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HONORABLE RONALD B. LEIGHTON

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,)	CIVIL NO. 15-5548RBL
)	
Plaintiffs,)	CONSENT DECREE
)	
v.)	
)	
ADVANCE ROSS SUB COMPANY, BNSF)	
RAILWAY COMPANY, BP PRODUCTS NORTH)	
AMERICA, INC. AND ATLANTIC RICHFIELD)	
COMPANY, BRANDRUD FURNITURE, INC.,)	
NEMSHOFF CHAIRS, INC. AND HERMAN)	
MILLER, INC., CANAM MINERALS/KLEEN)	

CONSENT DECREE - 1

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Washington, D.C. 20044
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1 BLAST DIV., CARSTENS COMPANY, CHEVRON)
2 U.S.A. INC., UNION OIL COMPANY OF)
3 CALIFORNIA, TEXACO DOWNSTREAM)
4 PROPERTIES INC., CITY WATERWAY)
5 INVESTMENTS, INC., CLOSING DAYS, INC.,)
6 FORMERLY KNOWN AS RICHARD A. JOHNSON)
7 CEDAR PRODUCTS, INC., FORMERLY D/B/A)
8 JOHNSON POSTMAN COMPANY, EXXONMOBIL)
9 OIL CORPORATION AND EXXON MOBIL)
10 CORPORATION, F. S. HARMON)
11 MANUFACTURING COMPANY,)
12 GLACIER NORTHWEST, INC. (LONE STAR)
13 NORTHWEST), GLOBE MACHINE)
14 MANUFACTURING COMPANY, GULL)
15 INDUSTRIES, INC., INVESTCO FINANCIAL)
16 CORPORATION, J.M. MARTINAC)
17 SHIPBUILDING CORPORATION, KING COUNTY)
18 METRO TRANSIT DIVISION,)
19 LOUISIANA-PACIFIC CORPORATION, MARINE)
20 IRON WORKS, INC., MCFARLAND CASCADE)
21 HOLDINGS, INC., CASCADE POLE AND)
22 LUMBER COMPANY AND MCFARLAND)
23 CASCADE POLE & LUMBER COMPANY,)
24 MENASHA CORPORATION, MOORAGE)
25 ASSOCIATES, LLC, MOUNTAIN STATES)
26 POWER (PACIFICORP), MUFU UNION BANK,)
27 N.A., NESTLÉ USA, INC., NICHOLS TRUCKING)
28 COMPANY / JOHN AND ELDEENA NICHOLS,)
NORTHWEST ETCH TECHNOLOGY, INC.,)
OFFICEMAX INCORPORATED, OLYMPIC)
CHEMICAL CORPORATION, OMYA, INC.,)
PACIFIC NORTHERN OIL CORP., PETRICH)
MARINE DOCK, LLC, PHILLIPS 66 COMPANY,)
PRECISION MACHINE WORKS, INC., PREMIER)

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1 INDUSTRIES, INC., PUGET SOUND ENERGY,)
 2 RAINIER PLYWOOD CO., SHELL OIL)
 3 COMPANY, SHORE TERMINALS LLC,)
 4 SUPERVALU, INC., THE BOEING COMPANY,)
 5 THE DIL TRUST, INCLUDING ITS)
 6 PREDECESSOR THE DILLINGHAM)
 7 CORPORATION, THE JACK MORRIS ESTATE/)
 8 MORRIS FAMILY TRUSTS, THE JOSEPH L.)
 9 TRUCCO AND JEAN E. TRUCCO LIVING TRUST,))
 10 COLONIAL FRUIT & PRODUCE, INC., THE)
 11 WATTLES COMPANY, THREE RIVERS)
 12 MANAGEMENT, INC. FOR THE FORMER)
 13 HYGRADE FOOD PRODUCTS CORP.,)
 14 TRUCK-RAIL HANDLING, INC., UNION PACIFIC)
 15 RAILROAD COMPANY, WASHINGTON FLORAL)
 16 SERVICE, INC., WASHINGTON STATE)
 17 DEPARTMENT OF TRANSPORTATION, and)
 18 WOODWORTH & COMPANY, INC.)
 19)
 20)
 21)
 22)
 23)
 24)
 25)
 26)
 27)
 28)
 Defendants.)

I. INTRODUCTION

The United States of America (“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 Advance Ross Sub Company, BNSF Railway Company, BP Products North America, Inc. and Atlantic Richfield Company, Brandrud

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1 Furniture, Inc., Nemshoff Chairs, Inc. and Herman Miller, Inc., CanAm Minerals/Kleen Blast
2 Div., Carstens Company, Chevron U.S.A. Inc., Union Oil Company of California, Texaco
3 Downstream Properties Inc., City Waterway Investments, Inc., Closing Days, Inc., formerly
4 known as Richard A. Johnson Cedar Products, Inc., formerly d/b/a Johnson Postman Company,
5 ExxonMobil Oil Corporation and Exxon Mobil Corporation, F. S. Harmon Manufacturing
6 Company, Glacier Northwest, Inc. (Lone Star Northwest), Globe Machine Manufacturing
7 Company, Investco Financial Corporation, J.M. Martinac Shipbuilding Corporation, King
8 County Metro Transit Division, Louisiana-Pacific Corporation, Marine Iron Works, Inc.,
9 McFarland Cascade Holdings, Inc., Cascade Pole and Lumber Company and McFarland Cascade
10 Pole & Lumber Company, Menasha Corporation, Moorage Associates, LLC, Mountain States
11 Power (PacifiCorp), MUFG Union Bank, N.A., Nestlé USA, Inc., Nichols Trucking Company /
12 John and Eldeena Nichols, Northwest Etch Technology, Inc., OfficeMax Incorporated, Olympic
13 Chemical Corporation, OMYA, Inc., Pacific Northern Oil Corp., Petrich Marine Dock, LLC,
14 Phillips 66 Company, and its predecessor-in-interest ConocoPhillips Company, Precision
15 Machine Works, Inc., Premier Industries, Inc., Puget Sound Energy, Rainier Plywood Co., Shell
16 Oil Company, Shore Terminals LLC, SUPERVALU, Inc., The Boeing Company, The DIL
17 Trust, including its predecessor the Dillingham Corporation, The Jack Morris Estate/Morris
18 Family Trusts, The Joseph L. Trucco and Jean E. Trucco Living Trust, Colonial Fruit & Produce,
19 Inc., The Wattles Company, Three Rivers Management, Inc. for the former Hygrade Food
20 Products Corp., Truck-Rail Handling, Inc., Union Pacific Railroad Company, Washington Floral
21 Service, Inc., Washington State Department of Transportation, and Woodworth & Company, Inc.

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1 (“Defendants”) pursuant to Section 107 of the Comprehensive Environmental Response,
2 Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9607; the Model
3 Toxics Control Act (MTCA), chapter 70.105D RCW; Section 311 of the Clean Water Act
4 (CWA), 33 U.S.C. § 1321; the Washington Water Pollution Control Act (WPCA), chapter 90.48
5 RCW; and Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. §
6 2702(b)(2)(A). This Consent Decree (the “Decree”) addresses the claims asserted in the
7 Complaint against Defendants for Natural Resource Damages (as defined below) in the
8 Commencement Bay Environment (as defined below).
9

10 II. RECITALS

11
12 A. The United States Department of Commerce, acting through NOAA; the United
13 States Department of the Interior; the Washington Department of Ecology on behalf of the State
14 of Washington; the Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe (collectively,
15 “the Trustees” and, individually, a “Trustee”), under the authority of Section 107(f) of CERCLA,
16 42 U.S.C. § 9607(f), Section 1321(f)(5) of CWA, Section 1006(b) of OPA, 33 U.S.C. § 2706(b),
17 and 40 C.F.R. Part 300, subpart G, MTCA and the WPCA, serve as trustees for natural resources
18 for the assessment and recovery of damages for injury to, destruction of, or loss of natural
19 resources under their trusteeship.
20

21
22 B. Investigations conducted by the United States Environmental Protection Agency
23 (“EPA”), the Trustees, and others have detected hazardous substances in the sediments, soils and
24 groundwater of the Commencement Bay Environment, including but not limited to arsenic,
25 antimony, cadmium, chromium, copper, mercury, nickel, lead, zinc, bis(2-ethylhexyl)-phthalate,
26

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1 hexachlorobenzene, hexachlorobutadiene, polycyclic aromatic hydrocarbons (PAHs), and
2 polychlorinated biphenyls (PCBs). In particular, the Trustees have documented the presence of
3 over 23 hazardous substances in the marine sediments of Commencement Bay's Thea Foss and
4 Wheeler-Osgood Waterways.
5

6 C. The Trustees began assessing natural resource damages in the Commencement
7 Bay Environment in October 1991 by finding that hazardous substances had been released into
8 the Commencement Bay Environment; that public trust natural resources had likely been injured
9 by the releases; that data sufficient to pursue a natural resource damage assessment were
10 available or could likely be obtained at a reasonable cost; and that, without further action,
11 implemented and planned response actions would not adequately remedy the resource injuries.
12

13 *See* Preassessment Screen of Natural Resource Damages in the Commencement Bay
14 Environment Due to Activities Taking Place In and About the Commencement Bay/Nearshore
15 Tidelands (CB/NT) Superfund Site (October 29, 1991). The Trustees notified representatives of
16 known potentially responsible parties (“PRPs”) of their intent to conduct a damage assessment.
17 The Trustees subsequently entered into a Funding and Participation Agreement for Phase 1 of the
18 Commencement Bay-Wide Natural Resource Damage Assessment, dated February 10, 1993,
19 with several of the major PRPs. The Trustees published a report on the results of Phase 1 of the
20 damage assessment process in June 1995. Those major PRPs did not participate in subsequent
21 stages of the damage assessment, and the Trustees continued the process independently. The
22 Trustees have now completed a series of studies during Phase 2 of the damage assessment,
23 focusing on impacts of contaminants on marine sediments, benthic organisms, flatfish and
24

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1 salmonids. Results of those studies were published in a series of reports, consisting of
2 Commencement Bay Natural Resource Trustees, 1996, Hylebos Waterway Data and Data
3 Analysis Report; Collier, T.K., L.L. Johnson, M.S. Myers, C.M. Stehr, M.M. Krahn, and J.E.
4 Stein, 1998, Fish injury in the Hylebos Waterway in Commencement Bay, Washington; Mary R.
5 Arkoosh, Ed Casillas, Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects of
6 Chemical Contaminants from the Hylebos Waterway on Disease Resistance of Juvenile Salmon;
7 Ed Casillas, Bich-Thuy L. Eberhart, Frank C. Sommers, Tracy K. Collier, Margaret M. Krahn
8 and John E. Stein, 1998, Effects of Chemical Contaminants from the Hylebos Waterway on
9 Growth of Juvenile Chinook Salmon; and Ed Casillas, Bich-Thuy L. Eberhart, Tracy K. Collier,
10 Margaret M. Krahn and John E. Stein, 1998, Exposure of Juvenile Chinook Salmon to Chemical
11 Contaminants Specific to the Hylebos Waterway. While the Trustees' studies were specific to
12 the nearby Hylebos Waterway, the Trustees assert that the study results are equally applicable to
13 the circumstances of the Thea Foss and Wheeler-Osgood Waterways. Without admitting
14 Plaintiffs' allegations, the Plaintiffs and Defendants (collectively, the "Parties" and, individually,
15 a "Party") agree that no further natural resource damage assessment is required to effectuate the
16 purposes of this Consent Decree, with respect to Defendants.

17
18
19
20 D. Plaintiffs have filed a complaint (the "Complaint") pursuant to Section 107 of
21 CERCLA, 42 U.S.C. § 9607; MTCA, chapter 70.105D RCW; CWA, 33 U.S.C. §§ 1251 et seq.;
22 and OPA, 33 U.S.C. §§ 2701 et seq., seeking recovery from Defendants of damages for injury to,
23 destruction of, and loss of natural resources resulting from releases of hazardous substances into
24 the Commencement Bay Environment, including the costs of assessing the damages.

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1 E. Plaintiffs allege in the Complaint that Defendants each own or in the past owned
2 and/or operated real property or facilities from which storm water, surface water runoff,
3 wastewater, other process discharges, and/or groundwater have flowed to the Commencement
4 Bay Environment. Plaintiffs also allege that investigations by EPA and others have detected
5 concentrations of hazardous substances in soils, groundwater or sediments on, in or adjacent to
6 those properties or facilities. Some of these hazardous substances are found in the sediments of
7 the Commencement Bay Environment.
8

9 F. Plaintiffs allege in the Complaint that hazardous substances have been released to
10 the Commencement Bay Environment from properties or facilities owned and/or operated by
11 each Defendant through direct discharge, surface water runoff, groundwater and seeps, and that
12 those hazardous substances have caused injury to, destruction of and loss of natural resources in
13 the Commencement Bay Environment under Plaintiffs' trusteeship, including fish, shellfish,
14 invertebrates, birds, marine sediments, and resources of cultural significance. Plaintiffs further
15 allege that each of them and the public have suffered the loss of natural resource services
16 (including ecological services as well as direct and passive human use losses) as a consequence
17 of those injuries.
18

19 G. Plaintiffs allege that each Defendant is either (a) the owner and/or operator of a
20 vessel or a facility; (b) a person who at the time of disposal or release of any hazardous substance
21 owned or operated any facility at which such hazardous substances were disposed of; (c) a
22 person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged
23 with a transporter for transport for disposal or treatment, of hazardous substances owned or
24

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1 possessed by such person, by any other party or entity, or otherwise generated any hazardous
2 substance disposed of or treated, at any facility or incineration vessel owned or operated by
3 another party or entity and containing such hazardous substances; and/or (d) a person who
4 accepts or accepted any hazardous substances for transport to disposal or treatment facilities,
5 incineration vessels or sites selected by such person from which there is a release or a threatened
6 release of a hazardous substance that causes the incurrence of response costs within the meaning
7 of 42 U.S.C. § 9607 and RCW 70.105D.040.
8

9 H. Defendants each deny all the allegations of the Complaint.
10

11 I. Although the Trustees have initiated but not yet completed a natural resource
12 damage assessment for the Commencement Bay Environment, the Trustees have developed and
13 analyzed information sufficient to support a settlement that is fair, reasonable and in the public
14 interest.
15

16 J. To facilitate resolving natural resource damage claims, relying upon the results of
17 the damage assessment studies, remedial investigations, regulatory standards, and scientific
18 literature, the Trustees developed an estimate of the amount of injury to natural resources that
19 had occurred as a result of releases of hazardous substances to the Thea Foss and Wheeler-
20 Osgood Waterways. The Trustees quantified the effects of the injuries in terms of the losses of
21 ecological services over affected areas of the waterway and over time, discounted to the current
22 year. The Trustees used the term *discounted ecological service acre-years* (DSAYs) to describe
23 both the scale of the injuries, and the amount of habitat restoration they are seeking to
24 compensate for the injuries.
25

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1 K. Plaintiffs assert that hazardous-substance releases to the Thea Foss and Wheeler-
2 Osgood Waterways have become dispersed and commingled to the extent that the effects of one
3 PRP's releases cannot be readily distinguished from another's. Plaintiffs further assert that the
4 circumstances of the contamination of the Thea Foss and Wheeler-Osgood Waterways make all
5 PRPs who contributed to the contamination jointly and severally liable for all injuries to natural
6 resources that have resulted from the contamination. As a consequence, Plaintiffs assert the right
7 to recover for the loss of all the calculated DSAYs and associated damage assessment costs from
8 any Thea Foss and Wheeler-Osgood Waterways PRP. Without prejudice to their position and
9 solely for purposes of facilitating settlement with individual PRPs, the Trustees have determined
10 that settling with Defendants for a portion of the natural resource damages attributable to all
11 waterway sources would result in a fair and equitable resolution of the Trustees' claims. Taking
12 into consideration prior settlements with other PRPs who bore some liability for hazardous
13 substance contamination of the Thea Foss and Wheeler-Osgood Waterways and releases of
14 hazardous substances by non-settling parties, the Trustees have agreed to settle their claims
15 against Defendants for the equivalent of 156.78 DSAYs, a portion of the Trustees' unreimbursed
16 damage assessment costs, plus providing funding for long-term habitat oversight and stewardship
17 activities for agreed restoration projects.

21 L. In settlement of this action Defendants have agreed, in lieu of and as equivalent to
22 monetary damages, (1) to contract with King County to secure permanently the right to use real
23 property for the purpose of natural resource restoration, to construct thereon the habitat
24 restoration project described in Appendix A ("Countyline Project" or "Project"), attached hereto

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1 and by this reference incorporated herein, and perform any additional activities described in
2 Appendix A; (2) to permanently protect a portion of the bed and shoreline of the Wheeler-
3 Osgood Waterway (“Wheeler-Osgood Site,” described in Appendix B) by executing and
4 recording the Wheeler-Osgood Site deed restriction, attached hereto as Appendix C, intended to
5 preserve the site in perpetuity for use as a habitat restoration site; (3) to pay \$50,000.00 to
6 support project oversight by the Trustees; (4) to pay \$188,894.00 toward the Trustees’ long-term
7 restoration project oversight and stewardship activities and (5) to reimburse \$833,705.00 in
8 natural resource damage assessment costs incurred by the Trustees.
9

10
11 M. The Trustees have determined that the timely actions and expenditures to be
12 undertaken by Defendants under this Consent Decree are appropriate and necessary to protect
13 and restore the natural resources allegedly injured as a result of alleged actions or omissions of
14 Defendants that are addressed herein, that such timely actions and expenditures will produce
15 DSAYs sufficient to offset Defendants’ allocated liability, and are adequate to redress
16 Defendants’ responsibility for the Natural Resource Damages that are the subject of this
17 proceeding. In return the Trustees have agreed to covenant not to sue Defendants for Natural
18 Resource Damages as provided below in Paragraph 53.
19

20 N. Defendants do 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 O. Plaintiffs and Defendants 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

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1 reasonable, and in the public interest.

