plans  
15 and specifications, operation and maintenance plan, and health  
16 and safety plan. These plans shall not be implemented, nor  
17 shall any other remedial activity take place at this site  
18 without Ecology's approval. Upon approval by Ecology, the plans  
19 and the schedule shall become an enforceable element of this  
20 Amended Decree. Implementation of the plans shall begin within  
21 thirty (30) calendar days of the receipt of Ecology's approval.

22 E. A cleanup action report, summarizing installation of  
23 treatment and containment systems and soil removal, will be  
24 submitted no later than twelve (12) months following final  
25 acceptance by Ecology of the construction plan and  
26 specifications.

1 F. Defendant agrees not to perform any remedial actions  
2 outside the scope of this Amended Decree unless the parties  
3 agree to amend the scope of work to cover these actions. All  
4 work conducted under this decree shall be done in accordance  
5 with ch. 173-340 WAC unless otherwise provided herein.

6 VII. DESIGNATED PROJECT COORDINATORS

7 The project coordinator for Ecology is:

8 Patti Y. Carter  
9 Site Manager  
10 Department of Ecology  
4601 N. Monroe, Suite 202  
Spokane, Washington 99205-1295.

11 The project coordinator for Defendant is:

12 Douglas K. Pottratz  
13 Environmental Compliance Administrator  
The Washington Water Power Company  
14 P.O. Box 3727  
Spokane, Washington 99220-3727

15 Each project coordinator shall be responsible for  
16 overseeing the implementation of this Amended Decree. The  
17 Ecology project coordinator will be Ecology's designated  
18 representative at the Site. To the maximum extent possible,  
19 communications between Ecology and the Defendant and all  
20 documents, including reports, approvals, and other  
21 correspondence concerning the activities performed pursuant to  
22 the terms and conditions of this Amended Decree, shall be  
23 directed through the project coordinators. The project  
24 coordinators may designate, in writing, working level staff  
25 contacts for all or portions of the implementation of the  
26 remedial work required by this Amended Decree. The project

1 coordinators may agree to minor modifications to the work to be  
2 performed without formal amendments to this Amended Decree.  
3 Minor modifications will be documented in writing by Ecology.

4 Any party may change its respective project coordinator.  
5 Written notification shall be given to the other parties at  
6 least ten (10) calendar days prior to the change.

7 VIII. PERFORMANCE

8 All work performed pursuant to this Amended Decree shall be  
9 under the direction and supervision, as necessary, of a  
10 professional engineer or hydrogeologist, or equivalent, with  
11 experience and expertise in hazardous waste site investigation  
12 and cleanup. Any construction work must be under the  
13 supervision of a professional engineer. Defendant shall notify  
14 Ecology in writing as to the identity of such engineer(s) or  
15 hydrogeologist(s), or others, and of any contractors and  
16 subcontractors to be used in carrying out the terms of this  
17 Amended Decree, in advance of their involvement at the Site.

18 IX. ACCESS

19 Ecology or any Ecology authorized representatives shall  
20 have the authority to enter and freely move about all property  
21 at the Site at all reasonable times for the purposes of, inter  
22 alia: inspecting records, operation logs, and contracts related  
23 to the work being performed pursuant to this Amended Decree;  
24 reviewing Defendant's progress in carrying out the terms of this  
25 Amended Decree; conducting such tests or collecting such samples  
26 as Ecology may deem necessary; using a camera, sound recording,

1 or other documentary type equipment to record work done pursuant  
2 to this Amended Decree; and verifying the data submitted to  
3 Ecology by the Defendant. All parties with access to the Site  
4 pursuant to this paragraph shall comply with approved health and  
5 safety plans.

6 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

7 With respect to the implementation of this Amended Decree,  
8 Defendant shall make the results of all sampling, laboratory  
9 reports, and/or test results generated by it, or on its behalf  
10 available to Ecology and shall submit these results in  
11 accordance with Section XI of this Amended Decree.

12 In accordance with WAC 173-340-840(5), ground water  
13 sampling data shall be submitted in an electronic format  
14 agreeable to Ecology's site coordinator. These submittals shall  
15 be provided to Ecology in accordance with Section XI of this  
16 Amended Decree.

