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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, ON)	
BEHALF OF THE NATIONAL)	
OCEANIC AND ATMOSPHERIC)	
ADMINISTRATION and THE UNITED)	
STATES DEPARTMENT OF THE)	
INTERIOR; STATE OF WASHINGTON)	
THROUGH THE DEPARTMENT OF)	
ECOLOGY: LOWER ELWHA)	
KLALLAM TRIBE; PORT GAMBLE)	
S’KLALLAM TRIBE; and THE)	
JAMESTOWN S’KLALLAM TRIBE,)	
)	
Plaintiffs,)	CIVIL NO. 21-cv-5204
)	CONSENT DECREE
v.)	
)	
NIPPON PAPER INDUSTRIES USA)	
CO., LTD., MERRILL & RING INC.,)	
GEORGIA-PACIFIC LLC, THE PORT)	
OF PORT ANGELES, OWENS)	
CORNING, and the CITY OF)	
PORT ANGELES)	
)	
Defendants.)	

I. INTRODUCTION

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3 The State of Washington, through the Department of Ecology; the United States of
4 America on behalf of the Department of Commerce, through the National Oceanic and
5 Atmospheric Association, and the United States Department of Interior; the Lower Elwha
6 Klallam Tribe; the Port Gamble S’Klallam Tribe; and the Jamestown S’Klallam Tribe
7 (collectively, “Plaintiffs” or the “Trustees”, and individually, a “Plaintiff” or “Trustee”), have
8 filed a complaint (the “Complaint”) in this case against defendant City of Port Angeles, among
9 other parties, pursuant to Section 107 of the Comprehensive Environmental Response,
10 Compensation and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607; Section
11 311(f)(4) of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(f)(4); and Section 1002(b)(2)(A)
12 of the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2702(b)(2)(A); the Model Toxics Control
13 Act (“MTCA”), Wash. Rev. Code § 70A.305.040(2); and Wash. Rev. Code § 90.48.142 for
14 Covered Natural Resource Damages (as defined below) at the Western Port Angeles Harbor Site
15 (“Site”). This Consent Decree (the “Decree”) addresses the claims asserted in the Complaint
16 against the City of Port Angeles (“Defendant”).
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II. RECITALS

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22 A. The Trustees, under the authority of Section 107(f) of CERCLA, 42 U.S.C.
23 § 9607(f), Section 1006 of OPA, 33 U.S.C. § 2706, Section 311(f)(5) of the CWA, 33 U.S.C.
24 §1321(f)(5), 40 C.F.R. Part 300, subpart G, MTCA, Wash. Rev. Code § 70A.305.040(2), and
25 Wash. Rev. Code § 90.48.142, serve as trustees for natural resources for the assessment and
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1 recovery of damages for injury to, destruction of, or loss of natural resources under their
2 trusteeship.

3
4 B. Investigations conducted by the Trustees found that hazardous substances, such as
5 elevated concentrations of metals, semivolatile organic compounds, dioxin/furans, phthalates,
6 and PCBs have been released at the Site. Hazardous substances in sediment throughout the
7 Harbor above State criteria have been cited in multiple investigations by the Department of
8 Ecology from 2008 to 2012 (Port Angeles Harbor Preassessment Screen, 2013).

9
10 C. The Trustees have completed a natural resource damage assessment for the Site
11 for the purpose of settlement with Defendant (Proposed Estimate of Natural Resource Damages
12 in Port Angeles Harbor Port Angeles, Washington, 2014). Based on these findings, the Trustees
13 and Defendant agree that there is sufficient information to effectuate the purposes of this Consent
14 Decree with respect to Defendant.

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17 D. Plaintiffs have filed the Complaint pursuant to Section 107 of CERCLA, 42
18 U.S.C. § 9607, Section 311(f)(4) of the CWA, 33 U.S.C. § 1321(f)(4); and Section
19 1002(b)(2)(A) of the OPA, 33 U.S.C. § 2702(b)(2)(A); MTCA, Wash. Rev. Code § 70A.305.040
20 (2); and Wash. Rev. Code § 90.48.142, seeking recovery from Defendant of damages for injury
21 to, destruction of, and loss of natural resources resulting from releases of hazardous substances at
22 the Site, including the costs of assessing the damages.

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24
25 E. Plaintiffs allege that hazardous substances have been or are being released from
26 facilities and that those hazardous substances have caused injury to, destruction of, and loss of
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1 natural resources at the Site under Plaintiffs' trusteeship, including fish, shellfish, invertebrates,
2 birds, marine sediments, and resources of cultural significance. Plaintiffs further allege that each
3 of them and the public have suffered the loss of natural resource services (including ecological
4 services as well as direct and passive human use losses) as a consequence of those injuries.
5 Tribal Trustees also allege harm to practice of tribal culture and to exercise of treaty rights as a
6 result of harm to Port Angeles Harbor's natural resources.
7

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9 F. Plaintiffs allege that Defendant is liable under one or more of the bases
10 enumerated in 42 U.S.C. § 9607(a), Section 311(f)(4) of the CWA, 33 U.S.C. § 1321(f)(4); and
11 Section 1002(b)(2)(A) of the OPA, 33 U.S.C. § 2702(b)(2)(A); MTCA, Wash. Rev. Code §
12 70A.305.040(1), and Wash. Rev. Code § 90.48.142.
13

14 G. The Trustees have developed and analyzed information sufficient to support a
15 settlement that is fair, reasonable and in the public interest.
16

