

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

UNITED STATES OF AMERICA, ON BEHALF
OF THE NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION AND THE
UNITED STATES DEPARTMENT OF THE
INTERIOR; THE STATE OF WASHINGTON
THROUGH THE WASHINGTON
DEPARTMENT OF ECOLOGY;
MUCKLESHOOT INDIAN TRIBE;
SUQUAMISH INDIAN TRIBE OF THE PORT
MADISON RESERVATION,

Plaintiffs,

v.

CROWLEY MARINE SERVICES, INC.,
8th AVENUE TERMINALS, INC., and
WASHINGTON DEPARTMENT OF
TRANSPORTATION.

Defendants.

Case No.

CONSENT DECREE

Consent Decree

U. S. DEPARTMENT OF JUSTICE
Environment and Natural Resources Division
7600 Sand Point Way NE
Seattle, WA 98115

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I. INTRODUCTION

The United States of America (“United States”), on behalf of the National Oceanic and Atmospheric Administration (“NOAA”) and the United States Department of the Interior; the State of Washington (the “State”) through the Washington State Department of Ecology; the Suquamish Indian Tribe of the Port Madison Reservation (“Suquamish Tribe”); and the Muckleshoot Indian Tribe (collectively, “Plaintiffs”), have filed a Complaint in this case against defendants Crowley Marine Services, Inc., and 8th Avenue Terminals, Inc. (collectively, “Crowley”) and the Washington State Department of Transportation (“WSDOT”) (collectively, “Settling Defendants”) pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607; the Model Toxics Control Act (“MTCA”), RCW 70A.305; Section 311 of the Clean Water Act (“CWA”), 33 U.S.C. § 1321; and Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2702(b)(2)(A), for Covered Natural Resource Damages as a result of releases of hazardous substances into the Lower Duwamish River (“LDR”) and/or Elliott Bay (as defined below). The Lower Duwamish River is an urban waterway in and near Seattle, Washington, which flows into Elliott Bay and has been subject to considerable levels of industrial use throughout its history and into the present. This Consent Decree (the “Decree”) resolves the claims asserted in the Complaint against the Settling Defendants.

II. BACKGROUND

A. The National Oceanic and Atmospheric Administration; the United States Department of the Interior; the Washington Department of Ecology on behalf of the State of Washington; the Suquamish Tribe, and the Muckleshoot Indian Tribe (collectively, “the Trustees” and, individually, a “Trustee”), under the authority of Section 107(f) of CERCLA, 42

1 U.S.C. § 9607(f), 40 C.F.R. Part 300, subpart G, and RCW 70A.305.040(2), serve as trustees for
2 natural resources for the assessment and recovery of damages for injury to, destruction of, or loss
3 of natural resources and the services provided by those injured resources under their trusteeship.

4
5 B. Investigations conducted by the Trustees and others detected hazardous
6 substances in the sediments, soils, and groundwater of the Lower Duwamish River, including but
7 not limited to arsenic, antimony, cadmium, chromium, copper, mercury, nickel, lead, zinc, bis(2-
8 ethylhexyl) phthalate, hexachlorobenzene, hexachlorobutadiene, tributyltin (“TBT”),
9 dichlorodiphenyltrichloroethane (“DDT”), polychlorinated biphenyls (“PCBs”), and polycyclic
10 aromatic hydrocarbons (“PAHs”). Overall, the Trustees have documented the presence of over
11 30 hazardous substances in the sediments of the LDR.
12

13 C. The Trustees began assessing damages to natural resources in the LDR in 1990 by
14 finding that hazardous substances had been released into the LDR; that natural resources had
15 likely been injured by the releases; that data sufficient to pursue a natural resource damage
16 assessment were available or could likely be obtained at a reasonable cost; and that, without
17 further action, future response activities would not adequately remedy the resource injuries. *See,*
18 *e.g.*, NOAA, Lower Duwamish River Sediment Characterization Study Report (Dec. 10, 1998);
19 Elliott Bay Trustee Council, Pre-Assessment Screen for LDR (December 2009); NOAA, Final
20 Lower Duwamish River NRDA Restoration Plan and Programmatic Environmental Impact
21 Statement (July 2013); and Final Lower Duwamish River NRDA: Injury Assessment Plan
22 (March 2019).
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1 D. Although the Trustees have initiated but not yet completed a natural resource
2 damage assessment for the LDR, the Trustees have developed and analyzed information
3 sufficient to support settlements that are fair, reasonable, and in the public interest.