17 Unless informed otherwise by Ecology, Defendant shall make  
18 every effort to provide/allow split samples to be taken by  
19 Ecology and/or its authorized representatives of any samples  
20 collected by Defendant pursuant to the implementation of this  
21 Amended Decree. Duplicate samples shall be provided only if  
22 sample quantity is impossible to split for a valid sample.  
23 Defendant shall notify Ecology seven (7) days in advance of any  
24 sample collection or work activity undertaken pursuant to this  
25 Amended Decree on or off the site. Ecology shall, upon request,  
26 allow split or duplicate samples to be taken by Defendant or its

1 authorized representatives of any samples collected by Ecology  
2 pursuant to the implementation of this Amended Decree provided  
3 it does not interfere with the Department's sampling. Without  
4 limitation on Ecology's rights under Section IX, Ecology shall  
5 endeavor to notify Defendant prior to any sample collection  
6 activity. Ecology sampling shall be conducted in compliance with  
7 WAC 173-340-800.

8 XI. PROGRESS REPORTS

9 Defendant shall submit to Ecology written monthly progress  
10 reports which describe the actions taken during the previous  
11 month to implement the requirements of this Amended Decree. The  
12 progress shall include the following:

13 A. A list of on-site and off-site activities that have  
14 taken place pursuant to this Amended Consent Decree during the  
15 month;

16 B. Detailed description of any deviations from required  
17 tasks not otherwise documented in project plans or amendment  
18 requests;

19 C. Description of all deviations from the schedule  
20 (Exhibit B) during the current month and any planned deviations  
21 in the upcoming month;

22 D. For any deviations in schedule, a plan for recovering  
23 lost time and maintaining compliance with the schedule;

24 E. All relevant data (including laboratory analysis  
25 summaries) received by the Defendant during the past month and  
26 an identification of the source of the sample;

1 F. A list of deliverables for the upcoming month if  
2 different from the schedule; and

3 After the effective date of this Amended Decree, all  
4 progress reports shall be submitted by the tenth day of the  
5 month following the reporting period for which they are  
6 required. Unless otherwise specified, progress reports and any  
7 other documents submitted pursuant to this Amended Decree shall  
8 be sent by certified mail, return receipt requested; personal  
9 service; express courier; or by facsimile with a confirmation  
10 copy via the U.S. Postal Service to Ecology's project  
11 coordinator.

12 XII. RETENTION OF RECORDS

13 Defendant shall preserve, during the pendency of this  
14 Amended Decree and for ten (10) years from the date this Amended  
15 Decree is no longer in effect as provided in Section XXV, all  
16 records, reports, documents, and underlying data in its  
17 possession relevant to the implementation of this Amended Decree  
18 and shall insert in contracts with project contractors and  
19 subcontractors a similar record retention requirement. Upon  
20 request of Ecology, Defendant shall make all non-archived  
21 records available to Ecology and allow access for review. All  
22 archived records shall be made available to Ecology within a  
23 reasonable period of time.

24 XIII. TRANSFER OF INTEREST IN PROPERTY

25 No voluntary or involuntary conveyance or relinquishment of  
26 title, easement, leasehold, or other interest held by WWP in any

1 portion of the Site shall be consummated without provision for  
2 continued operation and maintenance of any containment system,  
3 treatment system, and monitoring system installed or implemented  
4 pursuant to this Amended Decree.

5 Prior to transfer of any legal or equitable interest of WWP  
6 in all or any portion of the Site, and during the effective  
7 period of this Amended Decree, Defendant shall serve a copy of  
8 this Amended Decree upon any prospective purchaser, lessee,  
9 transferee, assignee, or other successor to WWP's interest in  
10 the property; and, at least thirty (30) days prior to any  
11 transfer, Defendant shall notify Ecology of said contemplated  
12 transfer.

13 XIV. RESOLUTION OF DISPUTES

14 A. In the event a dispute arises as to an approval,  
15 disapproval, proposed modification or other decision or action  
16 by Ecology's project coordinator, the parties shall utilize the  
17 dispute resolution procedure set forth below.

18 (1) Upon receipt of the Ecology project coordinator's  
19 decision, the Defendant has fourteen (14) days within which to  
20 notify Ecology's project coordinator of its objection to the  
21 decision.