17 H. In settlement of this action, Defendant has agreed, subject to the terms of this
18 Consent Decree, to pay \$800,000 to the Trustees in damages.
19

20 I. Defendant does not admit any liability to Plaintiffs arising out of the transactions
21 or occurrences alleged in the Complaint and the matters alleged in this Consent Decree.
22

23 J. Plaintiffs and Defendant agree, and this Court by entering this Decree finds, that
24 this Decree has been negotiated by the Parties in good faith; that settlement of this matter will
25 avoid prolonged and complicated litigation between the Parties; and that this Decree is fair,
26 reasonable, and in the public interest.
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1 NOW, THEREFORE, it is hereby Ordered, Adjudged and Decreed:
2

3 **III. JURISDICTION AND VENUE**

4 1. This Court has jurisdiction over the subject matter of this action, pursuant to 28
5 U.S.C. §§ 1331, 1345 and 1367, Section 311(n) of the CWA, 33 U.S.C. § 1321(n); Section
6 1017(b) of OPA, 33 U.S.C. § 2717(b); 42 U.S.C. § 9613(b), and 33 U.S.C. § 2717(b) and over
7 the Parties. Venue lies in this District pursuant to 28 U.S.C. §§ 1391(b), Section 1017(b) of
8 OPA, 33 U.S.C. § 2717(b) and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the
9 releases or threatened releases of hazardous substances that gave rise to this claim occurred in
10 this district, and because the Site is located in this district.
11

12
13 2. For purposes of this Decree, or any action to enforce this Decree, Defendant
14 consents to the Court's jurisdiction over this Decree and any such action and over Defendant and
15 consent to venue in this judicial district.
16

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18 3. The Complaint states claims upon which relief may be granted pursuant to
19 Section 107 of CERCLA, 42 U.S.C. § 9607, Section 311(f) of the CWA, 33 U.S.C. § 1321(f);
20 and Section 1002(b)(2)(A) of the OPA, 33 U.S.C. § 2702(b)(2)(A); MTCA, Wash. Rev. Code §
21 70A.305.040(2), and Wash. Rev. Code § 90.48.142.
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23 **IV. PARTIES BOUND**

24
25 4. The obligations of this Consent Decree apply to and are binding upon the
26 Plaintiffs, and upon Defendant and any successors, assigns, or other entities or persons otherwise
27 bound by law. Any change in status of the Defendant including, but not limited to, any transfer
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1 of assets or real or personal property, shall in no way alter the Defendant's responsibilities under
2 this Consent Decree.

3
4 5. In any action to enforce this Consent Decree, Defendant shall not raise as a
5 defense the failure by any of its officials, employees, agents, or contractors to take any actions
6 necessary to comply with the provisions of this Consent Decree.
7

8 V. DEFINITIONS

9
10 6. Terms used in this Consent Decree that are defined in CERCLA, MTCA, CWA,
11 OPA, Wash. Rev. Code § 90.48.142, or in regulations promulgated thereunder and have the
12 meanings assigned to them in CERCLA, MTCA, CWA, OPA, Wash. Rev. Code § 90.48.142, or
13 in such regulations, shall have the meanings assigned to them in the Act or such regulations,
14 unless otherwise provided in this Decree. Whenever the terms set forth below are used in this
15 Consent Decree, the following definitions shall apply:
16

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

19 b. "CWA" means the Clean Water Act, as amended, 33 U.S.C. § 1251. *et seq.*;

20 c. "Complaint" shall mean the complaint filed by the United States, the Tribal
21 Trustees, and the State in this action;

22 d. "Consent Decree" or "Decree" means this Consent Decree and all appendices
23 attached hereto (listed in Section XVI.);
24

25 e. "Covered Natural Resource Damages" means damages, including costs of damage
26 assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607; MTCA, Rev. Code
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1 Wash. § 70A.305.040(2); Section 311(f)(4) of the CWA, 33 U.S.C. § 1321(f)(4); Wash. Rev.
2 Code § 90.48.142; and Section 1002(b)(2) of the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C.
3 § 2702(b)(2), for injury to, destruction of, loss of, loss of use of, or impairment of, natural
4 resources within the Site as described in Appendix A or the portion of the Rayonier Mill Study
5 Area, identified in Appendix B, below the mean higher high water line, resulting from releases or
6 threatened releases of hazardous substances or discharges of oil to Port Angeles Harbor and
7 adjoining shorelines, from and on Defendant’s Facilities, where such release or threatened
8 release occurred on or before the effective date of this Consent Decree and which are known to
9 have come to be located at either the Site as described in Appendix A or the portion of the
10 Rayonier Mill Study Area, identified in Appendix B, below the mean higher high water line;
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13 f. “Day” shall mean a calendar day unless expressly stated to be a business day. In
14 computing any period of time under this Consent Decree, where the last day would fall on a
15 Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next
16 business day;
17

18 g. “Defendant” means the City of Port Angeles;

