

1 THE HONORABLE JOHN C. COUGHENOUR

2 UNITED STATES DISTRICT COURT  
3 WESTERN DISTRICT OF WASHINGTON  
4 AT SEATTLE

5  
6 THE UNITED STATES OF AMERICA,  
7 THE STATE OF WASHINGTON, THE  
8 MUCKLESHOOT INDIAN TRIBE, and THE  
9 PUYALLUP TRIBE OF INDIANS,

10 Plaintiffs,

11 v.

12 POLAR TANKERS, INC.,

13 Defendant.

Case No. C10-0429-JCC

ORDER

14 This matter comes before the Court on Plaintiff United States of America's Motion to  
15 Enter Consent Decree. (Dkt. No. 7). There has been no response or reply. Having thoroughly  
16 considered the parties' briefing and the relevant record, the Court finds oral argument  
17 unnecessary and hereby GRANTS the motion.

18 **I. BACKGROUND**

19 A. The Plaintiffs filed a complaint against Defendant Polar Tankers, Inc.  
20 ("Defendant"), concurrently with this Consent Decree, alleging that Defendant is liable  
21 pursuant to the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. §§ 2701 *et seq.*, for a discharge  
22 of crude oil from the tank vessel POLAR TEXAS, owned by Polar Tankers, Inc., into  
23 waterways in or near Dalco Passage, Washington that occurred on or about October 13, 2004  
24 ("Spill"). The oil washed ashore on Vashon and Maury Islands in the Dalco Passage area off  
25 Commencement Bay. Defendant Polar Tankers, Inc. is a wholly owned subsidiary of  
26 ConocoPhillips, Inc.

1           B.       The Complaint seeks natural resource damages under Section 1002 of OPA, 33  
2 U.S.C. § 2702, and the Washington State Water Pollution Control Act (RCW 90.48.142), for  
3 injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable  
4 costs of assessing the damages, on behalf of the United States, the State of Washington, the  
5 Muckleshoot Indian Tribe, and the Puyallup Tribe of Indians.

6           C.       The Department of Commerce, National Oceanic and Atmospheric  
7 Administration (“NOAA”); Department of the Interior, U.S. Fish & Wildlife Service  
8 (“USFWS”); Washington State Department of Fish and Wildlife; Washington State  
9 Department of Ecology; the Muckleshoot Indian Tribe; and the Puyallup Tribe of Indians share  
10 trusteeship of the injured natural resources and are coordinating restoration efforts.

11           D.       The Trustees allege that the Spill caused injuries to various intertidal and  
12 subtidal species, including Puget Sound Chinook salmon and other salmonids, Hardshell  
13 Clams, Surf Smelt, and Sand Lance, and their habitats, as well as birds and other wildlife. The  
14 Spill resulted in oiling and temporary closures of beaches on Vashon and Maury Islands. The  
15 Trustees have determined that the settlement contained in this consent decree will compensate  
16 the public for damages to natural resources.

17           E.       In October 2006, Defendant paid a total of \$2,313,293.94 to the United States to  
18 reimburse removal costs and to satisfy claims for civil penalties pursuant to Section 311(b)(6)  
19 of the Clean Water Act, 33 U.S.C. § 1321(b)(6), as amended by OPA, 33 U.S.C. §§ 2701 *et*  
20 *seq.* In October 2006, Defendant also paid a total of \$540,000 to the State of Washington  
21 (Washington Department of Ecology) to reimburse removal costs and to satisfy claims for civil  
22 penalties pursuant to Washington State Water Pollution Control Act, Chapters 90.56 and 90.48  
23 RCW.

24           F.       The Parties agree and the Court finds that settlement of this matter without  
25 further litigation is in the public interest and that the entry of this Consent Decree is the most  
26 appropriate means of resolving this matter.