2 NOW, THEREFORE, it is hereby Ordered, Adjudged and Decreed:

3 III. JURISDICTION AND VENUE

4
5 1. This Court has jurisdiction over the subject matter of this action pursuant to 28
6 U.S.C. §§ 1331, 1345 and 1367, and 42 U.S.C. §§ 9607 and 9613(b) and 33 U.S.C. § 2717(b).
7 The Court has personal jurisdiction over the Parties. Solely for the purposes of this Decree and
8 the underlying Complaint, the Parties waive all objections and defenses that they may have to
9 jurisdiction of the Court or to venue in this District. The Parties may not challenge the terms of
10 this Decree or this Court's jurisdiction to enter and enforce this Decree.
11

12 IV. PARTIES BOUND

13 2. This Decree is binding upon the United States, the State, the Puyallup Tribe of
14 Indians, the Muckleshoot Indian Tribe, each Defendant and their heirs, successors and assigns.
15 Any change in ownership or corporate or other legal status, including but not limited to any
16 transfer of assets or real or personal property, will in no way alter the status or responsibilities of
17 the Parties under this Decree.
18

19 3. Defendants shall provide a copy of this Consent Decree to each contractor hired
20 by them to perform any of the work required by this Consent Decree, and to each person
21 representing Defendants with respect to any such work, and shall condition all future contracts
22 entered into by Defendants hereunder upon performance of the work in conformity with the
23 terms of this Consent Decree. Defendants or their contractors shall provide written notice of the
24 Consent Decree to all subcontractors hired by Defendants' contractors to perform any portion of
25

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1 the work. Defendants shall be responsible for ensuring that all work performed by their
2 contractors and subcontractors is performed in accordance with this Consent Decree.

3
4 V. DEFINITIONS

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

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

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

20 c. "Commencement Bay Restoration Account" means the Commencement
21 Bay Natural Resource Restoration Account authorized by the Order Directing the Deposit of
22 Natural Resource Damages into the Registry of the Court in United States v. Port of Tacoma,
23
24
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1 No. C93-5462B (W.D. Wash. Oct. 8, 1993) (attached as Appendix D).

2 d. "Consent Decree" or "Decree" means this Consent Decree and all attached
3 appendices. In the event of a conflict between this Consent Decree and any Appendix, the
4 Consent Decree will control.

5 e. "Countyline Project" or "Project" means the Countyline Project described
6 in Appendix A.

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

10 g. "DSAYs" means discounted ecological service acre-years, the metric
11 established by the Trustees to determine the scale of Natural Resource Damages liability
12 associated with the Thea Foss and Wheeler-Osgood Waterways and the natural resource
13 restoration efforts needed to compensate for injury to, destruction or loss of natural resources
14 giving rise to liability.

15 h. "Defendant" means each one of, and "Defendants" means all of, Advance
16 Ross Sub Company, BNSF Railway Company, BP Products North America, Inc. and Atlantic
17 Richfield Company, Brandrud Furniture, Inc., Nemshoff Chairs, Inc. and Herman Miller, Inc.,
18 CanAm Minerals/Kleen Blast Div., Carstens Company, Chevron U.S.A. Inc., Union Oil
19 Company of California, Texaco Downstream Properties Inc., City Waterway Investments, Inc.,
20 Closing Days, Inc., formerly known as Richard A. Johnson Cedar Products, Inc., formerly d/b/a
21 Johnson Postman Company, ExxonMobil Oil Corporation and Exxon Mobil Corporation, F. S.

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1 Harmon Manufacturing Company, Glacier Northwest, Inc. (Lone Star Northwest), Globe
2 Machine Manufacturing Company, Investco Financial Corporation, J.M. Martinac Shipbuilding
3 Corporation, King County Metro Transit Division, Louisiana-Pacific Corporation, Marine Iron
4 Works, Inc., McFarland Cascade Holdings, Inc., Cascade Pole and Lumber Company and
5 McFarland Cascade Pole & Lumber Company, Menasha Corporation, Moorage Associates,
6 LLC, Mountain States Power (PacifiCorp), MUFG Union Bank, N.A., Nestlé USA, Inc., Nichols
7 Trucking Company / John and Eldeena Nichols, Northwest Etch Technology, Inc., OfficeMax
8 Incorporated, Olympic Chemical Corporation, OMYA, Inc., Pacific Northern Oil Corp., Petrich
9 Marine Dock, LLC, Phillips 66 Company, and its predecessor-in-interest ConocoPhillips
10 Company, Precision Machine Works, Inc., Premier Industries, Inc., Puget Sound Energy, Rainier
11 Plywood Co., Shell Oil Company, Shore Terminals LLC, SUPERVALU, Inc., The Boeing
12 Company, The DIL Trust, including its predecessor the Dillingham Corporation, The Jack
13 Morris Estate/Morris Family Trusts, The Joseph L. Trucco and Jean E. Trucco Living Trust,
14 Colonial Fruit & Produce, Inc., The Wattles Company, Three Rivers Management, Inc. for the
15 former Hygrade Food Products Corp., Truck-Rail Handling, Inc., Union Pacific Railroad
16 Company, Washington Floral Service, Inc., Washington State Department of Transportation, and
17 Woodworth & Company, Inc.

21
22 i. “Entry of the Consent Decree” means the date that the Court signs and
23 enters the Decree into the record of the above-captioned matter after the close of the public
24 comment period.

25 j. “King County” means the King County Department of Natural Resources

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1 and Parks, as sponsor and implementer of the Countyline Project. It does not mean or include
2 the King County Metro Transit Division, a named Defendant herein.

3 k. "MTCA" means the Model Toxics Control Act, Chapter 70.105D RCW.

4 l. "Natural Resources" means that definition as provided in 42 U.S.C. §
5 9601(16).
6

7 m. "Natural Resource Damages" means damages, including costs of damage
8 assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607; Chapter 70.105D
9 RCW; Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; Chapter 90.48 RCW; and
10 Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A), for
11 injury to, destruction of, or loss of natural resources resulting from releases of hazardous
12 substances or discharges of oil to the Commencement Bay Environment at or from sites along,
13 adjacent to or draining to the Thea Foss and Wheeler Osgood Waterways.
14

15 n. "Parties" mean the United States, the State of Washington, the Puyallup
16 Tribe of Indians, the Muckleshoot Indian Tribe and Defendants.
17

18 o. "Plaintiffs" means the United States, the State of Washington, the
19 Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe.
20

21 p. "Project Site" means the approximately 121 acre site composed of all or a
22 portion of King and Pierce County tax parcels in Pacific and Sumner, Washington, and
23 unincorporated Pierce County, Washington, as more particularly indicated in Appendix A, in
24 which King County has or is in the process of obtaining real property interests sufficient to
25 construct, repair, and maintain the Countyline Project in perpetuity, in a manner consistent with
26

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1 the terms of this Consent Decree.

2 q. "Trustees" mean the United States Department of Commerce, acting
3 through NOAA; the Department of the Interior; the Washington State Department of Ecology, on
4 behalf of the State of Washington; the Puyallup Tribe of Indians; and the Muckleshoot Indian
5 Tribe.
6

7 r. "Wheeler-Osgood Site" means the approximately four-acre site composed
8 of a portion of Pierce County tax parcel 0320041028, in Tacoma, Washington, as indicated in
9 Appendix B, that is owned by Defendant BNSF Railway Company that will become subject to a
10 Deed Restriction (Appendix C) intended to preserve the site in perpetuity for use as a habitat
11 restoration site.
12

13 VI. GENERAL PROVISIONS

14 5. The Complaint states claims upon which relief may be granted.

15 6. Nothing in this Consent Decree shall be construed as an admission of liability by
16 any Defendant for any claims or allegations made in the Complaint or in this Consent Decree.
17

18 7. Except where otherwise expressly provided, each Defendant shall be jointly and
19 severally responsible for performing the obligations undertaken by Defendants under this
20 Consent Decree, including those obligations specifically undertaken by King County. Plaintiffs
21 may take such actions as provided below to enforce the terms of this Consent Decree against any
22 one or more of Defendants as Plaintiffs may choose.
23

24 8. All activities undertaken by Defendants pursuant to this Consent Decree shall be
25 performed in accordance with the requirements of all applicable laws and permits.

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1 9. Defendants shall ensure that all work performed under this Consent Decree shall
2 be conducted pursuant to the design and schedule approved by the Trustees in Appendix A
3 attached hereto and shall be subject to review by the Trustees. If the Trustees determine that
4 Defendants are not complying with the design and schedule set forth in Appendix A, the Trustees
5 shall provide prompt written notice to Defendants specifying the basis for their determination of
6 noncompliance. Defendants may correct the noncompliance or invoke the dispute resolution
7 procedures set forth in Section XVII below. Subject to the right of Defendants to invoke the
8 dispute resolution provisions, the Trustees may require Defendants to take actions, to alter,
9 suspend or cease ongoing activities, and to alter, postpone or refrain from taking proposed
10 actions, as the Trustees reasonably deem necessary to ensure compliance with the terms of this
11 Consent Decree and any plans or proposals adopted hereunder.

14 10. This Consent Decree is not, and shall not be construed to be, a permit issued
15 pursuant to any law.

17 11. Where any portion of the activities undertaken pursuant to this Consent Decree
18 requires a federal, state or local permit or approval, Defendants shall cause timely and complete
19 applications to be submitted and take all other actions necessary to obtain all such permits or
20 approvals. Defendants shall use best efforts to cause any necessary permits to be obtained, and
21 any delays in permit issuance that may occur despite such best efforts shall not constitute non-
22 compliance with the timelines set out in Appendix A.

24 12. The Plaintiffs do not, by their consent to the entry of this Consent Decree, warrant
25 or aver in any manner that Defendants' compliance with this Consent Decree will result in

1 compliance with CERCLA or any other law. Compliance with this Consent Decree does not
2 diminish or affect Defendants' responsibility to comply with any applicable federal, state or local
3 law or regulation. The Parties agree that Defendants are responsible for achieving and
4 maintaining complete compliance with all applicable federal, state and local laws, regulations
5 and permits.
6

7 VII. PROJECT SITE

8 13. King County has obtained or is in the process of obtaining all real property
9 interests necessary to construct, operate, maintain and repair the Project Site forever for open
10 space, flood protection and control, salmon recovery and conservation purposes. Each parcel or
11 portion of a parcel constituting the Project Site as shown in Appendix E-1 hereto shall be subject
12 to deed restrictions, the form of which are attached as Appendices E-2 and E-3 hereto, and which
13 shall be recorded prior to the initiation of construction of the Project, and which shall bind such
14 parcels in perpetuity to the restrictions and requirements of this Consent Decree.
15
16

17 VIII. PROJECT DEVELOPMENT

18 14. Defendants shall provide the funds and services and ensure that all necessary
19 steps are taken to construct the Countyline Project and to perform any additional activities in
20 accordance with the details, specifications and project development schedule set out in Appendix
21 A.
22

23 15. Defendants shall avoid taking any action on the Project Site property or adjacent
24 property owned or controlled by Defendants that is inconsistent with this Consent Decree and
25 that would interfere with the Countyline Project such that it would substantially decrease the

1 likelihood of success of the Project. Provided, however, that Defendants (including their agents,
 2 contractors, successors and assigns) are authorized to use, develop, and operate on adjacent
 3 property as is consistent with existing or subsequently issued permits and is otherwise in
 4 compliance with applicable law, and such use, development and operations shall not be
 5 considered inconsistent with this Consent Decree or an interference with, or diminishment of, the
 6 Countyline Project. Provided, however, that no Defendant shall take or permit to be taken any
 7 action on adjacent property that constitutes a trespass on the Project Site. Defendants shall notify
 8 the Trustees in writing at least 30 days prior to entering into any contracts for or applying for any
 9 permits for the taking of any actions on the Countyline Project Site other than those identified in
 10 Appendix A. Such notice shall include a narrative description of the proposed actions plus a site
 11 diagram indicating the location of the proposed actions.
 12

14 16. Within 120 days after completion of construction of the Countyline Project,
 15 Defendants shall submit a written Notice of Completion to the Trustees. The Notice of
 16 Completion shall include copies of all permits issued for the Countyline Project plus a set of as-
 17 built project drawings. The Trustees shall review the course and results of the development of the
 18 Countyline Project to determine whether the Project has been completed in accordance with
 19 Appendix A. Within 60 days after receiving the Notice of Completion, the Trustees shall submit
 20 to Defendants either (a) a written notice identifying specific deficiencies the Trustees determine
 21 must be satisfied for the Countyline Project to be completed in accordance with Appendix A
 22 (Notice of Deficiencies); or (b) a written notice of the Trustees' determination that the Project
 23 has been so completed (Notice of Approval of Completion). Following receipt of a Notice of
 24

1 Deficiencies, Defendants shall correct the identified deficiencies and complete the Countyline
2 Project in accordance with Appendix A, and submit to the Trustees an amended Notice of
3 Completion for review and response in accordance with this Paragraph. Any delay in
4 completing Countyline Project construction as a result of the operation of this Paragraph shall
5 not in and of itself constitute grounds for relief from the requirement to pay stipulated penalties
6 under Section XVIII for compliance delays.
7

8 17. Within 180 days following receipt of the Trustees' Notice of Approval of
9 Completion for the Countyline Project, Defendants shall submit to the Trustees a Project
10 Completion Accounting. The Project Completion Accounting shall itemize the costs incurred by
11 King County in developing the Countyline Project and shall be substantially in the form of
12 Appendix F attached hereto.
13

14 **IX. POST-CONSTRUCTION MONITORING AND ADAPTIVE MANAGEMENT**

15 18. To confirm that the Countyline Project produces the number of DSAYs needed to
16 offset the Defendants' allocated liability, Defendants shall monitor the performance of the
17 Project over a period not to exceed ten years ("Monitoring Period") to demonstrate that, on
18 average, the White River inundates at least 32.5 acres of the Project Site ("Inundation Goal").
19 Such monitoring shall be performed in accordance with the following particulars:
20

21 a. Defendants shall monitor site inundation by means of an aerial photograph
22 which shall be taken between February 1 and March 31 for each year of required monitoring
23 ("Required Monitoring Event").
24

25 b. Except as provided in Paragraph 20, Defendants shall acquire the required

1 aerial photograph in the first, third, fifth, seventh and tenth years following completion of
2 construction. Defendants may elect to acquire aerial photographs between February 1 and March
3 31 in other years during the Monitoring Period.

4
5 c. Defendants shall acquire the aerial photographs at a time of day, with sun
6 angle, image angle, weather and lighting conditions, elevation, and image resolution sufficient to
7 permit unambiguous determination of the extent of site inundation.

8
9 d. Defendants shall provide NOAA an electronic, ortho-rectified copy of the
10 photograph by May 31 in any year in which Defendants acquire aerial photographs under
11 Subparagraph 18.b.

12 19. The Trustees shall use the supplied photographs to calculate the acres of
13 inundation of the Project Site, and shall recalculate the average inundation acreage after each
14 Required Monitoring Event. The Trustees shall also perform such calculations for any other
15 years in which Defendants provide aerial photographs that satisfy the conditions of
16 Subparagraphs 18.a- d. The Trustees shall notify Defendants of the results of their calculations
17 within 45 days after each calculation or recalculation.

18
19 20. If the Trustees' calculation of the acres of inundation exceeds an average of 48.8
20 acres over the course of any three consecutive monitoring events, including Required Monitoring
21 Events and any monitoring conducted in other years as provided in Subparagraph 18.b, the
22 requirements of this Section shall be deemed fulfilled and Defendants shall have no further
23 monitoring or adaptive management requirements for the Project.