4 E. Plaintiffs allege in the Complaint that Defendants Crowley Marine Services, Inc.,
5 and 8th Avenue Terminals, Inc. (and its predecessor by name change, Pacific Terminals, Inc.),
6 owned and operated a marine transportation and logistics operation at a property along the LDR
7 located at 7400 8th Avenue S., Seattle, Washington, from about 1992 to 2014. In 2007, Crowley
8 sold a portion of the property to the City of Seattle. Crowley sold the remaining property in 2014.
9 In 2019 Crowley reacquired the property it sold in 2014. Prior to Crowley's ownership,
10 companies conducted various industrial activities on the property, including manufacturing and
11 repairing heavy equipment; manufacturing pipe, asphalt, and concrete; and treating wood.
12 Plaintiffs allege that prior to and during Crowley's operations, releases of hazardous substances
13 including PAHs, phenol, and 4-methylphenol to the LDR occurred at and from the property.
14 Plaintiffs allege that Defendant WSDOT owns and operates an outfall (I-5 Storm Drain #2046-
15 Slip 4), collecting stormwater runoff from I-5 and surrounding areas which the Trustees have
16 identified as a source of releases of hazardous substances, including DDT, to the LDR.

17 F. Plaintiffs allege in the Complaint that Settling Defendants owned and/or operated
18 facilities on, adjacent to, or near the LDR at the time of the disposal of hazardous substances
19 within the meaning of 42 U.S.C. § 9607 and RCW 70A.305.040. Plaintiffs allege that hazardous
20 substances have been released and oil discharged to the LDR from the facilities owned and/or
21 operated by Settling Defendants, identified in Appendix A, through direct discharge or other
22 process discharges that have flowed to the LDR. The alleged discharges were to "navigable
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1 waters” or “adjoining shorelines” within the meaning of Section 1002(a) of OPA, 33 U.S.C. §
2 2702(a), and Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3). Plaintiffs also allege that
3 investigations have detected hazardous substances in soils, groundwater and/or sediments on or
4 in the facilities, and some of these same hazardous substances are found in the sediments of the
5 LDR. Plaintiffs further allege that hazardous substances that have been or are being released to
6 the LDR from the facilities owned and/or operated by Settling Defendants identified in Appendix
7 A have caused injury to, destruction of, and loss of natural resources in the LDR under Plaintiffs’
8 trusteeship, including fish, shellfish, birds, sediments, and resources of cultural significance.
9 Plaintiffs allege that each of them and the public have suffered the loss of natural resource
10 services (including ecological services as well as direct and passive human-use losses) as a
11 consequence of those injuries.
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14 G. To facilitate resolving natural resource damage claims, relying upon the results of
15 remedial investigations, regulatory standards, and scientific literature, the Trustees developed an
16 estimate of the amount of injury to natural resources that had occurred as a result of releases of
17 hazardous substances and discharges of oil to the LDR. The Trustees quantified the effects of the
18 injuries in terms of the losses of ecological services over affected areas of the LDR and over
19 time, discounted to a present value. Plaintiffs used the term discounted service acre-years
20 (“DSAYs”) to describe both the scale of the injuries, and the amount of habitat restoration they
21 are seeking to compensate for the injuries. At this time, for purposes of early settlements,
22 including this Decree, the Trustees’ estimated total number of DSAYs for the LDR is 5,278.
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25 H. Plaintiffs assert that hazardous substance releases to the LDR have become
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1 dispersed and commingled to the extent that the effects of releases or discharges of one
2 potentially responsible party ("PRP") cannot be readily distinguished from another's. Plaintiffs
3 further assert that the circumstances of the LDR contamination make all PRPs who contributed
4 to the contamination jointly and severally liable for all injuries to natural resources that have
5 resulted from the contamination. As a consequence, Plaintiffs assert the right to recover for
6 damages and associated damage assessment costs from any Lower Duwamish River PRP.
7 Without prejudice to their position and solely for purposes of facilitating early settlements with
8 individual PRPs, the Trustee Council developed a streamlined process for allocating natural
9 resource damages liability among the PRPs. The Plaintiffs determined that settling with Settling
10 Defendants for a portion of the natural resource damages attributable to all LDR sources would
11 result in a fair and equitable resolution of Plaintiffs' claims. Taking into consideration prior
12 settlements with other PRPs who bore some liability for hazardous substance contamination of
13 the LDR and releases of hazardous substances and oil by non-settling parties, Plaintiffs agreed
14 to settle their claims against Settling Defendants as provided in this Consent Decree. Plaintiffs
15 determined, based upon the facts regarding Settling Defendants' ownership and operations and
16 other equitable factors, that Settling Defendants account for less than 0.15% of the total
17 estimated DSAYs for the LDR, 5.4 DSAYs.