1           G.     The Parties agree, and the Court by entering this Consent Decree finds, that this  
2 Consent Decree has been negotiated by the Parties in good faith and will avoid prolonged and  
3 complicated litigation between the Parties. The proposed consent judgment represents a  
4 resolution that is fair, reasonable and equitable and does not violate the law or public policy.  
5 *Sierra Club, Inc. v. Electronic Controls Design, Inc.*, 909 F.2d 1350, 1355 (9th Cir. 1990).

6           H.     Defendant does not admit any liability arising out of the transactions or  
7 occurrences alleged in this action and does not admit the allegations contained in the complaint  
8 or in this Consent Decree.

9           NOW, THEREFORE, before the taking of any testimony, without the adjudication or  
10 admission of any issue of fact or law except as provided in Section I, and with the consent of  
11 the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

12       **II.     JURISDICTION, VENUE, AND NOTICE**

13           1.     This Court has jurisdiction over the subject matter of the claims in this action  
14 pursuant to 28 U.S.C. §§ 1331, 1345, and 1367(a). Venue lies in this judicial district pursuant  
15 to 28 U.S.C. §§ 1391(b) and (c), because the Spill alleged in the Complaint occurred in, and  
16 Defendant conducts business in, this judicial district. For purposes of this Consent Decree, or  
17 any action to enforce this Consent Decree, Defendant consents to the Court's jurisdiction and  
18 venue in this judicial district.

19       **III.    APPLICABILITY**

20           2.     The obligations of this Consent Decree apply to and are binding upon the  
21 Plaintiffs and upon Defendant, and its parent companies and affiliates, including but not  
22 limited to ConocoPhillips Company, and its successors or assigns. Any change in ownership  
23 or corporate status of the Defendant including, but not limited to, any transfer of assets or real  
24 or personal property, shall in no way alter such Defendant's or its successors' and assigns'  
25 rights or responsibilities under this Consent Decree.

26           //

1 **IV. DEFINITIONS**

2 3. Terms used in this Consent Decree that are defined or used in OPA, or in  
3 regulations promulgated thereunder, shall have the meanings assigned to them in the statute or  
4 such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set  
5 forth below are used in this Consent Decree, the following definitions shall apply:

- 6 a. "Complaint" shall mean the complaint filed by the Plaintiffs in this action, unless  
7 noted otherwise.
- 8 b. "Consent Decree" or "Decree" shall mean this Consent Decree.
- 9 c. "Day" shall mean a calendar day unless expressly stated to be a working day. In  
10 computing any period of time under this Consent Decree, where the last day would  
11 fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of  
12 business of the next working day.
- 13 d. "Defendant" shall mean Polar Tankers, Inc., a wholly owned subsidiary of  
14 ConocoPhillips, Inc., and its parent companies and affiliates, including but not  
15 limited to ConocoPhillips Company, and its successors or assigns.
- 16 e. "Natural Resources" shall have the meaning set forth in Section 1001(20) of OPA,  
17 33 U.S.C. § 2701(20).
- 18 f. "Natural Resource Damages" shall have the meaning set forth in Section 1002 of  
19 OPA, 33 U.S.C. § 2702, Section 107 of CERCLA, 42 U.S.C. § 107, the  
20 Washington State Water Pollution Control Act Chapter 90.48 RCW, and the  
21 Washington Model Toxics Control Act Chapter 70.105D RCW, which includes  
22 damages for injury to, destruction of, loss of, or loss of use of, natural resources,  
23 including the reasonable costs of assessing the damage.
- 24 g. "NOAA" shall mean the National Oceanic and Atmospheric Administration of the  
25 United States Department of Commerce.

26 //

- h. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral.
- i. "Parties" shall mean the United States, the State, the Muckleshoot Indian Tribe, the Puyallup Tribe of Indians and Defendant.
- j. "Plaintiffs" shall mean the United States, the State of Washington, the Muckleshoot Indian Tribe, and the Puyallup Tribe of Indians.
- k. "Spill" shall mean the discharge of oil that occurred on or about October 13, 2004.
- l. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.
- m. "State" shall mean the State of Washington.
- n. "Tribes" shall mean the Muckleshoot Indian Tribe and the Puyallup Tribe of Indians.
- o. "Trustees" shall mean the designated federal, state, and tribal agencies or officials who act on behalf of the public as trustees for the Natural Resources allegedly injured by the Spill.
- p. "United States" shall mean the United States of America, acting on behalf of NOAA and USFWS.
- q. "USFWS" shall mean the U.S. Fish & Wildlife Service of the Department of the Interior.