19 h. “Defendant’s Facilities” means the following facilities: (i) all storm, sanitary, and
20 combined sewer systems that currently or formerly discharge directly or indirectly to Port
21 Angeles Harbor and that are or were installed, owned, operated, or maintained by the City of
22 Port Angeles, (ii) every Wastewater Treatment Plant, together with all associated pipes, outfalls,
23 facilities, and equipment, currently or formerly owned, operated, or maintained by the City of
24 Port Angeles; (iii) land on or near the Ediz Hook land parcel that the City of Port Angeles
25 currently or formerly owned or leased, (iv) all electrical infrastructure, equipment and systems
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1 currently or formerly owned, operated, or maintained by the City of Port Angeles, (v) state
2 aquatic lands leased by the City of Port Angeles, including but not limited to state aquatic lands
3 covered by DNR Lease Nos. 22-002484, 51-032481, 51-080974, 22-081288, 20-085091,
4 20-087677, (vi) all piers currently or formerly owned or leased by the City of Port Angeles that
5 are in or adjacent to Port Angeles Harbor, including but not limited to the pier covered by former
6 DNR Lease Nos. HA1502 and HA1552 and the former Oak Street Pier, (vii) all real property
7 and/or associated fixtures, improvements, and facilities owned, operated, or maintained by the
8 City of Port Angeles, and (viii) all streets, alleys, curbs, gutters, and ditches currently or formerly
9 owned, operated, or maintained by City of Port Angeles.
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12 i. “Interest,” shall mean interest at the rate specified for interest on investments of
13 the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded
14 annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate
15 of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject
16 to change on October 1 of each year.
17

18 j. “MTCA” means the Model Toxics Control Act, Chapter 70A.305 RCW;

19 k. “OPA” means the Oil Pollution Act of 1990, 33 U.S.C §2701, et seq.;

20 l. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;

21 m. “Parties” means the State of Washington, through the Department of Ecology
22 (“Ecology”); the United States Department of Commerce, through the National Oceanic and
23 Atmospheric Administration (“NOAA”); the United States Department of Interior (“DOI”); the
24 Lower Elwha Klallam Tribe; the Port Gamble S’Klallam Tribe; the Jamestown S’Klallam Tribe;
25 and the City of Port Angeles;
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1 n. “Port Angeles Harbor” means the harbor adjacent to the City of Port Angeles and
2 the Strait of Juan de Fuca and enclosed on the west and north by the Ediz Hook, on the east by a
3 line running southeasterly from the tip of Ediz Hook to the mouth of Morse Creek, and by the
4 mean higher high water line on all land boundaries, as generally depicted on Appendix C;

5
6 o. “Site” or “Western Port Angeles Harbor Site” is generally located in the western
7 part of Port Angeles Harbor up to the mean higher high water line on all land boundaries, as
8 identified and delineated in the Site Diagram attached as Appendix A, and is further defined by
9 the extent of contamination caused by the release of hazardous substances;

10
11 p. “State” shall mean the State of Washington;

12 q. “Trustees” means Ecology, NOAA, DOI, the Lower Elwha Klallam Tribe, the
13 Port Gamble S’Klallam Tribe, and the Jamestown S’Klallam Tribe (the three tribes may be
14 referred to as “the Tribal Trustees”);

15
16 r. “United States” means the United States of America, including all of its
17 departments, agencies, and instrumentalities.

18
19 **VI. PAYMENTS BY THE DEFENDANT**

20 7. Within 90 days after the effective date, Defendant shall pay a total of \$800,000 to
21 the Plaintiffs as follows.

22 a. Payment Instructions. Defendant shall pay a total of \$800,000, to the
23 United States, the State, and Tribal Trustees for Covered Natural Resource Damages. Payment
24 shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice
25 account, in accordance with written instructions provided to Defendant by the Financial
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1 Litigation Unit (“FLU”) of the United States Attorney’s Office for the Western District of
2 Washington after the Effective Date. Any payments received by the Department of Justice after
3 4:00 p.m. (Eastern Time) will be credited on the next business day. The payment instructions
4 provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number,
5 which Defendant shall use to identify all payments required to be made in accordance with this
6 Consent Decree. The FLU will provide the payment instructions to:

8 Sarina Carrizosa
9 Finance Director
10 City of Port Angeles
11 Scarrizo@cityofpa.us

12 on behalf of Defendant. Defendant may change the individual to receive payment instructions
13 on its behalf by providing written notice of such change to the United States in accordance with
14 Section XIII (Notices and Submissions).

15 b. The total amount to be paid by Defendant pursuant to this Paragraph, shall
16 be deposited in a segregated sub-account within the NRDAR Fund to be managed by the United
17 States DOI NRDAR for the joint benefit and use of the Trustees to pay for Trustee-sponsored
18 natural resource restoration projects in accordance with Section VII.

20 8. Notice of Payment. Upon making any payment under Paragraph 7, Defendant
21 shall send written notice that payment has been made to the United States Department of Justice,
22 Ecology, NOAA, DOI, the Lower Elwha Klallam Tribe, the Port Gamble S’Klallam Tribe, and
23 the Jamestown S’Klallam Tribe in accordance with Paragraph 26 and shall reference the civil
24 action number, CDCS Number and DOJ case number 90-11-3-10973.

27 9. Non-Compliance with Payment Obligations.

1 a. *Interest.* In the event any payment required by Paragraph 7 is not made
2 when due, the Defendant shall pay Interest on the unpaid balance commencing on the payment
3 due date and accruing through the date of full payment.

4 b. *Stipulated Penalties.* In addition to the Interest required to be paid under
5 the preceding Subparagraph, if any payment required by Paragraph 7 is not made when due, the
6 Defendant shall also pay stipulated penalty of \$5,000 per violation per day for the first 30 days
7 that a payment is late, and \$15,000 per violation per day thereafter through the date of full
8 payment.

