

Hon. Robert J. Bryan

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

CONSENT DECREE - Page 1

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

I. INTRODUCTION

The United States, on behalf of the National Oceanic and Atmospheric Administration (“NOAA”) and the United States Department of the Interior; the State of Washington (the “State”) through the Washington State Department of Ecology; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe (collectively, “Plaintiffs”), have filed a complaint in this case against defendants Murray Pacific Corporation, a Washington corporation (“Murray Pacific”); Pan Pacific Trading Corporation, a dissolved Washington corporation whose successor is Murray Pacific; Boardman Brown; and Mary Jane Anderson (collectively, “Defendants”) pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9607; the Model Toxics Control Act (MTCA), chapter 70.105D RCW; Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 321; and Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A). This Consent Decree (the “Decree”) addresses the claims asserted in the Complaint against Defendants for Natural Resource Damages (as defined below) in the Commencement Bay Environment (as defined below).

II. RECITALS

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

B. Investigations conducted by the United States Environmental Protection Agency

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

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

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

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

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

1 F. Plaintiffs further allege that hazardous substances have been or are being released
2 to the Commencement Bay Environment from properties or facilities owned and/or operated by
3 Defendants through direct discharge, surface water runoff, groundwater and seeps, and that those
4 hazardous substances have caused injury to, destruction of and loss of natural resources in the
5 Commencement Bay Environment under Plaintiffs' trusteeship, including fish, shellfish,
6 invertebrates, birds, marine sediments, and resources of cultural significance. Plaintiffs further
7 allege that each of them and the public have suffered the loss of natural resource services
8 (including ecological services as well as direct and passive human use losses) as a consequence of
9 those injuries.

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

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

23 I. Although the Trustees have initiated but not yet completed a natural resource
24 damage assessment for the Commencement Bay Environment, the Trustees have developed and
25

1 analyzed information sufficient to support a settlement that is fair, reasonable and in the public
2 interest.

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

16 K. Plaintiffs assert that hazardous-substance releases to the Hylebos Waterway have
17 become dispersed and commingled to the extent that the effects of one PRP's releases cannot be
18 readily distinguished from another's. Plaintiffs further assert that the circumstances of the
19 Hylebos Waterway contamination make all PRPs who contributed to the contamination jointly
20 and severally liable for all injuries to natural resources that have resulted from the contamination.
21 As a consequence, Plaintiffs assert the right to recover for the loss of all 1526.77 DSAYs from
22 any Hylebos Waterway PRP. Without prejudice to their position, and solely for purposes of
23 facilitating settlement with individual PRPs, the Trustees have developed a proposal for
24 allocating liability for the 1526.77 DSAYs among the PRPs. Independent consultants hired by
25

1 the Trustees reviewed existing information from the files of EPA, the Washington State
2 Department of Ecology, and local public libraries to allocate liability among the various Hylebos
3 Waterway facilities that contributed to the contamination.

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

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

23 N. The Trustees quantified natural resource damages in their Hylebos Waterway
24 report in terms of DSAYs in order to encourage settling parties to resolve their liability by

25

26

27 CONSENT DECREE - Page 7

28

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1 constructing habitat restoration projects. For parties who prefer settling on a cash-damages
2 basis, the Trustees reviewed data from existing restoration projects and estimated it would cost
3 fifty-two thousand dollars (\$52,000.00) per DSAY if the Trustees themselves constructed the
4 required restoration projects. The cash damages equivalent of the 5.316 DSAYs allocated to
5 Defendants totals two hundred seventy-six thousand four hundred thirty-two dollars
6 (\$276,432.00). Parties liable for natural resource damages are also liable for the reasonable costs
7 of assessing the damages. 42 U.S.C. § 9607(a)(4)(C). The Trustees allocated to Defendants
8 liability for thirty thousand six hundred sixty-nine dollars and seventy cents (\$30,669.70) in
9 damage assessment costs. The dollar value of the Trustees' claim asserted against Defendants
10 totals three hundred seven thousand one hundred one dollars and seventy cents (\$307,101.70).
11 The Trustees have agreed to settle their natural resource damage claims against Defendants
12 associated with the Commencement Bay Environment for cash payments totaling three hundred
13 two thousand dollars (\$302,000.00) in natural resource damages and damage assessment costs.
14 Murray Pacific has agreed to pay the Trustees the identified sum in return for the Trustees'
15 covenants not to sue Defendants for Natural Resource Damages as provided below in Paragraph
16 2.