**V. DAMAGE ASSESSMENT REIMBURSEMENT AND NATURAL RESOURCE DAMAGES**

4. Damage Assessment Reimbursement. Within thirty (30) days after the Effective Date of this Consent Decree, Defendant shall pay to the Trustees and King County a total of \$100,700 to reimburse costs, as specified below:

- a.) \$52,000 to NOAA;
- b.) \$10,000 to USFWS;

b.) \$3,000 to the State of Washington;

d.) \$12,700 to the Puyallup Tribe; and

e.) \$23,000 to King County.

Payments to NOAA and USFWS shall be made by FedWire Electronic Funds Transfer (“EFT”) to the United States Department of Justice, referencing the Civil Action Number and DOJ case number 90-5-1-1-08673. Payments shall be made in accordance with current EFT procedures and instructions to be provided by the Financial Litigation Unit of the U.S. Attorney’s Office for the Western District of Washington. Any payments received by the Department of Justice after 4:00pm Eastern Standard Time shall be credited on the next business day.

Payment to the State of Washington shall be made by certified check and made payable and addressed as follows:

Payee: Washington Department of Fish and Wildlife

Address: 600 Capitol Way N

Olympia, Washington 90501-1091

Attn: Lynn Needham, Accounts Receivable

Payment to the Puyallup Tribe of Indians shall be made by certified check and made payable and addressed as follows:

Payee: Puyallup Tribe of Indians

Address: Puyallup Tribe of Indians

3009 East Portland Avenue

Tacoma, Washington 98404

Attn: Bill Sullivan

Payment to King County shall be made by certified check and made payable and addressed as follows:

Payee: King County Wastewater Treatment Division

Address: Attn: Steve Tull

Business & Finance Officer IV,

KC DNRW Wastewater Treatment Division

201 S. Jackson St., Suite 502  
Seattle, Washington 98104

5. Natural Resource Damages. Within thirty (30) days after the Effective Date of this Consent Decree, Defendant shall pay a total of \$487,300 for natural resource damages. Payment shall be made to the Department of Interior Natural Resource Damage Assessment and Restoration Fund. Such payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the United States Department of Justice, referencing the Civil Action Number, DOJ case number 90-5-1-1-08673, NRDAR Account No. 14X5198 and “Natural Resource Damages for the Dalco Passage Spill.” Payments shall be made in accordance with current EFT procedures and instructions to be provided by the Financial Litigation Unit of the U.S. Attorney’s Office for the Western District of Washington. Any payments received by the Department of Justice after 4:00pm Eastern Standard Time shall be credited on the next business day.

6. At the time of each payment in Paragraphs 4 and 5 above Defendant shall send notice that the payment has been made to DOJ, the Trustees and King County in accordance with Section XI (Notices). The notice shall state that the payment is for Natural Resource Damages or reimbursement for costs of assessing damages caused by the Spill and shall reference DOJ case number 90-5-1-1-08673 and the Civil Action Number.

#### **VI. RESTORATION PLAN**

7. The Trustees intend to use the funds recovered under Paragraph 5 above to restore, rehabilitate, and replace natural resources injured as a result of the Spill in accordance with a restoration plan that the will be developed, adopted, and implemented consistent with applicable federal, state and tribal law. The funds will be used for all costs associated with implementing restoration, including but not limited to drafting and adopting the restoration plan and related NEPA/SEPA determination, public involvement, restoration monitoring and administrative costs. A copy of the restoration plan as currently proposed is attached hereto as

1 Appendix A. The Trustees may elect to modify the proposed plan after execution of this  
2 Consent Decree and payment of the \$487,300 in natural resource damages by Defendant  
3 pursuant to Paragraph 5 above. Such a modification shall not affect the payment obligation set  
4 forth in Paragraph 5 or the covenant not to sue set forth in Paragraph 18.