24
25 21. If, following the third Required Monitoring Event, the Trustees' calculation of

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1 average inundation of the Project Site demonstrates that the inundation does not exceed 29.3
2 acres, the Trustees and Defendants shall, within 60 days after the Trustees' notice to Defendants,
3 meet to discuss the conditions preventing the Project Site from achieving the Inundation Goal
4 and what measures Defendants will take to increase the likelihood of achieving the Inundation
5 Goal by the end of the Monitoring Period.
6

7 22. If, following the last Required Monitoring Event, the Trustees' calculations
8 demonstrate that the ten-year average inundation of the Project Site falls short of the Inundation
9 Goal, the Trustees shall so notify the Defendants by issuing a Notice of Deficiency. The Notice
10 of Deficiency shall identify the number of acres of average inundation and corresponding
11 number of DSAYs that the Site failed to produce.
12

13 a. Within 60 days following the date of the Trustees' Notice of Deficiency,
14 Defendants shall submit to the Trustees a proposed plan and schedule for taking actions, on the
15 Project Site or elsewhere in a location approved by the Trustees adjacent to or downstream of the
16 Project Site, to produce a sufficient number of DSAYs to offset the shortfall identified in the
17 Notice of Deficiency.
18

19 b. Within 45 days following receipt of the Defendants' proposed plan and
20 schedule, the Trustees shall respond with specific comments or a statement indicating the
21 Trustees' acceptance of the proposed plan and schedule.
22

23 c. Within 45 days following the date of the Trustees' comments, Defendants
24 shall either revise and implement the proposed plan and schedule consistent with the Trustees'
25 comments and thereafter commence work in accordance with the revised plan and schedule, or
26

1 shall compensate the Trustees for the identified DSAY shortfall by paying the sum of \$66,000
2 times the total DSAY shortfall, adjusted by the increase in the Consumer Price Index over the
3 Monitoring Period. Payments in accordance with this Subparagraph will be made to the
4 Department of the Interior's Natural Resource Damage Assessment and Restoration Revolving
5 Fund, per instructions provided by the Trustees.
6

7 X. ACCESS TO INFORMATION AND PROJECT SITE

8 23. To facilitate their oversight responsibilities, the Trustees shall have full access to
9 all work in progress required under this Consent Decree.
10

11 24. From and after the Effective Date, Defendants shall cause the Trustees and their
12 contractors to have access at all reasonable times to the Project Site and to any property under
13 the control of any Defendant to which access is required for the oversight or implementation of
14 this Consent Decree. Where the property to which access is sought is not otherwise open to
15 public access, the Trustees shall give notice to the property owner(s) and King County prior to
16 access. Each Trustee shall have the authority to enter freely and move about such property at all
17 reasonable times for the purposes of overseeing the requirements of this Consent Decree,
18 including, but not limited to:
19

20 a. Monitoring and assessing progress on the planning, development,
21 maintenance and monitoring of the Countyline Projects;
22

23 b. Verifying any data or information submitted to the Trustees;
24
25

1 c. Inspecting and copying records, operation logs, contracts or other
2 documents maintained or generated by Defendants or their contractors hereafter retained to
3 perform work undertaken pursuant to this Consent Decree;
4

5 d. Conducting such tests, investigations or sample collections as deemed
6 necessary to monitor compliance with this Consent Decree or to assist in further identifying and
7 quantifying natural resource injuries requiring restoration actions and in planning and carrying
8 out maintenance actions as provided in Subparagraph 24.f;
9

10 e. Using a camera, sound recording device or other type equipment to record
11 the work done under this Consent Decree or injuries to natural resources;
12

13 f. Undertaking any maintenance action as the Trustees determine
14 appropriate. Such maintenance actions shall only be taken with the approval of the property
15 owner(s) and King County, which approval may be withheld only upon a showing that the
16 proposed action would be inconsistent with the purposes of the Project as described in Appendix
17 A (including the Project's flood control purposes), would be inconsistent with other provisions of
18 this Consent Decree or other applicable law, or would impose costs or additional liability upon
19 Defendants or King County. For the purposes of this Subparagraph 24.f, "maintenance" does not
20 include any repair, modification, or alteration that changes the ecological function, character,
21 scope or size of the Project as described in Appendix A.
22
23
24

25 25. Defendants shall have the right to accompany any Trustee or its representative on

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1 the property. Anyone provided access through this Consent Decree shall comply with applicable
2 health and safety requirements and shall not interfere with ongoing operations.

3 XI. IDENTIFICATION OF CONTRACTORS

4
5 26. Trustees and Defendants agree that the Countyline Project as described in
6 Appendix A is to be constructed, operated, repaired and maintained by King County. The
7 Defendants shall cause the Trustees to be notified in writing of all contractors selected by King
8 County, in accordance with state and local procurement laws, to implement the Project, within
9 30 days of such selection by King County. Defendants shall ensure that contracts for
10 implementation of the Project under the terms of this Consent Decree shall be consistent with
11 Appendix A.
12

13 XII. REIMBURSEMENT OF RESTORATION OVERSIGHT COSTS

14 27. Defendants shall reimburse Trustee costs incurred in the oversight of the
15 development and maintenance of the Countyline Project and in monitoring Project performance
16 in the total amount of \$50,000. Sums paid under this Paragraph shall be deposited in the
17 Commencement Bay Restoration Account for use as the Trustees shall determine in accordance
18 with the terms of this Consent Decree and other applicable law. Payment shall be made as
19 provided below in Paragraph 34.
20

21 XIII. PRESERVATION OF WHEELER-OSGOOD SITE

22
23 28. BNSF Railway Co. ("BNSF") owns the Wheeler-Osgood Site, as described in
24 Appendix B.

25 29. Within 30 days of the Effective Date, BNSF shall record in the applicable real

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1 property records for the real property comprising the Wheeler-Osgood Site a deed restriction
2 intended to make the site available in perpetuity for the purposes of habitat preservation and
3 restoration and inform prospective purchasers or lessees of the existence of this Consent Decree
4 and of the fact that the transfer and use of the parcel are subject to the requirements and
5 restrictions of this Consent Decree (attached hereto as Appendix C).
6

7 30. As provided in Appendix C, BNSF shall not sell, grant, lease or otherwise transfer
8 to any party an interest in the real property comprising the Wheeler-Osgood Site other than as
9 specifically contemplated in this Consent Decree without the prior written consent of the
10 Trustees, and the United States Department of Justice (“DOJ”).
11

12 31. Defendants shall avoid taking any action on the Wheeler-Osgood Site or on
13 adjacent property owned or controlled by any Defendant that would substantially diminish the
14 value of the Wheeler-Osgood Site as natural resource habitat. Provided, however, Defendants
15 (including their agents, contractors, successors and assigns) are authorized to use, develop and
16 operate on adjacent property as is consistent with existing or subsequently issued permits and is
17 otherwise in compliance with applicable law, and such use and operations shall not be
18 considered an interference with, or diminishment of, the deed restrictions for the Wheeler-
19 Osgood Site set forth in Appendix C. Provided, however, that no Defendant shall take or permit
20 to be taken any action on adjacent property that constitutes a trespass on the Wheeler Osgood
21 Site.
22

23
24 32. The Trustees may at any time implement, or authorize any third party to
25 implement, such further restoration actions on the Wheeler-Osgood Site as they determine

1 appropriate. Such further restoration actions shall only be taken with the approval of BNSF
2 Railway Co. and under a mutually acceptable access agreement between the Trustees and BNSF.
3 BNSF's approval may be withheld only upon a showing that the proposed activity would be
4 inconsistent with the purposes of preserving and enhancing the ecological value of the site,
5 would be inconsistent with other provisions of this Consent Decree or other applicable law,
6 would unreasonably interfere with BNSF Railway Co.'s use of adjacent property, or would
7 impose costs upon BNSF Railway Co.
8

9
10 **XIV. PERMANENT RESTORATION PROJECT STEWARDSHIP**

11 33. Defendants' agreement to develop the Countyline Project and to preserve the
12 existing habitat values of the Wheeler-Osgood Site is intended to generate ecological services
13 sufficient to offset Defendants' allocated liability for natural resource damages calculated by the
14 Trustees in terms of DSAYs. The Trustees' computation of DSAYs assumes that restoration
15 projects constructed as designed will produce ecological services in perpetuity. To ensure that
16 the public receives the full benefit of the agreed restoration actions, Defendants also agree to
17 contribute financially to the costs of long-term monitoring, maintenance and adaptive
18 management of the Countyline Project after fulfilling all permit requirements as required by
19 Section VIII. Defendants also agree to contribute financially to the costs of long-term
20 monitoring, maintenance and adaptive management of the Wheeler-Osgood Site beginning on
21 the Effective Date of this Consent Decree. Defendants' financial contributions to the costs of
22 long-term monitoring, maintenance and adaptive management for the Countyline Project and
23 Wheeler Osgood Site described in this Paragraph will be fully satisfied upon Defendants'

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1 payment of the sums provided in Section XV below, and Defendants will have no other
2 continuing funding obligations under this Decree.

3 XV. PAYMENT OF COSTS OF PROJECT OVERSIGHT,
4 LONG TERM STEWARDSHIP AND
5 NATURAL RESOURCE DAMAGE ASSESSMENT

6 34. Within 30 days of the Effective Date, Defendants will pay to the Trustees
7 \$238,894.00, consisting of the \$50,000.00 for restoration project oversight costs as stipulated
8 above in Paragraph 27, plus the \$188,894.00 to contribute to the Trustees' long-term oversight
9 and stewardship activities as stipulated above in Paragraph 33. This payment will be made by
10 electronic funds transfer per directions provided by the Clerk of the Court for deposit into the
11 Commencement Bay Natural Resource Restoration Account.
12

13 35. Within 30 days of the Effective Date, Defendants will pay to the Trustees
14 additional sums totaling \$833,705.00 in natural resource damage assessment costs. These sums
15 shall be paid in the following amounts and particulars:
16

17 Trustee: National Oceanic and Atmospheric Administration
18 Amount: \$269,615.47

19 Trustee: U.S. Department of the Interior
20 Amount: \$379,452.65

21 Payments to NOAA and the U.S. Department of the Interior shall be made by FedWire
22 Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with
23 current EFT procedures. Payment shall be made in accordance with instructions provided to
24 Defendants by the Financial Litigation Unit of the U.S. Attorney's Office of the Western District
25

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1 of Washington. Any payments received by the Department of Justice after 4:00 p.m. Eastern
2 Standard Time shall be credited on the next business day. Defendants shall provide at least five
3 days' notice to the Financial Litigation Unit before making the transfer.
4

5 Payments to the other Trustees shall be made by certified checks, or as otherwise directed
6 by the recipient, with the notation "Thea Foss NRDA Mediation Group - Commencement Bay
7 Assessment Costs," in the amounts indicated and made payable and addressed as follows:

8 Trustee: State of Washington
9 Amount: \$63,485.02
10 Payee: State of Washington/Department of Ecology
11 Address: State of Washington
12 Department of Ecology
13 Attention: Cashiering Section
14 P.O. Box 5128
15 Lacey, WA 98503-0210

16 Trustee: Puyallup Tribe of Indians
17 Amount: \$114,033.59
18 Payee: Puyallup Tribe of Indians
19 Address: Mr. William Sullivan
20 Environmental Protection Department
21 Puyallup Tribe of Indians
22 2002 E. 28th Street
23 Tacoma, WA 98404

24 Trustee: Muckleshoot Indian Tribe
25 Amount: \$7,118.27
26 Payee: Muckleshoot Indian Tribe
27 Address: Mr. Rob Otsea
28 Office of the Tribal Attorney
Muckleshoot Indian Tribe

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1 39015 172nd Avenue S.E.
2 Auburn, WA 98002

3 36. At the time of each payment Defendants will send notice that payment has been
4 made to the Trustees and DOJ in accordance with Section XXV (Notices and Submissions).
5 Such notice will reference Commencement Bay NRDA, DOJ case number 90-11-2-1049, and the
6 civil action number set forth in the caption of this Consent Decree.
7

8 **XVI. FAILURE TO MAKE TIMELY PAYMENTS**

9 37. If Defendants fail to make any payment under Paragraphs 34-35 by the required
10 due date, interest shall be assessed at the rate specified for interest on investments of the EPA
11 Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on
12 October 1 of each year in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest is
13 the rate in effect at the time the interest accrues. The rate of interest is subject to change on
14 October 1 of each year. Interest will continue to accrue on the unpaid balance through the date of
15 payment.
16
17

18 **XVII. DISPUTE RESOLUTION**

19 38. Unless otherwise expressly provided for in this Consent Decree, the dispute
20 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising
21 under or with respect to this Consent Decree.
22

23 39. Any dispute which arises under or with respect to this Consent Decree shall in the
24 first instance be the subject of informal negotiations between the Trustees and Defendants. The
25 period for informal negotiations shall not exceed twenty-one (21) days from the time the dispute
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1 arises, unless the parties to the dispute agree otherwise in writing. The dispute shall be
2 considered to have arisen when the Trustees send Defendants a written notice specifying the
3 nature of the dispute and requested relief (“Notice of Dispute”) or Defendants send the Trustees
4 a written Notice of Dispute.

5
6 40. a. If the Parties cannot resolve a dispute by informal negotiations under the
7 preceding Paragraph, then the position advanced by the Trustees shall be considered binding
8 unless, within twenty-one (21) days after the conclusion of the informal negotiation period,
9 Defendants invoke the formal dispute resolution procedures of this Section by serving on the
10 Trustees a written Statement of Position on the matter in dispute, including, but not necessarily
11 limited to, any factual data, analysis or opinion supporting that position and any supporting
12 documentation relied upon by Defendants.
13

14
15 b. Within twenty-one (21) days after receipt of Defendants' Statement of
16 Position, the Trustees shall serve on Defendants their written Statement of Position, including,
17 but not necessarily limited to, any factual data, analysis or opinion supporting that position and
18 all supporting documentation relied upon by the Trustees.
19

20 c. An administrative record of the dispute shall be maintained by the
21 Trustees and shall contain all Statements of Position, including supporting documentation,
22 submitted pursuant to this Section.
23

24 d. The Defendants and the Trustees each shall identify a Formal Dispute
25 Resolution Representative, who shall meet to discuss the matter in dispute at the earliest

1 available opportunity and who will meet and work in good faith to resolve the matter in dispute.
2 If the Parties fail to resolve the dispute within twenty-one (21) days after the initial meeting of
3 the Formal Dispute Resolution Representatives, then the position advanced by the Trustees in
4 their Statement of Position shall be considered binding upon Defendants, subject to any
5 agreements the Formal Dispute Resolution Representatives may have reached on one or more
6 issues. In such event, the Trustees shall within five (5) days of the conclusion of the formal
7 dispute resolution process notify Defendants in writing that the formal dispute resolution process
8 has concluded. Defendants may seek judicial review of the Trustees' Statement of Position (as
9 modified by any agreements the Formal Dispute Resolution Representatives may have reached)
10 pursuant to the following Subparagraph.
11

12
13 e. Any matter in dispute shall be reviewable by this Court, provided that a
14 motion for judicial review of the decision is filed by Defendants with the Court and served on all
15 Parties within twenty-one (21) days of receipt of the Trustees' letter notifying Defendant of the
16 conclusion of the formal dispute resolution process. The motion shall include a description of
17 the matter in dispute (including both Statements of Position), the efforts of the parties to resolve
18 the dispute, the relief requested, and the schedule, if any, within which the dispute must be
19 resolved to ensure orderly implementation of this Consent Decree. The Parties shall jointly
20 move the Court to establish a schedule under which the Plaintiffs file a response to Defendants'
21 motion within twenty-one (21) days of receipt of the motion, and Defendants file a reply brief
22 within five (5) business days of receipt of the response. If the Court does not grant the motion
23
24
25

1 for such a schedule, then the Parties shall file the response and reply in accordance with the
2 schedule set forth in the Local Rules for the Western District of Washington.

3
4 f. The Court may rule based on the administrative record, with or without
5 oral argument, and shall review Trustees' Statement of Position or its resolution of the dispute
6 under the standards of the Administrative Procedures Act.

7
8 g. The foregoing notwithstanding, the Parties acknowledge that disputes may
9 arise that require resolution on an expedited basis. In such cases, the Parties shall agree on an
10 expedited schedule or, absent prompt agreement, either Defendants or the Trustees may petition
11 the Court for the imposition of an expedited schedule.

12
13 41. The invocation of formal dispute resolution procedures under this Section shall
14 not extend, postpone, or affect in any way any obligation of the Defendants under this Consent
15 Decree, not directly in dispute, unless the Trustees or the Court agree otherwise. Stipulated
16 penalties with respect to the disputed matter shall continue to accrue, but payment otherwise
17 required under Section XVIII shall be stayed pending resolution of the dispute. Notwithstanding
18 the stay of payment, stipulated penalties shall continue to accrue from the first day of
19 noncompliance with any applicable provision of this Consent Decree. In the event that the
20 Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as
21 provided in Section XVIII (Stipulated Penalties).
22

23
24 **XVIII. STIPULATED PENALTIES**

25 42. The Parties stipulate that delays in carrying out the activities required herein may

1 diminish the compensatory value attributable to those activities. Consequently, in the event that
2 Defendants exceed the deadline provided for one of the activities described below (subject to any
3 modifications agreed to under Section XXIX) and such delay is not excused through operation of
4 the dispute resolution provisions (Section XVII) and/or the force majeure provisions (Section
5 XIX), Defendants shall, as a stipulated penalty, increase the financial contributions it makes
6 under this Consent Decree to fund habitat restoration actions, over and above any payments
7 required elsewhere under this Consent Decree, as follows:

9 a. For each week Defendants fail to comply with a deadline under
10 Paragraph 34 or 35 for making any payment; in the Countyline Project Development Schedule
11 included in Appendix A; under Paragraph 16 for submitting a Notice of Completion; under
12 Paragraph 17 for submitting a Project Completion Accounting; under Paragraph 18 for providing
13 a performance monitoring photograph; under Subparagraph 22.a for submitting a proposed plan
14 and schedule; under Subparagraph 22.c for implementing the plan or making the required
15 payment; or under Paragraph 51 for providing copies of certificates of insurance and insurance
16 policies, Defendants shall pay a stipulated penalty in the amount of \$1,000. Where the delay
17 extends beyond the second week, the stipulated penalty shall apply to each additional day of
18 delay for each such missed deadline. For purposes of this Subparagraph, a week shall equal a
19 continuous period of seven days.