9 c. *Payment of Interest and Stipulated Penalties.* Any Interest payments
10 under Subparagraph 9.a shall be paid in the same manner as the overdue principal amount, and
11 shall be directed to the same fund or account as the overdue principal amount. Any stipulated
12 penalty payments under Subparagraph 9.b shall be paid to the United States in accordance with
13 payment instructions provided by the Financial Litigation Unit of the United States Attorney's
14 Office for the Western District of Washington. From these stipulated penalties, twenty percent
15 (20%) shall be deposited in the United States Treasury, and the remaining eighty percent (80%)
16 shall be deposited into the segregated sub-account within the NRDAR Fund to be managed by
17 the United States DOI for the joint benefit and use of the Trustees to pay for Trustee-sponsored
18 natural resource restoration projects in accordance with Section VII.

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23 **VII. TRUSTEE-SPONSORED NATURAL RESOURCE RESTORATION PROJECTS**

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25 10. **Management and Application of Funds.** All funds deposited in a segregated sub-
26 account within the NRDAR Fund under that Subparagraph, shall be managed by DOI for the
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1 joint benefit and use of the Trustees to pay for Trustee-sponsored natural resource restoration
2 efforts in accordance with this Consent Decree. All such funds shall be applied toward the costs
3 of restoration, rehabilitation, or replacement of injured natural resources, and/or acquisition of
4 equivalent resources, including but not limited to any planning, administrative, oversight, or
5 monitoring costs and expenses necessary for, and incidental to, restoration, rehabilitation,
6 replacement, and/or acquisition of equivalent resources planning, and any restoration,
7 rehabilitation, replacement, and/or acquisition of equivalent resources undertaken.
8

9
10 11. Restoration Planning. The Trustees intend to prepare a separate Restoration Plan
11 describing how the funds dedicated for Trustee-sponsored natural resource restoration efforts
12 under this Section will be used. As provided by 43 C.F.R. § 11.93, the Restoration Plan will
13 identify how funds will be used for restoration, rehabilitation, replacement, or acquisition of
14 equivalent resources. The Restoration Plan may also identify how funds will be used to address
15 services lost to the public until restoration, rehabilitation, replacement, and/or acquisition of
16 equivalent resources is completed. To the extent it is consistent with 43 C.F.R. Part 11, the
17 Trustees will seek to prioritize projects that meet the selection criteria outlined in the Restoration
18 Plan and that will provide direct benefits to the natural resources in Port Angeles Harbor.
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21 12. Decisions regarding any use or expenditure of funds under this Section shall be
22 made by unanimous agreement of the Trustees. Defendant shall not be entitled to dispute, in any
23 forum or proceeding, any decision relating to use of funds or restoration efforts under this
24 Section. Nothing in this Paragraph is intended to alter or modify any right, obligation, or
25 limitation on the Trustees' implementation of Trustee-sponsored natural resource restoration
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1 efforts under any applicable law, rule, or regulation.

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3 **VIII. COVENANT NOT TO SUE BY PLAINTIFFS**

4 13. Except as specifically provided in Section IX (Reservations of Rights) below,
5 Plaintiffs covenant not to sue or to take administrative action against Defendant pursuant to
6 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Chapter 70A.305 RCW, Section 311(f)(4) of
7 the CWA, 33 U.S.C. § 1321(f)(4), Wash. Rev. Code § Chapter 90.48.142, and Section
8 1002(b)(2) of OPA, 33 U.S.C. § 2702(b)(2), to recover Covered Natural Resource Damages.
9 This covenant not to sue shall take effect upon receipt of the Defendant's payments pursuant to
10 Paragraph 7 of this Consent Decree. This covenant extends only to Defendant and does not
11 extend to any other person.
12
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14 **IX. RESERVATIONS OF RIGHTS**

15
16 14. Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights
17 against Defendant with respect to all matters not expressly included within the Covenant Not to
18 Sue by Plaintiffs in Paragraph 13. Notwithstanding any other provision of this Consent Decree,
19 the Plaintiffs reserve all rights against Defendant with respect to:
20

- 21 a. claims based on failure by Defendant to meet a requirement of this
22 Consent Decree;
23 b. liability for costs of response incurred or to be incurred by Plaintiffs under
24 any federal or State statute;
25 c. liability for damages or other costs incurred or to be incurred by the
26 Plaintiffs that are not within the definition of Covered Natural Resource Damages;
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1 d. liability for damages to natural resources (including assessment costs) as
2 defined in 42 U.S.C. §§ 9601; Chapter 70A.305 RCW; Section 311(f)(4) of the CWA 33 U.S.C.
3 § 1321(f)(4); and Section 1002(b)(2)(A) of the OPA, 33 U.S.C. § 2702(b)(2)(A); Wash. Rev.
4 Code § 90.48.142, or any other applicable federal or state law concerning response to hazardous
5 substance or oil releases, resulting from new releases of hazardous substances at or from the Site
6 after the effective date of this Consent Decree

7
8 e. liability for damages to natural resources (including assessment costs) as
9 defined in 42 U.S.C. §§ 9601 and Chapter 70A.305 RCW, or any other applicable federal or state
10 law concerning response to hazardous substance or oil releases, based upon the Defendant's
11 transportation, treatment, storage, or disposal, or the arrangement for the transportation,
12 treatment, storage, or disposal of hazardous substances at or in connection with the Site, after the
13 effective date of this Consent Decree;

14
15 f. liability for injunctive relief or administrative order enforcement under
16 any federal or State statute;

17
18 g. liability for damages for injury to, destruction of, or loss of natural
19 resources resulting from releases or threatened releases of hazardous substances outside of the
20 Site and Rayonier Mill Study Area below the mean higher high water line;