21 I. Settling Defendants do not admit any liability to Plaintiffs arising out of the
22 transactions or occurrences alleged in the Complaint and the matters alleged in this Decree.

24 J. Plaintiffs and Settling Defendants (collectively, the "Parties" and, individually, a
25 "Party") agree that neither Plaintiffs nor Settling Defendants will use this settlement (including
26 the terms of this Decree and the basis for the compromise contained in other documents filed in
27

1 this action in support of this Decree) in any other forum, whether in litigation, administrative
 2 proceedings, formal or informal negotiations, or otherwise, to resolve, attempt to resolve, or in
 3 any way influence the resolution of, other claims between Plaintiffs and Settling Defendants in
 4 the LDR (as defined below); provided, however, that this provision does not limit Plaintiffs or
 5 Settling Defendants from using otherwise available factual information referenced in documents
 6 filed in support of this Decree. The restriction in the preceding sentence applies to, but is not
 7 limited to, claims other than Covered Natural Resources Damages that the United States (on
 8 behalf of the United States Environmental Protection Agency) and the State may have against
 9 Settling Defendants under CERCLA, the Solid Waste Disposal Act (as amended by the
 10 Resource Conservation and Recovery Act), 42 U.S.C. § 6901 *et seq.*, or MTCA in the LDR.

13 K. The Parties agree, and this Court by entering this Consent Decree finds, that this
 14 Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid
 15 prolonged and complicated litigation between the Parties, that this Decree will expedite the
 16 restoration and protection of natural resources at and near the Lower Duwamish River, that the
 17 funding of restoration by the Settling Defendants constitutes appropriate action necessary to
 18 protect and restore the natural resources allegedly injured by releases or threatened releases of
 19 hazardous substances and discharges of oil by the Settling Defendants, and that this Decree is
 20 fair, reasonable, and in the public interest.

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

25 III. JURISDICTION AND VENUE

26 1. This Court has jurisdiction over the subject matter of this action pursuant to 28
 27 U.S.C. §§ 1331, 1345 and 1367, 42 U.S.C. § 9613(b), and 33 U.S.C. § 2717(b). The Court has

1 personal jurisdiction over the Parties. Solely for the purposes of this Decree and the underlying
 2 Complaint, the Parties waive all objections and defenses that they may have to jurisdiction of the
 3 Court or to venue in this District. The Parties may not challenge the terms of this Decree or this
 4 Court's jurisdiction to enter and enforce this Decree.

5 6 **IV. GENERAL PROVISIONS**

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

13 3. The Complaint states claims against the Settling Defendants upon which relief
 14 may be granted. Nothing in this Decree shall be construed as an admission of liability by Settling
 15 Defendants for any claims or allegations made in the Complaint or in this Decree. This Decree
 16 shall not be used as evidence of Settling Defendants' alleged liability in any action or proceeding
 17 other than an action or proceeding to enforce the terms of this Decree.

19 20 **V. DEFINITIONS**

21 4. Unless otherwise expressly provided, terms used in this Decree that are defined in
 22 CERCLA or in regulations promulgated under CERCLA have the meanings assigned to them in
 23 CERCLA or in such regulations. Whenever the terms listed below are used in this Decree or in
 24 any attached Appendix, the following definitions will apply:

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

1 b. “Consent Decree” or “Decree” means this Consent Decree, including Appendices
2 A and B.

3 c. “Covered Natural Resource Damages” means damages, including costs of damage
4 assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607; Chapter 70A.305
5 RCW; Section 311 of the Clean Water Act (“CWA”), 33 U.S.C. § 1321; and Section 1002 of the
6 Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2702(b) and any other statutory or common law,
7 for injury to, destruction of, loss of, loss of use of, or impairment of Natural Resources,
8 including, but not limited to: (i) the costs of assessing such injury, destruction, or loss or
9 impairment of natural resources; (ii) the costs of restoration, rehabilitation, or replacement of
10 injured or lost natural resources or of acquisition of equivalent resources; (iii) the costs of
11 planning such restoration activities; (iv) compensation for injury, destruction, loss, impairment,
12 diminution in value, or loss of use of natural resources; and (v) each of the categories of
13 recoverable damages described in 43 C.F.R. § 11.15, and applicable State or tribal law, resulting
14 from releases of hazardous substances or discharges of oil to the LDR and/or Elliott Bay, or
15 adjoining shorelines, where such release or discharge occurred on or before the Effective Date of
16 this Consent Decree, at or from the facilities owned or operated by Settling Defendants,
17 respectively, identified in Appendix A. Damages, injury to, destruction of, loss of, loss of use of,
18 or impairment of Natural Resources resulting from releases of hazardous substances or
19 discharges of oil originating from Settling Defendants’ operations or activities outside of the
20 facilities identified for each Defendant in Appendix A are not included in Covered Natural
21 Resource Damages, even if those hazardous substances or discharges of oil reach the LDR
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1 and/or Elliott Bay by flowing over, under, or through any portion of the facilities identified in
 2 Appendix A.