## 5 **VII. STIPULATED PENALTIES**

6 8. Defendant shall be liable for stipulated penalties for violations of this Consent  
7 Decree as specified below. A violation includes failing to perform any obligation required by  
8 the terms of this Consent Decree, according to all applicable requirements of this Consent  
9 Decree and within the specified time schedules established by or approved under this Consent  
10 Decree.

11 9. Failure to Pay Damage Assessment Costs. If Defendant fails to make a  
12 payment required to be paid pursuant to Paragraph 4 of this Consent Decree when due,  
13 Defendant shall pay to the Trustees a stipulated penalty of \$1,000 per Day for each Day that  
14 the payment is late. Payment of a stipulated penalty for failure to make a payment required  
15 under Paragraph 4 shall be in accordance with the payment procedures outlined in Paragraph 4.

16 10. Failure to Pay Natural Resource Damages. If Defendant fails to pay the Natural  
17 Resource Damages required to be paid pursuant to Paragraph 5 of this Consent Decree when  
18 due, Defendant shall pay to the Trustees a stipulated penalty of \$2,000 per Day for each Day  
19 that the payment is late. Payment of a stipulated penalty for failure to make the payment  
20 required under Paragraph 5 shall be in accordance with the payment procedures outlined in  
21 Paragraph 5.

22 11. Interest on Late Payments. In addition to the stipulated penalties set forth in  
23 this Section, in the event Defendant fails to make timely payments of any amounts required  
24 under this Consent Decree, Defendant shall pay interest on the unpaid balance. Interest for late  
25 payments of the damage assessment costs and Natural Resource Damages required in Section  
26 V, shall be at the rate specified in Section 1005 of OPA, 33 U.S.C. § 2705.



1           12.     Stipulated penalties under this Section shall begin to accrue on the Day after  
2 performance is due and shall continue to accrue until performance is satisfactorily completed.  
3 Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

4           13.     Plaintiffs shall give Defendant written notification that Defendant has failed to  
5 make a timely payment pursuant to this Consent Decree; however, the stipulated penalties  
6 provided for in Paragraphs 9 and 10 shall accrue, as provided in Paragraph 12 above, and shall  
7 be owed regardless of whether or not Defendant has been notified of a violation. Defendant  
8 shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written  
9 demand.

10          14.     Any stipulated penalty payments shall be accompanied by a reference to this  
11 Consent Decree and be identified as "Stipulated Penalties." Notice of the payment shall be  
12 sent to the Parties in the manner specified in Section XI (Notices).

13          15.     If Defendant fails to pay stipulated penalties according to the terms of this  
14 Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in  
15 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph  
16 shall be construed to limit the United States or the State from seeking any remedy otherwise  
17 provided by law for Defendant's failure to pay any stipulated penalties.

18          16.     Defendant shall not deduct any stipulated penalties paid under this Consent  
19 Decree pursuant to this Section in calculating its federal income tax.

20          17.     Subject to the provisions of Section IX of this Consent Decree (Effect of  
21 Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree  
22 shall be in addition to any other rights, remedies, or sanctions available to the United States for  
23 Defendant's violation of this Consent Decree or applicable law.

