Elliott Bay/Duwamish Restoration Program
1992 annual report

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May 1993

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Introduction

On March 19, 1990 a complaint was filed by the United States on behalf of the National Oceanic and Atmospheric Administration (NOAA)[1]. The complaint was filed under Section 107 of CERCLA, 42 U.S.C. § 9607 (a), to seek recovery for injuries to United States' trust resources in Elliott Bay and the Duwamish River. Injuries were alleged to have occurred as a result of the release of several hazardous substances via combined sewer outfalls (CSOs) and storm water outfalls operated by the Municipality of Metropolitan Seattle (Metro) and the City of Seattle (City).

The parties involved settled the lawsuit by entering into a Consent Decree in federal district court on December 23, 1991. "In view of the nature of the claims and defenses, the risks of litigation, and all other relevant factors, the court finds that the consent decree is fair, reasonable, adequate, and in the public interest" (Judge William L. Dwyer, December 23, 1991). The settlement requires Metro and the City to provide $12 million for sediment remediation, $5 million in cash and $5 million in real property for habitat development, and up to $2 million in additional contaminant source control efforts to protect sediment and habitat projects. The agreement also provided for the creation of a Panel to oversee and manage the implementation of the settlement.

Though they forcefully pressed their respective positions during the lawsuit, the seven parties involved have now established an effective working relationship, and have made substantial progress in implementing the settlement. The Panel has spent the first year on organizational matters, gathering information, and developing a list of potential project sites and selection criteria.

This Annual Report is intended to bring together in one place the underlying documents and basic information regarding the participants and the principles, actions and decisions of the Panel and its working groups.

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[1] United States, et al. v. City of Seattle and Municipality of Metropolitan Seattle ,Case No. C90-395WD (W.D. Wash.) [NOTE: all ¶ numbers cited refer to this document].

The Consent Decree

In the process of negotiating a settlement, attorneys representing the signatories to the Consent Decree established many of the necessary guidelines and procedures under which the settlement would be implemented. Among these were: The creation of a Panel of Managers and a list of their authorities, a registry account to receive payments from Metro and the City of Seattle, a schedule for these payments, the terms for implementing three major programs (sediment remediation, habitat development, and source control), and the geographic boundaries within which the Panel of Managers may act.

Panel of Managers

The Panel of Managers established by the Consent Decree to manage the implementation of the settlement consists of designated voting representatives and alternates from the following agencies: NOAA, U.S. Fish and Wildlife Service (USFWS), Washington Department of Ecology, Suquamish Indian Tribe, Muckleshoot Indian Tribe, City of Seattle, and Metro. The Panel of Managers have named themselves (by Resolution 1992 – 24) "The Elliott Bay/Duwamish Restoration Program Panel". The Panel has also established two technical working groups which advise the Panel. These are: the Sediment Remediation Technical Working Group, chaired by Pat Romberg of Metro, and the Habitat Development Technical Working Group, chaired by Curtis Tanner of USFWS. These groups are open to representatives of other agencies listed in the Consent Decree who are "...capable of contributing particular expertise applicable to that working group's tasks" or to "...other qualified individuals" (Consent Decree ¶ 15).

A broad base of knowledge and expertise has been developed in the technical working groups due to the participation of a variety of experts. Among these have been representatives from parties to the settlement, the U.S. Army Corps of Engineers, the Environmental Protection Agency, the Washington Departments of Wildlife, Natural Resources, and Fisheries, King County Surface Water Management, the Port of Seattle, the Boeing Company, and the Fisheries Research Institute of the University of Washington.

A spirit of intergovernmental cooperation has been achieved by the participants in the working groups. In the first year since the decree was signed, the agency representatives have worked together to make significant progress in implementing the settlement and achieving its goals. It is hoped that this spirit of cooperation will establish the momentum necessary for the long-term success of the EB/DRP.

A Public Participation Committee has been established by the Panel. This group is committed to keeping the public informed and involved in the Elliott Bay/Duwamish Restoration Program.

Geographic Boundaries

The area covered by the settlement includes Elliott Bay eastward of a line between Alki Point and West Point including "...the shoreline ten (10) meters upland from the mean high water line ('Elliott Bay')..." and the Duwamish River from the river mouth to the head of navigation "...including Harbor Island and the East and West Waterways around Harbor Island ('Duwamish River')..."(Consent Decree ¶ 3). For purposes of habitat development, the covered area includes tributaries to the Duwamish River.

Payments and Budgeting

The total value of payments, in-kind services and real property to be provided by Metro and the City of Seattle is $24,250,000 over a period of six years beginning in 1992 and ending in 1997. The burden of making payments is shared equally between Metro and the City of Seattle. Of this amount, $12 million will be used for sediment remediation, and $5 million will be used for habitat development. Metro and the City are charged with providing up to $5 million worth of real property to be used as sites for habitat development projects.

The Panel may allow Metro and the City to fulfill their obligations by providing in-kind services. The determination to do so may be made annually through 1996, provided that Metro and the City have submitted proposals for the provision of such services by September 30 of each year. The Panel may accept the proposals in whole or in part, and must specify conditions to ensure adequate oversight of the services provided.

In addition, in-kind services to implement the source control goals established by the Panel of Managers are to be provided by Metro and the City in accordance with the Consent Decree which states"[The Panel has the authority to] establish source control goals to protect natural resources and prevent recontamination of sites selected for sediment remediation or habitat development in the covered area" (Consent Decree ¶ 9d, ¶ 33 and 34). The value of in-kind services for this purpose will total $2 million.

Other important financial constraints and guidelines established by the Consent Decree include the following:

- Minimum payments by Metro and the City for purposes of sediment remediation in the amount of $300,000 on January 15 and July 15 are to be deposited semi-annually until 1997, when the balance of $12 million will be due (minimum annual total for sediment remediation is $600,000 – ¶ 21).
- Minimum payments by Metro and the City for purposes of habitat development in the amount of $125,000 to be deposited on the same dates semi-annually until 1997, when the balance of $5 million will be due (minimum annual total for habitat development is $250,000 – ¶ 29).
- Payments above the minimum amounts for habitat development and sediment remediation will exceed the minimum only by as much as the Panel has indicated in the annual budget, taking into account unspent funds from prior years (¶ 11, 20, 21, 28, 29).
- Interest earned on amounts deposited for sediment remediation and habitat development will be used only for the implementation of sediment remediation projects and habitat development projects, respectively (¶ 4c).
- An annual budget for the following year will be provided to Metro and the City by March 31 of every year after 1992 (example: the 1994 budget is due March 31, 1993). The 1992 and 1993 annual budgets were adopted by Panel Resolutions 1992 – 5 (1993 budget) and 1992 – 6 (1992 budget) at the Panel meeting of May 7, 1992 (¶ 11).
- No more than $2 million can be spent to support Panel functions. This includes salary and overhead for an administrative director, costs associated with administering the Registry Account, costs of public review and participation, costs of disseminating information, costs of contracting for services necessary for any of the listed purposes, and costs associated with participation by personnel of the Trustees in Panel meetings and deliberations and technical working groups, including salary and travel (¶ 10a).

- No more than $3 million can be spent on expenses of planning and design support. This includes "...the costs of studies needed to set goals and establish priorities for sediment remediation, habitat development, and source control projects; costs of analysis as required for comparison of candidate sites and site selection; costs of site characterization as required to support detailed technical/engineering studies; costs of project design, specifications, selection of equipment, materials, and procedures; costs associated with NEPA/SEPA review, analysis, and reporting; costs associated with permitting; costs of selection of monitoring parameters and design of monitoring programs; costs of technical support for the Suquamish and Muckleshoot Indian Tribes; final report preparation; and costs of contracting for any services necessary to the accomplishment of said tasks" (¶ 10b).
- The Panel has adopted Trustee Reimbursement Guidelines (see Resolution 1992-10), which reflect the Panel's desire to limit this amount to $150,000 per year. This resolution, and other resolutions, are intended to keep administrative and planning functions within the maximum amounts established by the Consent Decree.

Milestones of 1992

- January 23, 1992: The first meeting of the Elliott Bay/Duwamish Restoration Program Panel. Preliminary division into subgroups: Technical and Administrative.
- January 30: The first meeting of the Technical Group, preliminary discussion of the goals of the Program.
- February 6: Curtis Tanner, USFWS and Mike Rylko, EPA presented "Potential Intertidal Habitat Restoration Sites in the Duwamish River Estuary" to the Panel. This list of sites has become the nucleus of the list of potential habitat development sites under consideration.
- February 20: Jim Lindler and Bob Swartz of Metro introduced the first public participation proposal; Metro assumed initial responsibilities for planning public participation.
- February 27: City of Seattle, Metro, EPA, DNR, Port of Seattle, Corps of Engineers, Ecology and USFWS representatives presented available data resources which could be provided for purposes of implementing the settlement, in particular, Geographic Information Systems (GIS) databases.

- March 5: A first draft of Panel Bylaws was available. The bylaws were drafted by attorneys representing the parties to the settlement.
- March 19: The Panel agreed to grant to NOAA personnel the duties of the Administrative Director of the Panel. Panel Bylaws were adopted.
- March 26: The Technical Group began discussion of criteria for habitat development and sediment remediation projects.
- April 2: Dave Jamison of DNR proposed an Elliott Bay Cooperative Management Plan to address the need for comprehensive planning in Elliott Bay and to address DNR concerns with regard to the impact of sediment remediation and habitat development projects on navigation and commerce.
- April 15: Panel meetings were reduced in frequency from bimonthly to monthly, to occur on the first Thursday of each month. The Technical Group began meeting every Thursday when there was not a Panel meeting.
- April 23: John Beal of the International Marine Association Protecting Aquatic Life Foundation (I'M A PAL Foundation) became the first member of the public to address the Technical Group. He discussed his activities in and around the Hamm Creek drainage basin and expressed his desire that the Program take action on behalf of Hamm Creek.
- May 7: 1992 and 1993 budgets were adopted by the Panel.
- June 4: An amendment to the Panel Bylaws stated that all Panel meetings would be open to the public unless the Panel chose to conduct an executive session.

The Technical Group was directed by the Panel to form two technical working groups, appoint chairs, develop a work plan and send out invitations to prospective participants listed in the Consent Decree.

Trustee reimbursement guidelines were adopted.

The Panel voted to support DNR's proposed Elliott Bay Cooperative Management Plan.

- July 9: First meeting of the Sediment Remediation Technical Working Group (SRTWG); Pat Romberg, Metro, was selected to chair the group. First meeting of the Habitat Development Technical Working Group (HDTWG); Curtis Tanner, USFWS, selected as Chair.
- July 14 – 15: Habitat Restoration Workshop co-sponsored by USFWS and the NOAA Restoration Center and conducted by Charles Simenstad, University of Washington, Fisheries Research Institute, Ron Thom, Battelle,

and Gordon Thayer, NMFS, was held at NOAA's Sand Point facility for Elliott Bay and Commencement Bay NRDA participants.

- July 23: Jeff Zahir presented Boeing Company plans to redevelop 600 acres of land adjacent to the Duwamish River and expressed the desire of the Boeing Company to work in cooperation with the Elliott Bay/Duwamish Restoration Program.
- July 30: Doug Hotchkiss presented Port of Seattle redevelopment plans in Elliott Bay and suggested that the Port and the EB/DRP might work together on projects of mutual interest.
- August: Technical Working Groups proceeded with development of the site selection process and preliminary site evaluations.

On the 27th of August, it was the consensus of the SRTWG that due to issues of resuspension, recontamination, circulation and sediment impact zone delineation (about which there is currently insufficient data) the waterfront may be have to be addressed as a single sediment remediation site.

- September 3: Metro was authorized to proceed with the collection of initial sediment chemistry and hydrography data at several sites in the Duwamish River.

Metro and the City formally requested the Panel to adopt the Pier 53 Capping and Enhanced Natural Recovery Project. The matter was referred to the SRTWG for further consideration and the formulation of a technical recommendation to the Panel.

- October 1: Kathy Chorostecki of NOAA Damage Assessment and Restoration Center Northwest rendered her opinion that Program activities fall under NEPA and possibly SEPA due to broad interpretation by the Courts of these requirements. The Panel decided to call a meeting with Corps of Engineers Environmental Resources Section personnel to discuss NEPA, SEPA and Section 404 requirements.