3 d. “Day” means a calendar day. In computing any period of time under this Consent
 4 Decree, where the last day falls on a Saturday, Sunday, or federal holiday, the period of time will
 5 run until the close of business of the next working day. “Working day” means a day other than a
 6 Saturday, Sunday, or federal holiday.
 7

8 e. “Defendants” or “Settling Defendants” shall mean Crowley Marine Services, Inc.,
 9 8th Avenue Terminals, Inc., and the Washington State Department of Transportation.
 10

11 f. “Discounted Service-Acre Year” (DSAY) means the amount of a specific suite of
 12 ecological services determined to be produced per acre of a given type of habitat over a period of
 13 years, the total of which are discounted to a present value.
 14

15 g. “Effective Date” shall be the date on which this Consent Decree is entered by the
 16 Court, or, if the Court instead issues an order approving the Consent Decree, the date of such
 17 order.
 18

19 h. “Elliott Bay” means any portion of Elliott Bay (including the shoreline, intertidal
 20 and subtidal areas, tributaries, estuaries and bottom sediments) in the State of Washington where
 21 hazardous substances originating from the facilities identified in the definition of Covered
 22 Natural Resource Damages have come to be located.
 23

24 i. “Lower Duwamish River” or “LDR” means any portion of the Duwamish
 25 Waterway (including the shoreline, intertidal areas, tributaries, estuaries and bottom sediments)
 26 in the State of Washington where hazardous substances, originating from the facilities identified
 27

1 in the definition of Covered Natural Resource Damages, have come to be located. The LDR
2 includes the in-waterway portions of three Superfund Sites: the Harbor Island Superfund Site
3 (located south of downtown Seattle, Washington, including the East Waterway and West
4 Waterway that flow from the south end of Harbor Island north to Elliott Bay), the Lower
5 Duwamish Waterway Superfund Site (approximately five miles of the Duwamish River from the
6 southern tip of Harbor Island south to the area around the Norfolk Combined Sewer
7 Overflow/Storm Drain in Tukwila, Washington), and the Lockheed West Superfund Site (areas
8 in and around the site formerly known as Lockheed Shipyard No. 2, located near the confluence
9 of the West Waterway and Elliott Bay).

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

13 k. “Natural Resources” means that definition as provided in 42 U.S.C. § 9601(16).

15 l. “Parties” means the United States, the State of Washington, the Suquamish Tribe,
16 the Muckleshoot Indian Tribe, and Settling Defendants.

18 m. “Plaintiffs” means the United States, the State of Washington, the Suquamish
19 Tribe, and the Muckleshoot Indian Tribe.

21 n. “Trustees” mean the National Oceanic and Atmospheric Administration; the
22 United States Department of the Interior; the Washington State Department of Ecology, on
23 behalf of the State of Washington; the Suquamish Tribe; and the Muckleshoot Indian Tribe.

25 o. “United States” shall mean the United States of America and each department,
26 agency and instrumentality of the United States, including the United States Department of
27 Commerce and the United States Department of the Interior.

VI. PAYMENT OF ASSESSMENT COSTS AND NATURAL RESOURCE DAMAGES; PURCHASE OF RESTORATION CREDITS

A. Reimbursement of Assessment Costs

5. Payment for Past Assessment Costs Incurred by the United States.

(1) Within seventy-five (75) days after the Effective Date, Crowley shall pay \$44,063.06 and WSDOT shall pay \$20,262.57 to the United States for assessment costs incurred by NOAA and by the Department of the Interior. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Western District of Washington after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Settling Defendants shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Jodie Vosse, vossej@wsdot.wa.gov
WSDOT Environmental Services Office
310 Maple Park Ave., SE
Olympia, WA 98504-7320
Mail Stop: 47331
Phone Number: (360)705-7461

on behalf of WSDOT and to:

8th Avenue Terminals, Inc. /Crowley Marine Services, Inc.
Attn: Jannina Gahagan, Jannina.Gahagan@crowley.com
9487 Regency Square Blvd
Jacksonville, FL 32225
Phone Number: (804) 204-1988

on behalf of Crowley. Settling Defendants may change the individuals to receive payment instructions on their behalf by providing written notice of such change to the United States in accordance with Section XIII (Notices).