22 (2) The parties' project coordinators shall then confer in  
23 an effort to resolve the dispute. If the project coordinators  
24 cannot resolve the dispute within fourteen (14) days, Ecology's  
25 project coordinator shall issue a written decision.  
26

1 (3) Defendant may then request Ecology management review  
2 of the decision. This request shall be submitted in writing to  
3 the Toxics Cleanup Program Manager within seven (7) days of  
4 receipt of Ecology's project coordinator's decision.

5 (4) Ecology's Program Manager shall conduct a review of  
6 the dispute and shall issue a written decision regarding the  
7 dispute within thirty (30) days of the Defendant's request for  
8 review. The Program Manager's decision shall be Ecology's final  
9 decision on the disputed matter.

10 B. If Ecology's final written decision is unacceptable to  
11 Defendant, Defendant has the right to submit the dispute to the  
12 Court for resolution. The parties agree that one judge should  
13 retain jurisdiction over this case and shall, as necessary,  
14 resolve any dispute arising under this Amended Decree. In the  
15 event Defendant presents an issue to the Court for review, the  
16 Court shall review the action or decision of Ecology on the  
17 basis of whether such action or decision was arbitrary and  
18 capricious and render a decision based on such standard of  
19 review.

20 C. The parties agree to only utilize the dispute  
21 resolution process in good faith and agree to expedite, to the  
22 extent possible, the dispute resolution process whenever it is  
23 used. Where either party utilizes the dispute resolution  
24 process in bad faith or for purposes of delay, the other party  
25 may seek sanctions.  
26

1 Implementation of these dispute resolution procedures shall  
2 not provide a basis for delay of any activities required in this  
3 Amended Decree, unless Ecology agrees in writing to a schedule  
4 extension or the Court so orders.

5 XV. AMENDMENT OF AMENDED CONSENT DECREE

6 This Amended Decree may only be amended by a written  
7 stipulation among the parties to this Amended Decree that is  
8 entered by the Court or by order of the Court. Such amendment  
9 shall become effective upon entry by the Court. Agreement to  
10 amend shall not be unreasonably withheld by any party to the  
11 Amended Decree.

12 Defendant shall submit any request for an amendment to  
13 Ecology for approval. Ecology shall indicate its approval or  
14 disapproval in a timely manner after the request for amendment  
15 is received. If the amendment to the Amended Decree is  
16 substantial, Ecology will provide public notice and opportunity  
17 for comment. Reasons for the disapproval shall be stated in  
18 writing. If Ecology does not agree to any proposed amendment,  
19 the disagreement may be addressed through the dispute resolution  
20 procedures described in Section XIV of this Amended Decree.

21 XVI. EXTENSION OF SCHEDULE

22 A. An extension of schedule shall be granted only when a  
23 request for an extension is submitted in a timely fashion,  
24 generally at least 30 days prior to expiration of the deadline  
25 for which the extension is requested, and good cause exists for  
26 granting the extension. All extensions shall be requested in

1 writing. The request shall specify the reason(s) the extension  
2 is needed.

3 An extension shall only be granted for such period of time  
4 as Ecology determines is reasonable under the circumstances. A  
5 requested extension shall not be effective until approved by  
6 Ecology (or the Court acting pursuant to Section XIV.C).  
7 Ecology shall act upon any written request for extension in a  
8 timely fashion. It shall not be necessary to formally amend  
9 this Amended Decree pursuant to Section XV when a schedule  
10 extension is granted.

11 B. The burden shall be on the Defendant to demonstrate to  
12 the satisfaction of Ecology that the request for such extension  
13 has been submitted in a timely fashion and that good cause  
14 exists for granting the extension. Good cause includes, but is  
15 not limited to, the following.

16 (1) Circumstances beyond the reasonable control and  
17 despite the due diligence of Defendant including delays caused  
18 by unrelated third parties or Ecology, such as (but not limited  
19 to) delays by Ecology in reviewing, approving, or modifying  
20 documents submitted by Defendant; or

21 (2) Acts of God, including fire, flood, blizzard, extreme  
22 temperatures, storm, or other unavoidable casualty; or

23 (3) Endangerment as described in Section XVII.