The Panel voted to adopt the Pier 53 Sediment Remediation Pilot Project, which had been initiated by the City and Metro, after the Panel determined that the project fell within the framework of the settlement.

The Panel established the Public Participation Committee.

Jim Lindler presented the Stakeholder Interview Report[2], which had been prepared by Metro staff under his direction. The report summarizes

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[2]Summary of Stakeholder Interviews, 1992. Copies available from Administrative Director, Elliott Bay/Duwamish Restoration Program.

results of interviews with Panel representatives, regulatory and resource agency personnel, elected officials, individuals with technical expertise and academic interest in Panel activities, representatives of environmental groups, and business and community leaders. The report provides the distilled opinion of 76 informed individuals on the future direction of the Elliott Bay/Duwamish Restoration Program.

- October 8: The SRTWG began development of a waterfront sediment remediation study by inventorying the types of questions which should be answered by the study. The HDTWG selected sites for preliminary design studies.
- October 29: A meeting at the US Army Corps of Engineers resulted in a recommendation to the Panel that the Panel should produce a programmatic concept and scoping document and project-by-project environmental assessments as a means of meeting NEPA requirements.
- November 5: Metro was designated to manage environmental review and tasked with developing a programmatic concept document to be used as the scoping document under NEPA. NOAA was designated as federal lead agency for NEPA purposes.

A target date of February 10, 1993 was set for the first public meeting.

- December 3: Wes Sprague of Metro presented the first draft outline of the programmatic concept document, as well as an environmental review budget. The budget was favorably received, but the Panel voted only to authorize funds for concept document development, with environmental assessment costs to be authorized at a later date.

The "Elliott Bay Panel" changed its name to "Elliott Bay/Duwamish Restoration Program Panel".

NOTE: The Administrative Record of the Elliott Bay/Duwamish Restoration Program is available by appointment. The Administrative Record contains a complete set of meeting minutes, decision documents, accounting documents and other records which are available to the public. Contact:

Elliott Bay/Duwamish Restoration Program
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Public Participation 1992 Summary

Margaret Duncan, Suquamish Tribe

The Consent Decree calls for public participation in the restoration program. It states that the Panel should provide for public participation in the selection and design of proposed habitat development and sediment remediation projects in addition to the formal opportunities provided by environmental review and permitting.

Early on, the Panel established its public process. In April 1992, the Panel authorized a study of the issues, values, and expectations of a cross-section of those individuals and groups recognized as having an interest in the Panel's activities. The cross-section included individuals, environmental and community groups, academics, businesses, elected officials, government agencies and members of the Panel. In addition to soliciting perspectives and advice regarding sediment remediation and habitat development, participants in the interview process were invited to comment on public education and involvement. On behalf of the Panel, Metro interviewed 79 individuals representing 33 organizations.

Many participants in the interview process viewed the Consent Decree and the work of the Panel as a positive opportunity to make significant improvements in Elliott Bay and the Duwamish River. They cautioned the Panel to use its limited time and monies to select projects that would provide long-term benefits to the environment. In urging the Panel to define a vision and structure that would carry out that vision over time, participants stressed that the Panel's work is dependent on public participation and support. Appropriate participation by citizens in projects being implemented was seen as a positive way to build support and long-term stewardship. Public support for restoration activities in the bay and river and public education to develop and encourage habits conducive to environmental recovery were seen as important goals. The results of the interviews were published and disseminated as the Elliott Bay Duwamish Restoration Program Summary of Stakeholder Interviews [3]in December 1992. A draft of the report was released to members of the Panel in October 1992.

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[3]Summary of Stakeholder Interviews, 1992. Copies available from Administrative Director, Elliott Bay/Duwamish Restoration Program.

Early in 1992, the Panel allocated funds for the development of a public involvement/education plan. In October 1992, the Panel established the Public Participation Committee to develop and implement the plan based on the findings of the summary of interviews. Suquamish Tribe representative Margaret Duncan assumed the role of chair for the committee, which is staffed by Virginia Hassinger, City of Seattle, and Robert Clark and Gail Siani of NOAA Damage Assessment and Restoration Center Northwest. Jim Lindler of Metro Communications provides his expertise as well. By the end of 1992, plans were in place for a February 1993 evening public meeting to share information and get feedback on selection criteria and potential sites for habitat development and sediment remediation projects. Work began on developing a mailing list and on other ways to inform the public of the Panel's activities.

In another early action, the Public Participation Committee recommended that the Panel develop a public identity. In December 1992, the committee recommended the name "Elliott Bay/Duwamish Restoration Program", which was adopted. The "Elliott Bay/Duwamish Restoration Program Panel" became the official name of the Panel.

In another important initiative, the Public Participation Committee recommended that the Panel Bylaws be amended to more clearly state the Panel's intent that meeting of the Panel, technical working groups, and committees be open to the public. The recommendation was accepted, and the Bylaws were amended in early 1993 to reaffirm this intent.

RESOLUTION 1992-1, March 19

[Note: what follows is the complete text of the NOAA proposal, this proposal was adopted by the Panel as Resolution 1992-1.]

ADMINISTRATIVE DIRECTOR
ELLIOTT BAY SETTLEMENT IMPLEMENTATION PANEL

NOAA PROPOSAL AS AMENDED
March 19, 1992

NOAA, through its NMFS Restoration Center and NOAA General Counsel/Damage Assessment representatives, proposes that the Administrative Director ("Director") functions be delegated to it by the Panel of Managers to perform the day-to-day administrative affairs of the Panel. Consent Decree, ¶14.

Day-to-day functions of the Director include but are not limited to tasks pertaining to the organization of Panel meetings and record-keeping on behalf of the Panel. For example:

- **meeting rooms**: reserving conference facilities
- **notification:** notifying Panel members of location and time of all regular and any special meetings
- **coffee**: purchase and preparation for meetings (via a discretionary fund?)
- **agendas**: preparing, disseminating and photocopying
- **minutes**: recording and preparing of minutes and attendance lists, including disseminating and photocopying for Panel meetings; maintaining minutes files
- **photocopying and dissemination**: other reports and documents as requested by Panel members
- **communications**: among and between Panel members, contractors, or other representatives to facilitate coordination of Panel activities; liaison with Court Registry Account representative
- **record-keeping**: maintaining all files on Panel communications, deliberations, financial expenditures (including tracking receipts and disbursements through the Registry Account), plans, proposals, and any other record-keeping as required by Panel operations

•**data collection**: Oversee the creation of a central repository for the collection, coordination, and dissemination of data and information of issues related to sediment remediation, habitat development, source control, or other information necessary for Panel deliberations. *

In accordance with ¶14 of the Consent Decree, the Director will provide to the Panel quarterly reports of its activities, including an accounting of any funds which may have been disbursed for the reasonable and necessary expenses incurred in performing the administrative tasks delegated to it by the Panel.

Six months from acceptance of this proposal, the Panel and NOAA will evaluate whether NOAA should continue in its capacity as Director or whether those functions should be otherwise redelegated or contracted out.

Reimbursement for the Administrative Director and its functions shall be in accordance with ¶10a of the Consent Decree. ("Expenses of Panel functions support include, but are not limited to, salary and overhead for an administrative director....")

Reimbursement will be based on billable hours, or whatever is decided by the Panel, but Clark and Francisco estimate that 50% of their time will be spent on Director tasks: Clark (35K), Francisco (25K), secretarial support (10K): Total=70K per year based on 1992 dollars. If costs associated with information collection/ dissemination activities are extensive, they will need to be handled as a separate cost item.

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* Paragraph 14 provides: "The Panel shall not delegate to the Director the authority to disburse, expend, obligate, or otherwise use funds from the Registry Account or perform any task of the Panel as set forth in paragraph 9 of this Decree." Among the items of the Panel's authority set out in paragraph 9 is:

> b. Gather data in Elliott Bay and the Duwamish River regarding damages to natural resources occasioned by releases of hazardous substances into the environment that have resulted in injury to, destruction of, or loss of natural resources;
>
> * * * *
>
> g. Ensure the collection from, and dissemination to, each group that is a member of the Panel all information necessary to an informed discussion and resolution of all issues related to sediment remediation, habitat development and source control....

Arguably, acting as a central repository for collecting, coordinating, and disseminating data and information could be viewed as "any task of the Panel as set forth in paragraph 9." NOAA believes the better reading of the Decree is to interpret the limitation on the delegation of authority only to prohibit the Administrative Director from making policy decisions that should be made by the Panel.

For purposes of subparagraphs b. and g. of Paragraph 9, this would mean that the Administrative Director would not be authorized to decide whether data should be collected or to decide what types of data should be collected. However, once the Panel determined that specific data should be collected ("ensured the collection" of data), the Administrative Director could be delegated the task of gathering the data.

ADDENDUM TO THE ADMINISTRATIVE DIRECTOR PROPOSAL

- NOAA will oversee data collection, storage and presentation and also examine data options for the technical working groups as directed by the panel.
- Data collection and distribution costs will be borne by the Elliott Bay Panel as a separate budget item aside from the $70K for A.D. salary and secretarial support.
- NOAA requests a lump-sum disbursement of $10K into a 'Discretionary Fund' for panel support costs (such as coffee). A quarterly account of expenditures from this fund will be given to the panel.

RESOLUTION 1992-2, March 19

Adoption of Bylaws

[Note: The Amended Bylaws of the Elliott Bay/Duwamish Restoration Program Panel are attached as an appendix.]

RESOLUTION 1992-3, March 19

"A motion to authorize 3.5K for [public involvement] plan development and set aside 34K for Level I, Option A [of the Public Involvement/Education Plan] if needed for 1992, was approved..."

RESOLUTION 1992-4, March 19

"Panel meetings will be held on the first Thursday of each month and the next Panel meeting will be on 7 May 1992. The Technical Working Group will meet every Thursday when there is no Panel meeting."

RESOLUTION 1992-5, May 7

ELLIOTT BAY SETTLEMENT IMPLEMENTATION
1993 BUDGET
1 May 1992

I.	PANEL FUNCTIONS		
	1. Administrative Director Salary and Overhead		70k
	a. Discretionary Fund		02k
	2. Public Participation		50k
	3. Trustee Reimbursement		120k
		Σ=	242k
II.	PLANNING AND DESIGN SUPPORT		
	1. Costs of Studies for Priorities and Goals		
	Sediment- Site Assessment		50k
	Sediment- Implementation Design		200k
			250k
	Habitat- Site Assessment		25k
	Habitat- Implementation Design		100k
			125k
	2. Technical Support		
	a. Muckleshoot Tribe (1/2 x 110k)		55k
	b. Suquamish Tribe (1/2 x 75k)		37.5k
			92.5k
		Σ=	467.5k
III.	PROJECT IMPLEMENTATION		
	1. Sediment Remediation		0k
	2. Habitat Restoration		500k
		Σ=	500k
IV.	CONTINGENCY FUNDS		
	Up to 10% of total		88k
			1297.5k*

***Note: Figures in 1992 Dollars**

RESOLUTION 1992-6, May 7

ELLIOTT BAY SETTLEMENT IMPLEMENTATION
1992 BUDGET
1 May 1992

I.	PANEL FUNCTIONS		
	1. Administrative Director Salary and Overhead		70k
	a. Discretionary Fund		02k
	2. Public Participation		34k
	3. Trustee Reimbursement		120k
		Σ=	226k
II.	PLANNING AND DESIGN SUPPORT		
	1. Costs of Studies for Priorities and Goals		
	Sediment- Site Assessment		75k
	Sediment- Implementation Design		75k
			150k
	Habitat- Site Assessment		40k
	Habitat- Implementation Design		60k
			100k
	2. Technical Support		
	a. Muckleshoot Tribe (1/2 x 110k)		55k
	b. Suquamish Tribe (1/2 x 75k)		37.5k
			92.5k
		Σ=	342.5
III.	PROJECT IMPLEMENTATION		
	1. Sediment Remediation		200k
	2. Habitat Restoration		190k
		Σ=	390k
IV.	CONTINGENCY FUNDS		
	Up to 10% of total		64k
			1022.5k

RESOLUTION 1992-7, May 7

"Article III, paragraph 7 of the Bylaws specifies which actions of the Panel shall be memorialized in the form of resolutions. The resolutions will be recorded by having the chairperson and secretary sign the minutes of the meeting in which the resolution was adopted. The resolution will be recorded in the minutes together with a record of dissenting votes (if any)."