21
22 h. additional claims in this action or in a new action for Covered Natural
23 Resource Damages if conditions, factors, or information at the Site or the Rayonier Mill Study
24 Area (identified in Appendix B), not known to the Trustees as of the date of lodging, are
25 discovered that, together with any other relevant information, indicate that there is a threat to the
26 environment, or injury to, destruction of, or loss of natural resources of a type unknown or of a
27

1 magnitude significantly greater than was known, at the time of the date of lodging of this
2 Consent Decree. Information known to the Trustees shall consist of any information in the files
3 of, or otherwise in the possession of, any one of the individual Trustees, or their contractors,
4 subcontractors, or consultants who worked on the Trustees' natural resource damage assessment
5 in Port Angeles Harbor;
6

7 i. liability for civil penalties under the Clean Water Act or any other
8 applicable federal or state law if the release or discharge violated a regulatory requirement under
9 that statute; and
10

11 j. criminal liability to the United States or State.

12 **X. COVENANT NOT TO SUE BY DEFENDANT**

13
14 15. Defendant covenants not to sue and agrees not to assert any claims or causes of
15 action against the Plaintiffs, or their contractors or employees, relating to Covered Natural
16 Resource Damages or this Consent Decree, including but not limited to:

17 a. any direct or indirect claim for reimbursement of any payment for
18 Covered Natural Resource Damages from the Hazardous Substance Superfund based on Sections
19 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or
20 9613, or any other provision of law; and
21

22 b. any claim against the United States, the State, or the Tribal Trustees
23 pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Covered
24 Natural Resource Damages.
25

26 16. Nothing in this Consent Decree shall be deemed to constitute approval or
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1 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or
2 40 C.F.R. 300.700(d).

3
4 17. Defendant agrees not to file a brief or otherwise oppose any other settlement
5 agreements that resolve liability for natural resource damages at the Site between the Trustees
6 and persons who are not a party to this Consent Decree.

7
8 **XI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

9
10 18. Nothing in this Consent Decree shall be construed to create any rights in, or grant
11 any cause of action to, any person not a Party to this Consent Decree. Each of the Parties
12 expressly reserves any and all rights (including, but not limited to, any right to contribution
13 under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of
14 action they each may have with respect to any matter, transaction, or occurrence relating in any
15 way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes
16 the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C.
17 § 9613(f)(2)-(3), to pursue any such persons to obtain additional relief (including response
18 action, response costs, and natural resource damages) and to enter into settlements that give rise
19 to contribution protection pursuant to Section 113(f)(2). Nor does this Consent Decree diminish
20 the right of the State of Washington to pursue any such persons to obtain additional relief under
21 RCW 70A.305.

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23
24 19. The Parties agree, and by entering this Consent Decree this Court finds, that this
25 settlement constitutes a judicially approved settlement for purposes of Section 113(f)(2), and that
26 Defendant is entitled, as of the effective date of this Consent Decree, to protection from
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1 contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C.
2 § 9613(f)(2), and RCW 70A.305.040(4)(d), or as may be otherwise provided by law, for Covered
3 Natural Resource Damages; provided, however, that if the Plaintiffs exercise their rights under
4 the reservations in Section IX, other than in Paragraphs 14(f) (criminal liability), the contribution
5 protection afforded by this Consent Decree will no longer include those matters that are within
6 the scope of the exercised reservation. The contribution protection afforded by this Consent
7 Decree shall take effect upon receipt of Defendant's payments pursuant to Section VI of this
8 Consent Decree.
9

10
11 20. Defendant agrees that with respect to any suit or claim for contribution brought
12 against it for matters related to this Consent Decree, the Defendant will notify the persons
13 identified in Section XIII (Notices and Submissions) in writing within 10 days of service of the
14 complaint or claim upon it. In addition, Defendant shall notify the persons identified in Section
15 XIII (Notices and Submissions) within 10 days of service or receipt of any Motion for Summary
16 Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for
17 matters related to this Consent Decree.
18

19
20 21. Defendant also agrees that they will notify the Trustees in writing no later than 60
21 days before bringing a suit or claim for contribution for Covered Natural Resource Damages.
22 Defendant also will notify the Trustees of any settlement of claims (regardless of whether the
23 claim is filed or unfiled) for contribution for Covered Natural Resource Damages.
24

25 22. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs
26 for injunctive relief, recovery of response costs, or other appropriate relief other than Covered
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1 Natural Resource Damages, Defendant shall not assert, nor may they maintain, any defense or
2 claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion,
3 claim-splitting, or other defenses based upon any contention that the claims raised by the
4 Plaintiffs in the subsequent proceeding were or should have been brought in the instant case;
5 provided, however, that nothing in this Paragraph affects the enforceability of the covenants not
6 to sue set forth in Section VIII.
7

8
9 **XII. RETENTION OF RECORDS**

10 23. Until 5 years after the effective date, Defendant shall preserve and retain all non-
11 identical copies of records and documents (including records or documents in electronic form)
12 now in their possession or control or which come into their possession or control that concern
13 their or others' liability under CERCLA or MTCA in Port Angeles Harbor. Each of the above
14 record retention requirements shall apply regardless of any retention policy to the contrary.
15

16
17 24. At the conclusion of this document retention period, Defendant shall notify the
18 Trustees at least 90 days prior to the destruction of any such records or documents, and, upon
19 written request by the Trustees, Defendant shall deliver any such non-privileged records or
20 documents to the Trustees. Defendant may assert that certain documents, records and other
21 information are privileged under the attorney-client privilege or any other privilege recognized
22 by federal law. If Defendant asserts such a privilege, they shall provide the Plaintiffs with the
23 following: (1) the title of the document, record, or information; (2) the date of the document,
24 record, or information; (3) the name and title of the author of the document, record, or
25 information; (4) the name and title of each addressee and recipient; (5) a description of the
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1 subject of the document, record, or information; and (6) the privilege asserted by Defendant.