24 However, neither increased costs of performance of the  
25 terms of the Amended Decree nor changed economic circumstances  
26

1 shall be considered circumstances beyond the reasonable control  
2 of Defendant.

3 C. Ecology may extend the schedule for a period not to  
4 exceed ninety (90) days, except where an extension is needed as  
5 a result of:

6 (1) Delays in the issuance of a necessary permit which was  
7 applied for in a timely manner; or

8 (2) Other circumstances deemed exceptional or  
9 extraordinary by Ecology; or

10 (3) Endangerment as described in Section XVI.

11 Ecology shall give Defendant written notification in a  
12 timely fashion of any extensions granted pursuant to this  
13 Amended Decree.

14 XVII. ENDANGERMENT

15 In the event Ecology determines that activities  
16 implementing or in noncompliance with this Amended Decree, or  
17 any other circumstances or activities, are creating or have the  
18 potential to create a danger to the health or welfare of the  
19 people on the Site or in the surrounding area or to the  
20 environment, Ecology may order Defendant to stop further  
21 implementation of this Amended Decree for such period of time as  
22 needed to abate the danger or may petition the Court for an  
23 order as appropriate. During any stoppage of work under this  
24 section, the obligations of Defendant with respect to the work  
25 under this Amended Decree which is ordered to be stopped shall  
26 be suspended and the time periods for performance of that work,

1 as well as the time period for any other work dependent upon the  
2 work which is stopped, shall be extended, pursuant to  
3 Section XVI of this Amended Decree, for such period of time as  
4 Ecology determines is reasonable under the circumstances.

5 In the event Defendant determines that activities  
6 undertaken in furtherance of this Amended Decree or any other  
7 circumstances or activities are creating an endangerment to the  
8 people on the Site or in the surrounding area or to the  
9 environment, Defendant may stop implementation of this Amended  
10 Decree for such period of time necessary for Ecology to evaluate  
11 the situation and determine whether Defendant should proceed  
12 with implementation of the Amended Decree or whether the work  
13 stoppage should be continued until the danger is abated.  
14 Defendant shall notify Ecology's project coordinator as soon as  
15 possible, but no later than twenty-four (24) hours after such  
16 stoppage of work, and thereafter provide Ecology with  
17 documentation of the basis for the work stoppage. If Ecology  
18 disagrees with the Defendant's determination, it may order  
19 Defendant to resume implementation of this Amended Decree. If  
20 Ecology concurs with the work stoppage, the Defendant's  
21 obligations shall be suspended and the time period for  
22 performance of that work, as well as the time period for any  
23 other work dependent upon the work which was stopped, shall be  
24 extended, pursuant to Section XVI of this Amended Decree, for  
25 such period of time as Ecology determines is reasonable under  
26 the circumstances. Any disagreements pursuant to the clause

1 shall be resolved through the dispute resolution procedures in  
2 Section XIV.

3 XVIII. OTHER ACTIONS

4 A. Ecology reserves its rights to institute remedial  
5 action(s) at the Site and subsequently pursue cost recovery, and  
6 Ecology reserves its rights to issue orders and/or penalties or  
7 take any other enforcement action pursuant to available  
8 statutory authority under the following circumstances:

9 (1) Where Defendant fails, after notice, to comply with  
10 any requirement of this Amended Decree; or

11 (2) In the event or upon the discovery of a release or  
12 threatened release not addressed by this Amended Decree; or

13 (3) Upon Ecology's determination that action beyond the  
14 terms of this Amended Decree is necessary to abate an emergency  
15 situation which threatens public health or welfare or the  
16 environment; or

17 (4) Upon the occurrence or discovery of a situation beyond  
18 the scope of this Amended Decree as to which Ecology would be  
19 empowered to perform any remedial action or to issue an order  
20 and/or penalty, or to take any other enforcement action. This  
21 Amended Decree is limited in scope to the geographic Site  
22 described in Exhibit A and to those contaminants which Ecology  
23 knows to be at the Site when this Amended Decree is entered.

24 Ecology will not, however, bring an action against WWP to  
25 recover remedial action costs paid to and received by Ecology  
26 under this Consent Decree. In addition, Ecology will not take

1 additional enforcement actions against WWP to require those  
2 remedial actions required by this Amended Consent Decree,  
3 provided WWP complies with this Amended Decree.