Resolution 1992-8, May 7

"...[Authorizes] the expenditure of an additional 2K on the public interview phase of the Metro public participation plan. This was to allow for more than the 25 interviews originally allowed for in the plan. The total authorized expenditure is now 5.5K [of the $34K for Level I, Option A]."

RESOLUTION 1992-9, June 4

Amendment to Articles III and VII of the Bylaws, proposed by the Suquamish Tribe.
[Note: The Amended Bylaws of the Elliott Bay/Duwamish Restoration Program Panel are attached as an appendix.]

RESOLUTION 1992-10, June 4

"As authorized by the Consent Decree, Paragraph 9. i., the Panel adopted the attached Trustee Reimbursement Guidelines by unanimous resolution..."

TRUSTEE REIMBURSEMENT GUIDELINES
Elliott Bay Consent Decree Panel of Managers

1. Paragraph 10. a. (page 18) of the Consent Decree states:

> The parties to this Decree agree that the funds paid by Metro and the City into the Registry Account shall be used only for sediment remediation and habitat development, as defined herein, and for expenses of Panel functions support and planning and design support as specified below. No more than two million dollars ($2,000,000) shall be spent on expenses of Panel functions support. The Panel shall apportion such expenses between the sediment remediation and habitat development programs. Expenses of Panel functions support include, but are not limited to, salary and overhead for an administrative director; costs associated with administering the Registry Account; costs of public review and participation; costs of disseminating information; and costs of contracting for any services necessary to the accomplishment of any of said tasks. Expenses of Panel functions support also include the reasonable and necessary

costs, as determined on the basis of guidelines established by the Panel, associated with participation by personnel of the Trustees in Panel meetings and deliberations and technical working groups, including salary and travel, provided that such costs are not otherwise chargeable to Metro or the City in connection with the review of any required permit, application or other approval.

2. The Panel of Managers establishes the following guidelines for Trustee reimbursement:

a. Reimbursement to the Trustees will be provided from the Registry Account for Trustee personnel participation in Panel meetings and deliberations, participation in technical working groups, and preparation for those meetings. Salary for meeting preparation and attendance and costs of travel to Panel meetings and technical working groups are reimbursable expenses.

b. Paragraph 3. g. of the Consent Decree (page 12) defines Trustees to include, "NOAA, Interior, Ecology, the Suquamish Tribe and the Muckleshoot Indian Tribe." The U.S. Fish and Wildlife Service has been formally designated by Interior as Interior's representative on the Panel of Managers.

c. Each of the five Trustees will make a best faith effort to limit Trustee reimbursement costs to no more than thirty thousand dollars ($30,000) per Trustee per year. Collectively, the five Trustees will make a best faith effort to limit Trustee reimbursement to an annual maximum total of one hundred and fifty thousand dollars ($150,000) for all five Trustees. These target maximum amounts do not include the costs of NOAA's administrative director or the Tribes' technical support (provided per Consent Decree paragraph 16, page 24), both of which are costs in addition to the $30,000 and $150,000 target ceilings. These target ceilings are meant to cover costs of participation in implementation of the Consent Decree, per paragraph 10. a., page 18.

d. If any one of the five Trustees anticipates requesting more than $30,000 in reimbursement for routine Panel functions support in any one calendar year, such request will be coordinated in advance with the Panel of Managers for their consent.

RESOLUTION 1992-11, June 4

"The Elliott Bay Panel supports the Elliott Bay Cooperative as proposed by DNR (Department of Natural Resources) and authorizes Panel expenditure of up to $12.5K or 25% of initial costs (including hiring a facilitator and support for the first meetings), whichever is less."

RESOLUTION 1992-12, June 4

T-105 Habitat Restoration Site Proposal

"...a motion to sequester $48 K in the 1992 budget for preconstruction costs and to reimburse the City for up to $12 K, which would include sediment analysis, from this amount was carried, with City of Seattle abstaining".

RESOLUTION 1992-13, July 2

"The Elliott Bay Panel authorizes the reimbursement of the National Oceanic and Atmospheric Administration (NOAA) for time and expenses of personnel fulfilling Administrative Director duties from 19 March through 30 June 1992 (and in accordance with Panel Resolution 1992 – 1) in the amount of $13,085.45."

RESOLUTION 1992-14, July 2

"The Elliott Bay Panel adopts the proposed Suquamish Tribe FTE budget (attached) and authorizes payment from the registry account to the Suquamish Indian Tribe in the amount of 1/2 of $72,000 ($36,000). The Suquamish Tribe will provide a year-end summary of FTE support expenses for 1992. Funds which are not expended in support of a tribal FTE at the end of the 1992 calendar year may be carried over into the next year's budget for additional FTE support or used to reduce the amount transmitted to the Suquamish Tribe for FTE support in the 1993 calendar year, at the discretion of the Suquamish Tribe."

RESOLUTION 1992-15, August 6

"The Panel resolves that funds set aside in the 1992 budget for preconstruction costs at the T-105 site by Resolution 1992-12 are unsequestered and returned to the general budget for 1992."

RESOLUTION 1992-16, September 3

"The Panel authorizes the reimbursement of Metro and/or City of Seattle for costs associated with the collection of sediment data and hydrography at the following sites: Diagonal/Duwamish Pump Station, Harbor/Hinds CSO, West Michigan CSO, 8th Avenue CSO, Norfolk CSO, Michigan CSO and Brandon CSO. The total reimbursement shall not exceed $50,000 without additional authorization by the Panel."

RESOLUTION 1992-17, September 3

"The Elliott Bay Panel authorizes the expenditure of an additional $4,000.00 to complete the Stakeholder Interview Report being prepared by Metro. The funds will be taken from the $34,000.00 set aside for public participation in the 1992 budget [Public Involvement/Education Plan, Level I Option A]. This resolution brings the total authorization for funding the Stakeholder Interview Report to $8,500.00."

RESOLUTION 1992-18, October 1

"Resolution 1992-18 authorizes the formation of a Public Involvement Subcommittee to address issues related to public involvement, such as public meetings, Panel logo development, and a name for the Panel. The members of this subcommittee are Margaret Duncan, Gail Siani and Virginia Hassinger. Margaret Duncan will act as Chair."

RESOLUTION 1992-19, October 1

"The Elliott Bay Panel authorizes payment from the registry account to the Muckleshoot Indian Tribe in the amount of 1/2 of $88,510.00 ($44,255). The Muckleshoot Tribe will provide a year-end summary of FTE support expenses for 1992. Funds which are not expended in support of a tribal FTE at the end of the 1992 calendar year may be carried over into the next year's budget for additional FTE support or used to reduce the amount transmitted to the Muckleshoot Tribe for FTE support in the 1993 calendar year, at the discretion of the Muckleshoot Tribe."

RESOLUTION 1992-20, October 1

"The Elliott Bay Panel grants to Metro and the City of Seattle credit against payment to the Registry Account in the amount of $222,760.00 for expenses incurred in the Pier 53 sediment remediation project in accordance with Paragraph 26 of the Consent Decree and based on the following considerations:

(1) Ecology's list of sites which exceed cleanup screening levels (CSLs) in Elliott Bay is unavailable, however, at least two chemical contaminants at three or more sample stations within the Pier 53 Sediment Remediation Project boundary are known to have exceeded Ecology's CSLs; thus, it is very likely that this site would have been included on such a list.

(2) The Sediment Remediation Technical Working Group cannot, at this time, make a recommendation as to whether the site would have been selected by the group as a sediment remediation site – however, this site would have been given a high priority based on the preliminary selection matrix developed by the group and further, the Panel certifies that the site would have been selected by the Panel for remediation given the information available at the time of the project and also given the opportunity for the beneficial use of dredged material which was available at the time of the project.

(3) The project may only be a partial cleanup of the site as the site boundaries may be delineated by Ecology, however, the portion of the site which was remediated meets the cleanup standards adopted by the Panel for this site, which are the Marine Sediment Quality Standards contained in Chapter 173 – 204 WAC. The Panel also recognizes the possibility that the site may require further remediation, however, the design for further remediation of this site and the remediation of other sites will benefit from information derived as a result of this pilot remediation project.

The Panel anticipates that there will be expenses for monitoring in 1993, 1996, 2002 and a contingency monitoring cycle in the sixth or eighth years; these expenses will be incorporated into the appropriate annual budgets for these years, pending Panel review."

RESOLUTION 1992-21, November 5

"The Elliott Bay Panel authorizes the disbursement of funds from the Registry Account for the reimbursement of the National Oceanic and Atmospheric Administration (NOAA) for time and expenses of personnel fulfilling Administrative Director duties in accordance with Panel Resolution 1992 – 1 from July 1 through September 30, 1992 in the amount of $12,530.87."

RESOLUTION 1992-22, November 5

"Metro will be the Environmental Review Manager for the life of the Consent Decree, with NOAA as federal lead for NEPA requirements. Metro is hereby authorized to incur expenses pursuant to this resolution and prior to the next Panel meeting, at which time Metro will provide a budget for environmental review activities."

RESOLUTION 1992-23, December 3

"The Panel authorizes Metro to expend up to $34,000 of Panel funds for purposes of Environmental Review Concept Document preparation. These monies are understood to be from the Planning and Design portion of the 1992 and 1993 budgets. The Budget for the development of this Concept Document is attached and adopted by the Panel.

Concept Document Preparation	
Metro Environmental Compliance Division Labor	$22,000
Metro Water Pollution Control Division Labor	$4,200
City of Seattle Drainage and Waste Water Utility Labor	$3,600
Graphics	$3,700
Printing	$300
Mailing	$200
TOTAL	$34,000"

RESOLUTION 1992-24, December 3

"The Panel hereby amends Article I of the Bylaws so that it now reads as follows: "The Panel of Managers" created under the Consent Decree entered in United States, et al. v. The City of Seattle and Municipality of Metropolitan Seattle, Case No. C90-395WD, shall hereafter be referred to as 'The Elliott Bay/Duwamish Restoration Program Panel'."
[Note: The Amended Bylaws of the Elliott Bay/Duwamish Restoration Program Panel are attached as an appendix.]

RESOLUTION 1992-25, December 3

"The Panel authorizes the disbursement of funds from the Registry Account for the production of preliminary design drawings of habitat development sites selected by the Habitat Development Technical Working Group. The amount of the disbursement shall not exceed $10,000. Payment may be made in the amount specified and to the party specified by the Administrative Director at such time as the work is completed. The identification of payees and amounts shall be documented by memorandum signed by the Secretary and Chair of the Panel which shall be attached to and become a part of this resolution on signing."

RESOLUTION 1992-26, December 3

"The Elliott Bay Panel hereby authorizes the disbursement of funds in the amount of $2,647.65 from the registry account to the Washington State Department of Natural Resources. These funds are to reimburse the Department of Natural Resources for a portion of expenses related to the Elliott Bay Cooperative in accordance with Resolution 1992-11. The check should be made out to "Department of Natural Resources" and sent, together with the attached invoice, to:

Department of Natural Resources
Financial Services Division
PO Box 47041
Olympia, WA 98504 – 7041"

1992 Expenditures

1992 Disbursements From the Registry Account

•	1992–13:	to NOAA	$13,085.45
•	1992–14:	to Suquamish Tribe	$36,000.00
•	1992–19:	to Muckleshoot Tribe	$44,255.00
•	1992–21:	to NOAA	$12,530.87
			$105,871.32

Obligations Carried into 1993

Fourth quarter Administrative Director:			
•	1992-1	*ca.*	$13,000.00
Trustee Reimbursement for 1992:			
•	1992-10	N.T.E.[4]	$150,000.00
Public Participation:			
•	1992–3:		$3,500.00
•	1992–8:		$2,000.00
•	1992-17:		$4,000.00
•	Stakeholder Interviews and Report:		$9,500.00
Conceptual Designs:			
•	1992-25:		$4,496.58
Elliott Bay Cooperative			
•	1992-26:		$2,647.65
Remainder: N.T.E. total of $12,500			$9,852.35
Concept Document preparation:			
•	1992-23:	N.T.E.	$34,000.00
City/Metro Credit against future payment:			
•	1992-20:		$222,760.00
			$446,256.58

Total Obligated or Disbursed in 1992: $552,127.90
Registry Account Balance as of 12/17/92: $756,332.92

[4]Not to exceed.