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

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

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

III. JURISDICTION

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

IV. PARTIES BOUND

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

V. DEFINITIONS

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

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

20 b. "Commencement Bay Environment" means the waters of Commencement
21 Bay, State of Washington -- including the shoreline, intertidal areas, tributaries, drainage areas,
22 estuaries and bottom sediments -- lying south of a line drawn from Point Defiance to Dash
23 Point. These waters include the Thea Foss Waterway, Wheeler-Osgood Waterway, Middle
24 Waterway, St. Paul Waterway, Puyallup River from the mouth south to the present City limits,
25 Milwaukee Waterway, Sitcum Waterway, Blair Waterway, and Hylebos Waterway. This area

1 includes but is not limited to the Commencement Bay Nearshore/Tideflats Superfund Site, as
2 identified or amended by the EPA, including the B&L Landfill, and areas affected by releases of
3 hazardous substances within the Commencement Bay Nearshore/Tideflats Superfund Site.

4 c. "Consent Decree" or "Decree" means this Consent Decree and all
5 attached appendices. In the event of conflict between this Decree and any appendix, the Decree
6 will control.

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

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

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

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

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

21 i. "Natural Resource Damages" means damages, including costs of damage
22 assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607; Chapter 70.105D
23 RCW; Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; and Section
24 1002(b)(2)(A) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A), for injury to,
25 destruction of, or loss of Natural Resources resulting from releases of hazardous substances or

1 discharges of oil at or from the Commencement Bay Nearshore/Tideflats Superfund Site.

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

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

7 l. "Plaintiffs" mean the United States, the State, the Puyallup Tribe of
8 Indians, and the Muckleshoot Indian Tribe.

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

13 n. "Section" means a portion of this Consent Decree identified by a Roman
14 numeral.

15 o. "State" means the State of Washington.

16 p. "Trustees" mean the United States Department of Commerce, acting
17 through NOAA and the Department of the Interior; the Washington State Department of
18 Ecology, on behalf of the State of Washington; the Puyallup Tribe of Indians; and the
19 Muckleshoot Indian Tribe.

20 q. "United States" means the United States of America, including its
21 departments, agencies, and instrumentalities.

22 VI. PAYMENT OF NATURAL RESOURCE DAMAGES
23 AND DAMAGE ASSESSMENT COSTS

24 4. Within 30 days of entry of this Decree, Murray Pacific, for itself and on behalf of
25 the other Defendants, will pay to the Trustees two hundred seventy-one thousand eight hundred

1 thirty-nine dollars and eighty cents (\$271,839.80) for Natural Resource Damages. This payment
2 will be made by a certified check made payable to the Clerk of the Court. This check will be
3 deposited in the Commencement Bay Natural Resource Restoration Account.

4 5. Within 30 days of entry of this Decree, Murray Pacific, for itself and on behalf of
5 the other Defendants, will pay to the Trustees the sum of thirty thousand one hundred sixty
6 dollars and twenty cents (\$30,160.20) in damage assessment costs. This payment will be made by
7 certified checks, bearing the notation "Murray Pacific - Commencement Bay Assessment Costs"
8 (or an alternate notation as specified below), in the amounts indicated and made payable and
9 addressed as follows:

10 Trustee: National Oceanic and Atmospheric Administration
11 Amount: \$24,330.19
12 Payee: National Oceanic and Atmospheric Administration
13 Address: Chief, Damage Assessment Center
14 NOAA, N/ORCAx1
15 1305 East West Highway, Room 10218
16 Silver Spring, MD 20910

17 Trustee: U.S. Department of the Interior
18 Amount: \$4,067.67
19 Payee: Secretary of the Interior
20 Alternate
21 Notation: 14X5198 (NRDAR)
22 Commencement Bay Nearshore/Tideflats Superfund Site
23 Address: Chief, Division of Finance
24 U.S. Fish and Wildlife Service
25 4401 N. Fairfax Dr., Rm. 380
26 Arlington, VA 22203

27 Trustee: State of Washington
28 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

1 in addition to the Interest required by Paragraph 7.

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

6 c. At the time of each payment, Murray Pacific will send notice that payment
7 has been made to the Trustees and DOJ in accordance with Section XIII (Notices and
8 Submissions). This notice will reference Commencement Bay NRDA, DOJ Case Number
9 90-11-2-1049, and the civil action number.

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

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

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

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

25 VIII. COVENANT NOT TO SUE BY PLAINTIFFS

12. Except as specifically provided in Section IX (Reservations of Rights) below, Plaintiffs covenant not to sue or to take administrative action against Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a); Chapter 70.105D RCW; Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; or Section 1002(a) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(a), to recover Natural Resource Damages for releases of hazardous substances into the Commencement Bay Environment. This covenant not to sue will take effect upon receipt by the Registry of the Court of all payments required by Section VI, Paragraph 4 (Payment of Natural Resource Damages), receipt by each of the Trustees of all payments required by Section VI, Paragraph 5, and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Defendants of their obligations under this Decree. This covenant not to sue extends only to Defendants and their heirs, successors, and assigns, and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS

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

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

X. REOPENERS

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

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

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

12 XI. COVENANT NOT TO SUE BY DEFENDANTS

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

17 XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

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

23 17. The Parties agree, and by entering this Decree this Court finds, that Defendants are
24 entitled as of the date of entry of this Decree to protection from contribution actions or claims as
25

1 provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) and RCW 70.105D.040(4)(d)
2 for Natural Resource Damages.