2 However, no documents, reports or other information created or generated pursuant to the
3 requirements of the Consent Decree shall be withheld on the grounds that they are privileged.
4

5 25. Defendant hereby certifies individually that, to the best of its knowledge and
6 belief, after a reasonable inquiry that fully complies with the Federal Rules of Civil Procedure, it
7 has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents
8 or other information (other than identical copies) relating to its potential liability regarding the
9 Site since notification of potential liability by any Trustee.
10

11 **XIII. NOTICES AND SUBMISSIONS**
12

13 26. 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 this Consent Decree for Plaintiffs and Defendant,
18

19
20 As to Trustees

21 **State**

22
23 Rebecca S. Lawson, PE, LHG
24 Interim Program Manager
25 Toxics Cleanup Program
26 Washington State Department of Ecology
27 PO Box 47775
28 Olympia, WA 98504-7775
C: 360-790-2231
rlaw461@ecy.wa.gov

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Ecology Division
Office of the Attorney General of Washington
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DOI

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Office of the Regional Solicitor
U.S. Department of the Interior
601 SW 2nd Ave
Suite 1950
Portland, OR 97204
(503) 231-6826
(503) 231-2166 (fax)
Brad.grenham@sol.doi.gov

Jeff Krausmann
Washington Fish and Wildlife Office
U.S. Fish and Wildlife Service
510 Desmond Dr. SE, Suite 102
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(360) 753-9440
Jeff_krausmann@fws.gov

NOAA

Office of General Counsel, Natural Resources Section
Attn: Ericka Hailstocke-Johnson
1410 Neotomas Avenue, Suite 110
Santa Rosa, CA, 95405
ericka.hailstocke-johnson@noaa.gov

National Marine Fisheries Service, Restoration Center
Attn: Paul Cereghino
510 Desmond Drive Southeast, Suite 103
Lacey, WA 98503
paul.r.cereghino@noaa.gov

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Office of Response and Restoration, Assessment and Restoration
Division
Attn: Robert Neely
NOAA Western Region Center Building 1
7600 Sand Point Way NE
Seattle, WA 98115
robert.neely@noaa.gov

Lower Elwha Klallam Tribe

Stephen H. Suagee
Office of Tribal Attorney
Lower Elwha Klallam Tribe
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Mobile: 360-461-2989
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Jamestown S’Klallam Tribe

Hansi Hals
Natural Resources Director
Jamestown S’Klallam Tribe
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Sequim WA 98382
(360) 681-4601
Cell (360) 460-1578

1 **Port Gamble S’Klallam Tribe**

2 Steven Moe
3 Tribal Attorney
4 Port Gamble S’Klallam Tribe
5 31912 Little Boston Road N.E.
6 Kingston, WA 98346
7 (360) 297-6242
8 (360) 297-7097 fax
9 smoe@pgst.nsn.us

10 As to United States

11 Chief, Environmental Enforcement Section
12 Environment and Natural Resources Division
13 U.S. Department of Justice
14 P.O. Box 7611
15 Washington, D.C. 20044-7611
16 Re: DJ# 90-11-3-10973

17 Rachel Hankey
18 Trial Attorney
19 P.O. Box 7611
20 Washington, D.C. 20044-7611
21 (415)744-6471
22 Rachel.hankey@usdoj.gov

23 As to Defendant:

24 City Attorney of Port Angeles
25 321 E. 5th Street
26 Port Angeles, WA 98362
27 (360) 417-4530
28 Wbloor@cityofpa.us

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1 Valerie Fairwell
2 Cascadia Law Group PLLC
3 1201 Third Avenue, Suite 320
4 Seattle, WA 98101
5 (206) 292-2656
6 vfairwell@cascadialaw.com

7 **XIV. EFFECTIVE DATE**

8 27. The effective date of this Consent Decree shall be the date upon which this
9 Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted,
10 whichever occurs first, as recorded on the Court’s docket, except as otherwise provided herein.

11 **XV. RETENTION OF JURISDICTION**

12 28. This Court retains jurisdiction over both the subject matter of this Consent Decree
13 and the Parties for the duration of the performance of the terms and provisions of this Consent
14 Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such
15 further order, direction, and relief as may be necessary or appropriate for the construction or
16 modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to
17 resolve disputes.
18

19 **XVI. INTEGRATION/APPENDICES**

20 29. This Consent Decree and its appendices constitute the final, complete, and
21 exclusive agreement and understanding with respect to the settlement embodied in this Decree.
22 The Parties acknowledge that there are no representations, agreements, or understandings
23 relating to the settlement other than those expressly contained in this Decree. The following
24 appendices are attached to and incorporated into this Consent Decree:
25
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1 Appendix A: Site Diagram