12/23/91

FILED ENTERED
LODGED RECEIVED

DEC 23 1991

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, v. THE CITY OF SEATTLE, and MUNICIPALITY OF METROPOLITAN SEATTLE, Defendants.	NO. C90-395WD ORDER GRANTING MOTION TO ENTER CONSENT DECREE

The United States has moved for the entry of a consent decree resolving this lawsuit. All other parties have joined in the motion. The materials submitted by counsel, the public comments on the proposed decree, and all other relevant parts of the record have been fully considered.

In view of the nature of the claims and defenses, the risks and costs of litigation, and all other relevant factors, the court finds that the consent decree is fair, reasonable, adequate, and in the public interest.

AO 72
Rev 8/82)

The thrust of some of the public comments is that more should be done, especially in controlling the sources of pollution. In this regard it is important to bear in mind that while this decree fairly resolves this litigation, the measures it requires need not be the only steps taken to clean up Elliott Bay and the Lower Duwamish River. As the decree itself states:

> K. The parties understand that the source control, sediment remediation and habitat development efforts undertaken pursuant to this Decree are not intended to substitute for any other efforts or obligations of these parties.

There is nothing to prevent the governmental agencies and other parties involved from doing more than the settlement requires to protect these natural resources, and to remedy damage done in the past.

The motion is granted, and the consent decree will be entered.

The clerk is directed to send copies of this order to all counsel of record.

Dated: December 23, 1991.

William L. Dwyer
United States District Judge

AO 72
Rev 8/82

CC TO JUDGE

Hon. William L. Dwyer

FILED ENTERED
LODGED RECEIVED
DEC 23 1991
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, et al., Plaintiffs, v. THE CITY OF SEATTLE, and MUNICIPALITY OF METROPOLITAN SEATTLE, Defendants.	NO. C90-395WD CONSENT DECREE

CONSENT DECREE

This Consent Decree is made and entered into by and between the United States of America, the State of Washington, the Suquamish Indian Tribe, the Muckleshoot Indian Tribe, the City of Seattle ("City") and the Municipality of Metropolitan Seattle ("Metro").

INTRODUCTION

The parties to this Consent Decree agree that settlement of the claims in this case against defendants the City and Metro is

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fair, adequate, reasonable, equitable and in the public interest and is made in good faith and after arms-length negotiations, and that entry of this Consent Decree is the most appropriate means to resolve the matters covered herein.

RECITALS

A. The Department of Commerce acting through the National Oceanic and Atmospheric Administration ("NOAA"), the United States Department of the Interior ("Interior"), the Washington Department of Ecology ("Ecology"), the Muckleshoot Indian Tribe, and the Suquamish Indian Tribe have been designated pursuant to Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. Section 9607(f), and 40 C.F.R. Part 300, subpart G, to act on behalf of the public as trustees for natural resources for the assessment and recovery of damages for injury to, destruction of, or loss of natural resources under their trusteeships.

B. Metro, pursuant to statutory authority, is responsible for the construction, operation, and maintenance of trunk sewer lines, pumping facilities, and treatment plants serving over one million people including many industries and commercial enterprises in the greater Seattle area. Metro treats approximately 180 million gallons of wastewater per day at its five wastewater treatment plants, and discharges the treated effluent from a system of outfall pipes extending into Puget Sound. As a part of that system, combined sewer overflows

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("CSOs") are located on and discharge to Elliott Bay and the Duwamish River to handle extraordinary flows of storm water into the system.

C. The City, pursuant to statutory authority, owns and maintains a basic collector sewer system which feeds into the Metro trunk sewer lines, and also owns and maintains a storm water system. The City pays Metro for sewage transmission, treatment, and disposal services. As part of the sewer and storm water systems, the City owns and maintains certain CSOs and storm water outfalls that discharge to Elliott Bay and the Duwamish River.

D. The United States on behalf of NOAA filed a complaint in this action on March 19, 1990, under Section 107 of CERCLA, 42 U.S.C. § 9607(a), seeking, inter alia, recovery from Metro and the City for damages for injury to, destruction of, and loss of natural resources resulting from releases of hazardous substances, in particular chromium, cadmium, copper, lead, zinc, pentachlorophenols (PCPs), polychlorinated biphenyls (PCBs), polycyclic aromatic hydrocarbons (PAHs), and halogenated hydrocarbons, into the environment in and around the Duwamish River and Elliott Bay, for the costs of restoring, replacing or acquiring the equivalent of the affected natural resources, and for the costs of assessing the damage to the affected natural resources.

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E. The United States has alleged in its complaint in this matter, prior to conducting a natural resource damage assessment pursuant to 43 C.F.R. Part 11, that Metro and the City have released hazardous substances into the environment, with attendant injury to the United States' trust resources, and that mitigation and remediation of substances Metro and the City are alleged to have released would facilitate the recovery of such resources.

F. Metro and the City maintain that effluent discharged from their CSOs and storm water outfalls has presented little if any potential for injury to the natural resources in Elliott Bay and the Duwamish River; that their wastewater collection, treatment and disposal programs have contributed substantially to decreasing and/or minimizing injury and damage to natural resources; that their water quality programs have made improvements in the water quality of Elliott Bay and the Duwamish River; that their pretreatment programs, along with on-site monitoring, keep the contribution of industrial sources within permitted discharge limits; and that the limited natural resource damage from the CSOs and the storm water outfalls appears to have originated equally from industrial, commercial, and residential customers that discharge into the City and Metro systems.

G. Without admission or adjudication of any fact or issue of law in this matter, except as between the United States, Metro and the City as to the running of the statutes of limitation and

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to certain interpretations of Section 13 of the Rivers and Harbors Act, 33 U.S.C. § 407, in settlement of this action Metro and the City have agreed to participate in a cooperative program of restoration and replacement of natural resources in Elliott Bay and the Duwamish River. In addition to the provision of expertise through the contribution of in-kind services, Metro and the City have agreed to provide funding for the operation of the Panel (as defined below), the evaluation of natural resource damages, the selection, design, and implementation of sediment remediation and habitat development projects, and the modification of planned source control programs.

H. This Decree contains terms embodying a cooperative partnership among the United States, Metro, the City, the State of Washington, the Muckleshoot Indian Tribe, and the Suquamish Indian Tribe that will make improvements in Elliott Bay and the Duwamish River and will allow these parties to make progress in restoring and replacing damaged natural resources in the covered area, as defined below.

I. Scientific research conducted on natural resources in Elliott Bay and the Duwamish River indicates that the effects of many urban and industrial activities, including CSOs and storm water discharges, have contributed to the injury identified in these studies. Based on this research, the parties have agreed that, as to Metro and the City, no further natural resource

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damage assessment is required to effectuate the purposes of this Decree.

J. The programs and projects conducted pursuant to this Decree standing alone are not intended, nor could they be expected, to remedy all of the losses of or injuries to natural resources in Elliott Bay and the Duwamish River. The parties recognize the importance of dealing with the programs under this Decree in a comprehensive manner and of coordinating the activities undertaken pursuant to this Decree with actions by these and other parties in the Elliott Bay and Duwamish River area to maximize the benefits to the natural resources, as well as the residents, of the area. This includes coordinating ongoing Metro and City programs with efforts to maintain habitat development projects established pursuant to this Decree.

K. The parties understand that the source control, sediment remediation and habitat development efforts undertaken pursuant to this Decree are not intended to substitute for any other efforts or obligations of these parties.

L. The parties recognize that the United States and the State of Washington retain and reserve their authority that does not relate to recovery of natural resource damages, including the authority to issue orders requiring remedial action and to recover costs associated with such orders pursuant to CERCLA and the Model Toxics Control Act, Chapter 70.105D RCW, Chapter 90.48

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RCW, and the authority to administer and enforce the State Sediment Management Standards, Chapter 173-204 WAC.

M. The Trustees have determined that the actions and expenditures of Metro and the City under this Decree are an appropriate contribution to efforts to redress the natural resource damages that are the subject of this proceeding. This determination is based in major part upon the following considerations:

1. Metro has made a substantial public investment in water quality. For example, Metro spent $2,244,000 over the period 1977 through 1989 on its program of regulating commercial and industrial discharges into those portions of its sewerage system related to Elliott Bay and the Duwamish River area. Metro has spent an additional $38,000,000 since 1961 on other programs specifically designed to enhance Elliott Bay and the Duwamish River area. In addition to funds made available pursuant to this Decree, Metro will spend $54,500,000 (in 1988 dollars) for CSO control projects through the year 2006.

2. The City has been actively engaged in programs to increase protection of waters receiving urban runoff. During the period 1970 through 1989, the City has expended more than $150,000,000 in capital projects and other programs to enhance water quality in the Elliott Bay/Duwamish River area. (This figure does not include fees

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and charges paid to Metro, although the City has historically contributed over one-half of Metro's operating revenue.) The City's capital projects and other programs have included controlling CSOs, identifying and reducing sources of contaminants in storm drains, educating commercial and industrial dischargers on storage and handling practices of hazardous substances, and cleaning streets, catch basins, and storm drain lines.

3. On April 17, 1991, the State of Washington adopted Sediment Management Standards, Chapter 173-204 WAC, an innovative program of sediment quality standards, source control, and cleanup, applicable to sediments in Elliott Bay and the Duwamish River.

In particular, the CSO control efforts undertaken by Metro and the City, combined with the expected sediment quality benefits from adherence with the Sediment Management Standards program, provide a substantial foundation for the efforts contemplated under this Decree.

NOW, THEREFORE, before the taking of any testimony, before the adjudication of the merits of this case, and without admission of any issue of law, fact, liability, or responsibility by the City or Metro, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

JURISDICTION AND VENUE

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1. The Court has jurisdiction over the subject matter of this action and the parties to this Consent Decree pursuant to 28 U.S.C. §§ 1331 and 1345, and Section 113(b) of CERCLA, 42 U.S.C. § 9613. This Court also has personal jurisdiction over the City and Metro which, solely for the purposes of this Consent Decree, waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District and to service of process.

APPLICABILITY OF CONSENT DECREE

2. The provisions of this Consent Decree shall apply to and be binding on the parties to this Consent Decree, their agents, successors and assigns. Changes in the organizational form or status of a party shall have no effect on its obligations under this Consent Decree.

DEFINITIONS

3. This Consent Decree incorporates the definitions set forth in Section 101 of CERCLA, 42 U.S.C. § 9601. In addition, whenever the following terms are used in this Consent Decree, they shall have the following meanings:

a. "Covered area" means the embayment on Puget Sound located between Alki Point and West Point and includes the shoreline ten (10) meters upland from the mean high water line ("Elliott Bay") and the Duwamish River from the point at which it discharges into Elliott Bay to the head of navigation

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(approximately river mile 10), including Harbor Island and the East and West Waterways around Harbor Island ("Duwamish River").

b. "Covered matters" means any civil or administrative liability to the United States, the State of Washington, the Suquamish Indian Tribe and the Muckleshoot Indian Tribe, for any claim under 42 U.S.C. § 9607(a), 33 U.S.C. § 407, Chapter 70.105D RCW, Chapter 90.48 RCW, or any other federal, state, or common law, except claims relating to treaties between the United States and the Suquamish and Muckleshoot Indian Tribes, for (1) natural resource damages within the covered area, including the costs of assessing natural resource damages; and (2) reimbursement of response costs incurred or to be incurred by any Trustee (as defined below) with respect to its claims for natural resource damages in the covered area, that could have been adjudicated had United States v. City of Seattle and Municipality of Metropolitan Seattle, Cause No. C90-395WD, W.D. Wash. (Mar. 19, 1990), been prosecuted to final judgment; "covered matters" shall also include any civil or administrative liability to the United States, the Suquamish Indian Tribe, the Muckleshoot Indian Tribe and the State of Washington for any claims under 33 U.S.C. § 407 for injunctive and other equitable relief that could have been adjudicated had said case been prosecuted to final judgment. For the purpose of determining if claims could have been adjudicated, reference shall be made to the facts and allegations disclosed in the documents filed with

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the Court in said case by the date of entry of this Decree. "Covered matters" shall not be construed to include any authority of the United States or the State of Washington that does not relate to injunctive or equitable relief under 33 U.S.C. § 407 or to recovery of natural resource damages, including the authority to issue orders requiring remedial action and to recover costs associated with such orders pursuant to CERCLA and the Model Toxics Control Act, Chapter 70.105D RCW, Chapter 90.48 RCW, and the authority to administer and enforce the State Sediment Management Standards, Chapter 173-204 WAC.

c. "Habitat development" includes acquiring living natural resources for the purpose of habitat restoration and replacement and any program, technique, method, or other means of creating or enhancing aquatic or benthic habitat in the Duwamish River or Elliott Bay.

d. "Natural resource damages" means damages for injury to, destruction of, or loss of any and all natural resources caused in whole or in part by releases of hazardous substances into the environment.

e. "Sediment remediation" includes, but is not limited to, any program, technique, method, or other means of dredging, removing, cleansing, isolating, immobilizing, bioremediating, capping, or containing sediments beneath the waters of the Duwamish River and Elliott Bay that contain hazardous substances.