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1 **VIII. COVENANTS NOT TO SUE**

2 18. Covenant by the Plaintiffs. In consideration of the payments that will be  
3 made by Defendant pursuant to Section V (Damage Assessment Reimbursement and Natural  
4 Resource Damages) of this Consent Decree, the Plaintiffs covenant not to sue or take  
5 administrative action against the Defendant pursuant Section 1002(a) and (b) of OPA, 33  
6 U.S.C. § 2702(a) and (b), Section 107(a) of the Comprehensive Environmental Response,  
7 Compensation and Liability Act, 42 U.S.C. § 9607(a), Section 311 of the Clean Water Act, 33  
8 U.S.C. § 1311, the Washington State Model Toxics Control Act (Chapter 70.105D RCW), or  
9 the Washington State Water Pollution Control Act (Chapter 90.58 RCW), for Natural Resource  
10 Damages caused by the Spill or otherwise relating to or arising from the Spill. This covenant  
11 not to sue is conditioned upon receipt by the Trustees of all payments and interest required by  
12 Section V (Damage Assessment Reimbursement and Natural Resource Damages) and Section  
13 VII (Stipulated Penalties) of this Consent Decree.

14 19. Covenant by the Parties Not to Present Claims to the Oil Spill Liability Trust  
15 Fund. All Parties covenant not to assert any claim for response costs or damages arising from  
16 the Spill, pursuant to Sections 1008 and 1013 of OPA, 33 U.S.C. §§ 2708 and 2713, to the Oil  
17 Spill Liability Trust Fund.

18 20. Covenant by the Defendant. Defendant hereby covenants not to sue and  
19 agrees not to assert any claims or causes of action against the Plaintiffs (including all  
20 employees, agents, contractors, departments, agencies, administrations and bureaus thereof)  
21 related to Natural Resource Damages arising out of the Spill, including without limitation any  
22 potential or pending claims against the Oil Spill Liability Trust Fund relating to the Spill.

23 **IX. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

24 21. Notwithstanding any other provision of this Consent Decree, the Plaintiffs  
25 reserve, and this Consent Decree is without prejudice to, all legal and equitable remedies  
26 available to enforce the provisions of this Consent Decree, except as expressly stated in

1 Section VIII above. This Consent Decree shall not be construed to limit the rights of the  
2 Plaintiffs to obtain penalties or injunctive relief under the Clean Water Act, 33 U.S.C. § 1251  
3 *et seq.*, or OPA, or implementing regulations, or under other federal or state laws, regulations,  
4 or permit conditions, except as expressly specified in Section VIII above.

5 22. In any subsequent administrative or judicial proceeding initiated by the  
6 Plaintiffs for injunctive relief, civil penalties, damages, or other appropriate relief relating to  
7 Defendant's tank vessel, Defendant shall not assert, and may not maintain, any defense or  
8 claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion,  
9 claim preclusion, claim-splitting, or other defenses based upon any contention that the claims  
10 raised by the Plaintiffs in the subsequent proceeding were or should have been brought in the  
11 instant case, except with respect to claims that have been specifically resolved pursuant to  
12 Section VIII of this Consent Decree.

13 23. This Consent Decree does not limit or affect the rights of Defendant or of the  
14 Plaintiffs against any third parties, not party to this Consent Decree, nor does it limit the rights  
15 of third parties, not party to this Consent Decree, against Defendant, except as otherwise  
16 provided by law.

17 24. This Consent Decree shall not be construed to create rights in, or grant any  
18 cause of action to, any third party not party to this Consent Decree.

19 23. This Consent Decree does not limit or affect the rights of Defendant or of the  
20 Plaintiffs against any third parties, not party to this Consent Decree, nor does it limit the rights  
21 of third parties, not party to this Consent Decree, against Defendant, except as otherwise  
22 provided by law.

23 24. This Consent Decree shall not be construed to create rights in, or grant any  
24 cause of action to, any third party not party to this Consent Decree.

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1   **X.     COSTS**

2           25.     The Parties shall bear their own costs of this action, including attorneys' fees,  
3     except that the Plaintiffs shall be entitled to collect the costs (including attorneys' fees)  
4     incurred in any action necessary to collect any portion of amounts not paid by Defendants as  
5     required by the Consent Decree.