(2) Of the total amount to be paid by Settling Defendants pursuant to Subparagraph 5.a.(1):

- (a) \$909.27 shall be deposited in the DOI Natural Resource Damage Assessment and Restoration Fund, to be applied toward natural resource damage assessment costs incurred by DOI.
- (b) \$63,416.36 shall be deposited in the NOAA Damage Assessment and Restoration Revolving Fund, to be applied toward natural resource damage assessment costs incurred by NOAA.

6. Notice of Payments. At the time of each payment pursuant to Paragraph 5, Settling Defendants will send notice that payment has been made to the United States in accordance with Section XIII (Notices). Such notice will reference Lower Duwamish River NRDA, DOJ case number 90-11-3-07227/13, and the civil action number.

B. Payment of Natural Resource Damages

7. Within seventy-five days of the Effective Date of this Decree, Crowley shall pay \$143,889 and WSDOT shall pay \$66,111 to the Trustees for Covered Natural Resource Damages. Payments shall be made by EFT to the U.S. Department of Justice account in accordance with Paragraph 5. The payments shall be disbursed to a segregated sub-account within the DOI Natural Resources Restoration Fund (“Elliott Bay/Lower Duwamish River Account”) to be managed by the U.S. Department of the Interior for the joint benefit and use of the Trustees to pay for natural resource restoration projects to be jointly selected by the Trustees.

C. Purchase of Restoration Credits

8. As contemplated by this Consent Decree, and as required by the Consent Decree entered on May 7, 2021 in *United States et al., v. City of Seattle*, Civ. No. 16-1486 (W.D. Wash.) (DKt. # 31), a restoration project developer, Bluefield Holdings, Inc., has constructed and is completing development of a restoration project, known as Restoration Project One, along the Lower Duwamish River on behalf of LDR PRPs, including Defendants and the City of Seattle, for the purpose of, *inter alia*, resolving the liability of the PRPs for natural resource damages. See Appendix B (Letter from Bluefield Holdings, Inc.).

9. In addition to paying cash to resolve their liabilities to the Trustees under Paragraph 7, Defendants agree to fund a portion of Restoration Project One by purchasing restoration credits equivalent to 3.9 DSAYS from Bluefield Holdings, Inc. Within thirty (30) days of the Effective Date of this Consent Decree, Defendants shall provide the Natural Resource Damage Credit Certificates issued by Bluefield Holdings, Inc. as documentation of the purchase of the credits for 3.9 DSAYS to the Trustees. Defendants also agree that they shall retire the restoration credits. Each Defendant agrees not to sell or transfer the restoration credits to any other party.

10. Bluefield Holdings, Inc. acknowledges in the letter attached to this Consent Decree at Appendix B that, pursuant to the consent decree entered in *United States et al., v. City of Seattle*, No. 16-1486 (W.D. Wash. 2021), Bluefield Holdings, Inc. is obligated to, *inter alia*, operate and maintain, perform adaptive management, and fund permanent stewardship for Restoration Project One to maintain its ecological value, as determined by the Trustees, which includes ecological value that serves as the basis for the DSAY-equivalent restoration credits

1 purchased by the Defendants in settlement of this action. Bluefield Holdings, Inc. further
 2 acknowledges in the letter attached to this Consent Decree at Appendix B that the Trustees, in
 3 entering into this Consent Decree, are relying on performance by Bluefield Holdings, Inc. of its
 4 obligations in the consent decree entered in *United States et al., v. City of Seattle*.

6 VII. STIPULATED PENALTIES AND INTEREST

7 11. If either Settling Defendant fails to make a payment pursuant to Paragraphs 5 or 7
 8 or fails to purchase restoration credits pursuant to Paragraph 9 by the required due date (“Non-
 9 Compliant Defendant”), the Non-Compliant Defendant shall pay a stipulated penalty of \$5,000
 10 per day for each payment is not made by the required due date. Neither Settling Defendant shall
 11 incur penalties for the other Settling Defendant’s late payment.
 12

13 a. All penalties shall begin to accrue on the day after the payment is due, and
 14 shall continue to accrue through the final day the payment is made. Plaintiffs may give a Non-
 15 Compliant Defendant written notification of the late payment. Plaintiffs may send a Non-
 16 Compliant Defendant a written demand for the payment of stipulated penalties. However,
 17 penalties shall accrue as provided in this Paragraph regardless of whether Plaintiffs have notified
 18 a Non-Compliant Defendant of a late payment.
 19

20 b. Payments for stipulated penalties for late payments under Paragraph 5
 21 shall be made to the United States. All other payments under this Section shall be made as
 22 follows: 40% of the total to the United States; 20% of the total to the State; 20% of the total to
 23 the Suquamish Indian Tribe; and 20% of the total to the Muckleshoot Indian Tribe. All payments
 24 for stipulated penalties and interest for late payments to the United States under this Paragraph
 25 will be deposited by EFT to the United States Treasury in accordance with Paragraph 5(1). At
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1 the time of each payment, the Non-Compliant Defendant will send notice that payment has been
 2 made to the United States in accordance with Section XIII (Notices). This notice will reference
 3 Lower Duwamish River NRDA, DOJ Case Number 90-11-3-07227/13, and the civil action
 4 number.