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f. "Source control" means any program, technique, method, or other means of restricting or eliminating the discharge or other release of hazardous substances into Metro's and the City's CSO and/or storm water outfall systems.

g. "Trustees" means NOAA, Interior, Ecology, the Suquamish Indian Tribe and the Muckleshoot Indian Tribe.

DISTRICT COURT REGISTRY ACCOUNT

4. a. Metro and the City shall, pursuant to the schedules and terms set forth herein, pay all financial contributions under this Consent Decree by certified or bank check. Each such check shall include on its face a statement that it is a payment for natural resource damages in Civil Action No. C90-395WD (W.D. Wash.), and, with the exception of those funds identified in paragraph 32 below, shall be sent to:

Office of the United States Attorney
3600 SeaFirst Fifth Avenue Plaza
800 Fifth Avenue
Seattle, Washington 98104

The U.S. Attorney shall immediately deposit such funds with the Registry of the Court. The party making payment shall cause copies of each check and of any transmittal letter accompanying the check to be sent to: Chief, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044; NOAA Damage Assessment Center, WSC1 Room 212, 6001 Executive Boulevard, Rockville, Maryland 20852, Attention: Kathleen Anderson.

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b. The Registry of the Court shall administer all amounts paid for natural resource damages under this Decree in an interest-bearing account ("Registry Account" or "Account") as provided in the Order Directing the Deposit of Natural Resource Damages Into the Registry of the Court ("Deposit Order") issued by this Court pursuant to Rule 67 of the Federal Rules of Civil Procedure, 28 U.S.C. § 2041, and Rule GR 6 of the Rules of the United States District Court for the Western District of Washington. The Deposit Order shall be attached to this Decree.

c. All funds and all interest accrued thereon in the Registry Account shall be held in the name of the "Clerk, United States District Court," for the benefit of the Trustees. Monies in the Registry Account may be used to fund the planning, implementing, and overseeing of actions to restore, replace, or acquire the equivalent of natural resources that have been injured, destroyed, or lost as a result of the release of hazardous substances into the environment in the covered area, in accordance with 42 U.S.C. § 9607(f)(1). The Panel shall use all interest earned on funds paid into the Account for sediment remediation only for expenses of project implementation for sediment remediation and all interest earned on funds paid into the Account for habitat development only for expenses of project implementation for habitat development. All disbursements from the Registry Account shall be made by order of the Court in accordance with the provisions of 28 U.S.C. § 2042. Applications

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for disbursement orders may be made only by the United States on behalf of, and with the approval of, the Panel.

PROJECT AND ACCOUNT MANAGEMENT

5. A panel of managers ("Panel" or "Managers") shall be formed to direct the source control, sediment remediation and habitat development project activities contemplated herein to be performed utilizing funds deposited in the Registry Account. The Panel shall consist of the following groups: (a) NOAA and Interior, for the United States; (b) Ecology, for the State of Washington; (c) the Suquamish Indian Tribe; (d) the Muckleshoot Indian Tribe; (e) Metro; and (f) the City. The Panel shall have no independent legal status and shall have only that authority conferred upon it by this Decree.

6. Each member group of the Panel, as identified in the preceding paragraph, may as necessary select in what ever manner it deems appropriate one or more representatives from its respective agencies or subgroups to serve collectively as its Manager. Irrespective of the number of representatives from any group, each of the groups identified in the preceding paragraph shall have only a single vote on the Panel.

7. The terms in this paragraph shall apply only if the Suquamish Indian Tribe, the Muckleshoot Indian Tribe and the State of Washington all choose to continue their consent to this Decree and to participation in this settlement. The Parties to this Decree expect and intend that most issues for decision by

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the Panel will be based upon objective criteria, and that most decisions will be based on consensus. Where no consensus is achieved, except as provided in paragraph 30 of this Decree, the Panel will decide the issue by vote, with each member having one vote, and the majority prevailing. The position of the majority of the Trustees will prevail in the event of a tie vote. The position of the United States will prevail in the event of a tie vote in which the Trustees are evenly split. Any party may, within thirty (30) days of notification of the results of voting, petition the Court for review of any decision. The petitioner shall bear the burden of proving that the decision is inconsistent with the terms of this Decree. The Panel may adopt in the form of bylaws any additional decision making procedures it deems necessary.

8. The terms in this paragraph shall apply only if one or more Trustees exercise their right to withdraw pursuant to paragraph 53 of this Decree. Following entry of this Decree, the Panel shall establish procedures for making decisions. Such procedures shall conform to the following requirements: (a) decisions shall if possible be based on consensus; (b) the structure for deciding any issue by vote shall allow each group to have a true voice in the process; (c) deference shall be given to decisions by a majority of the trustee groups, even if they are not in the numerical majority of the Panel on a given issue; (d) any arrangement that would allow a group or groups to

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deadlock voting shall be avoided; and (e) any aggrieved party shall have the right to petition the Court for review of any decision by the Panel. The Panel may adopt in the form of bylaws any additional decision making procedures it deems necessary. If the Panel fails to establish decision making procedures, which conform to the requirements herein, within ninety (90) days of entry of the Decree, any party to this Decree may immediately petition the Court to establish such procedures.

9. For the purposes of this Decree, the Panel has the authority to:

a. Establish such procedures and practices as are necessary to the operation and deliberations of the Panel, including, but not limited to, provisions for collecting and disseminating information, convening and conducting meetings, and resolving disputes;

b. Gather data in Elliott Bay and the Duwamish River regarding damages to natural resources occasioned by releases of hazardous substances into the environment that have resulted in injury to, destruction of, or loss of natural resources;

c. Plan projects for sediment remediation and habitat development in the covered area;

d. Establish source control goals to protect natural resources and prevent recontamination of sites selected for sediment remediation or habitat development in the covered area;

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e. Review and comment upon actions proposed by Metro and the City to achieve the Panel's source control goals, determine if such actions are likely to achieve the Panel's goals, and direct Metro and the City to take such actions approved by the Panel;

f. Coordinate and provide for the dissemination of information to the public on the selection and design of sediment remediation and habitat development projects;

g. Ensure the collection from, and dissemination to, each group that is a member of the Panel all information necessary to an informed discussion and resolution of all issues related to sediment remediation, habitat development and source control;

h. Decide all issues related to selecting study activities and other data gathering efforts, and to selecting, planning, and managing sediment remediation and habitat development projects, including establishing performance standards and contingency plans for habitat development projects;

i. Develop guidelines for establishing the reasonable and necessary reimbursable costs of salary and travel incurred by the Trustees for their participation in the activities of the Panel and of the technical working groups, formed pursuant to paragraph 15 of this Decree; and

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j. Perform any other activity specifically provided for elsewhere in this Decree or as directed or approved by the Court.

No action of the Panel may be inconsistent with the Trustees' duties and responsbilities under 42 U.S.C. § 9607.

10. a. The parties to this Decree agree that the funds paid by Metro and the City into the Registry Account shall be used only for sediment remediation and habitat development, as defined herein, and for expenses of Panel functions support and planning and design support as specified below. No more than two million dollars ($2,000,000) shall be spent on expenses of Panel functions support. The Panel shall apportion such expenses between the sediment remediation and habitat development programs. Expenses of Panel functions support include, but are not limited to, salary and overhead for an administrative director; costs associated with administering the Registry Account; costs of public review and participation; costs of disseminating information; and costs of contracting for any services necessary to the accomplishment of any of said tasks. Expenses of Panel functions support also include the reasonable and necessary costs, as determined on the basis of guidelines established by the Panel, associated with participation by personnel of the Trustees in Panel meetings and deliberations and technical working groups, including salary and travel, provided that such costs are not otherwise chargeable to Metro or the City

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in connection with the review of any required permit, application or other approval.

b. No more than three million dollars ($3,000,000) shall be spent on expenses of planning and design support. The Panel shall apportion such expenses between the sediment remediation and habitat development programs. Expenses of planning and design support include, but are not limited to, costs of studies needed to set goals and establish priorities for sediment remediation, habitat development, and source control projects; costs of analysis as required for comparison of candidate sites and site selection; costs of site characterization as required to support detailed technical/-engineering studies; costs of project design, specifications, selection of equipment, materials, and procedures; costs associated with NEPA/SEPA review, analysis, and reporting; costs associated with permitting; costs of selection of monitoring parameters and design of monitoring programs; costs of technical support for the Suquamish and Muckleshoot Indian Tribes; final report preparation; and costs of contracting for any services necessary to the accomplishment of any of said tasks.

c. The remaining funds paid by Metro and the City into the Registry Account, plus any sums not expended pursuant to the preceding two subparagraphs, shall be spent on expenses of project implementation. Expenses of project implementation include, but are not limited to, costs of all on-the-ground

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operations, including acquiring, dredging, capping, filling, contouring, placing, removing, transporting, treating, or disposing of materials, other construction requirements, and planting of vegetation; construction management and inspection; costs of monitoring for the purpose of making project adjustments and determining whether project success has been achieved; acquiring sites for sediment remediation; and contracting for any services necessary to the accomplishment of any of said tasks.

11. The Panel shall provide to Metro and the City within one hundred twenty (120) days of entry of this Decree an annual budget for the calendar year 1992. By March 31 of each year beginning in 1992 and ending in 1996, the Panel shall provide to Metro and the City an annual budget for the following calendar year (e.g., by March 31, 1992, for calendar year 1993, etc.). The Panel must consider in each year's budget any unspent funds from previous years and any unspent interest earned on funds in the Account. The Panel may include in each such budget a figure for contingency funds in an amount of up to ten percent (10%) of the total amount budgeted, so long as the sum of the total amount budgeted and the requested contingency fund does not exceed the annual maximums set forth in paragraphs 20 and 28 of this Decree.

12. The Panel shall implement an accounting mechanism to track expenditures from the Registry Account. The Panel shall cause an accounting report of such expenditures to be made at

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least on an annual basis, which report shall be made available to all members of the Panel.

13. Except as provided in paragraph 34 regarding source control efforts, the Panel may allow Metro and the City, if either of them so chooses, to fulfill their respective financial obligations by providing in-kind services. By September 30 of each year beginning in 1992 and ending in 1996, Metro or the City or both of them shall submit to the Panel a proposal describing those tasks or portions of tasks, identified in the budgets prepared pursuant to paragraph 11 of this Decree, that Metro or the City or both of them propose to perform utilizing in-kind services. The proposal shall identify by grade, title, salary and level of benefits the employees who are to perform the specified services, and shall provide an employee-specific analysis of the work to be performed and the value of that work, including allied costs. The Panel may accept any such proposal in its entirety or, to the extent practicable, may accept a portion of a proposal and not accept other portions. As a condition of acceptance of such a proposal, the Panel shall specify such conditions as are necessary to insure adequate oversight by the Panel of the services to be provided and appropriate coordination with the efforts of contractors and others. The Panel shall notify Metro and the City in writing of its decision and shall specifically identify the tasks, identified in the budget the Panel has approved, to be performed

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through in-kind services and those to be performed through cash payments, with a specific cost allocation to each. Within ninety (90) days after the close of each calendar year in which such in-kind services have been provided, Metro and the City shall cause an accounting of such services to be prepared and made available to all members of the Panel.