6   **XI.    NOTICES**

7           26.     Unless otherwise specified herein, whenever notifications, submissions, reports  
8     or communications are required by this Consent Decree, they shall be made in writing and  
9     addressed to all parties as follows:

10   As to the United States

11           As to DOJ

12           Chief, Environmental Enforcement Section  
13           Environment and Natural Resources Division  
14           U.S. Department of Justice  
15           Box 7611, Ben Franklin Station  
16           Washington, D.C. 20044-7611  
17           Re: DOJ No. 90-5-1-1-08673

18           As to NOAA

19           Robert Taylor  
20           GCNR/NW  
21           National Oceanic and Atmospheric Administration  
22           7600 Sand Point Way N.E.  
23           Seattle, WA 98115

24           As to DOI

25           Barry Stein  
26           U.S. Department of the Interior  
            Office of the Solicitor, Pacific Northwest Region  
            805 SW Broadway Ste. 600  
            Portland Oregon 97201

1  
2 As to the State

3 Kelly T. Wood  
4 Philip M. Ferester  
5 Washington State Attorney General's Office  
6 P.O. Box 40117  
7 Olympia, WA 98504  
8 Facsimile: 360-586-6760

9 Rebecca Post  
10 Washington State Department of Ecology  
11 P.O. Box 47600  
12 Olympia, WA 98504

13 As to the Tribes

14 Charlotte Williams  
15 Muckleshoot Indian Tribe  
16 39015 172<sup>nd</sup> Avenue SE  
17 Auburn, Washington 98092  
18 Facsimile: (253) 939-5311

19 Bill Sullivan  
20 Puyallup Tribe of Indians  
21 3009 East Portland Avenue  
22 Tacoma, Washington 98404  
23 Facsimile: (253) 573-7929

24 As to King County

25 Attn: Steve Tull  
26 Business & Finance Officer IV,  
KC DNRP Wastewater Treatment Division  
201 S. Jackson St., Suite 502  
Seattle, Washington 98104  
(206) 684-1515

27 As to Defendant

28 Katharine Newman  
29 Senior counsel  
30 ConocoPhillips  
31 600 N Dairy Ashford

1 ML 2082  
2 Houston TX 77079  
3 ph 281.293.3649  
4 [katharine.f.newman@conocophillips.com](mailto:katharine.f.newman@conocophillips.com)

5 27. Any Party may, by written notice to the other Parties, change its designated  
6 notice recipient or notice address provided above.

7 28. Notices submitted pursuant to this Section shall be deemed submitted upon  
8 mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the  
9 Parties in writing.

## 10 **XII. EFFECTIVE DATE**

11 29. The Effective Date of this Consent Decree shall be the date this Consent Decree  
12 is entered by the Court.

## 13 **XIII. RETENTION OF JURISDICTION**

14 30. The Court shall retain jurisdiction over both the subject matter of this Consent  
15 Decree and the Parties for the duration of the performance of the terms and provisions of this  
16 Consent Decree for the purpose of enabling any of the Parties to apply to the Court for such  
17 further order, direction, and relief as may be necessary or appropriate to enforce compliance  
18 with its terms or to enable all of the Parties to apply to the Court for the material modification  
19 of the Consent Decree pursuant to Section XIV below. Nothing in this Consent Decree shall  
20 be deemed to limit or alter the Court's power to enforce it.

## 21 **XIV. MODIFICATION**

22 31. The terms of this Consent Decree may be modified only by a subsequent written  
23 agreement signed by all the Parties. Where the modification constitutes a material change to  
24 this Consent Decree, it shall be effective only upon approval by the Court.

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1 **XV. PUBLIC PARTICIPATION**

2 32. This Consent Decree shall be lodged with the Court for a period of not less than  
3 thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The  
4 Plaintiffs each reserve the right to withdraw or withhold its consent if the comments regarding  
5 the Consent Decree disclose facts or considerations indicating that the Consent Decree is  
6 inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree  
7 without further notice.

8 **XVI. SIGNATORIES/SERVICE**

9 33. The Deputy Section Chief of the Environmental Enforcement Section of the  
10 United States Department of Justice and each undersigned representative of the State of  
11 Washington, the Tribes and Defendant certifies that he or she is fully authorized to enter into  
12 the terms and conditions of this Consent Decree and to execute and legally bind the Party he or  
13 she represents to this document.