5 c. All penalties accruing under this Section shall be due and payable within
 6 thirty (30) days of a Non-Compliant Defendant's receipt from Plaintiffs of a demand for payment
 7 of the penalties.
 8

9 12. If a Non-Compliant Defendant fails to pay stipulated penalties when due,
 10 Plaintiffs may institute proceedings against the Non-Compliant Defendant to collect the
 11 penalties, as well as interest at the current rate specified for investments of the Hazardous
 12 Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of
 13 each year, in accordance with 42 U.S.C. § 9607(a).
 14

15 13. The Non-Compliant Defendant shall pay interest on its unpaid balance, which
 16 shall begin to accrue on the day after payment is due.
 17

18 14. If Plaintiffs bring a motion or a separate action in court to enforce this Decree and
 19 prevail, Plaintiffs shall be entitled to recover from the Non-Compliant Defendant their
 20 reasonable costs of such motion or action, including, but not limited to, costs of attorney time.
 21

22 15. Payments made under this Section are in addition to any other remedies or
 23 sanctions available to Plaintiffs by virtue of the Non-Compliant Defendant's failure to comply
 24 with the requirements of this Decree.
 25

26 16. Notwithstanding any other provision of this Section, Plaintiffs may, in their
 27 unreviewable discretion, waive payment of any portion of the stipulated penalties that have
 28

1 accrued pursuant to this Decree. Payment of stipulated penalties does not excuse Defendants
 2 from payment as required by Section VI (Payment of Assessment Costs and Purchase of
 3 Restoration Credits) or from performance of any other requirement of this Decree.

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

5 17. Except as specifically provided in Section IX (Reservations of Rights) below,
 6 Plaintiffs covenant not to sue or to take administrative action against Settling Defendants
 7 pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a); RCW 70A.305.040; RCW
 8 90.48.367(5); Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; Section 1002(a) of
 9 the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(a); or any applicable tribal law, to
 10 recover Covered Natural Resource Damages. This Covenant Not to Sue will take effect as to
 11 Crowley upon receipt of Crowley's complete payments pursuant to Section VI.A & B (Payment
 12 for Past Assessment Costs Incurred by United States and Natural Resource Damages), and as to
 13 WSDOT upon receipt of WSDOT's complete payments pursuant to Section VI.A & B (Payment
 14 for Past Assessment Costs Incurred by United States and Natural Resource Damages). This
 15 Covenant Not to Sue is conditioned upon the satisfactory performance by each Settling
 16 Defendant of its obligations under this Decree. This Covenant Not to Sue extends only to
 17 Settling Defendants, and their successors and assigns, and does not extend to any other person.

18 **IX. RESERVATIONS OF RIGHTS**

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

1 a. liability for any other costs, including without limitation, costs of response
2 incurred or to be incurred by the United States, the State, or the Tribes under any federal or State
3 statute or tribal law that are not within the definition of Covered Natural Resource Damages;

4 b. liability for damages to Natural Resources (including assessment costs) as
5 defined in 42 U.S.C. § 9601(6), (16) that are not within the definition of Covered Natural
6 Resource Damages;

7 c. liability for damages to Natural Resources (including assessment costs) as
8 defined in 42 U.S.C. § 9601(6), (16) within the Lower Duwamish River and/or Elliott Bay
9 resulting from new releases of hazardous substances or discharges of oil from Defendants'
10 facilities identified in Appendix A and/or operations after the Effective Date of this Consent
11 Decree;

12 d. liability for damages to Natural Resources (including assessment costs) as
13 defined in 42 U.S.C. § 9601(6), (16) based upon Defendants' transportation, treatment, storage,
14 or disposal, or the arrangement for the transportation, treatment, storage, or disposal of
15 hazardous substances at or in connection with the Lower Duwamish River and/or Elliott Bay,
16 after the Effective Date of this Decree;

17 e. liability for injunctive relief or administrative order enforcement under
18 any federal or State statute;

19 f. liability under Section 107(a)(4)(D), 42 U.S.C. § 9607(a)(4)(D), for costs
20 of any health assessment or health effects study carried out under 42 U.S.C. § 9604(i);