14. The Panel may elect to delegate the day-to-day administrative affairs of the Panel to an administrative director. Such an administrative director ("Director") shall be qualified to perform all the tasks delegated to him/her by the Panel and shall have only that authority specifically delegated to the Director by the Panel. The Panel shall not delegate to the Director the authority to disburse, expend, obligate, or otherwise use funds from the Registry Account or perform any task of the Panel as set forth in paragraph 9 of this Decree. The Panel may direct that an account be established into which the Panel may have funds placed for the day-to-day affairs of the Panel. The Director may at his/her discretion disburse, expend, obligate or otherwise use any funds placed into such an account for the reasonable and necessary expenses incurred in performing the administrative tasks assigned to the Director by the Panel. The Director shall provide to the Panel in writing on a quarterly basis a report of his/her activities and an accounting of all of his/her expenses for that quarter. The Director shall serve at the will and discretion of the Panel, and shall not, solely as a

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consequence of his/her service as Director, be considered an employee or agent of any party to this Decree. Nothing in the preceding sentence shall preclude a current employee of any party to this Decree from serving as Director, to the extent consistent with applicable laws and regulations.

15. The Panel may establish one or more technical working groups to assist the Panel in planning and designing sediment remediation and habitat development projects and in establishing goals regarding Metro's and the City's source control programs. The Panel shall give each of the following entities the opportunity to participate in any such working group: NOAA, Interior, EPA, the U.S. Army Corps of Engineers, the Muckleshoot Indian Tribe, the Suquamish Indian Tribe, the Washington Department of Ecology, the Washington Department of Fisheries, the Washington Department of Wildlife, the Washington Department of Natural Resources, the Washington Department of Health, the Port of Seattle, Metro, the City, and the Seattle-King County Department of Health. The Panel may also allow in any such working group other qualified individuals. All participants in any such working group shall be capable of contributing particular expertise applicable to that working group's tasks. The Panel shall decide the manner in which any such working group will perform its tasks and shall provide sufficient oversight to ensure that the terms of this Decree are achieved. The Panel may for any such working group disburse, expend, obligate, or

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otherwise use funds from the Registry Account, but such funds shall be used only for the reasonable and necessary administrative and clerical expenses of any such working group. Except as provided in paragraph 10(a) regarding the participation of the Trustees, no member of a working group shall in any way receive directly or indirectly from the Registry Account any salary or travel expenses for his/her participation in such a working group.

16. The Panel shall provide to the Suquamish Indian Tribe and to the Muckleshoot Indian Tribe sufficient funds to support for each tribe one full-time equivalent (1.0 FTE) of technical support annually for 1992 through 1997. The Tribes shall use such funds only for technical support related to the source control, sediment remediation and habitat development programs conducted pursuant to this Decree.

17. The Panel shall cause to be erected or placed in a prominent location a placard or sign to commemorate each sediment remediation or habitat development project performed under this Decree. Any such placard or sign shall indicate the financial contributions of Metro and the City and the participation of these Trustees.

18. The Panel shall provide for public participation in the process by which the Panel selects and designs sediment remediation and habitat development projects. Public participation includes, but is not limited to, public review

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pursuant to any required environmental review, and public review of any application for a permit, license, or other approval.

REMEDIATION OF SEDIMENTS

19. Metro and the City each agree to pay into the Registry Account established under paragraph 4 of this Decree:

a. The sum of six million dollars ($6,000,000); or

b. As permitted by the Panel pursuant to paragraph 13, a sum of funds that in combination with in-kind services has a total value of six million dollars ($6,000,000), to be applied to the costs of sediment remediation. The Panel shall use these funds and services only for sediment remediation, which shall include administering, planning, designing, implementing, and monitoring the results of sediment remediation projects, in Elliott Bay and the Duwamish River, except as specifically provided in paragraph 22 of this Decree. The sums provided for herein shall be paid in accordance with paragraphs 20 and 21 of this Decree.

20. This Decree obligates Metro and the City each to pay only up to the following amounts in each of the identified calendar years for the costs of sediment remediation, except as otherwise provided for in this paragraph:

1992 - $ 500,000 - Five Hundred Thousand Dollars;
1993 - $1,000,000 - One Million Dollars;
1994 - $1,500,000 - One Million Five Hundred Thousand Dollars;
1995 - $1,500,000 - One Million Five Hundred Thousand Dollars;
1996 - $1,500,000 - One Million Five Hundred Thousand Dollars; and
1997 - Balance of Six Million Dollar contribution.

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If Metro's or the City's annual payment in any given year is less than that year's annual maximum, its annual maximum in the successive year may be increased by the difference between the annual maximum and the annual payment from the preceding year. Metro and the City may at their discretion waive any one or all of their respective annual maximums by increasing the amount paid. Any such payments in excess of the amounts shown above shall in no way increase the sum total of amounts to be paid by either Metro or the City beyond its respective six million dollar ($6,000,000) obligation.

21. Metro and the City agree to each pay a minimum sum of one hundred fifty thousand dollars ($150,000) into the Account on January 15 and on July 15 in each of the years 1992, 1993, 1994, 1995 and 1996 for funding costs of sediment remediation. Such payments shall constitute partial payment of the maximum amounts as set forth in paragraph 19 of this Decree. Metro and the City shall pay any additional amount for sediment remediation, over and above the minimum sum referenced herein, only as the Panel budgets for such expenses. Metro and the City shall pay any such additional amount into the Account on January 15 of the calendar year for which the Panel plans to incur such an expense.

22. The Panel may use funds paid into the Account for sediment remediation for expenses of habitat development, including costs of monitoring, if such habitat development is incidental to sediment remediation projects, or is specifically

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required as conditions of permits for sediment remediation projects. Such habitat development could include that resulting from using sediment remediation projects as pilot projects for techniques or other methodologies of habitat development.

23. The Panel shall, to the greatest extent practicable, select sites for sediment remediation projects that are geographically and physically associated with Metro or City CSOs or storm drain outfalls.

24. The Panel shall use, if available, Ecology's list of sites requiring sediment cleanup as a basis for selecting sites for sediment remediation projects under this Decree, but shall not be bound by any priorities developed by Ecology for addressing the list of sites. Metro and the City shall provide to Ecology all information in their possession useful and relevant to Ecology's hazard assessment of station clusters of potential concern.

25. For each sediment remediation project, the Panel shall conduct a site cleanup study, determine the site-specific cleanup standard, and select a site cleanup action. In no event shall the Panel set a site specific cleanup standard for a project that is less stringent than the minimum cleanup level as set forth in the State of Washington's Sediment Management Standards, Chapter 173-204 WAC, as that standard exists at the time the Panel selects a project. In establishing site-specific cleanup standards, the Panel shall, consistent with the purposes of this

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Decree, set a cleanup objective of no adverse effects pursuant to WAC 173-204-570(2). If the State of Washington's Sediment Management Standards, Chapter 173-204 WAC, cease to exist or otherwise become unenforceable, the Panel may use other appropriate sediment standards or develop such standards for sediment remediation as are necessary to carry out the terms of this Decree.

26. The Panel may grant Metro and the City credit against their respective financial obligations under paragraph 19 for the Pier 53 sediment remediation project, so long as the site would otherwise have been on Ecology's list of sites requiring sediment cleanup, the site would otherwise have been selected as a site for sediment remediation by the Panel, and the level of remediation meets the cleanup standard selected by the Panel for that site. If the Panel decides to grant credit, and after review of detailed operational and financial information regarding this project, the Panel shall determine the amount of credit to be applied.

HABITAT DEVELOPMENT AND REAL ESTATE ACQUISITION

27. Metro and the City each agree to pay into the Registry Account, established under paragraph 4 of this Decree:

a. The sum of two million five hundred thousand dollars ($2,500,000); or

b. As permitted by the Panel pursuant to paragraph 13, a sum of funds that in combination with in-kind

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services has a total value of two million five hundred thousand dollars ($2,500,000), to be applied to the costs of habitat development. The Panel shall use these funds and services only for habitat development, which includes acquiring living natural resources for the purpose of habitat restoration and replacement and administering, planning, designing, constructing, and monitoring the results of habitat development projects, in Elliott Bay and the Duwamish River. Solely for the purposes of habitat development, the Panel may consider the Duwamish River to include tributaries to the Duwamish River. The sums provided for herein shall be paid in accordance with paragraphs 28 and 29 of this Decree.

28. This Decree obligates Metro and the City each to pay only up to the following amounts in each of the identified calendar years:

1992 - $200,000 - Two Hundred Thousand Dollars;
1993 - $200,000 - Two Hundred Thousand Dollars;
1994 - $500,000 - Five Hundred Thousand Dollars;
1995 - $800,000 - Eight Hundred Thousand Dollars;
1996 - $800,000 - Eight Hundred Thousand Dollars; and
1997 - Balance of Two Million Five Hundred Thousand Dollar contribution.

If Metro's or the City's annual payment in any given year is less than that year's annual maximum, its annual maximum in the successive year may be increased by the difference between the annual maximum and the annual payment from the preceding year. Metro and the City may at their discretion waive any one or all of their respective annual maximums by increasing the amount

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paid. Any such payments in excess of the amounts shown above shall in no way increase the sum total of amounts to be paid by either Metro or the City beyond its respective two million five hundred thousand dollar ($2,500,000) obligation.

29. Metro and the City agree to each pay a minimum sum of sixty-two thousand five hundred dollars ($62,500) into the Account on January 15 and on July 15 in each of the years 1992, 1993, 1994, 1995 and 1996 for funding costs of habitat development. Such payments shall constitute partial payment of the maximum amounts as set forth in paragraph 27 of this Decree. Metro and the City shall pay any additional amount for habitat development, over and above the minimum sum referenced herein, only as the Panel budgets for such expenses. Metro and the City shall pay any such additional amount into the Account on January 15 of the calendar year for which the Panel plans to incur such an expense.

30. In addition to the contribution specified in paragraph 27 of this Decree, Metro and the City each shall make permanently available real property with a value of up to two million five hundred thousand dollars ($2,500,000) for use as sites for habitat development projects selected by the Panel. Metro and the City each shall receive credit toward its respective maximum obligation under this paragraph for any donation by Metro or the City of any right of access, lease, easement, fee title, or any other real property interest,

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sufficient to permanently secure a site for any habitat development project under this Decree. The Panel shall attempt to determine by consensus the value of any property interest made available pursuant to this paragraph. If the Panel cannot so determine the value of any such property, then the value of the property shall be determined by the following procedure. The Trustees and donor of the property shall each retain or select a qualified real estate appraiser to determine the value of the property. Within sixty (60) days thereafter, the two appraisers shall attempt in good faith to reach agreement on the value of the donated property. If these appraisers cannot agree, then they shall within thirty (30) days select a third appraiser. This third appraiser shall determine within thirty (30) days which of the two appraisals most closely approximates the value of the selected property and he or she shall select that appraisal value as the value of the donated property. All appraisers retained or selected shall be competent, impartial and members of the American Institute of Real Property Appraisers (or successor association or body of comparable standing). The parties agree that the value established by this procedure shall be final, and there shall be no further review or appeal. Full public access to such areas shall be preserved to the maximum extent practicable, except as restrictions are necessitated by construction activities.

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31. The Panel shall, to the greatest extent practicable consistent with the goal of creating or enhancing aquatic or benthic habitat for natural resources, select sites for habitat development projects that are geographically and physically associated with existing public facilities, such as parks and fishing piers, in Elliott Bay and the Duwamish River.

32. Metro and the City each agree to pay NOAA the sum of one hundred twenty-five thousand dollars ($125,000) within sixty (60) days of entry of this Consent Decree to reimburse NOAA for the costs of natural resource damage assessment and habitat restoration planning for Elliott Bay and the Duwamish River incurred prior to the entry of this Decree. NOAA will provide Metro and the City with documentation describing the manner in which the funds are applied.

SOURCE CONTROL

33. The Panel shall establish source control goals to protect natural resources and prevent recontamination of sites selected for sediment remediation or habitat development in the covered area. Metro and the City shall determine for their respective source control programs what actions or changes, if any, are needed in addition to, or from, their ongoing source control programs to achieve such goals. Metro and the City shall propose such additional actions or changes to the Panel for its review, comment and approval. Metro and the City shall then take such actions approved by the Panel. The Panel shall not require

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Metro and the City to use or undertake any type or manner of source control that is beyond Metro's and the City's authority, or otherwise inconsistent with law.

34. Metro and the City each shall make available in-kind services with a value of up to one million dollars ($1,000,000) to cover the costs of the additional actions or changes needed to achieve the Panel's goals and to monitor the effectiveness of such source control efforts. Metro and the City each may fulfill its entire and respective obligation under this paragraph by providing in-kind services. Within ninety (90) days after the close of each calendar year in which such in-kind services have been provided, Metro and the City shall cause an accounting of such services to be prepared and made available to all members of the Panel.