3 18. Defendants agree that they will notify the Trustees and DOJ in writing no later
4 than 60 days before bringing a suit or claim for contribution for natural resource damages in the
5 Commencement Bay Environment. Defendants also agree that they will notify the Trustees and
6 DOJ in writing within 10 days of service of a complaint or claim upon them relating to a suit or
7 claim for contribution for natural resource damages in the Commencement Bay Environment. In
8 addition, Defendants will notify the Trustees and DOJ within 10 days of service or receipt of any
9 Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a
10 case for trial for matters related to this Decree.

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

18 XIII. NOTICES AND SUBMISSIONS

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

24 As to the United States and as to DOJ:
25 Chief, Environmental Enforcement Section

26
27 CONSENT DECREE - Page 17

U.S. Department of Justice
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1 Environment and Natural Resources Division
2 U.S. Department of Justice (DJ # 90-11-2-1049)
3 P.O. Box 7611
4 Washington, D.C. 20044-7611
5 (DJ # 90-11-2-1049)

6 As to NOAA:
7 Robert A. Taylor
8 NOAA Office of General Counsel GCNR/NW
9 7600 Sand Point Way NE
10 Seattle, WA 98115-0070

11 As to the United States Department of the Interior:

12 Jeff Krausmann
13 U.S. Fish & Wildlife Service
14 510 Desmond Dr. SE, Suite 102
15 Lacey, WA 98503-1263

16 As to the State:

17 Craig Thompson
18 Toxics Cleanup Program
19 State of Washington
20 P.O. Box 47600
21 Olympia, WA 98504-7600

22 As to the Puyallup Tribe of Indians:

23 Bill Sullivan
24 Environmental Department
25 Puyallup Tribe of Indians
26 1850 Alexander Avenue
27 Tacoma, WA 98421

28 As to the Muckleshoot Indian Tribe:

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

CONSENT DECREE - Page 18

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

1 As to Defendants:

2 L.T. Murray III, President
3 Murray Pacific Corporation
4 201 Pacific Avenue, Suite 1750
Tacoma, WA 98401

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7 XIV. RETENTION OF JURISDICTION

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

10 XV. INTEGRATION/APPENDICES

11 22. This Decree and its appendices constitute the final, complete, and exclusive
12 agreement and understanding with respect to the settlement embodied in this Decree. The Parties
13 acknowledge that there are no representations, agreements, or understandings relating to the
14 settlement other than those expressly contained in this Decree. The following appendices are
15 attached to and incorporated into this Consent Decree: Appendix A is the Order Directing the
16 Deposit of Natural Resource Damages into the Registry of the Court in United States v. Port of
17 Tacoma, No. C93-5462B (W.D. Wash. Oct. 8, 1993).

18 XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

19 23. This Decree will be lodged with the Court for a period of not less than 30 days for
20 public notice and comment. The Plaintiffs each reserve the right to withdraw or withhold their
21 consent if the comments regarding the Decree disclose facts or considerations that indicate this
22 Decree is inappropriate, improper, or inadequate. Defendants consent to the entry of this Decree
23 without further notice.

24 24. If for any reason this Court declines to approve this Decree in the form presented,
25 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.

XVII. SIGNATORIES/SERVICE

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

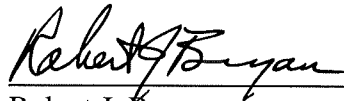
26. Defendants agree not to oppose entry of this Decree by this Court or to challenge any provision of this Decree unless any Plaintiff has notified Defendants in writing that it no longer supports entry of the Decree.

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

XVIII. FINAL JUDGMENT

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

IT IS SO ORDERED THIS 9th DAY OF DECEMBER, 2005.


Robert J. Bryan

United States District Judge

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CONSENT DECREE - Page 21

U.S. Department of Justice
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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: 7/1/05

s/ _____

6 Kelly A. Johnson
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 Date: 1/25/05

s/ _____

14 Date : 2/3/05

s/ _____

15 Assistant Attorney General
16 State of Washington

17 FOR THE PUYALLUP TRIBE OF INDIANS

18
19 Date: 1/21/05

s/ _____

20
21
22 FOR THE MUCKLESHOOT INDIAN TRIBE

23
24 Date: 1/28/05

s/ _____

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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 MURRAY PACIFIC CORPORATION

2
3 Date: 2/3/05 _____ s/ _____

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

8
9 Date: 2/3/05 _____ s/ _____

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12
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 23

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

1 FOR BOARDMAN BROWN

2
3 Date: 2/2/05 _____ s/ _____
4

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

8 FOR MARY JANE ANDERSON

9
10 Date: 1/26/05 _____ s/ _____
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14 Agent authorized to receive service of process by mail on behalf of Mary Jane Anderson with
15 respect to all matters relating to this Decree:
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27 CONSENT DECREE - Page 24
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