22 b. Stipulated penalties are due and payable within 30 days of the date of the
23 demand for payment of the penalties by the Trustees. All payments to the Trustees under this
24 Paragraph will be made by a certified check made payable to the Clerk of the Court. This check

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1 will be deposited in the Commencement Bay Restoration Account.

2 c. At the time of each penalty payment under this Paragraph, Defendants will
3 send notice that payment has been made to the Trustees and DOJ in accordance with Section
4 XXV (Notices and Submissions). This notice will reference Commencement Bay NRDA, DOJ
5 Case Number 90-11-2-1049, and the civil action number set forth in the caption of this Consent
6 Decree.
7

8 d. Penalties will accrue as provided in this Paragraph regardless of whether
9 the Trustees have notified Defendants of the violation or made a demand for payment, but the
10 penalties need only be paid upon demand. Penalties for late payments will begin to accrue on the
11 day after payment is due. All other penalties will begin to accrue on the day after the Trustees'
12 notice of noncompliance pursuant to Paragraph 9 and will continue to accrue through the date of
13 payment. Nothing in this Decree prevents the simultaneous accrual of separate penalties for
14 separate violations of this Decree.
15

16 e. Defendants may dispute the Trustees' right to the penalties identified
17 under Subparagraph a. above by invoking the dispute resolution procedures of Section XVII.
18

19 43. If Defendants fail to pay stipulated penalties when due, the Trustees may institute
20 proceedings to collect the penalties, as well as interest. Defendants shall pay Interest on the
21 unpaid balance, which shall begin to accrue on the date of demand made pursuant to
22 Subparagraph 42.b.
23

24 44. If Plaintiffs bring a motion or a separate action in court to enforce this Decree and
25 prevail, Defendants will reimburse Plaintiffs for all costs of such action, including but not limited
26

1 to costs of attorney time.

2 45. Payments made under this Section are in addition to any other remedies or
3 sanctions available to Plaintiffs by virtue of Defendants' failure to comply with the requirements
4 of this Decree.
5

6 46. Notwithstanding any other provision of this Section, Plaintiffs may, in their
7 unreviewable discretion, waive payment of any portion of the stipulated penalties that have
8 accrued pursuant to this Decree. Payment of stipulated penalties does not excuse Defendants
9 from payment as required by Section XV or from performance of any other requirement of this
10 Consent Decree.
11

12 47. The Trustees may use sums paid as stipulated penalties under Paragraph 42 to pay
13 unreimbursed damage assessment costs and/or to fund or contribute to additional actions to
14 restore Commencement Bay natural resources.
15

16 **XIX. FORCE MAJEURE**

17 48. "Force majeure," for purposes of this Consent Decree, is defined as any event
18 arising from causes beyond the control of Defendants that delays or prevents the performance of
19 any obligation under this Consent Decree despite Defendants' best efforts to fulfill the
20 obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation"
21 includes using best efforts to anticipate any potential force majeure event and use best efforts to
22 address the effects of any potential force majeure event (1) as it is occurring and (2) following
23 the potential force majeure event, such that the delay is minimized to the greatest extent possible.
24

25 "Force majeure" does not include financial inability to fulfill the obligation. The requirement

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1 that Defendants exercise “best efforts to fulfill the obligation” also includes, where necessary,
2 the filing of legal actions to compel contract performance in accordance with the design and
3 schedule approved by the Trustees herein.

4
5 49. a. If any event occurs or has occurred that may delay the performance of any
6 obligation under this Consent Decree, whether or not caused by a force majeure event,
7 Defendants shall notify the Trustees within 14 days of when Defendants first knew that the event
8 might cause a delay. Within 30 days thereafter, Defendants shall provide a written explanation
9 and description of the reasons for the delay; the anticipated duration of the delay; all actions
10 taken or to be taken to prevent or minimize the delay; a schedule for implementation of any
11 measures to be taken to prevent or mitigate the delay or the effect of the delay; and the rationale
12 for attributing such delay to a force majeure event (if Defendants intend to assert such a claim).
13 Defendants shall include with any notice all available documentation supporting their claim that
14 the delay was attributable to a force majeure event. Failure to comply with the above
15 requirements will preclude Defendants from asserting any claim of force majeure for that event.
16
17

18 b. If the Trustees agree that the delay or anticipated delay is attributable to a
19 force majeure event, the time for performance of the obligations under this Consent Decree that
20 are affected by the force majeure event will be extended by the Trustees for such time as is
21 necessary. An extension of the time for performance of the obligations affected by the force
22 majeure event shall not, of itself, extend the time for performance of any other obligation. If the
23 Trustees do not agree that the delay or anticipated delay has been or will be caused by a force
24 majeure event, the Trustees will notify Defendants in writing of their decision.
25

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1 c. If Defendants elect to invoke the dispute resolution procedures set forth in
 2 Section XVII, above, regarding a claimed force majeure event it shall do so no later than 30 days
 3 after receipt of the Trustees’ notice of disagreement. In any such proceeding Defendants shall
 4 have the burden of demonstrating by a preponderance of the evidence that the delay or
 5 anticipated delay has been or will likely be caused by a force majeure event, that the duration of
 6 the delay or the extension sought was or will be warranted under the circumstances, that
 7 Defendants exercised best efforts to fulfill the obligation in question, and that Defendants
 8 complied with the requirements of this Paragraph. If Defendants carry this burden, the delay at
 9 issue shall be deemed not to be a violation by Defendants of the affected obligation of this
 10 Consent Decree.
 11

12
 13 XX. INDEMNIFICATION; INSURANCE

14 50. a. The Plaintiffs do not assume any liability by entering into this agreement.
 15 Defendants shall, or shall cause King County to, indemnify, save and hold harmless each of the
 16 Plaintiffs and/or their officials, agents, employees, contractors, subcontractors, or representatives
 17 from any and all damage claims or causes of action arising from or on account of the acts or
 18 omissions of Defendants or King County and/or their officers, employees, agents, contractors,
 19 subcontractors, representatives, and any persons acting on their behalf or under their control, in
 20 carrying out the requirements of this Consent Decree. Further, Defendants agree to, or agree to
 21 cause King County to, pay the Plaintiffs all costs they incur, including but not limited to
 22 attorneys fees and other expenses of litigation and settlement, arising from or on account of
 23 damage claims made against the Plaintiffs based on acts or omissions of Defendants or King
 24

1 County or their officers, employees, agents, contractors, subcontractors, representatives and any
2 persons acting on their behalf or under their control, in carrying out the requirements of this
3 Consent Decree. None of the Plaintiffs shall be held out as a party to any contract entered into
4 by or on behalf of Defendants in carrying out the requirements of this Consent Decree. Neither
5 Defendants nor King County shall be considered an agent of any Plaintiff, and Defendants shall
6 require King County to affirmatively acknowledge that it is not acting as an agent of any
7 Plaintiff.
8

9 b. Defendants shall waive, and shall cause King County to waive any claims
10 against the Plaintiffs for damages or reimbursement or for set-off against any payments made or
11 to be made to the Plaintiffs, arising from or on account of any contract, agreement or
12 arrangement between Defendants or King County and any other person in carrying out the
13 requirements of this Consent Decree, including, but not limited to, claims on account of
14 construction delays. In addition, Defendants shall, and shall cause King County to, indemnify
15 and hold harmless the Plaintiffs with respect to any claims for damages or reimbursement arising
16 from or on account of any contract, agreement, or arrangement between Defendants or King
17 County and any person in carrying out the requirements of this Consent Decree including, but
18 not limited to, claims on account of construction delays.
19
20

21 51. No later than 15 days before commencing any work involved in implementing
22 this Consent Decree, Defendants shall, or shall cause King County to, secure and maintain
23 comprehensive general liability insurance and automobile liability insurance with limits of
24 \$1,000,000 (one million dollars), combined single limit or provide evidence of their ability to
25

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1 self-insure to such limits. In addition, for the duration of any work conducted in carrying out this
2 Consent Decree Defendants shall ensure, or shall cause King County to ensure that all persons or
3 entities performing any work involved in implementing this Consent Decree comply with all
4 applicable laws and regulations regarding the provision of worker's compensation insurance. No
5 later than 15 days before commencing any work involved in implementing this Consent Decree,
6 Defendants shall, or shall cause King County to, provide to the Trustees evidence of King
7 County's, and any persons' or entities' performing such work under contract or subcontract with
8 King County, compliance with applicable laws and regulations regarding the provision of
9 worker's compensation insurance. Defendants shall, or cause King County to, resubmit such
10 evidence each year on the anniversary of the Effective Date of this Consent Decree. If
11 Defendants demonstrate by evidence satisfactory to the Trustees that any contractor or
12 subcontractor maintains insurance equivalent to that described above, or insurance covering the
13 same risks but in a lesser amount, then, with respect to that contractor or subcontractor,
14 Defendants need provide only that portion of the insurance described above that is not
15 maintained by the contractor or subcontractor.

19 52. The Trustees agree to require that any contractor who performs work for them in
20 the Countyline Project area or the Wheeler Osgood Site shall agree to indemnify and hold
21 harmless King County or BNSF, respectively, and their agents, employees and representatives,
22 against all claims of any nature, including, but not limited to, claims by third parties for death,
23 personal injury, or property damage, and claims for environmental liability that arise as the result
24 of negligent acts or omissions of such contractor, its employees, representatives and agents in
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1 carrying out the provisions of this Consent Decree. Such indemnity shall be limited to actual
2 damages only, and shall not extend to consequential damages or any other liability except as
3 stated herein.

4
5 XXI. COVENANT NOT TO SUE BY PLAINTIFFS

6 53. Except as specifically provided in Section XXII (Reservations of Rights) below,
7 Plaintiffs covenant not to sue or to take administrative action against Defendants pursuant to
8 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a); Chapter 70.105D RCW; Section 311 of the
9 Clean Water Act (CWA), 33 U.S.C. § 1321; or Section 1002(a) of the Oil Pollution Act of 1990
10 (OPA), 33 U.S.C. § 2702(a), to recover Natural Resource Damages. This covenant not to sue
11 will take effect upon the Effective Date of this Consent Decree and continue in effect
12 conditioned upon the satisfactory performance by Defendants of their obligations under this
13 Consent Decree. This covenant not to sue extends only to each Defendant and its heirs,
14 successors and assigns, and does not extend to any other person.
15

16
17 XXII. RESERVATIONS OF RIGHTS

18 54. Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights
19 against Defendants with respect to all matters not expressly included within the Covenant Not to
20 Sue by Plaintiffs in Paragraph 53. Notwithstanding any other provision of this Consent Decree,
21 the Plaintiffs reserve all rights against Defendants with respect to:

22 a. liability for costs of response incurred or to be incurred by Plaintiffs
23 under any federal or State statute, provided, however, that nothing in this Subparagraph 54.a
24 shall be deemed to supersede or conflict with the provisions of the consent decree[s] entered in

1 United States v. Advance Ross Sub Company et al., W.D. Wash. Case number C03-5117RJB
2 (March 3, 2003) and United States v. Atlantic Richfield Company et al., W.D. Wash. Case
3 number C03-5117RJB (March 3, 2003);
4

5 b. liability for damages to natural resources (including assessment costs) as
6 defined 42 U.S.C. §§ 9601(6 & 16) that are not expressly included within the Covenant Not to
7 Sue by Plaintiffs in Paragraph 53;

8 c. liability for damages to natural resources (including assessment costs) as
9 defined in 42 U.S.C. §§ 9601(6 & 16) within the Commencement Bay Environment resulting
10 from new releases of hazardous substances from any Defendant's operations after the Effective
11 Date of this Consent Decree, or resulting from any Defendant's transportation, treatment,
12 storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of
13 hazardous substances after the Effective Date of this Consent Decree;

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

16 e. liability for costs incurred or to be incurred by the Agency for Toxic
17 Substances and Disease Registry in or regarding the Commencement Bay Environment;

18 f. additional claims for Natural Resource Damages if conditions, factors or
19 information in the Commencement Bay Environment, not known to the Trustees as of the
20 Effective Date, are discovered that, together with any other relevant information, indicate that
21 there is a threat to the environment, or injury to, destruction of, or loss of natural resources of a
22 type unknown, or of a magnitude significantly greater than was known, as of the Effective Date,
23

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1 which is attributable to any Defendant (for purposes of this Subparagraph, information known to
2 the Trustees shall consist of any information in the files of, or otherwise in the possession of, any
3 one of the individual Trustees, or their contractors or consultants who worked on the Trustees'
4 natural resource damages assessment and liability allocation projects);

5
6 g. criminal liability to the United States or State; and

7 h. claims in this action or in a new action based on a failure of Defendants to
8 satisfy the requirements of this Consent Decree.

9
10 55. The Parties acknowledge that post-remedial monitoring in the Thea Foss and
11 Wheeler-Osgood Waterways has shown that some level of recontamination of remediated areas
12 of waterway sediments is occurring and that the recontamination is evidence that there are on-
13 going sources of hazardous substances to the waterways. Defendants assert that none of them is a
14 significant on-going source of such recontamination, and the Trustees agree that they have no
15 information indicating that any Defendant is a significant on-going source of hazardous
16 substances to the waterways. The Parties agree the Defendants' assertions, and the Trustees' lack
17 of contrary information, shall constitute the information regarding the status of Thea Foss
18 Waterway contamination that is known to the Trustees as of the Effective Date for purposes of
19 the preceding Paragraph.
20

21
22 **XXIII. COVENANT NOT TO SUE BY DEFENDANTS**

23 56. Each Defendant covenants not to sue and agrees not to assert any claims or causes
24 of action against the United States, the State of Washington, the Puyallup Tribe of Indians and
25 the Muckleshoot Indian Tribe or their contractors or employees, for any civil claims or causes of

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1 action relating to Natural Resource Damages.

2 XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

3 57. Nothing in this Consent Decree shall be construed to create any rights in, or grant
4 any cause of action to, any person or entity not a Party to this Consent Decree. Each of the
5 Parties expressly reserves any and all rights (including, but not limited to, any right to
6 contribution), defenses, claims, demands, and causes of action they each may have with respect
7 to any matter, transaction, or occurrence relating in any way to the Commencement Bay
8 Environment against any person or entity not a Party hereto.
9

10 58. The Parties agree, and by entering this Consent Decree this Court finds, that each
11 Defendant is entitled, as of the Effective Date of this Consent Decree, to protection from
12 contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. §
13 9613(f)(2), and RCW 70.105D.040(4)(d), for Natural Resource Damages, provided, however,
14 that if the Trustees exercise their rights under the reservations in Section XXII (Reservation of
15 Rights) with regard to any Defendant, such Defendant will no longer be entitled to protection
16 from such contribution actions or claims for Natural Resource Damages as are within the scope
17 of the exercised reservation.
18

19 59. Each Defendant agrees that it will notify the Trustees and the United States in
20 writing no later than 60 days before bringing a suit or claim for contribution for Natural
21 Resource Damages. Each Defendant also agrees that it will notify the Trustees and the United
22 States in writing within 15 days of service of a complaint or claim upon them relating to a suit or
23 claim for contribution for Natural Resource Damages. In addition, each Defendant will notify the
24

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1 Trustees and the United States within 15 days of service or receipt of any Motion for Summary
2 Judgment and within 15 days of receipt of any order from a court setting a case for trial for
3 matters related to this Decree.

4
5 60. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs
6 for injunctive relief, recovery of response costs, or other appropriate relief other than Natural
7 Resource Damages, no Defendant shall assert, and nor may it maintain, any defense or claim
8 based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-
9 splitting, or other defenses based upon any contention that the claims raised by the Plaintiffs in
10 the subsequent proceeding were or should have been brought in the instant case; provided,
11 however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set
12 forth in Paragraphs 53 and 56.