INDEPENDENT CONTRACTOR

35. It is understood and agreed that Metro, the City, and the agents, officers, employees, and contractors of either of them, in the performance of the work and services provided under this Decree as in-kind contributions shall act as independent contractors and not as agents or employees of any other party to this Decree.

COVENANTS NOT TO SUE

36. Except as specifically provided in paragraphs 39 and 40, the United States, the State of Washington, the Suquamish Indian Tribe and the Muckleshoot Indian Tribe covenant not to sue

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or to take any other civil or administrative action against the City or Metro for covered matters.

37. Except as specifically provided in paragraph 41, the City and Metro hereby covenant not to sue or to take any other civil or administrative action against the United States, the State of Washington, the Suquamish Indian Tribe and the Muckleshoot Indian Tribe for any claims relating to or arising from the filing of the United States' complaint referenced herein, the conduct of this litigation, including but not limited to any claims for contribution or indemnification, and the negotiation, terms, approval, and implementation of this Consent Decree.

38. These covenants not to sue and the following reservation of rights shall take effect upon entry of this Consent Decree by the Court, subject to the parties' rights to void the Consent Decree pursuant to paragraph 54 if the Court declines to approve the Consent Decree as presented. These covenants not to sue remain in effect so long as the City and Metro are fulfilling or have fulfilled their obligations under this Consent Decree.

RESERVATION OF RIGHTS

39. Notwithstanding any other provision of this Consent Decree, the United States, the State of Washington, the Suquamish Indian Tribe and Muckleshoot Indian Tribe reserve the right to institute proceedings against Metro and the City in this action

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or a new action for the following claims: (a) claims for recovery of natural resource damages in the covered area based on conditions resulting from a release of hazardous substances from the CSO and/or storm water outfall systems after the effective date of this Consent Decree and that are actionable under treaty, federal, state or tribal law; (b) claims based on a failure by Metro or the City to satisfy requirements of this Consent Decree; and (c) claims for criminal liability.

40. Notwithstanding any other provision of this Consent Decree, the State of Washington reserves its right to institute proceedings against Metro and the City for claims pursuant to the Model Toxics Control Act, Chapter 70.105D RCW, based, in whole or in part, on factors not known at the time of entry of this Consent Decree that indicate a previously unknown threat to human health or the environment.

41. Notwithstanding any other provision of this Consent Decree, Metro and the City reserve the right to institute proceedings against the United States, the State of Washington, the Suquamish Indian Tribe and the Muckleshoot Indian Tribe for the following claims: (a) claims based on a failure by the United States, the State of Washington, the Suquamish Indian Tribe and the Muckleshoot Indian Tribe to fulfill their obligations under this Decree; and (b) claims based on a challenge to any decision by the Panel. Metro's and the City's reservations of rights pursuant to this paragraph do not include

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claims against the Trustees for monetary relief. Nothing in this paragraph is intended to constitute a waiver of any sovereign immunity defense that may be available to any of the Trustees.

42. The United States' consent to this Decree and participation in this settlement is solely on its own behalf and not as a trustee for any Indian Tribe.

CONTRIBUTION PROTECTION

43. The United States, the State of Washington, the Suquamish Indian Tribe and the Muckleshoot Indian Tribe acknowledge and agree that the payments to be made and commitment of work by Metro and the City pursuant to this Decree represent a good faith settlement and compromise of disputed claims and that the settlement represents a fair, reasonable and equitable discharge of liability for covered matters. Metro and the City shall have the benefits of Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), and any other applicable statute or other law limiting or extinguishing their liability to persons not a party to this Decree or affording them rights of contribution or other rights to recover from such persons costs or damages.

44. The United States, the State of Washington, the Suquamish Indian Tribe and the Muckleshoot Indian Tribe certify that the payments to be made and the work to be undertaken by Metro and the City pursuant to this Decree will be appropriate actions necessary to protect and restore the natural resources allegedly damaged by the release by Metro and the City of

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hazardous substances in the covered area and that the payments and work satisfy the requirements of Section 122(j)(2) of CERCLA, 42 U.S.C. § 9622(j)(2).

GENERAL

45. If for any reason the Court should decline to approve this Consent Decree in the form presented, any statements made in negotiation and the terms herein may not be used as evidence in any litigation or administrative proceeding.

46. This Consent Decree shall not be construed in any way to relieve the parties to this Decree or any other person or entity from the obligation to comply with any federal, state or local law.

47. This Consent Decree does not relieve or otherwise satisfy any obligation or liability of any person or entity not party to this Decree.

48. The Consent Decree may be executed in any number of counterparts and each executed counterpart shall have the same force and effect as an original instrument.

49. Each undersigned representative of the parties to the Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of the Consent Decree and to legally execute, and bind such party to, this Consent Decree.

MODIFICATION

50. The terms of this Consent Decree may be modified only by a subsequent written agreement by all of the parties signatory

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hereto, and approved by the Court as a modification to this Consent Decree.

51. If a court of competent jurisdiction finds unlawful any provision of this Consent Decree, including subparagraphs a-c of paragraph 4, the parties shall return the Decree to the Court for reformation consistent with the intent of the parties at the time they lodged the Decree with the Court.

PUBLIC COMMENT

52. This Decree will be subject to a 30-day public comment period in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. 50.7. The United States reserves the right to withdraw its consent to the Decree if comments received disclose facts or considerations which show that the Decree is inappropriate, improper or inadequate. Metro and the City consent to the entry of this Consent Decree without further notice.

53. The Suquamish Indian Tribe, the Muckleshoot Indian Tribe and the State of Washington each reserve the right to withdraw their consent from this Decree and from participation in this settlement if comments received during the public comment period disclose facts or considerations which show that the Decree is inappropriate, improper or inadequate as to the Suquamish Indian Tribe, the Muckleshoot Indian Tribe and the State of Washington, respectively. To exercise its right to withdraw, each of these parties shall file with the Court a

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written statement expressly indicating its intent to withdraw. These parties must exercise their right to withdraw before the United States Department of Justice files its motion to enter this Decree with the Court. Withdrawal by any one or all of these parties shall not in any way affect the rights and obligations of any other party to this Decree. If any one or all of these parties withdraws, any and all references to such a party or parties in the Decree, except those in paragraphs L, M(3), 15, 24, 25 and 26, shall by implication be stricken from the Decree and shall have no meaning or bearing on the operation of any term of this Decree. Withdrawal by any of these parties shall not impose any obligation on any other party to also withdraw nor shall any inference be made as to the propriety of any other party's continued consent to this Decree and participation in this settlement. If either or both the Suquamish Indian Tribe or the Muckleshoot Indian Tribe withdraws, the continued participation by the United States in this settlement is not intended to nor shall it constitute a settlement or waiver of any rights under statute, treaty or common law of such Tribe or Tribes.

VOIDABILITY

54. If for any reason the Court should decline to approve this Decree in the form presented, this Decree and the settlement embodied herein shall be voidable at the sole discretion of any

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party and the terms herein may not be used as evidence in any litigation.

EFFECTIVE DATE

55. This Consent Decree shall be effective upon the date of its entry by the Court.

DENIAL OF LIABILITY

56. Metro and the City both deny each of the allegations of the complaint filed by the United States and further deny responsibility for the natural resources damages and any other costs or relief sought by the Trustees. The parties agree that actions undertaken by the City and Metro in accordance with this Consent Decree do not constitute an admission of any violation of treaty, federal or state law or an admission of any liability by the City or Metro to the United States, the State of Washington, the Suquamish Indian Tribe and Muckleshoot Indian Tribe. Nor shall this Consent Decree be used as evidence or as collateral estoppel against any party to this Decree in any action or proceeding other than an action or proceeding to enforce the terms of this Consent Decree.

RETENTION OF JURISDICTION

57. The Court shall retain jurisdiction of this matter for purposes of entering such further orders, direction, or relief as may be appropriate for the construction, implementation, or enforcement of this Decree.

U.S. Department of Justice
Environmental Enforcement Section
c/o GC-DOJ DARC BIN C15700
7600 Sand Point Way N.E.
Seattle, Washington 98115-0070

58. By signature below, all parties consent to this Decree.

U.S. Department of Justice
Environmental Enforcement Section
c/o GC-DOJ DARC BIN C15700
7600 Sand Point Way N.E.
Seattle, Washington 98115-0070

FOR THE MUNICIPALITY OF METROPOLITAN SEATTLE

August 6 1991
Date

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Seattle, Washington 98104

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FOR THE CITY OF SEATTLE

Mark H. Sidran
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August 5 1991
Date

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FOR THE SUQUAMISH INDIAN TRIBE

Lyle Emerson George

Aug 7th 1991
Date

Lyle Emerson George
Vice-Chairman
Suquamish Indian Tribe
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Office of the Tribal Attorney
THE SUQUAMISH TRIBE
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FOR THE MUCKLESHOOT INDIAN TRIBE

Virginia Cross
Chairperson
Muckleshoot Indian Tribe
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August 7 1991
Date

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FOR THE STATE OF WASHINGTON

Fred Olson

Fred A. Olson
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Washington Department of Ecology
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Olympia, Washington 98503

August 6, 1991
Date

Jeffrey S. Myers
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Olympia, Washington 98504

August 6, 1991
Date

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FOR THE UNITED STATES OF AMERICA

Barry M. Hartman — 9/5/91
Barry M. Hartman — Date
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Charles E. DiTosa for — 9-5-91
James L. Nicoll, Jr. — Date
Senior Counsel
Environmental Enforcement Section
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c/o NOAA GC/DOJ Damage Assessment Center
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Susan L. Barnes — 9-9-91
Susan L. Barnes — Date
Assistant United States Attorney
3600 SeaFirst Fifth Avenue Plaza
800 Fifth Avenue
Seattle, Washington 98104

So ordered.
December 23, 1991.
William L. Dwyer
U.S. District Judge

U.S. Department of Justice
Environmental Enforcement Section
c/o GC-DOJ DARC BIN C15700
7600 Sand Point Way N.E.
Seattle, Washington 98115-0070

PANEL ORGANIZATION PLAN

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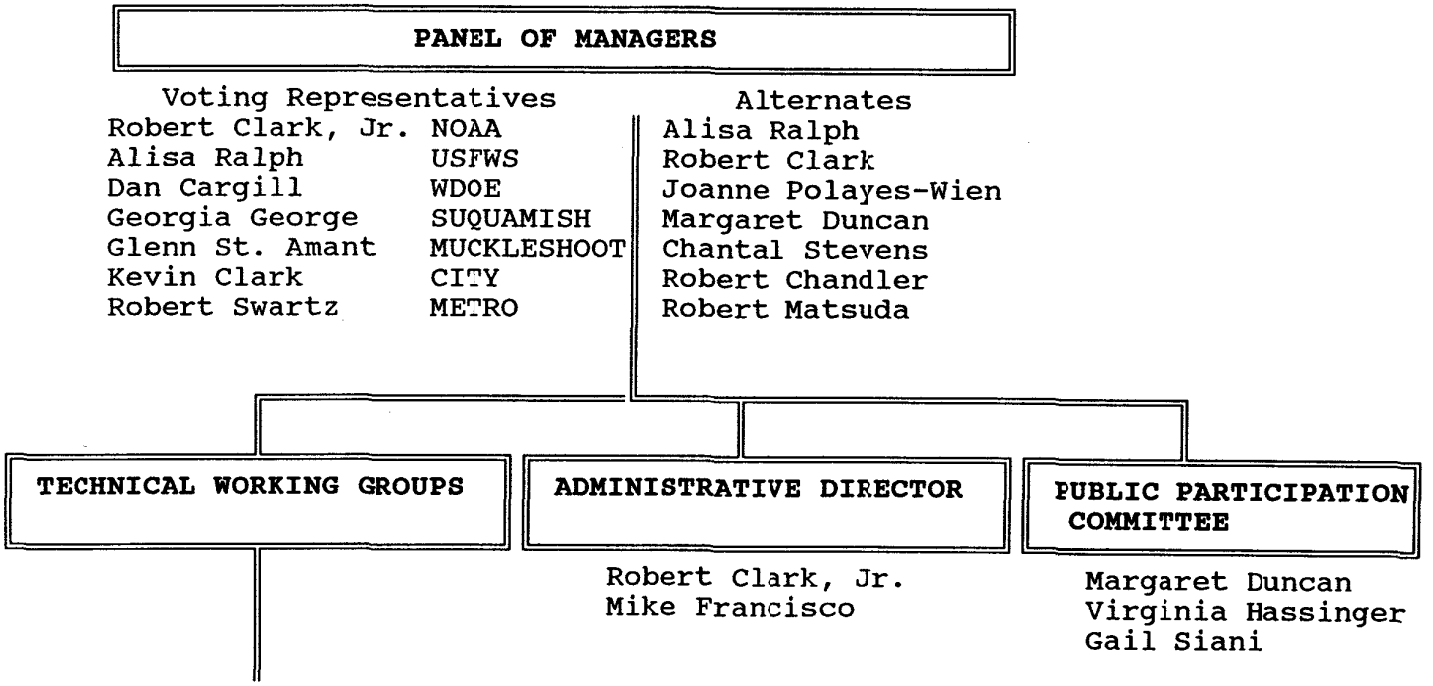
A. ACRONYMS AND ABBREVIATIONS