14 34. This Consent Decree may be signed in counterparts, and its validity shall not be  
15 challenged on that basis. Defendant agrees to accept service of process by mail with respect to  
16 all matters arising under this Consent Decree and to waive the formal service requirements set  
17 forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules  
18 of this Court including, but not limited to, service of a summons.

19 **XVII. INTEGRATION**

20 35. This Consent Decree constitutes the final, complete, and exclusive agreement  
21 and understanding among the Parties with respect to the settlement embodied in the Consent  
22 Decree and supercedes all prior agreements and understandings, whether oral or written,  
23 concerning the settlement embodied herein. No other document, nor any representation,  
24 inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree  
25 or the settlement it represents, nor shall it be used in construing the terms of this Consent  
26 Decree.

1 **XVIII. FINAL JUDGMENT**

2           36.     Upon approval and entry of this Consent Decree by the Court, this Consent  
3 Decree shall constitute a final judgment of the Court as to the United States, the State, the  
4 Tribes and Defendant.

5           DATED this 21st day of May, 2010.

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9 John C. Coughenour  
10 UNITED STATES DISTRICT JUDGE  
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1 FOR THE UNITED STATES OF AMERICA:

2 1/27/10

/s Ellen M. Mahan

3 ELLEN M. MAHAN

4 Deputy Section Chief

Environmental Enforcement Section

5 Environment and Natural Resources Division

6 United States Department of Justice

7 1/28/10

/s Erika M. Zimmerman

8 ERIKA M. ZIMMERMAN

9 Trial Attorney

Environmental Enforcement Section

10 Environment and Natural Resources Division

United States Department of Justice

11 P.O. Box 7611, Ben Franklin Station

12 Washington, D.C. 20044-7611

Telephone: (202) 514-5270

13 Facsimile: (202) 514-4180

14  
15 JENNY A. DURKAN

16 United States Attorney

17 BRIAN C. KIPNIS

Assistant United States Attorney

18 5220 United States Court House

700 Stewart Street

19 Seattle, Washington 98101-1271

Telephone: (206) 553-7970

20 Facsimile: (206) 553-4073

21 E-mail: brian.kipnis@usdoj.gov

1 FOR THE STATE OF WASHINGTON:

2  
3 12/31/09

/s Kelly T. Wood  
KELLY T. WOOD  
PHILIP M. FERESTER  
Washington State Attorney General's Office  
P.O. Box 40117  
Olympia, WA 98504  
Facsimile: 360-586-6760

7  
8 12/31/09

/s Dale Jensen  
DALE JENSEN  
Manager, Spills Program  
Washington State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

1 FOR THE MUCKLESHOOT INDIAN TRIBE:  
2

3 3/10/10

/s Robert L. Otsea, Jr.  
ROBERT L. OTSEA, JR.  
WSBA # 9367  
Office of the Tribal Attorney  
Muckleshoot Indian Tribe  
39015 - 172nd Avenue S.E.  
Auburn, Washington 98092  
Tel. (253) 939-3311

8  
9 3/10/10

/s Charlotte Williams  
CHARLOTTE WILLIAMS  
Chairperson  
Muckleshoot Indian Tribe  
39015 - 172nd Avenue S.E.  
Auburn, Washington 98092

1 FOR THE PUYALLUP TRIBE OF INDIANS:

2  
3 3/2/10

/s Herman Dillon, Sr  
HERMAN DILLON, SR  
Puyallup Tribal Council Chair  
Puyallup Tribe of Indians  
3009 Portland Avenue  
Tacoma, Washington 98404  
Facsimile: (253) 573-7929

FOR DEFENDANT:

1/25/10

/s Philip R. Lempriere

PHILIP R. LEMPRIERE

JAY CARLSON

Keesal, Young & Logan

1301 Fifth Avenue, Suite 1515

Seattle, Washington 98101

(206) 622-3790

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