13
14 **XXV. NOTICES AND SUBMISSIONS**

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

21 **As to the United States and as to DOJ:**

22
23 Chief, Environmental Enforcement Section
24 Environment and Natural Resources Division
25 U.S. Department of Justice
26 P.O. Box 7611

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1 Washington, D.C. 20044-7611
2 (DJ # 90-11-2-1049/16)

3 **As to NOAA:**

4 Robert A. Taylor
5 NOAA Office of General Counsel GCNR/NW
6 7600 Sand Point Way NE
7 Seattle, WA 98115-0070

8 **As to the United States Department of the Interior:**

9
10 Jeff Krausmann
11 U.S. Fish & Wildlife Service
12 510 Desmond Dr. SE, Suite 102
13 Lacey, WA 98503-1263

14 **As to the State of Washington:**

15 Celina Abercrombie
16 Toxics Cleanup Program
17 State of Washington
18 P.O. Box 47600
19 Olympia, WA 98504-7600

20 **As to the Puyallup Tribe of Indians:**

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

26 **As to the Muckleshoot Indian Tribe:**

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

As to Advance Ross Sub Company:

Jacqueline Wetzsteon
PacifiCorp
825 NE Multnomah
Suite 1500 LCT
Portland, OR 97232

Cathy Woollums
Senior Vice President
Berkshire Hathaway Energy
106 East Second Street
Davenport, IA 52801

Louis A. Ferreira, Esq.
Stoel Rives, LLP
900 SW Fifth Avenue
Suite 2600
Portland, OR 97204

As to BNSF Railway Company:

Allen Stegman
BNSF Railway Company
General Director Environmental & HazMat
2500 Lou Menk Dr., AOB-3
Fort Worth, Texas 76131-2828

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1 817-352-1954
2 Allen.Stegman@bnsf.com

3 Matthew Wells
4 Tupper Mack Wells PLLC
5 2025 First Avenue, Suite 1100
6 Seattle, WA 98121
7 206.407.0502 (direct)
8 wells@tmw-law.com

8 **As to BP Products North America, Inc. and Atlantic Richfield Company:**

9
10 Douglas S. Reinhart, Esq.
11 Senior Counsel
12 BP America, Inc.
13 150 W. Warrenville Road
14 Mail Code 200-1W
15 Naperville, Illinois 60563
16 Direct: 630-420-5457
17 Fax: 630-420-5172
18 Email: douglas.reinhart@bp.com

19 Cynthia Kezos
20 Strategy Manager
21 Remediation Management
22 BP Corporate North America Inc.
23 4 Centerpointe Drive, Suite 200
24 La Palma, California 90623
25 Direct: 714-228-6708
26 Fax: 714-229-6749
27 E-Mail: cindy.kezos@bp.com

28 **As to Brandrud Furniture, Inc., Nemshoff Chairs, Inc. and Herman Miller, Inc.:**

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1 H. Timothy Lopez
2 Herman Miller, Inc.
3 Corporate Secretary
4 855 East Main Avenue
5 PO Box 302
6 Zeeland, MI 49464
7 Fax 616.654.7218

8 **As to CanAm Minerals/Kleen Blast Div.:**

9 Fionn O'Neill
10 CanAm Minerals/Kleen Blast Div.
11 50 Oak ct #210
12 Danville CA 94526

13 **As to Carstens Company:**

14 Guy J. Sternal, Esq.
15 Eisenhower & Carlson, PLLC
16 1201 Pacific Avenue
17 Suite 1200
18 Tacoma, WA 98402

19 **As to Chevron U.S.A. Inc., Union Oil Company of California, Texaco Downstream
20 Properties Inc.:**

21 Mehagan Hopkins
22 Project Manager
23 Superfund and Specialty Portfolios
24 Chevron Environmental Management Company
25 6101 Bollinger Canyon Road
26 San Ramon, CA 94583
27 Tel 925 790 6989
28 Fax 925 790 6772

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1 mhopkins@chevron.com

2 **As to City Waterway Investments, Inc.:**

3
4 Dave Bingham
5 Johnny's Dock Restaurant & Marina
6 1900 East D Street,
7 Tacoma, WA 98421
8 Phone: (253) 627-3186

9 **As to Closing Days, Inc., formerly known as Richard A. Johnson Cedar Products, Inc.,
10 formerly d/b/a Johnson Postman Company:**

11 James V. Handmacher
12 Morton McGoldrick, P.S.
13 P.O. Box 1533
14 820 A Street, Suite 600
15 Tacoma, WA. 98401
16 (253) 682-7234
17 jvhandmacher@bvm.com

18 **As to ExxonMobil Oil Corporation and Exxon Mobil Corporation:**

19 Kevin J. Vaughan
20 Counsel, Environmental & Safety
21 Exxon Mobil Corporation
22 3225 Gallows Road
23 Suite 3d 0215
24 Fairfax, VA 22037
25 Phone – 832-625-8251

26 **As to F. S. Harmon Manufacturing Company:**

27 David Walton

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1 F. S. Harmon Manufacturing Company
2 2926 South Steele Street
3 Tacoma WA 98409-7638

4 James V. Handmacher
5 Morton McGoldrick, P.S.
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7 820 A Street, Suite 600
8 Tacoma, WA. 98401
9 (253) 682-7234
10 jvhandmacher@bvmm.com

11 **As to Glacier Northwest, Inc. (Lone Star Northwest):**

12 Ed Owens
13 Vice President–General Manager
14 Glacier Northwest, Inc.
15 5975 East Marginal Way S.
16 Seattle, WA 98134

17 Scott Isaacson
18 Senior Vice President & General Counsel
19 CalPortland Company
20 2025 E. Financial Way
21 Glendora, CA 91741

22 **As to Globe Machine Manufacturing Company:**

23 Loren Dunn
24 Riddell Williams P.S.
25 1001 Fourth Avenue
26 Suite 4500
27 Seattle, WA 98154

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1 **As to Gull Industries, Inc.:**

2 Robie G. Russell, Esq.
3 Russell Law Offices
4 76 South Main Street
5 Seattle, WA 98104-2514
6 (206) 621-2102 O
7 (206) 621-2104 F
8 robielaw@gmail.com

8 **As to Investco Financial Corporation:**

9
10 Angela L. Humphreys, General Counsel
11 Investco Financial Corporation
12 1302 Puyallup Street
13 Suite A
14 Sumner, WA 98390

14 **As to J.M. Martinac Shipbuilding Corporation:**

15 Sally E. Metteer, Esq.
16 Wilson Smith Cochran Dickerson
17 1215 Fourth Ave.
18 Suite 1700
19 Seattle, WA 98161

20 **As to King County Metro Transit Division:**

21 General Manager, Metro Transit Division
22 King County Department of Transportation
23 201 S. Jackson Street, MS KSC-TR-0415
24 Seattle, WA 98104

25 Chief Civil Deputy

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1 King County Prosecuting Attorney's Office
2 King County Courthouse, Room W400
3 516 Third Avenue
4 Seattle, WA 98104

5 **As to Louisiana-Pacific Corporation:**

6 Bert P. Krages II, Esq.
7 6665 S.W. Hampton Street
8 Suite 200
9 Portland, OR 97223
10 P: (503) 597-2525
11 F: (503) 597-2549
12 E: krages@onemain.com

13 **As to Marine Iron Works, Inc.:**

14 Martin Petrich
15 Marine Iron Works, Inc.
16 5205 Orca Drive NE
17 Tacoma, WA 98422

18 Tod Gold
19 Joyce Ziker Parkinson, PLLC
20 1601 5th Avenue, Suite 2040
21 Seattle, WA 98101

22 **As to McFarland Cascade Holdings, Inc., Cascade Pole and Lumber Company and
23 McFarland Cascade Pole & Lumber Company:**

24 Maureen Mitchell, Esq.
25 Summit Law Group
26 315 Fifth Avenue So.
27 Suite 1000

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1 Seattle, WA 98104-2682

2 **As to Menasha Corporation:**

3
4 General Counsel
5 1645 Bergstrom Road
6 P.O. Box 367
7 Neenah, WI 54957
8 (920) 751-1497

9 **As to Moorage Associates, LLC:**

10 Guy J. Sternal, Esq.
11 Eisenhower & Carlson, PLLC
12 1201 Pacific Avenue
13 Suite 1200
Tacoma, WA 98402

14 **As to Mountain States Power (PacifiCorp):**

15 Jacqueline Wetzsteon
16 PacifiCorp
17 825 NE Multnomah
18 Suite 1500 LCT
19 Portland, OR 97232

20 Cathy Woollums
21 Senior Vice President
22 Berkshire Hathaway Energy
23 106 East Second Street
Davenport, IA 52801

24 Louis A. Ferreira, Esq.
25 Stoel Rives, LLP

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1 900 SW Fifth Avenue
2 Suite 2600
3 Portland, OR 97204

4 **As to MUFG Union Bank, N.A.:**

5 Cynthia Wagner
6 MUFG Union Bank, N.A.
7 500 S. Main Street
8 Suite 320
9 Orange, CA 92868
10 (714) 565-5635
11 (714) 565-5691

12 **As to Nestlé USA, Inc.:**

13 Yun Au
14 Chief Legal Officer and General Counsel
15 Nestlé USA, Inc.
16 800 N. Brand Blvd.
17 Glendale, CA 91203

18 **As to Nichols Trucking Company / John and Eldeena Nichols:**

19 Dianne K. Conway
20 Gordon Thomas Honeywell LLP
21 1201 Pacific Ave.
22 Suite 2100
23 Tacoma, WA 98402

24 **As to Northwest Etch Technology, Inc.:**

25 John Dooley
26 2601 S. Hood Street

27 CONSENT DECREE - 56

28 Michael McNulty
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Washington, D.C. 20044
(202) 514-1210

1 Tacoma WA 98411
2 253-380-8922

3 **As to OfficeMax Incorporated:**

4
5 Dennis L. Radocha
6 Assistant General Counsel
7 Office Depot/OfficeMax Legal Department
8 1111 W. Jefferson Street, Suite 510
9 Boise, ID 83702

10 Office Depot, Inc.
11 ATTENTION: General Counsel
12 6600 N. Military Trail
13 Boca Raton, FL 33496

14 **As to Olympic Chemical Corporation:**

15 Michelle Ulick Rosenthal
16 Veris Law Group PLLC
17 1809 Seventh Avenue
18 Suite 1400
19 Seattle, WA 98101
20 michelle@verislawgroup.com

21 **As to OMYA, Inc.:**

22 Jeffrey T. Golenbock
23 Golenbock, Eiseman, Assor, Bell & Peskoe LLP
24 437 Madison Avenue
25 New York, N.Y. 10022
26 Phone: (212) 907-7373
27 Fax: (212) 754-0777

28 CONSENT DECREE - 57

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1 **As to Pacific Northern Oil Corp.:**

2 Thomas M. Kilbane
3 Attorney at Law PLLC
4 8164 NE Yeti Lane
5 Bainbridge Island, W A 98110

6
7 **As to Petrich Marine Dock, LLC:**

8 Clare Petrich
9 Petrich Marine Dock
10 1118 E "D" St
11 Tacoma, WA 98421

12 **As to Phillips 66 Company:**

13 Stephen Parkinson, Esq.
14 Joyce Ziker Parkinson, PLLC
15 1601 Fifth Avenue, Suite 2040
16 Seattle, WA 98101

17 Willette A. DuBose
18 Legal Specialist
19 Phillips 66 Company
20 3010 Briarpark DR, PWC-08-8108-09
Houston, TX 77042

21 **As to Precision Machine Works, Inc.:**

22
23 David Baublits
24 Precision Machine Works, Inc.
25 2024 Puyallup Ave. E.
Tacoma, WA 98421

26 CONSENT DECREE - 58

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As to Premier Industries, Inc.:

Courtney Seim
Riddell Williams P.S.
1001 Fourth Avenue
Suite 4500
Seattle, WA 98154

As to Puget Sound Energy:

Courtney Seim
Riddell Williams P.S.
1001 Fourth Avenue
Suite 4500
Seattle, WA 98154

John Rork
Manager, Environmental Services
Puget Sound Energy
10885 NE 4th Street
Bellevue, WA 98004

As to Rainier Plywood Co.:

Shawn O'Day
Richlite Company
624 E. 15th Street
Tacoma, WA 98421
(253) 383-5533

As to Shell Oil Company:

Carol Campagna
CONSENT DECREE - 59

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1 Soil & Groundwater Principal Program Manager
2 20945 S. Wilmington Ave.
3 Carson CA 90749

4 William E. Platt
5 Senior Manager, Discontinued Operations, Downstream US and Canada
6 PCRO and Environmental Claims
7 One Shell Plaza
8 910 Louisiana St.
Houston, TX 77002

9 Kimberly Lesniak
10 Senior Legal Counsel
11 Downstream Manufacturing & Regulatory
12 One Shell Plaza
13 910 Louisiana St.
Houston, TX 77002

14 **As to Shore Terminals LLC:**

15 Stephen Tan
16 Cascadia Law Group PLLC
17 1201 Third Ave.
18 Suite 320
19 Seattle, WA 98101
stan@cascadialaw.com

20 **As to SUPERVALU, Inc.:**

21 Lynette K. Stocker
22 SUPERVALU
23 Legal Department
24 11840 Valley View Road
25 Eden Prairie, MN 55344

26 CONSENT DECREE - 60

27 Michael McNulty
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1 Office: 952.828.4877
2 Fax: 952.828.4403
3 lynette.k.stocker@supervalu.com

4 **As to The Boeing Company:**

5 Leah M. Krider
6 Senior Counsel, Environment, Health & Safety
7 Office of the General Counsel
8 The Boeing Company
9 Mailcode 7830-NE51
10 5400 International Blvd.
11 North Charleston, SC 29418

12 **As to The DIL Trust, including its predecessor the Dillingham Corporation:**

13 Kirk A. Wilkinson
14 Latham & Watkins LLP
15 355 South Grand Avenue
16 Los Angeles, CA 90071-1560
17 Direct Dial: +1.213.891.8234
18 Fax: +1.213.891.8763
19 Email: kirk.wilkinson@lw.com

20 **As to The Jack Morris Estate/Morris Family Trusts:**

21 David J. Morris, Sole Successor Trustee
22 2319 Hobart Ave SW
23 Seattle, WA 98116

24 Charles M. Davis
25 The Law Office of Charles M. Davis
26 4767 Wharf St.
27 Bow, WA 98232

28 CONSENT DECREE - 61

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1 (360) 766-3223

2 (360) 766-4014

3 **As to The Joseph L. Trucco and Jean E. Trucco Living Trust, Colonial Fruit & Produce,**
4 **Inc.:**

5 Kevin Trucco

6 9024 Lake Steilacoom Pt Rd SW

7 Lakewood, WA 98498

8 Phone: 253-272-2102

9 Fax: 253-222-8186

10 **As to The Wattles Company:**

11 Craig Wattles, President

12 The Wattles Company

13 35800 249th Avenue SE

14 Enumclaw, WA 98022

15 Tel: 253-272-7205

16 Email: craig@wattlescompany.com

17 Kurt Peterson

18 Cascadia Law Group PLLC

19 1201 Third Avenue, Suite 320

20 Seattle, WA 98101

21 Tel: 206-292-6300

22 kpeterson@cascadialaw.com

23 Joseph Rehberger

24 Cascadia Law Group PLLC

25 1201 Third Avenue, Suite 320

26 Seattle, WA 98101

27 Tel: 206-292-6300

28 jrehberger@cascadialaw.com

CONSENT DECREE - 62

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1
2 **As to Three Rivers Management, Inc. for the former Hygrade Food Products Corp.:**

3 Douglas B.M. Ehlke, Esq.
4 28840 11th Avenue South
5 Federal Way, WA 98003

6 Robert S. Markwell
7 Three Rivers Management, Inc.
8 Manor Oak One, Suite 200
9 1910 Cochran Rd.
10 Pittsburgh, PA 15220

11 Charles E. McChesney II, Esq.
12 Three Rivers Management, Inc.
13 Manor Oak One, Suite 200
14 1910 Cochran Rd.
15 Pittsburgh, PA 15220

16 **As to Truck-Rail Handling, Inc.:**

17 Robie G. Russell, Esq.
18 Russell Law Offices
19 76 South Main Street
20 Seattle, WA 98104-2514
21 (206) 621-2102 O
(206) 621-2104 F
robielaw@gmail.com

22 **As to Union Pacific Railroad Company:**

23 Tod A Gold, Esq.
24 Joyce Ziker Parkinson, PLLC
25 1601 Fifth Avenue

26 CONSENT DECREE - 63

27 Michael McNulty
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1 Suite 2040
2 Seattle, WA 98101

3 Gary Honeyman
4 Manager
5 Environmental Site Remediation
6 221 Hodgeman St.
7 Laramie, WY 82072

8 **As to Washington Floral Service, Inc.:**

9 Mark Berglund
10 2701 S. 35th Street
11 Tacoma WA 98409
12 253-472-8343

13 **As to Washington State Department of Transportation:**

14 Deborah Cade
15 Office of the Attorney General
16 PO Box 40113
17 Olympia, WA 98504-0113
18 (360) 753-4964
19 DeborahC@ATG.WA.GOV

20 **As to Woodworth & Company, Inc.:**

21 Jeff Woodworth
22 President
23 Woodworth Capital, Inc
24 3110 Ruston Way, Suite D
Tacoma, WA 98402

25 **XXVI. EFFECTIVE DATE**

26 CONSENT DECREE - 64

27 Michael McNulty
28 USDOJ/ENRD/EES
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Washington, D.C. 20044
(202) 514-1210

1 Decree without written notification to and written approval of the United States Department of
2 Justice and the Trustees, Defendants and the Court. Modifications to this Consent Decree
3 exclusive of the appendices incorporated within that do not materially alter the terms of this
4 Consent Decree may be made by written agreement between the United States Department of
5 Justice, the Trustees and Defendants. Modifications to any of the appendices to this Consent
6 Decree that do not materially alter any of the terms of this Consent Decree may be made by
7 written agreement between the Trustees and Defendants. The following modifications shall be
8 deemed not to materially alter the terms of this Consent Decree or the appendices incorporated
9 herein:
10

11
12 a. Extensions of deadlines contained in Appendix A, provided that the total
13 of such extensions shall equal one year or less;

14 b. Project design changes that increase the Countyline Project scale, or that
15 decrease the Project scale by no more than 10% (ten percent) of the Project's area; or
16

17 c. Extensions of deadlines for reports, accounts, plans or proposals of 45
18 days or less.