21 g. additional claims for Covered Natural Resource Damages if conditions,
22 factors or information in the Lower Duwamish River and/or Elliott Bay, not known to the
23 Trustees as of the Effective Date, are discovered that, together with any other relevant

information, indicate that there is a threat to the environment, or injury to, destruction of, or loss of Natural Resources of a type unknown, or of a magnitude significantly greater than was known, as of the Effective Date of this Decree (for purposes of this Subparagraph, information known to the Trustees shall consist of any information in the files of, or otherwise in the possession of, any one of the individual Trustees, or their contractors or consultants who worked on the Trustees' natural resource damages assessment and liability allocation projects);

h. criminal liability to the United States or State; and

i. liability for failure of a Defendant to satisfy the requirements of this Decree.

X. COVENANT NOT TO SUE BY DEFENDANTS

19. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, the State, the Suquamish Tribe, and the Muckleshoot Indian Tribe, or their contractors or employees, relating to Covered Natural Resource Damages, including, but not limited to:

a. any direct or indirect claim for reimbursement of any payment for Covered Natural Resource Damages from the Hazardous Substance Superfund based on Sections 107, 111, 112, and 113 of CERCLA, 42 U.S.C. §§9607, 9611, 9612 and 9613, or any other provision of law; or

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

Settling Defendants reserve, and this Consent Decree is without prejudice to, all rights and defenses with respect to all matters reserved in Section IX (Reservation of Rights); however,

1 Settling Defendants' reservation in this Paragraph is only to the same extent and for the same
 2 matters, transactions, or occurrences as are raised in the claims asserted by the Plaintiffs pursuant
 3 to Section IX.

4 **XI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

5 20. Nothing in this Decree shall be construed to create any rights in, or grant any
 6 cause of action to, any person not a Party to this Decree. Each of the Parties expressly reserves
 7 any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C.
 8 § 9613), defenses, claims, demands, and causes of action each Party may have with respect to
 9 any matter, transaction, or occurrence relating in any way to the Lower Duwamish River and/or
 10 Elliott Bay against any person not a Party hereto. Nothing in this Decree diminishes the right of
 11 the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3),
 12 to pursue any such persons to obtain additional relief (including response action, response costs,
 13 and natural resource damages) and to enter into settlements that give rise to contribution
 14 protection pursuant to Section 113(f)(2).
 15
 16
 17

18 21. The Parties agree, and by entering this Decree this Court finds, that this settlement
 19 constitutes a judicially-approved settlement pursuant to which Defendants have, as of the
 20 Effective Date, resolved their liability to the United States within the meaning of Section
 21 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and are entitled, as of the Effective Date, to
 22 protection from contribution actions or claims as provided by CERCLA, 42 U.S.C. § 9613(f)(2),
 23 and RCW 70A.305.040(4)(d), or as may be otherwise provided by law, for Covered Natural
 24 Resource Damages. However, if Plaintiffs exercise their rights under the reservations in Section
 25 IX (Reservation of Rights), other than in Paragraphs 18(h) (criminal liability) and 18(i) (failure
 26
 27

1 to satisfy a requirement of this Decree), the contribution protection afforded by this Decree to the
 2 Settling Defendant against whom Plaintiffs exercise their reserved rights will no longer include
 3 those natural resource damages that are within the scope of the exercised reservation.

4
 5 22. Each Defendant agrees that it will notify Plaintiffs in writing no later than sixty
 6 (60) days before bringing a suit or claim for contribution for Covered Natural Resource
 7 Damages. Each Defendant also will notify Plaintiffs of any settlement of its claims (regardless of
 8 whether the claim is filed or unfiled) for contribution for Covered Natural Resource Damages.
 9 Each Defendant also agrees that it will notify Plaintiffs in writing within ten (10) days of service
 10 of a complaint or claim upon such Defendant relating to a suit or claim for contribution for
 11 Covered Natural Resource Damages. In addition, each Defendant will notify Plaintiffs within
 12 ten (10) days of service on or receipt by such Defendant of any Motion for Summary Judgment
 13 and within ten (10) days of receipt by such Defendant of any order from a court setting a case for
 14 trial for matters related to this Decree.
 15
 16

17 23. In any subsequent administrative or judicial proceeding initiated by a Plaintiff(s)
 18 for injunctive relief, recovery of response costs, or other appropriate relief other than Covered
 19 Natural Resource Damages, Defendants shall not assert, nor may they maintain, any defense or
 20 claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion,
 21 claim-splitting, or other defenses based upon any contention that the claims raised by Plaintiffs
 22 in the subsequent proceeding were or should have been brought in the instant case; provided,
 23 however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set
 24 forth in Paragraphs 17 and 19.
 25
 26
 27

XII. RETENTION OF RECORDS

24. Until ten (10) years after each Defendant's payments to Plaintiffs pursuant to Paragraph 5, such Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability or the liability of any other person under CERCLA with respect to the Lower Duwamish River and/or Elliott Bay. The above record retention requirement shall apply regardless of any corporate retention policy to the contrary.