2
3 Appendix B: Rayonier Mill Study Area Map

4 Appendix C: Port Angeles Harbor Map

5
6 **XVII. MODIFICATION**

7
8 30. No material modifications shall be made to any requirement under this Consent
9 Decree without written notification to and written approval of the United States Department of
10 Justice and the Trustees, Defendant, and the Court. Modifications to this Consent Decree that do
11 not materially alter the terms of this Consent Decree may be made by written agreement between
12 the United States Department of Justice, the Trustees, and Defendant.
13

14 **XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

15
16 31. This Decree shall be lodged with the Court for a period of not less than 30 days
17 for public notice and comment. The Plaintiffs each reserve the right to withdraw or withhold
18 their consent if the comments regarding the Decree disclose facts or considerations that indicate
19 this Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this
20 Consent Decree without further notice and agree not to withdraw from or oppose entry of this
21 Consent Decree by the Court or to challenge any provision of the Decree, unless the United
22 States has notified Defendant in writing that it no longer supports entry of the Decree.
23
24

25 32. If for any reason this Court does not approve this Decree in the form presented,
26 this Decree may be voided at the sole discretion of any Party, and the terms of the agreement
27
28

1 may not be used as evidence in any litigation among the Parties.

2
3 **XIX. SIGNATORIES/SERVICE**

4 33. The Deputy Section Chief for the Environmental Enforcement Section within the
5 Environment and Natural Resources Division of the United States Department of Justice and
6 each undersigned representative of the State, the Lower Elwha Klallam Tribe, the Port Gamble
7 S’Klallam Tribe, the Jamestown S’Klallam Tribe, and Defendant certifies that they are
8 authorized to enter into the terms and conditions of this Consent Decree and to execute and bind
9 legally the Party that they represent to this document.
10

11
12 34. This Consent Decree may be signed in counterparts, and its validity shall not be
13 challenged on that basis. Defendant agrees to accept service of process by mail with respect to
14 all matters arising under or relating to this Consent Decree and to waive the formal service
15 requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any
16 applicable Local Rules of this Court including, but not limited to, service of a summons.
17 Defendant need not file an answer to the complaint in this action unless or until the Court
18 expressly declines to enter this Consent Decree. Electronic and digital signatures will be
19 accepted and treated as original.
20
21

22 **XX. FINAL JUDGMENT**

23
24 35. Upon approval and entry of this Consent Decree by the Court, this Consent
25 Decree shall constitute a final judgment between and among the United States, the State, the
26 Lower Elwha Klallam Tribe, the Port Gamble S’Klallam Tribe, the Jamestown S’Klallam Tribe,
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1 and Defendant. The Court finds that there is no just reason for delay and therefore enters this
2 judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

3
4 SO ORDERED THIS 9th day of June, 2021.

5
6 

7 ROBERT J. BRYAN
8 United States District Judge

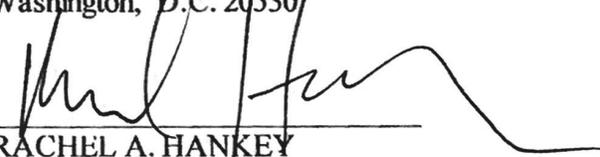
1 Signature Page for Decree regarding Western Port Angeles Harbor
2 U.S., et al., v. City of Port Angeles

3 FOR THE UNITED STATES OF AMERICA:

4 Date: 3/16/21


NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section
Environment & Natural Resources
Division U.S. Department of Justice
Washington, D.C. 20530

9 Date: 3/19/21


RACHEL A. HANKEY
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources
Division U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Phone: (415) 744-6471
Email: rachel.hankey@usdoj.gov

28 CONSENT DECREE – Page 27

Rachel Hankey
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(415) 7446471

1 Signature Page for Decree regarding Western Port Angeles Harbor
2 *U.S., et al., v. City of Port Angeles*

3
4 FOR THE STATE OF WASHINGTON:

5
6 Date: 2/4/2021

Rebecca S. Lawson, Digitally signed by Rebecca
S. Lawson, PE, LHG Acting
PE, LHG Acting Program Manager
Program Manager Date: 2021.02.04 14:27:05
-08'00'

REBECCA LAWSON
Toxic Cleanup Program Manager
Department of Ecology



9 Date: 2/5/2021

JONATHAN THOMPSON
Assistant Attorney General
State of Washington

1 Signature Page for Decree regarding Western Port Angeles Harbor
2 *U.S., et al., v. City of Port Angeles*

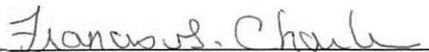
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4 FOR THE LOWER ELWHA KLALLAM TRIBE:

5
6 Date: Feb. 4, 2021



7 _____
8 Stephen H. Suagee, WSBA No. 26776
9 Office of Tribal Attorney
10 Lower Elwha Klallam Tribe
11 2851 Lower Elwha Rd.
12 Port Angeles, WA 98363
13 (360) 504-3001
14 steve.suagee@elwha.org

15 *Attorney for the Lower Elwha Klallam Tribe*



16 _____
17 Frances G. Charles, Chairwoman
18 Lower Elwha Klallam Tribe
19 2851 Lower Elwha Rd.
20 Port Angeles, WA 98363

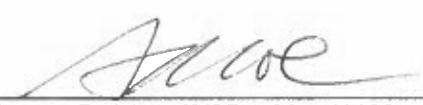
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28 CONSENT DECREE – Page 29

Rachel Hankey
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Environment and Natural Resources Division
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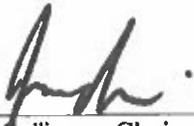
1 Signature Page for Decree regarding Western Port Angeles Harbor
2 *U.S., et al., v. City of Port Angeles*