19 XXX. ENFORCEMENT

20 66. The requirements of this Consent Decree, including but not limited to deadlines,
21 schedules and Project designs, are independently enforceable and the delay or failure of the
22 Trustees to enforce any requirement will not preclude or prejudice the subsequent enforcement
23 of the same or another requirement.
24

25 XXXI. TERMINATION

26 CONSENT DECREE - 66

27 Michael McNulty
28 USDOJ/ENRD/EES
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Washington, D.C. 20044
(202) 514-1210

1 67. This Decree as it applies to each Defendant shall terminate upon written notice,
2 made in accordance with Section XXV, by Defendants to all Plaintiffs that all affirmative actions
3 required under Section VIII, IX and XIII have been taken, all payments required under Sections
4 XV (and under Sections XVI and XVIII, if applicable) have been made and all other applicable
5 requirements of this Decree have been fulfilled, and subsequent written notice by the United
6 States confirming the performance by Defendants of their obligations under this Decree. Such
7 notice by the United States shall be sent within 45 calendar days of receipt by all Plaintiffs of the
8 required payments and notice from Defendants. If the United States fails to send such notice, this
9 Decree shall terminate automatically on the 46th day following receipt by all Plaintiffs of the
10 required payments and notice from Defendant. The following provisions of this Decree shall
11 survive termination: Paragraph 15 (actions on Project Site or adjacent properties); Section X
12 (“Access to Information and Project Site”); Section XIII (“Preservation of “Wheeler-Osgood
13 Site”); (Section XXI (“Covenant Not to Sue by Plaintiffs”); Section XXII (“Reservations of
14 Rights”); Section XXIII (“Covenant Not to Sue by Defendants”); and Section XXIV (“Effect of
15 Settlement; Contribution Protection”).

16
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19 XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

25
26 CONSENT DECREE - 67

27 Michael McNulty
28 USDOJ/ENRD/EES
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 Washington, D.C. 20044
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1 69. If for any reason this Court does not approve this Decree in the form presented,
2 this agreement may be voided at the sole discretion of any Party and the terms of the agreement
3 may not be used as evidence in any litigation between the Parties.
4

5 XXXIII. SIGNATORIES/SERVICE

6 70. The Assistant Attorney General for the Environment and Natural Resources
7 Division of the United States Department of Justice and each undersigned representative of the
8 State, the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe and each Defendant certifies
9 that he or she is authorized to enter into the terms and conditions of this Decree and to execute
10 and bind legally the Party that he or she represents to this document.
11

12 71. Each Defendant agrees not to oppose entry of this Decree by this Court or to
13 challenge any provision of this Decree unless any Plaintiff has notified Defendant in writing that
14 it no longer supports entry of the Decree.
15

16 72. Each Defendant will identify on the attached signature page the name and address
17 of an agent who is authorized to accept service of process by mail on behalf of it with respect to
18 all matters relating to this Decree. Each Defendant agrees to accept service in that manner and to
19 waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure
20 and any applicable local rules of this Court, including but not limited to service of a summons;
21 provided that such agreement and waiver is effective only as to such matters as may relate to or
22 arise out of this Decree, and not as to any other matter.
23

24 XXXIV. FINAL JUDGMENT

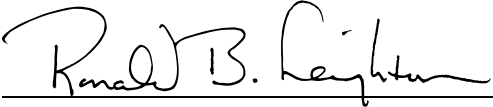
25 73. Upon approval and entry of this Decree by the Court in the record of the above-
26 CONSENT DECREE - 68

Michael McNulty
USDOJ/ENRD/EES
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Washington, D.C. 20044
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1 captioned matter, this Decree will constitute the final judgment between and among the United
2 States, the State, the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe, and each
3 Defendant. The Court finds that there is no just reason for delay and therefore enters this
4 judgment as a final judgment under Fed. R. Civ. P. 54 and 58.
5

6
7 SO ORDERED THIS 2nd DAY OF October, 2015.
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11 

12 Ronald B. Leighton
13 United States District Judge
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26 CONSENT DECREE - 69

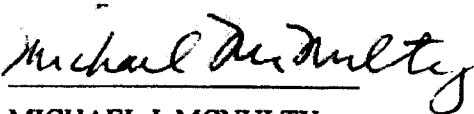
27 Michael McNulty
28 USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in United States, *et al.* v.
2 Advance Ross Sub Company, *et al.*

3 FOR THE UNITED STATES OF AMERICA

4
5 JOHN C. CRUDEN
6 Assistant Attorney General
7 Environment and Natural Resources Division

8 Date: 7/7/15



9 MICHAEL J. MCNULTY
10 Senior Counsel
11 Environmental Enforcement Section
12 United States Department of Justice
13 P.O. Box 7611, Ben Franklin Station
14 Washington, D.C. 20044
15 202-514-1210
16 michael.mcnulty@usdoj.gov

26 CONSENT DECREE - 69

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FOR THE PUYALLUP TRIBE OF INDIANS



Date: May 14, 2015

BILL STERUD
Chairman, Puyallup Tribal Council
3009 E. Portland Ave.
Tacoma, WA 98404
(253) 573-7800

CONSENT DECREE - 70

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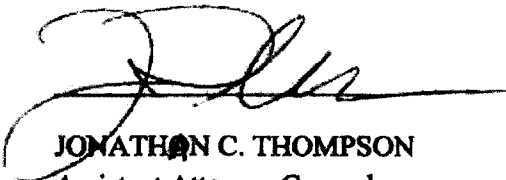
FOR THE STATE OF WASHINGTON

Date: 4/7/15



JAMES PENDOWSKI
Toxics Cleanup Program Manager
Washington State Department of Ecology
PO Box 47600, Olympia, WA 98504
360-407-7177
Jim.Pendowski@ecy.wa.gov

Date: 4/16/15



JONATHAN C. THOMPSON
Assistant Attorney General
Office of the Attorney General of Washington
2425 Bristol Court SW, Olympia, WA 98504
360-586-6740
Jonathon.Thompson@atg.wa.gov

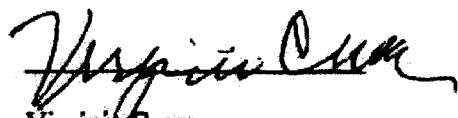
CONSENT DECREE - 71

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FOR THE MUCKLESHOOT INDIAN TRIBE

Date: 5/21/15



Virginia Cross
Chairperson
Muckleshoot Indian Tribe
39015 172nd Avenue S.E.
Auburn, WA 98092
(253) 939-3311

Date: 5-21-15



Robert L. Otsea, Jr. WSBA #9367
Chief Legal Counsel
Office of the Tribal Attorney
Muckleshoot Indian Tribe
39015 - 172nd Avenue S.E.
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otsea@muckleshoot.nsn.us

CONSENT DECREE - 72

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1 FOR ADVANCE ROSS SUB COMPANY

2

3

Date: 4-17-15

Cathy S. Woollums

4

5

Name Cathy S. Woollums
Title Senior Vice President, Environmental Services and
Chief Environmental Counsel for
Berkshire Hathaway Energy Company

6

7

Address 106 East Second Street
Davenport, Iowa 52801

8

9

Phone 563-333-8009
Email cswoolums@berkshirehathawayenergyco.com

10

11

12

13

Agent authorized to receive service of process by mail on behalf of Advance Ross Sub Company
with respect to all matters relating to this Decree:

14

15

16

Name Louis A. Ferreira
Title Partner
Address 900 SW 5th Ave., Suite 2600, Portland, OR 97204
Phone 503-294-9412
email lou.ferreira@stoel.com

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CONSENT DECREE - 73

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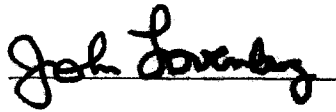
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P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
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1 FOR BNSF RAILWAY COMPANY

2

3 Date: March 25, 2015



4

5

Name John Lovenburg
Title VP of Environmental
Address 2500 Lou Menk Dr., AOB-3
Fort Worth, Texas 76131-2828
Phone (817) 352-1459
Email John.Lovenburg@bnsf.com

6

7

8

9

10

11

Agent authorized to receive service of process by mail on behalf of BNSF Railway Company with respect to all matters relating to this Decree:

12

13

14

15

Name CT Corporation
Title Registered Agent for BNSF Railway Company
Address 505 Union Av SE, Ste 120
Olympia, WA 98501
Phone (360) 357-6794
email

16

17

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CONSENT DECREE - 74

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1 FOR BP PRODUCTS NORTH AMERICA, INC. AND ATLANTIC RICHFIELD COMPANY

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Date: MARCH 31, 2015 

Name Cynthia D. Kezos
Title Strategy Manager
Address BP Corporate NA Inc.
4 Centerpointe Drive, Suite 200
La Palma, CA 90623
Phone 714-228-6708
Email cindy.kezos@bp.com

Agent authorized to receive service of process by mail on behalf of BP Products North America, Inc. and Atlantic Richfield Company with respect to all matters relating to this Decree:

Name Doug Reinhart, Esq.
Title Senior Counsel
Address BP America Inc.
150 West Warrenville Road
Building 200, Room 1004V
Naperville, IL 60563
Phone 630-420-5457
Email douglas.reinhart@bp.com

CONSENT DECREE - 75

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1 FOR BRANDRUD FURNITURE, INC., NEMSHOFF CHAIRS, INC. AND HERMAN
2 MILLER, INC.

3 Date: April 1, 2015

X 

4
5 Name Tim Lopez
6 Title General Counsel
7 Address 855 East Main Ave, Zeeland, MI 49464
8 Phone 616.654.3000
9 Email tim_lopez@hermanmiller.com

10 Agent authorized to receive service of process by mail on behalf of Brandrud Furniture, Inc.,
11 Nemshoff Chairs, Inc. and Herman Miller, Inc. with respect to all matters relating to this Decree:

12 Name Tim Lopez
13 Title General Counsel
14 Address 855 East Main Avenue, Zeeland, MI 49464
15 Phone 616.654.3000
16 Email tim_lopez@hermanmiller.com

26 CONSENT DECREE - 76

27 Michael McNulty
28 USDOJ/ENRD/EES
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1 FOR CANAM MINERALS/KLEEN BLAST DIV.
2

3

4 Date: 4/30/15

T. Spurgeon

5

Name: Timothy Spurgeon

6

Title: President CEO

7

Address: 50 Oak Court Suite 210

8

Phone: 925.831.9800

9

Email: tim@kleenblast.com

10 Agent authorized to receive service of process by mail on behalf of CanAm Minerals/Kleen Blast
Div with respect to all matters relating to this Decree:

11

Name: Timothy Spurgeon

12

Title: President CEO

13

Address: 50 Oak Court Suite 210

14

Phone: 925.831.9800

15

Email: tim@kleenblast.com

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26 CONSENT DECREE - 77

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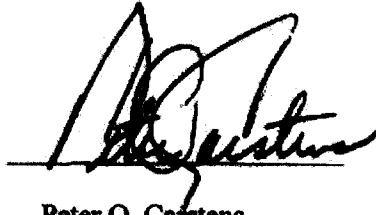
Michael McNulty
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P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR CARSTENS COMPANY

2

3

Date: 3/26/13



4

5

Name: Peter O. Carstens

6

Title: President

7

Address: 1202 E. Sprague Ave, Suite 202
Spokane WA 99202

8

Phone: (509) 747-3947

9

Email: peter@carstensmanagement.com

10

11 Agent authorized to receive service of process by mail on behalf of Carstens Company with
12 respect to all matters relating to this Decree:

12

13

Name: Guy J. Sternal

14

Title: Attorney

15

Address: Eisenhower & Carlson, PLLC
1201 Pacific Ave, Suite 1200
Tacoma WA 98402

16

Phone: (253) 572-4500

17

Email: gsternal@eisenhowerlaw.com

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26 CONSENT DECREE - 78

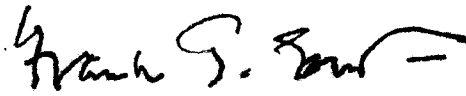
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Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR CHEVRON U.S.A. INC.

2 Date: April 22 2015



3 Name: Frank G. Soler
4 Title: Assistant Secretary for Chevron U.S.A. Inc.
5 Address: 6001 Bollinger Canyon Rd., San Ramon, CA 94583
6 Phone: 925-842-1000

7
8
9 Agent authorized to receive service of process by mail on behalf of Chevron U.S.A. Inc. with
10 respect to all matters relating to this Decree:

11 Name: Corporation Service Company
12 Title: Agent for Service of Process
13 Address: 2710 Gateway Oaks Dr., Suite 150N
14 Sacramento, CA 95833
15 Phone: 916-641-5100

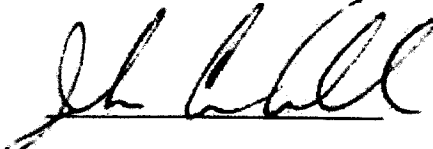
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26 CONSENT DECREE - 79

27 Michael McNulty
28 USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR CITY WATERWAY INVESTMENTS, INC.

2

3 Date: 5-12-2015



4

5

Name: John Crabill
Title: President
Address: 1900 East D St, Tacoma, WA 98421
Phone: (253) 627 3186
Email: johncrabill@icloud.com

6

7

8

9

10 Agent authorized to receive service of process by mail on behalf of City Waterway Investments,
11 Inc. with respect to all matters relating to this Decree:

12

Name: David Bingham
Title: Secretary - Treasurer
Address: 1900 East D St, Tacoma, WA 98421
Phone: (253) 627 3186
Email: winston3609@yahoo.com

13

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26 CONSENT DECREE - 80

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Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR CLOSING DAYS, INC., FORMERLY KNOWN AS RICHARD A. JOHNSON CEDAR
2 PRODUCTS, INC., FORMERLY D/B/A JOHNSON POSTMAN COMPANY

3
4 Date: 4-7-15 
5

6 Name Fred Nix
7 Title President
8 Address 5640 South Durango
Tacoma, WA
9 Phone 253-537-8824
Email fnix54@gmail.com

10
11
12 Agent authorized to receive service of process by mail on behalf of Closing Days, Inc., formerly
13 known as Richard A. Johnson Cedar Products, Inc., formerly d/b/a Johnson Postman Company
with respect to all matters relating to this Decree:

14
15 Name James V. Handmacher
16 Title Attorney
17 Address 820 A Street, Suite 600
Tacoma, WA 98402
18 Phone 253-627-8131
Email jvhandmacher@bvmm.com

26 CONSENT DECREE - 81

27 Michael McNulty
28 USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

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FOR EXXONMOBIL OIL CORPORATION AND EXXON MOBIL CORPORATION

Date: May 1, 2015



Name: Len M. Racioppi
Title: Agent and Attorney-in-Fact
Address: 22777 Springwoods Village Parkway, Spring TX 77389
Phone: 832-624-2039
Email: len.m.racioppi@exxonmobil.com

Agent authorized to receive service of process by mail on behalf of ExxonMobil Oil Corporation and Exxon Mobil Corporation with respect to all matters relating to this Decree:

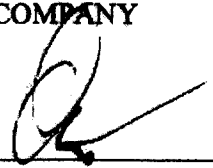
Name: Kevin J. Vaughan
Title: Counsel
Address: 22777 Springwoods Village Parkway, Spring TX 77389
Phone: 832-625-8251
Email: kevin.j.vaughan@exxonmobil.com

CONSENT DECREE - 82

Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

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FOR F. S. HARMON MANUFACTURING COMPANY



Date: March 24, 2015

Name	David Walton
Title	President
Address	2926 South Steele Street Tacoma WA 98409-7638
Phone	(425) 345-2032
Email	DAVID.WALTON7@comcast.net

Agent authorized to receive service of process by mail on behalf of F. S. Harmon Manufacturing Company with respect to all matters relating to this Decree:

Name	James V. Handmacher
Title	Attorney
Address	820 A Street, Suite 600 Tacoma, WA 98402
Phone	(253) 627-8131
Email	jvhandmacher@bvmm.com

CONSENT DECREE - 83

Michael McNulty
 USDOJ/ENRD/EES
 P.O. Box 7611
 Ben Franklin Station
 Washington, D.C. 20044
 (202) 514-1210

1 FOR GLACIER NORTHWEST, INC. (LONE STAR NORTHWEST),
2

3 Date: April 20, 2015 
4

5 Name Ed Owens
6 Title Vice President-General Manager
7 Address 5975 East Marginal Way S., Seattle, WA 98134
8 Phone (206) 764-3000
9 Email EOwens@calportland.com

10 Agent authorized to receive service of process by mail on behalf of Glacier Northwest, Inc.
11 (Lone Star Northwest) with respect to all matters relating to this Decree:

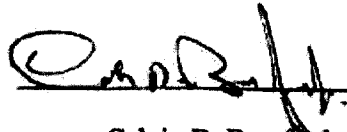
12 Name Registered Agent Solutions, Inc. (RASI)
13 Title
14 Address 3400 Capitol Blvd S. #101, Olympia, WA 98501
15 Phone
16 Email

26 CONSENT DECREE - 84

27 Michael McNulty
28 USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR GLOBE MACHINE MANUFACTURING COMPANY
2

3 Date: 28 April 15
4



5 Name Calvin D. Bamford, Jr.
6 Title President
7 Address Globe Machine Manufacturing Company
8 701 East D Street
9 Tacoma, WA 98421
10 Phone (253) 383-2584
11 Email calb@globemachine.com

12 Agent authorized to receive service of process by mail on behalf of Globe Machine
13 Manufacturing Company with respect to all matters relating to this Decree:

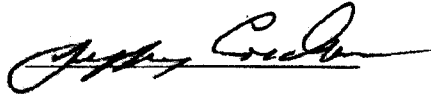
14 Name: Loren Dunn
15 Title: Principal
16 Address: Riddell Williams P.S.
17 1001 Fourth Avenue, Suite 4500
18 Seattle, WA 98154
19 Phone: (206) 389-1794
20 Email: ldunn@riddellwilliams.com

21
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25 CONSENT DECREE - 85

26 Michael McNulty
27 USDOJ/ENRD/EES
28 P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR GULL INDUSTRIES, INC.
2

3 Date: 4/27/15



4
5 Name Jeffrey M. Cordova
6 Title CFO/VP
7 Address PO Box 24687
8 Seattle, WA 98124
9 Phone (206) 624-5900
10 email jmc@gulloil.com

11 Agent authorized to receive service of process by mail on behalf of Gull Industries, Inc. with respect
12 to all matters relating to this Decree:

13 Name Robie G. Russell
14 Title Attorney at Law
15 Address 76 South Main Street
16 Seattle, WA 98104-2514
17 Phone (206) 621-2102
18 email robielaw@gmail.com

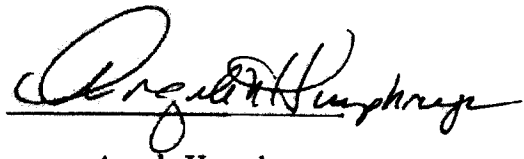
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26 CONSENT DECREE - 86

27 Michael McNulty
28 USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

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FOR INVESTCO FINANCIAL CORPORATION

Date: 4/28/15



Name Angela Humphreys
Title Vice President – General Counsel
Address 1302 Puyallup St., Sumner, WA 98390
Phone (253) 863-6200
Email ahumphreys@investco.com

Agent authorized to receive service of process by mail on behalf of Investco Financial Corporation with respect to all matters relating to this Decree:

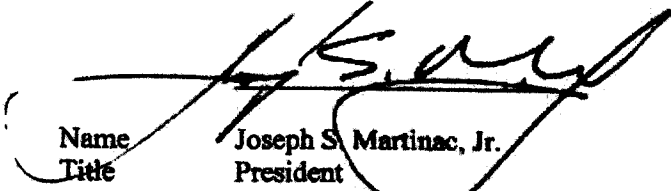
Name Angela Humphreys
Title Vice President – General Counsel
Address 1302 Puyallup St., Sumner, WA 98390
Phone (253) 863-6200
Email ahumphreys@investco.com

CONSENT DECREE - 87

Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR J.M. MARTINAC SHIPBUILDING CORPORATION
2

3 Date: May 6, 2015
4



5 Name	Joseph S. Martinac, Jr.
6 Title	President
7 Address	J.M. Martinac Shipbuilding Corporation 2902 North 27 th Tacoma, WA. 98407
8 Phone	(253) 761-6122
9 Email	jmartinac@martinacship.com

10
11 Agent authorized to receive service of process by mail on behalf of J.M. Martinac Shipbuilding
12 Corporation with respect to all matters relating to this Decree:

13 Name	Sally E. Metteer
14 Title	Attorney
15 Address	Wilson Smith Cochran Dickerson 901 Fifth Avenue, Suite 1700 Seattle, WA 98164
16 Phone	(206) 623-4100
17 Email	metteer@wscd.com

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26 CONSENT DECREE - 88

27 Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
28 (202) 514-1210

1 FOR KING COUNTY METRO TRANSIT DIVISION

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Date: 9/23/15 Kevin Desmond

Name Kevin Desmond
Title General Manager, KC Metro Transit Division
Address 201 South Jackson Street, M/S KSC-TR-0415
Seattle, WA 98104
Phone 206-477-5910
Email kevin.desmond@kingcounty.gov

Agent authorized to receive service of process by mail on behalf of King County Metro Transit Division with respect to all matters relating to this Decree:

Name King County Metro Transit
Title General Manager's Office
Address 201 South Jackson Street, M/S KSC-TR-0415
Seattle, WA 98104

With a copy to:

Chief Civil Deputy
King County Prosecuting Attorney's Office
King County Courthouse, Room W400
516 Third Avenue
Seattle, WA 98104

CONSENT DECREE - 89

Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR LOUISIANA-PACIFIC CORPORATION
2

3 Date: 4/14/2015
4



5 Name April A. Ingram
6 Title Assoc. General Counsel
7 Address 414 Union St., Suite 2000, Nashville TN 37219
8 Phone (615) 986-5691
9 Email april.ingram@lpcorp.com

10 Agent authorized to receive service of process by mail on behalf of Louisiana-Pacific
11 Corporation with respect to all matters relating to this Decree:

12 Name United States Corporation Company
13 Title
14 Address 300 Deschutes Way SW, Suite 304
15 Tumwater, WA 98501
16 Phone
17 email

26 CONSENT DECREE - 90

27 Michael McNulty
28 USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR MARINE IRON WORKS, INC.

2

3 Date: 5-4-15



4

5

Name	Martin A. Petrich
Title	VP & Secretary
Address	5205 Orca Drive NE, Tacoma, WA 98422
Phone	(253) 878-5770
Email	marpet1@comcast.net

6

7

8

9

10 Agent authorized to receive service of process by mail on behalf of Marine Iron Works, Inc. with
11 respect to all matters relating to this Decree:

11

12

Name	Tod Gold
Title	Attorney
Address	1601 5 th Avenue, Suite 2040, Seattle, WA 98101
Phone	(206) 957-5953
Email	tgold@jzplaw.com

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26 CONSENT DECREE - 91

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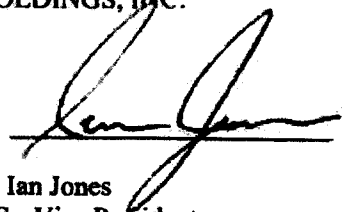
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Michael McNulty
 USDOJ/ENRD/EES
 P.O. Box 7611
 Ben Franklin Station
 Washington, D.C. 20044
 (202) 514-1210

1 FOR MCFARLAND CASCADE HOLDINGS, INC.

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Date: April 30/15



Name Ian Jones
Title Sr. Vice President
Address 1640 East Marc, Tacoma, WA 98421
Phone (253) 572-3033
email IJones@Stella-Jones.com

Agent authorized to receive service of process by mail on behalf of McFarland Cascade Holdings, Inc. with respect to all matters relating to this Decree:

Name Maureen Mitchell
Title Attorney, Summit Law Group
Address 315 5th Ave. S., Suite 1000, Seattle, WA 98104
Phone (206) 676-7000
email MaureenM@summitlaw.com

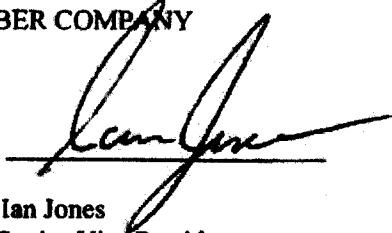
CONSENT DECREE - 92

Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

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FOR CASCADE POLE AND LUMBER COMPANY

Date: April 30/15



Name Ian Jones
Title Senior Vice President
Address 1640 East Marc, Tacoma, WA 98421
Phone (253) 572-3033
email IJones@Stella-Jones.com

Agent authorized to receive service of process by mail on behalf of Cascade Pole and Lumber Company with respect to all matters relating to this Decree:

Name Maureen Mitchell
Title Attorney, Summit Law Group PLLC
Address 315 5th Ave. S., Suite 1000, Seattle, WA 98104
Phone (206) 676-7000
email MaureenM@Summitlaw.com

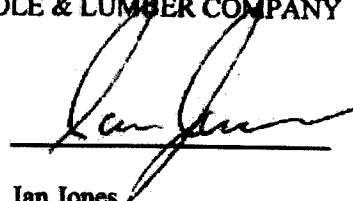
CONSENT DECREE - 93

Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

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FOR MCFARLAND CASCADE POLE & LUMBER COMPANY

Date: April 30/15



Name Ian Jones
Title Senior Vice President
Address 1640 East Marc, Tacoma, WA 98421
Phone (253) 572-3033
email IJones@Stella-Jones.com

Agent authorized to receive service of process by mail on behalf of and McFarland Cascade Pole & Lumber Company with respect to all matters relating to this Decree:

Name Maureen Mitchell
Title Attorney, Summit Law Group PLLC
Address 315 5th Ave. S., Suite 1000, Seattle, WA 98104
Phone (206) 676-7000
email MaureenM@summitlaw.com

CONSENT DECREE - 94

Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR MENASHA CORPORATION

2

3

Date: 4/30/2015



4

5

Name: Mark P. Fogarty

6

Title: Vice President, General Counsel and Corporate Secretary

7

Address: 1645 Bergstrom Road, Neenah, WI 54957-0367

8

Phone: (920) 751-1497

9

Email: Mark.Fogarty@menasha.com

10

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

11

12

Name CT Corporation

13

Title

14

Address

208 South LaSalle St. Suite 814

15

Phone

Chicago, IL 60604

16

email

312-345-4328

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CONSENT DECREE - 95

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Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR MOORAGE ASSOCIATES, LLC

2

3 Date: 03/30/2015

Albert C. Smith

4

5

Name: Albert C. Smith

6

Title: Member

7

Address: P.O. Box 782
Palo Alto, CA 94023

8

Phone: (650) 948-2087

9

Email: acs2087@gmail.com

10

11 Agent authorized to receive service of process by mail on behalf of Moorage Associates, LLC
with respect to all matters relating to this Decree:

12

Name: Guy J. Sternal

13

Title: Attorney

14

Address: Eisenhower & Carlson, PLLC
1201 Pacific Ave., Suite 1200
Tacoma WA 98402

15

Phone: (253) 572-4500

16

Email: gsternal@eisenhowerlaw.com

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26 CONSENT DECREE - 96

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Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR MOUNTAIN STATES POWER (PACIFICORP)

2

3 Date: 4-17-15

4

Cathy S. Woollums

5

Name Cathy S. Woollums
Title Senior Vice President, Environmental Services and
6 Chief Environmental Counsel for
7 Berkshire Hathaway Energy Company
Address 106 East Second Street
8 Davenport, Iowa 52801
Phone 563-333-8009
9 Email cswoolums@berkshirehathawayenergyco.com

10

11

12 Agent authorized to receive service of process by mail on behalf of Mountain States Power
(PacifiCorp) with respect to all matters relating to this Decree:

13

14

Name Louis A. Ferreira
Title Partner
15 Address 900 SW Fifth Ave., Suite 2600, Portland, OR 97204
16 Phone 503-294-9412
17 email lou.ferreira@stoel.com

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CONSENT DECREE - 97

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Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR MUFG UNION BANK, N.A.
2

3 Date: 5/1/15 Cynthia Wagner
4

5 Name Cynthia Wagner
6 Title Director
7 Address 500 S. Main Street, Suite 320
8 Orange, CA 92868
9 Phone (714) 565-5635
10 Email Cynthia.wagner@unionbank.com

11 Agent authorized to receive service of process by mail on behalf of MUFG Union Bank, N.A.
12 with respect to all matters relating to this Decree:

13 Name Cynthia Wagner
14 Title Director
15 Address 500 S. Main Street, Suite 320
16 Orange, CA 92868
17 Phone (714) 565-5635
18 Email Cynthia.wagner@unionbank.com

19 Name Joseph J. Catalano
20 Title DGC & Managing Director
21 Address 400 California St, 16th Floor
22 San Francisco, CA 94104
23 Phone (415) 765-2506
24 Email joseph.catalano@unionbank.com

25
26 CONSENT DECREE - 98

27 Michael McNulty
28 USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR NESTLÉ USA, INC.

2

3 Date: 3/27/15



5

Name Yun Au
Title Chief Legal Officer & General Counsel
Address 800 North Brand Blvd., Glendale, CA 91203
Phone (818) 549-6703
email Yun.Au@US.nestle.com

JC 3/27/15

6

7

8

9

10 Agent authorized to receive service of process by mail on behalf of Nestlé USA, Inc. with
11 respect to all matters relating to this Decree:

12

Name CT Corporation System
Title n/a
Address 818 West 7th St., 2nd Fl., Los Angeles, CA 90017
Phone (213) 627-8252
email n/a

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CONSENT DECREE - 99

Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR NICHOLS TRUCKING COMPANY / JOHN AND ELDEENA NICHOLS
2

3 Date: 3-26-15
4

Robert W. Stack

5 Name Robert W. Stack
6 Title Terminal Manager
7 Address 424 East 19th St.
8 Tacoma, WA 98421
9 Phone (253) 272-8495
10 Email bob@nicholstrucking.com

11 Agent authorized to receive service of process by mail on behalf of Nichols Trucking Company/
12 John and Eldeena Nichols with respect to all matters relating to this Decree:

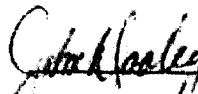
13 Name Dianne K. Conway
14 Title Attorney
15 Address c/o Gordon Thomas Honeywell LLP
16 1201 Pacific Ave., Suite 2100
17 Tacoma, WA 98402
18 Phone (253) 620-6500
19 Email dconway@gth-law.com

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26 CONSENT DECREE - 100

27 Michael McNulty
28 USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR NORTHWEST ETCH TECHNOLOGY, INC.
2

3 Date: 4/6/15
4



5 Name: John Dooley
6 Title: CEO
7 Address: 2601 South Hood Street
Tacoma WA 98411
8 Phone: (253) 572-2401
Email: johnd@nwetch.com

9
10
11 Agent authorized to receive service of process by mail on behalf of Northwest Etch Technology,
Inc. with respect to all matters relating to this Decree:

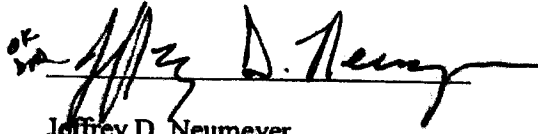
12 Name: Guy J. Sternal
13 Title: Attorney
14 Address: Eisenhower & Carlson, PLLC
1201 Pacific Ave., Suite 1200
Tacoma WA 98402
15 Phone: (253) 572-4500
16 Email: gsternal@eisenhowerlaw.com

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26 CONSENT DECREE - 101

27 Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
28 (202) 514-1210

1 FOR OFFICEMAX INCORPORATED
2

3 Date: 03/30/2015



4
5 Jeffrey D. Neumeyer
6 Vice President and Associate General Counsel
7 1111 West Jefferson Street, Suite 510
8 Boise, ID 83702
9 Tel: 208.388.4177
10 Jeffrey.Neumeyer@officedepot.com

11 Agent authorized to receive service of process by mail on behalf of OfficeMax Incorporated with
12 respect to all matters relating to this Decree:

13 Corporate Creations
14 11380 Prosperity Farms Road #221E
15 Palm Beach Gardens, FL 33410
16 www.CorporateCreations.com
17 Tel: (561) 694-8107
18 Fax: (561) 694-1639

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26 CONSENT DECREE - 102

27 Michael McNulty
28 USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR OLYMPIC CHEMICAL CORPORATION

2

3 Date: 5/1/15

William Krause

4

5

Name	William Krause
Title	Secretary
Address	17411 NE Union Hill Road, Redmond, WA 98052
Phone	(425) 889-3759
Email	will.krause@univarcorp.com

6

7

8

9

10 Agent authorized to receive service of process by mail on behalf of Olympic Chemical
11 Corporation with respect to all matters relating to this Decree:

11

12

Name	Michell Ulick Rosenthal
Title	Partner (Veris Law Firm)
Address	1809 Seventh Ave., Suite 1400, Seattle, WA 98101
Phone	(206) 535-6006
Email	michelle@verislawgroup.com

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26 CONSENT DECREE - 103

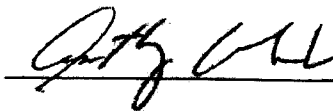
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Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR OMYA, INC.
2

3 Date: 4-27-2015
4



5 Name Anthony Colak
6 Title Chief Executive Officer
7 Address 9987 Carver Road, Suite 300
8 Cincinnati, OH 45242
9 Phone 513-387-4600
10 Email Anthony.Colak@omya.com

11 Date: 4-27-2015
12



13 Name Michael Phillips
14 Title Chief Financial Officer
15 Address 9987 Carver Road, Suite 300
16 Cincinnati, OH 45242
17 Phone 513-387-4600
18 Email Michael.Phillips@omya.com