4 Ecology reserves all rights regarding the injury to,  
5 destruction of, or loss of natural resources resulting from the  
6 release or threatened release of hazardous substances from the  
7 Washington Water Power Central Steam Plant site.

8 Ecology reserves the right to take any enforcement action  
9 whatsoever, including a cost recovery action, against  
10 potentially liable persons not party to this Amended Decree.

11 XIX. INDEMNIFICATION

12 Defendant agrees to indemnify and save and hold the State  
13 of Washington, its employees, and agents harmless from any and  
14 all claims or causes of action for death or injuries to persons  
15 or for loss or damage to property arising from or on account of  
16 acts or omissions of Defendant, its officers, employees, agents,  
17 or contractors in entering into and implementing this Amended  
18 Decree. However, the Defendant shall not indemnify the State of  
19 Washington nor save nor hold its employees and agents harmless  
20 from any claims or causes of action arising out of the negligent  
21 acts or omissions of the State of Washington, or the employees  
22 or agents of the State, in implementing the activities pursuant  
23 to this Amended Decree.

24 XX. COMPLIANCE WITH APPLICABLE LAWS

25 A. All actions carried out by WWP pursuant to this  
26 Amended Decree shall be done in accordance with all applicable

1 federal, state, and local requirements, including requirements  
2 to obtain necessary permits, except as provided in paragraph B  
3 of this section.

4 B. Pursuant to RCW 70.105D.090(1), the substantive  
5 requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and  
6 90.58 RCW and of any laws requiring or authorizing local  
7 government permits or approvals for the remedial action under  
8 this Amended Decree that are known to be applicable at the time  
9 of entry of the Amended Decree have been included in Exhibit B,  
10 the Cleanup Action Plan, and are binding and enforceable  
11 requirements of the Amended Decree.

12 WWP has a continuing obligation to determine whether  
13 additional permits or approvals addressed in RCW 70.105D.090(1)  
14 would otherwise be required for the remedial action under this  
15 Amended Decree. In the event either WWP or Ecology determines  
16 that additional permits or approvals addressed in RCW  
17 70.105D.090(1) would otherwise be required for the remedial  
18 action under this Amended Decree, it shall promptly notify the  
19 other party of this determination. Ecology shall determine  
20 whether Ecology or WWP shall be responsible to contact the  
21 appropriate state and/or local agencies. If Ecology so  
22 requires, WWP shall promptly consult with the appropriate state  
23 and/or local agencies and provide Ecology with written  
24 documentation from those agencies of the substantive  
25 requirements those agencies believe are applicable to the  
26 remedial action. Ecology shall make the final determination on

1 the additional substantive requirements that must be met by WWP  
2 and on how WWP must meet those requirements. Ecology shall  
3 inform WWP in writing of these requirements. Once established  
4 by Ecology, the additional requirements shall be enforceable  
5 requirements of this Amended Decree. WWP shall not begin or  
6 continue the remedial action potentially subject to the  
7 additional requirements until Ecology makes its final  
8 determination.

9 Ecology shall ensure that notice and opportunity for  
10 comment is provided to the public and appropriate agencies prior  
11 to establishing the substantive requirements under this section.

12 C. Pursuant to RCW 70.105D.090(2), in the event Ecology  
13 determines that the exemption from complying with the procedural  
14 requirements of the laws referenced in RCW 70.105D.090(1) would  
15 result in the loss of approval from a federal agency which is  
16 necessary for the State to administer any federal law, the  
17 exemption shall not apply and the WWP shall comply with both the  
18 procedural and substantive requirements of the laws referenced  
19 in RCW 70.105D.090(1), including any requirements to obtain  
20 permits.