BOEING	The Boeing Company
CITY	City of Seattle
COE	U.S. Army Corps of Engineers
DOI	U.S. Department of the Interior
EPA	U.S. Environmental Protection Agency
METRO	Municipality of Metropolitan Seattle
MUCKLESHOOT	Muckleshoot Indian Tribe
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NOS	National Ocean Service
PORT	Port of Seattle
SUQUAMISH	Suquamish Indian Tribe
USFWS/FWS	U.S. Fish and Wildlife Service
UW/FRI	Univ. Washington, Fisheries Research Institute
WDF	Washington Department of Fisheries
WDNR	Washington Department of Natural Resources
WDOE	Washington Department of Ecology
WDW	Washington Department of Wildlife

B. **ORGANIZATIONAL CHART**

ORGANIZATIONAL STRUCTURE



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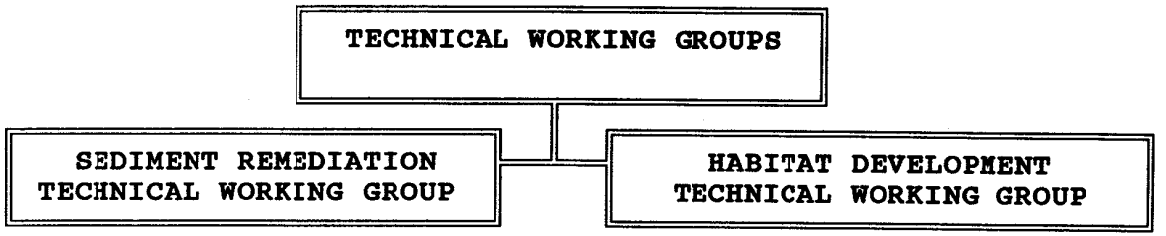

Pat Romberg, Chair	METRO
Pat Cagney	COE
Dan Cargill	WDOE
Randy Carman	WDF
Robert Chandler	CITY
Robert Clark, Jr.	NOAA
Margaret Duncan	SUQUAMISH
Mike Francisco	NOAA
Virginia Hassinger	CITY
Doug Hotchkiss	PORT
David Jamison	WDNR
Paul Johansen	BOEING
Robert Matsuda	METRO
Joan McGilton	BOEING
Joanne Polayes-Wien	WDOE
Gail Siani	NOAA
Justine Smith	EPA
Glen St. Amant	MUCKLESHOOT
Rick Vining	WDF

Curtis Tanner, Chair	FWS
George Blomberg	PORT
Pat Cagney	COE
Dan Cargill	WDOE
Randy Carman	WDF
Robert Clark, Jr.	NOAA
Margaret Duncan	SUQUAMISH
Mike Francisco	NOAA
Virginia Hassinger	CITY
David Jamison	WDNR
Robert Matsuda	METRO
Joan McGilton	BOEING
Joanne Polayes-Wien	WDOE
Gail Siani	NOAA
Charles Simenstad	UW/FRI
Glen St. Amant	MUCKLESHOOT
Martha Turvey	WDOE
Rick Vining	WDF

C. **NAMES AND ADDRESSES OF PANEL PARTICIPANTS**

P = Panel of Managers Representative
S = Sediment Remediation Technical Working Group
H = Habitat Development Technical Working Group

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AMENDED BYLAWS
OF
ELLIOTT BAY/DUWAMISH RESTORATION PROGRAM PANEL

ARTICLE I

NAME

The "Panel of Managers" created under the Consent Decree entered in United States, et al. v. The City of Seattle and Municipality of Metropolitan Seattle, Case No. C90-395WD, shall hereafter be referred to as the "Elliott Bay/Duwamish Restoration Program Panel."

ARTICLE II

MEMBERS

Each member group, as defined in paragraph 5 of the Consent Decree, shall upon approval of these Bylaws designate in writing to the Panel chair a voting representative together with such alternates as it deems appropriate to represent it on the Panel. Any member group may substitute its voting representative by written notice to the Panel chair.

ARTICLE III

MEETINGS

1. Regular Meetings. The Panel shall meet at least once every month at such times and places agreed to by the Panel. All Panel, technical working group, and committee meetings will be open to the public unless the Panel, the technical working groups, or

the committees choose by majority vote to conduct a meeting or portion thereof in executive session.

2. Agenda. An agenda prepared by the chair in consultation with the administrative director shall be given at least three days prior to any regular meeting. Member groups may designate items to be included in the agenda. All Panel, technical working group and committee meeting agendas will include a time and space allocation for "Public Comment." This regular agenda item is designated for public or non-Panel members to appear before the Panel, technical working groups, and committees and share their ideas, comments, and views on Panel activities.

3. Special Meetings. Special meetings of the Panel may be held at any place and time whenever called by any four member groups.

4. Notice of Meetings. Notice of the time and place of any special meeting of the Panel shall be given by the secretary or by the member groups calling the meeting, by mail, telegram, facsimile, or by personal communication over the telephone or otherwise, at least three (3) days prior to the date on which the meeting is to be held. The business to be transacted and the purpose of any meeting of the Panel shall be specified in the form of an agenda in the notice or any waiver of notice of such meeting. Attendance of a member group at any meeting shall constitute a waiver of notice of such meeting, except where the member group attends a meeting for the purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

5. Quorum. A majority of member groups shall constitute a quorum for the transaction of business. At any meeting of the Panel at which a quorum is present, any business may be transacted, and the Panel may exercise all of its powers. A member group present at such a meeting shall be presumed to have assented to the action taken at the meeting unless the member group's dissent or abstention is entered in the minutes of the meeting or the member group files its written dissent or abstention to such action with either the person acting as secretary of the meeting before adjournment of the meeting or by registered mail to the secretary immediately after the adjournment of the meeting. Notwithstanding the provisions of Article VII(1), any action excepting an action on reconsideration taken by the Panel shall be tabled for reconsideration at the next meeting of the Panel upon the request of any member group where: (a) the action was not set forth in an agenda or notice for the meeting at which it was taken; or (b) the action was taken by vote of the Panel based on a three-two or three-one majority.

6. Meetings Held by Telephone or Similar Communications Equipment. Member groups may participate in a meeting of the Panel or its committees by means of a telephone conference or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participating by such means shall constitute presence in person at a meeting.

7. Meeting Conduct. Member groups only shall participate in Panel, technical working group, and committee meeting agenda discussions and decision making processes. If non-Panel members wish to appear before the Panel, technical working groups, and committees and contribute to agenda discussions, such public/non-Panel members must either contact the Chair in advance of the meeting and request special placement on the agenda in accordance with paragraph (2) above or attend the meeting and be heard during the regularly scheduled "Public Comment" period reserved on each regular meeting agenda.

8. Form of Actions. The following actions of the Panel shall be taken and memorialized in the form of resolutions: designation and appointment of committees; appointment and removal of an administrative director; designation and elimination of additional working groups; specification and modification of additional powers and duties of the Chair and Secretary; alteration or amendment of the Bylaws; adoption of budgets; adoption of project proposals; approvals of expenditures from the Registry Account; acceptance of proposals for the performance of in-kind services; appointment of a party to undertake projects on behalf of the Panel; establishing guideline for reimbursement of Trustees' expenses; and such other actions as the Panel shall determine.

ARTICLE IV

COMMITTEES AND WORKING GROUPS

1. Committees. The Panel may designate and appoint any committees. Each committee shall consist of two (2) or more member groups and shall have and exercise such authority of the Panel as may be specified in the resolution establishing the committee. However, no such committee shall have the authority of the Panel to amend, alter or repeal the Bylaws; elect, appoint or remove any member of any such committee or any administrative director appointed by the Panel; or amend, alter or repeal any resolution of the Panel.

2. Working Groups. The Panel may designate and appoint any working groups to assist the Panel in carrying out its duties under the Consent Decree. The membership on any working group is open to any representatives designated by member groups, those representatives those agencies or entities identified in paragraph 15 of the Consent Decree, and to such other qualified individuals as determined by the Panel. Each working group shall elect or designate a chair who is also a representative of a member group. A working group shall exercise no power or authority of the Panel. Working groups will serve to analyze and recommend restoration, remediation and source control projects and the means to implement those projects. Any proposal developed by a working group shall be presented to the Panel by the working group chair or a person designated by the working group chair.

ARTICLE V.

ACTIONS BY WRITTEN CONSENT

Any action required or permitted by the Consent Decree or Bylaws to be taken at a meeting of the Panel may be taken without a meeting if consent in writing, setting forth the action so taken, shall be signed by all member groups entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote, and may be described as a such.

ARTICLE VI.

WAIVER OF NOTICE

Whenever any notice is required to be given to any Panel member or member group by the Consent Decree or Bylaws, a waiver thereof in writing signed by the Panel member or member group to such notice, whether before or after the time stated therein, shall be the equivalent to the giving of such notice.

ARTICLE VII.

OFFICERS

1. Officers Enumerated. The officers of the Panel shall be a chairperson and a secretary. In addition to the powers and duties specified below, the officers shall have such powers and perform such duties as the Panel may prescribe.

2. The Chair. The chair must be a designated representative of a member group on the Panel. He/she shall preside at meetings of the Panel and any committees exercising any authority of the Panel.

It is the duty and responsibility of each acting Chair to enforce any and all Panel rules of procedure and to control and direct all Panel discussions and comments. The position of chair shall rotate among the member groups on a quarterly basis commencing January 1, 1992. The voting representative for the Department of Ecology shall serve as the first chair to be succeeded in order by the voting representative of the Suquamish Indian Tribe, the Muckleshoot Indian Tribe, Seattle, Metro, and then that voting representative designated jointly by NOAA and Interior.

3. The Secretary. Unless the Panel acts otherwise, the administrative director appointed by the Panel shall automatically serve as secretary. It shall be the duty of the secretary to keep records of the proceedings of the Panel including a true and accurate copy of the Bylaws, any resolutions or amendments to the Bylaws adopted by the Panel, and minutes of any and all meetings of the Panel.

4. Vacancies. Vacancies in any office arising from any cause may be filled by the Panel at any regular or special meeting. In the event a chair or designated alternative is not present at a meeting, the voting representative of the member group next in rotation to serve as chair shall serve as chair at that meeting.

5. Removal. Any officer elected or appointed may be removed by the Panel whenever in its judgment the best interest of the Panel will be served thereby.

ARTICLE VIII.

ADMINISTRATIVE PROVISIONS

1. Dispute Resolution. Any member group objecting to an action by the Panel may request reconsideration of such action in writing. Provided such a request is submitted to the chair within thirty (30) days of the Panel's action, the time to seek judicial review of the Panel's action in accordance with paragraph 7 of the Consent Decree shall run from the date the request for reconsideration is denied. A request for reconsideration shall be heard at the next regular meeting of the Panel. A request for reconsideration shall be deemed denied if not resolved within thirty (30) days of submission to the chair. Submission of a request for reconsideration shall not be deemed a waiver of any right to file a petition for review pursuant to paragraph 7 of the Consent Decree.

2. Amendment of Bylaws. These Bylaws may be altered, amended or repealed by the affirmative vote of a majority of the member groups in accordance with the Consent Decree at any regular or special meeting.

3. Rules of Procedure. The rules of procedure at meetings of the Panel shall be the rules contained in Roberts Rules of Order on Parliamentary Procedure, newly revised, so far as applicable and when not inconsistent with these Bylaws, the Consent Decree or with any resolution of the Panel.