19 Agent authorized to receive service of process by mail on behalf of OMYA, Inc. with respect to
20 all matters relating to this Decree:

21 Name Jeffrey T. Golenbock, Attorney
22 Title Partner
23 Address 437 Madison Avenue
24 New York, NY 10022
25 Phone 212-907-7373
26 Email jgolenbock@golenbock.com

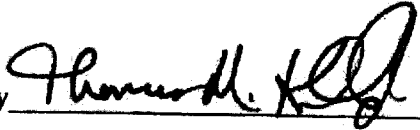
27 CONSENT DECREE - 104
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Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR PACIFIC NORTHERN OIL CORP., a dissolved Washington corporation

2 THOMAS M. KILBANE ATTORNEY AT LAW PLLC

3
4
5 Date: May 1, 2015

By 

6 Name Thomas M. Kilbane
7 Title Authorized Person
8 Address 8164 NE Yeti Lane
9 Bainbridge Island, WA 98110
10 Phone (206) 484-1307
11 email tom@kilbanelaw.com

12 Agent authorized to receive service of process by mail on behalf of Pacific Northern Oil Corp., a
13 dissolved Washington corporation, with respect to all matters relating to this Decree:

14 Name Thomas M. Kilbane
15 Title Authorized Person
16 Address 8164 NE Yeti Lane
17 Bainbridge Island, WA 98110
18 Phone (206) 484-1307
19 email tom@kilbanelaw.com

20
21
22
23
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25
26 CONSENT DECREE - 105

27 Michael McNulty
28 USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR PETRICH MARINE DOCK, LLC
2

3 Date: 3/27/15
4

Clare Petrich

5 Name: Clare Petrich
6 Title: Managing Partner
7 Address: 1118 East D Street, Tacoma, WA 98421
8 Phone: 253-272-1005
9 Email: clare@harbornet.com

10
11 Agent authorized to receive service of process by mail on behalf of Petrich Marine Dock, LLC
12 with respect to all matters relating to this Decree:

13 Name: Kimberly Seely
14 Title: Attorney
15 Address: 4015 Ruston Way, Suite 200, Tacoma, WA 98402
16 Phone: 253-203-6820
17 Email: kseely@coastlinelaw.com

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26 CONSENT DECREE - 106

27 Michael McNulty
28 USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR PHILLIPS 66 COMPANY
2

3 Date: 4-1-15
4



5 Name Steve Belin
6 Title Remediation Manager, Remediation Management
7 Address 420 South Keeler, PB-1715, Bartlesville, OK 74003
8 Phone 918-977-5399
9 Email Steve.A.Belin@P66.com

10 Agent authorized to receive service of process by mail on behalf of Phillips 66 Company with
11 respect to all matters relating to this Decree:

12 Name United States Corporation Company
13 Title Agent for Service of Process
14 Address 300 Deschutes Way SW, Suite 304
15 Tumwater, WA 98501
16 Phone 800-927-9800
17 Email info@cscinfo.com

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26 CONSENT DECREE - 107

27 Michael McNulty
28 USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR PRECISION MACHINE WORKS, INC.
2

3 Date: 4/8/15
4

David Baublits

5	Name	David Baublits
6	Title	Former President
7	Address	2024 Puyallup Ave. E., Tacoma, WA 98421
8	Phone	(253) 272-5119
9	Email	tohspord@hotmail.com

10 Agent authorized to receive service of process by mail on behalf of Precision Machine Works,
11 Inc. with respect to all matters relating to this Decree:

12	Name	<u>SAME AS ABOVE</u>
13	Title	
14	Address	
15	Phone	
16	email	

26 CONSENT DECREE - 108

27 Michael McNulty
28 USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR PREMIER INDUSTRIES, INC.
2

3 Date: April 3rd 2015 
4

5 Name: Michael R. Wall
6 Title: President
7 Address: Premier Industries, Inc.
8 11126 Vipond Drive NW
9 Gig Harbor, WA 98329
10 Phone: (253) 279-1797
11 email

11 Agent authorized to receive service of process by mail on behalf of Premier Industries, Inc. with
12 respect to all matters relating to this Decree:

13 Name: Courtney Seim
14 Title: Principal
15 Address: Riddell Williams P.S.
16 1001 Fourth Avenue, Suite 4500
17 Seattle, WA 98154
18 Phone: (206) 389-1683
19 Email: cseim@riddellwilliams.com
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25 CONSENT DECREE - 109

26 Michael McNulty
27 USDOJ/ENRD/EES
28 P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR PUGET SOUND ENERGY

2

3 Date: 4/23/2015



4

5 Name Lorna Luebbe
6 Title Assistant General Counsel/Director Environmental
7 Address Puget Sound Energy, Inc.
8 10885 NE 4th St., PSE 12N
9 Bellevue, WA 98004-5591
10 Phone (425) 462-3031
11 Email lorna.luebbe@pse.com

10

11

12 Agent authorized to receive service of process by mail on behalf of Puget Sound Energy with
13 respect to all matters relating to this Decree:

13

14 Name: Courtney Seim
15 Title: Principal
16 Address: Riddell Williams P.S.
17 1001 Fourth Avenue, Suite 4500
18 Seattle, WA 98154
19 Phone: (206) 389-1683
20 Email: cseim@riddellwilliams.com

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25 CONSENT DECREE - 110

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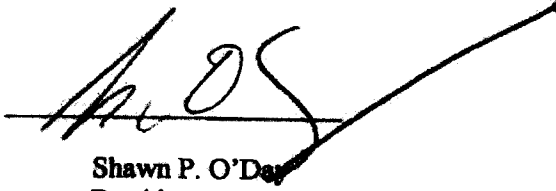
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Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR RAINIER PLYWOOD CO.
2

3 Date: 4/27/2015
4



5 Name Shawn P. O'Day
6 Title President
7 Address 624 E 15th St, Tacoma, WA 98421
8 Phone (253) 383-5533 x112
9 Email shawn@richlite.com

10 Agent authorized to receive service of process by mail on behalf of Rainier Plywood Co. with
11 respect to all matters relating to this Decree:

12 Name Shawn P. O'Day
13 Title President
14 Address 624 E 15th St, Tacoma, WA 98421
15 Phone (253) 383-5533 x112
16 Email shawn@richlite.com

26 CONSENT DECREE - 111
27
28

Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR SHELL OIL COMPANY

2

3

4 Date: 5-5-15



5

Name	W.E. Platt
Title	Senior Manager
Address	910 Louisiana, Suite 31062C Houston, TX 77002
Phone	713-241-5126
email	ed.platt@shell.com

6

7

8

9

10

11

Agent authorized to receive service of process by mail on behalf of Shell Oil Company with respect to all matters relating to this Decree:

12

13

Name	CT Corporation System
Title	
Address	505 Union Avenue SE Olympia, WA 98501
Phone	360-357-6794
email	Not Available

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CONSENT DECREE - 112

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Michael McNulty
 USDOJ/ENRD/EES
 P.O. Box 7611
 Ben Franklin Station
 Washington, D.C. 20044
 (202) 514-1210

1 FOR SHORE TERMINALS LLC

2

3 Date: 4/2/2015

4



Karen M. Thompson
Senior Vice President & General Counsel
19003 IH-10 West, San Antonio, TX 78257
(210) 918-2354
karen.thompson@nustarenergy.com

5

6

7

8

9

10 Agent authorized to receive service of process by mail on behalf of Shore Terminals LLC with respect to all matters relating to this Decree:

11

Karen M. Thompson
Senior Vice President & General Counsel
19003 IH-10 West, San Antonio, TX 78257
(210) 918-2354
karen.thompson@nustarenergy.com

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26 CONSENT DECREE - 113

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Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR SUPERVALU, INC.

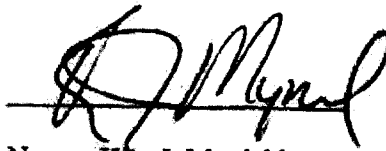
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3

Date: 4/28/15

4

5



Name: Kim J. Myrdahl

Title: VP, Litigation, Regulatory & Compliance

6 Address: 11840 Valley View Road, Eden Prairie, MN 55344

7 Phone: 952-828-4159

Email: Kim.J.Myrdahl@supervalu.com

8

9

10 Agent authorized to receive service of process by mail on behalf of SUPERVALU, Inc. with
11 respect to all matters relating to this Decree:

11

12

Name: CT Corporation

Title: CT Corporation

13

Address: 505 Union Avenue SE, Olympia, WA 98501

14

Phone: 360-357-6794

15

Email: N/A

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26 CONSENT DECREE - 114

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Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR THE BOEING COMPANY

2

3

4 Date: March 24, 2015



5

Name: Leah M. Krider

6

Title: Senior Counsel

7

Address: The Boeing Company

8

5400 International Blvd.

9

M/C 7830-NE51

10

North Charleston, SC. 29418-6937

11

Phone: 843-641-1839

12

Email: Leah.M.Krider@boeing.com

13

Agent authorized to receive service of process by mail on behalf of The Boeing Company with respect to all matters relating to this Decree:

14

Name:

15

Title:

16

Address: The Boeing Company

17

c/o Corporation Service Company

18

2730 Gateway Oaks Drive, Suite 100

19

Sacramento, CA 95833

20

Phone: (916)641-5100

21

Email:

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CONSENT DECREE - 115

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Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR THE DIL TRUST, INCLUDING ITS PREDECESSOR THE DILLINGHAM
2 CORPORATION

3
4 Date: 5/6/15 Kirk A. Wilkinson

5
6 Name Kirk A. Wilkinson
7 Title Counsel
8 Address c/o Latham & Watkins, 355, South Grand Ave,
9 Phone (213) 891-8234
10 email Kirk.Wilkinson@lw.com

11
12 Agent authorized to receive service of process by mail on behalf of The DIL Trust, including its
13 predecessor the Dillingham Corporation, only with respect to all matters relating to this Decree:

14 Name Kirk A. Wilkinson
15 Title Counsel
16 Address c/o Latham & Watkins, 355, South Grand Ave,
17 Phone (213) 891-8234
18 email Kirk.Wilkinson@lw.com

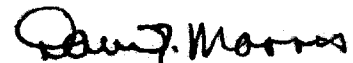
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26 CONSENT DECREE - 116

27 Michael McNulty
28 USDOJ/ENRD/EES
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(202) 514-1210

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FOR THE JACK MORRIS ESTATE/MORRIS FAMILY TRUSTS

Date: 3/24/15



Name David J. Morris
Title Sole Successor Trustee
Address 2319 Hobart Ave SW
Seattle WA 98116

Agent authorized to receive service of process by mail on behalf of The Jack Morris Estate/Morris Family Trusts with respect to all matters relating to this Decree:

Name Charles M. Davis
Title Attorney for Jack Morris Estate/Morris Family Trusts
Address 4767 Wharf St
Bow WA 98232
Phone (360) 766-3223
Email Cdavis@davismarine.com

CONSENT DECREE - 117

Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR THE JOSEPH L. TRUCCO AND JEAN E. TRUCCO LIVING TRUST, COLONIAL
2 FRUIT & PRODUCE, INC.

3
4 Date: 4/3/15



5
6 Name Kevin Trucco
7 Title Trustee
8 Address 9024 Lake Steilacoom Point Road SW
9 Phone (253) 272-2102
10 Email Kevin@colonialproduce.com

11
12 Agent authorized to receive service of process by mail on behalf of The Joseph L. Trucco and
13 Jean E. Trucco Living Trust, Colonial Fruit & Produce, Inc. with respect to all matters relating to
14 this Decree:


15 Name Kevin Trucco
16 Title Trustee
17 Address 9024 Lake Steilacoom Point Road SW
18 Phone (253) 272-2102
19 Email Kevin@colonialproduce.com

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21
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23
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25
26 CONSENT DECREE - 118

27 Michael McNulty
28 USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR THE WATTLES COMPANY

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Date: April 17, 2015 

Name Craig Wattles
Title President
Address 35800 249th Avenue SE, Enumclaw, WA 98022
Phone 253-272-7205
email craig@wattlescompany.com

Agent authorized to receive service of process by mail on behalf of The Wattles Company with respect to all matters relating to this Decree:

Name Kurt Peterson
Title Attorney
Address 1201 Third Avenue, Suite 320, Seattle, WA 98101
Phone 206-292-6300
email kpeterson@cascadialaw.com

CONSENT DECREE - 119

Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR THREE RIVERS MANAGEMENT, INC. FOR THE FORMER HYGRADE FOOD
2 PRODUCTS CORP.

3
4 Date: 4-30-2015 

5 Name Robert S. Markwell
6 Title President, Three Rivers Management, Inc.
7 Address 1910 Cochran Road, Suite 200
8 Pittsburgh, PA 15220
9 Phone (412) 208-8812
10 Email rob.markwell@trmi.biz

11 Agent authorized to receive service of process by mail on behalf of Three Rivers Management,
12 Inc. for the former Hygrade Food Products Corp. with respect to all matters relating to this
13 Decree:

14 Name Charles E. McChesney, II
15 Title Chief Counsel, Three Rivers Management, Inc.
16 Address 1910 Cochran Road, Suite 200
17 Pittsburgh, PA 15220
18 Phone (412) 208-8839
19 Email charles.mcchesney@trmi.biz

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26 CONSENT DECREE - 120

27 Michael McNulty
28 USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR TRUCK-RAIL HANDLING, INC.

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Date: 4/23/2015



Name Lee Schorno
Title President
Address 45051 Industrial Drive
Fremont, CA 94538-6436
(510) 657-4267
email lschorno@quatp-trh.com

Agent authorized to receive service of process by mail on behalf of Truck-Rail Handling, Inc. with respect to all matters relating to this Decree:

Name Robie G. Russell
Title Attorney at Law
Address 76 South Main Street
Seattle, WA 98104-2514
Phone (206) 621-2102
email robielaw@gmail.com

CONSENT DECREE - 121

Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR UNION PACIFIC RAILROAD COMPANY
2

3 Date: May 4, 2015
4

5 Name : David P. Young
6 Title AVP Law
7 Address 801 Louisiana, Suite 300, Houston, TX 77002
8 Phone 713-220-3201
9 Email dpyoung@up.com

10 Agent authorized to receive service of process by mail on behalf of Union Pacific Railroad
11 Company with respect to all matters relating to this Decree:

12 Name Tod Gold
13 Title Attorney
14 Address Joyce Ziker Parkinson, PLLC
15 Phone 206.957.5953
16 Email tgold@jzplaw.com

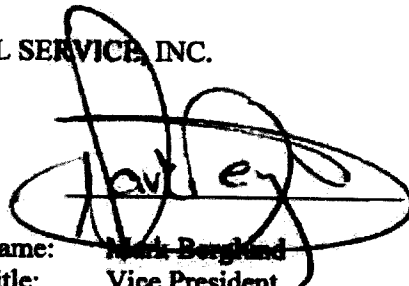
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26 CONSENT DECREE - 122

27 Michael McNulty
28 USDOJ/ENRD/EES
P.O. Box 7611
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Washington, D.C. 20044
(202) 514-1210

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FOR WASHINGTON FLORAL SERVICE, INC.

Date: 4/14/2015



Name: ~~Mark Berglund~~
Title: Vice President
Address: 2701 S. 35th Street
Tacoma WA 98409
Phone: (253) 472-8343
Email: mberglund@washingtonfloral.com

Agent authorized to receive service of process by mail on behalf of Washington Floral Service, Inc. with respect to all matters relating to this Decree:

Name: Mark Berglund
Title: Vice President
Address: 2701 S. 35th Street
Tacoma WA 98409
Phone: (253) 472-8343
Email: mberglund@washingtonfloral.com

CONSENT DECREE - 123

Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

2

3 Date: 4/13/15



4

5

Name Deborah L. Cade
Title Assistant Attorney General

6

Address PO Box 40113
Olympia, WA 98504-0113

7

Phone 360-753-4964

8

Email DeborahC@atg.wa.gov

9

10

11

Agent authorized to receive service of process by mail on behalf of Washington State
Department of Transportation with respect to all matters relating to this Decree:

12

13

Name Deborah L. Cade
Title Assistant Attorney General

14

Address PO Box 40113
Olympia, WA 98504-0113

15

Phone 360-753-4964

16

Email DeborahC@atg.wa.gov

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CONSENT DECREE - 124

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Michael McNulty
USDOJ/ENRD/EES
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1210

1 FOR WOODWORTH & COMPANY, INC.
2

3 Date: April 4, 2015
4



5 Name: Jeff Woodworth
6 Title: President
7 Address: 3110 Ruston Way, Suite D
Tacoma, WA 98402
8 Phone: (253) 759.0165
9 Email: jeff@woodworthcapital.com

10 Agent authorized to receive service of process by mail on behalf of Woodworth & Company,
11 Inc. with respect to all matters relating to this Decree:

12 Name: Jeff Woodworth
13 Title: President
14 Address: 3110 Ruston Way, Suite D
Tacoma, WA 98402
15 Phone: (253) 759.0165
16 Email: jeff@woodworthcapital.com

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26 CONSENT DECREE - 125

27 Michael McNulty
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28 (202) 514-1210