21 XXI. REMEDIAL AND INVESTIGATIVE COSTS

22 The Defendant agrees to pay costs incurred by Ecology  
23 pursuant to this Amended Decree. These costs shall include work  
24 performed by Ecology or its contractors for, or on, the Site  
25 under Chapter 70.105D RCW both prior to and subsequent to the  
26 issuance of this Amended Decree for investigations, remedial

1 actions, and Amended Decree preparation, negotiations,  
2 oversight, and administration. Ecology costs shall include  
3 costs of direct activities and support costs of direct  
4 activities as defined in WAC 173-340-550(2). The Defendant  
5 agrees to pay the required amount within ninety (90) days of  
6 receiving from Ecology the itemized statement of costs that  
7 includes a summary of costs incurred, an identification of  
8 involved staff, and the amount of time spent by involved staff  
9 members on the project. A general statement of work performed  
10 will be provided upon request. Itemized statements shall be  
11 prepared quarterly. Failure to pay Ecology's costs within  
12 ninety (90) days of receipt of the itemized statement will  
13 result in interest charges.

14 XXII. IMPLEMENTATION OF REMEDIAL ACTION

15 If Ecology determines that Defendant has failed without  
16 good cause to implement the remedial action, Ecology may, after  
17 notice to Defendant, perform any or all portions of the remedial  
18 action that remain incomplete. If Ecology performs all or  
19 portions of the remedial action because of the Defendant's  
20 failure to comply with its obligations under this Amended  
21 Decree, Defendant shall reimburse Ecology for the costs of doing  
22 such work in accordance with Section XXI, provided that  
23 Defendant is not obligated under this section to reimburse  
24 Ecology for costs incurred for work inconsistent with or beyond  
25 the scope of this Amended Decree.  
26

1 XXIII. PUBLIC PARTICIPATION

2 Ecology shall maintain the responsibility for public  
3 participation at the Site. However, Defendant shall cooperate  
4 with Ecology and, if agreed to by Ecology, shall:

5 A. Prepare drafts of public notices and fact sheets at  
6 important stages of the remedial action as deemed appropriate.  
7 Ecology will finalize (including editing if necessary) and  
8 distribute such fact sheets and prepare and distribute public  
9 notices of Ecology's presentations and meetings;

10 B. Notify Ecology's project coordinator prior to the  
11 preparation of all press releases and fact sheets, and before  
12 major meetings with the interested public and local governments.  
13 Likewise, Ecology shall notify Defendant prior to the issuance  
14 of all press releases and fact sheets, and before major meetings  
15 with the interested public and local governments;

16 C. Participate in public presentations on the progress of  
17 the remedial action at the Site. Participation may be through  
18 attendance at public meetings to assist in answering questions,  
19 or as a presenter;

20 D. In cooperation with Ecology, arrange and/or continue  
21 information repositories to be located at Spokane Public Library  
22 at 906 W. Main Avenue, Spokane, Washington; The Washington Water  
23 Power Company at 1411 E. Mission, Spokane, Washington; and  
24 Ecology's Eastern Regional Office at 4601 N. Monroe, Suite 202,  
25 Spokane, Washington. At a minimum, copies of all public  
26 notices, fact sheets, and press releases; all quality assured

1 ground water, surface water, soil sediment, and air monitoring  
2 data; cleanup action plans, supplemental planning documents, and  
3 all other similar documents relating to performance of the  
4 remedial action required by this Amended Decree shall be  
5 promptly placed in these repositories.

6 XXIV. DURATION OF AMENDED DECREE

7 This Amended Decree shall remain in effect and the remedial  
8 program described in the Amended Decree shall be maintained and  
9 continued until the Defendant has received written notification  
10 from Ecology that the requirements of this Amended Decree have  
11 been satisfactorily completed.

12 XXV. CLAIMS AGAINST THE STATE

13 Defendant hereby agrees that it will not seek to recover  
14 any costs accrued in implementing the remedial action required  
15 by this Amended Decree from the State of Washington or any of  
16 its agencies; and further, that the Defendant will make no claim  
17 against the State Toxics Control Account or any Local Toxics  
18 Control Account for any costs incurred in implementing this  
19 Amended Decree. Except as provided above, however, Defendant  
20 expressly reserves its right to seek to recover any costs  
21 incurred in implementing this Amended Decree from any other  
22 potentially liable person.