3 FOR THE PORT GAMBLE S'KLALLAM TRIBE:
4

5
6 Date: 2/9/21


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Attorney for Port Gamble S'Klallam Tribe


Jeromy Sullivan, Chairman
Port Gamble S'Klallam Tribe
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28 CONSENT DECREE – Page 30

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1 Signature Page for Decree regarding Western Port Angeles Harbor
2 *U.S., et al., v. City of Port Angeles*

3 FOR THE JAMESTOWN S'KLALLAM TRIBE:

4
5 Date: 2.25.2021

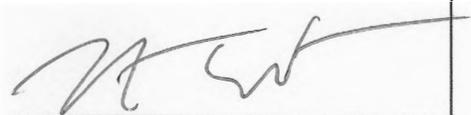


6 W. Ron Allen
7 Chair/ CEO
8 Jamestown S'Klallam Tribe

1 Signature Page for Decree regarding Western Port Angeles Harbor
2 *U.S., et al., v. City of Port Angeles*

3 FOR THE CITY OF PORT ANGELES
4

5 Date: 2/12/2021
6



Nathan A. West
City Manager
City of Port Angeles
321 E. 5th Street
Port Angeles, WA 98362

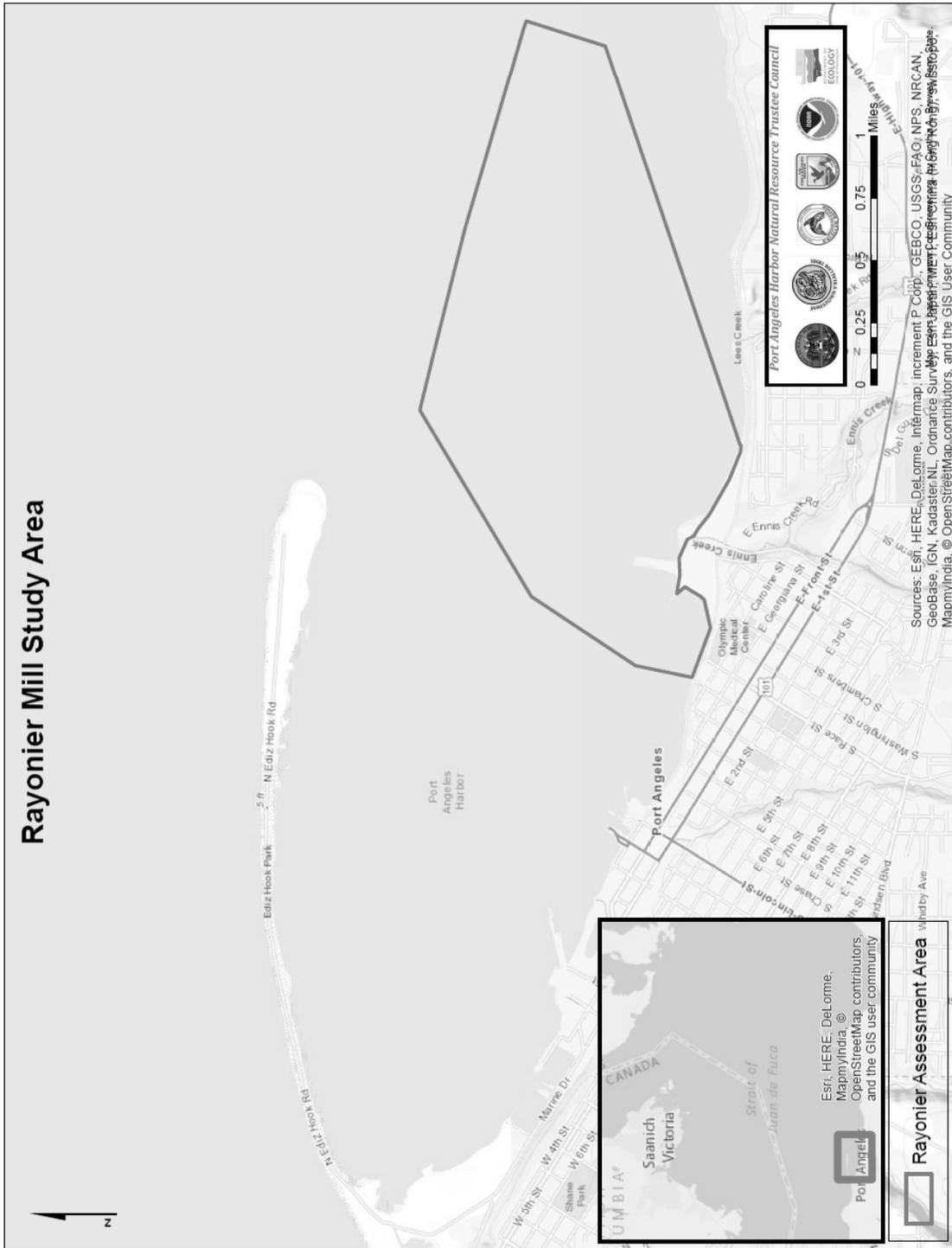
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CONSENT DECREE – Page 32

Rachel Hankey
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APPENDIX B

Rayonier Mill Study Area



Rachel Hankey
 United States Department of Justice
 Environment and Natural Resources Division
 P.O. Box 7611, Washington, D.C. 20044

U.S., et al. v. City of Port Angeles

APPENDIX C
PORT ANGELES HARBOR



CONSENT DECREE Page 35

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