23 XXVI. COVENANT NOT TO SUE

24 In consideration of WWP's compliance with the terms and  
25 conditions of this Decree, the State, covenants not to institute  
26 legal or administrative actions against WWP regarding

1 | contamination covered by this Decree unless confirmational  
2 | monitoring indicates that additional remedial actions are  
3 | necessary at the site to attain MTCA cleanup standards within  
4 | the reasonable restoration time frame set forth in the CAP.  
5 | Until cleanup standards are met at this Site, compliance with  
6 | this Decree shall satisfy Defendant's cleanup obligations for  
7 | the release or threatened release of hazardous substances  
8 | covered by the terms of this Decree, unless, as noted above,  
9 | confirmational monitoring indicates that additional remedial  
10 | actions are necessary at the site to attain MTCA cleanup  
11 | standards within the reasonable restoration time frame set forth  
12 | in the CAP.

13 |         The terms and application of this Consent Decree are  
14 | strictly limited to the Site specifically defined in Exhibit A  
15 | and to those hazardous substances which Ecology knows to be  
16 | located at the Site as of the entry of this Decree. This  
17 | consent decree shall not be applicable to any other hazardous  
18 | substance or area, and the State retains all of its authority  
19 | relative to such substances and areas.

20 |         A. Reopeners: Ecology specifically reserves the right to  
21 | institute legal or administrative action against WWP seeking to  
22 | require it to perform additional response actions at the Site,  
23 | and to pursue appropriate cost recovery in accordance with  
24 | provisions set out in RCW 70.105D.050, under the following  
25 | circumstances:  
26 |

1 (1) Upon WWP's failure to meet the requirements of this  
2 Decree, including, but not limited to, failure of the remedial  
3 action to meet the cleanup standards identified in the Cleanup  
4 Action Plan (Exhibit B);

5 (2) Upon Ecology's Determination that action beyond the  
6 terms of this Decree is necessary to abate an imminent and  
7 substantial endangerment to public health or welfare or the  
8 environment;

9 (3) Upon Ecology's determination that additional remedial  
10 actions are necessary to achieve cleanup standards within the  
11 reasonable restoration time frame set forth in the CAP;

12 (4) In the event new information becomes available  
13 regarding factors previously unknown to Ecology, including the  
14 nature or quantity of hazardous substances at the Site, and  
15 Ecology determines, in light of this information, that further  
16 remedial action is necessary at the Site to protect human health  
17 or the environment, and Defendants, after notice, fail to take  
18 the necessary action within a reasonable time.

19 B. Applicability: Any Covenant Not to Sue concerning  
20 work performed under this Consent Decree shall have no  
21 applicability whatsoever to:

- 22 1. Criminal liability;
- 23 2. Liability for damages to natural resources;
- 24 3. Any Ecology action against potentially liable persons  
25 not a party to this Decree, including cost recovery.

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XXVII. EFFECTIVE DATE

This Amended Decree is effective upon the date it is entered by the Court.

XXVIII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

This Amended Decree has been the subject of public notice and comment, and a public hearing, under RCW 70.105D.040(4)(a), as outlined in Exhibit C, which is incorporated herein by reference. As a result of this process, Ecology has found that this Amended Decree will lead to a more expeditious cleanup of hazardous substances at the Site. Ecology has also determined that no further public notice or hearing is required under RCW 70.105D.040(4)(a) or WAC 173-340-600(9)(e) prior to the entry of this Amended Decree.

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1 If the Court withholds or withdraws its consent to this  
2 Amended Decree, it shall be null and void at the option of any  
3 party and the accompanying Complaint shall be dismissed without  
4 costs and without prejudice. In such an event, no party shall  
5 be bound by the requirements of this Amended Decree.

6 SIGNED by the parties who also hereby waive further notice  
7 of presentation for entry by the Court.

8  
9 Mary E. Burg 11-25-96 R. D. Fukai 11/21/96  
10 MARY E. BURG Date ROBERT D. FUKAI Date  
11 Program Manager Vice President  
12 Toxics Cleanup Program The Washington Water Power Company

13 Thomas C. Morrill 11-25-96 Jerry K. Boyd 11/21/96  
14 THOMAS C. MORRILL Date JERRY K. BOYD Date  
15 Assistant Attorney General Attorney for The Washington Water  
16 Power Company

17 THIS DECREE is approved and IT IS SO ORDERED this \_\_\_\_\_  
18 day of \_\_\_\_\_, 1996.

19 \_\_\_\_\_  
20 SUPERIOR COURT JUDGE  
21 Spokane County Superior Court

22 w:\11\150\01883\p117:sw