25. At the conclusion of these document retention periods, each Defendant shall notify the Plaintiffs at least ninety (90) days prior to the destruction of any such records or documents, and, upon written request by Plaintiffs, and except as provided in Paragraph 26 (Privileged and Protected Claims), such Defendant shall deliver any such non-privileged records or documents to Plaintiffs.

26. Privileged and Protected Claims. Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If either Defendant asserts such a privilege, it shall provide Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by such Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Decree shall be withheld on the grounds that they are privileged.

27. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after a thorough inquiry that fully complies with the Federal Rules of Civil Procedure, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Lower Duwamish River and/or Elliott Bay since notification of potential liability by any Trustee.

XIII. NOTICES

28. Whenever notice is required to be given by one Party to another under the terms of this Decree, it will be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, written notice by regular mail, or by electronic mail, as specified constitutes complete satisfaction of any written notice requirement of the Decree for Plaintiffs and Defendants.

As to the United States and as to DOJ:

Chief, Environmental Enforcement Section
 Environment and Natural Resources Division
 U.S. Department of Justice
 P.O. Box 7611
 Washington, D.C. 20044-7611
 Eescdcopy.enrd@usdoj.gov
 (DJ #90-11-3-07227/13)

Erika Wells
 U.S. Department of Justice
 c/o NOAA/Damage Assessment
 7600 Sand Point Way, NE
 Seattle, WA 98115
 Erika.wells@usdoj.gov

1 As to NOAA:

2 Joseph Edgell
3 NOAA Office of General Counsel
4 7600 Sand Point Way NE
5 Seattle, WA 98115
6 Joseph.Edgell@noaa.gov

7 Rachel Ramos
8 NOAA Office of General Counsel
9 501 W. Ocean Blvd.
10 Suite 4470
11 Long Beach, CA 90802
12 Rachel.ramos@noaa.gov

13 Marla Steinhoff
14 Regional Resource Coordinator
15 Office of Response and Restoration
16 Assessment and Restoration Division
17 7600 Sand Point Way NE, Bldg. 1,
18 Seattle, WA 98115-6349
19 Marla.steinhoff@noaa.gov

20 As to the United States Department of the Interior:

21 Deirdre Donahue
22 U.S. Department of the Interior
23 Office of the Solicitor
24 601 SW 2nd Avenue, Suite 1950 Portland, OR 97204
25 Deirdre.donahue@sol.doi.gov

26 Jeff Krausmann
27 U.S. Fish & Wildlife Service
28 510 Desmond Dr. SE, Suite 102
Lacey, WA 98503-1263
Jeff_krausmann@fws.gov

As to the State:

John Level
Assistant Attorney General
2425 Bristol Court S.W.
P.O. Box 40117
Olympia, WA 98504 0117
john.level@atg.wa.gov

CONSENT DECREE

23

U. S. DEPARTMENT OF JUSTICE
Environment and Natural Resources Division
7600 Sand Point Way NE
Seattle, WA 98115

1 As to the Suquamish Tribe:

2 Kendra Martinez
3 Suquamish Tribe
4 Office of Tribal Attorney
5 P.O. Box 498
6 Suquamish, WA 98392-0498
7 kmartinez@Suquamish.nsn.us

8 With a copy to Dave Askman
9 Outside counsel to Suquamish Tribe
10 dave@askmanlaw.com

11 As to the Muckleshoot Indian Tribe:

12 Robert L Otsea, Jr. and Trent Crable
13 Office of the Tribal Attorney
14 Muckleshoot Indian Tribe
15 39015 172nd Avenue S.E.
16 Auburn, WA 98002
17 Trent.crabble@muckleshoot.nsn.us

18 As to Defendant Crowley:

19 Jannina Gahagan
20 Crowley Maritime Corporation
21 9487 Regency Square Blvd.
22 Jacksonville, FL 32225
23 Jannina.Gahagan@crowley.com

24 Joshua M. Lipsky
25 Cascadia Law Group PLLC
26 1201 Third Avenue, Suite 320
27 Seattle, WA 98101
28 jlipsky@cascadialaw.com

As to Defendant WSDOT:

Eric Wolin
WSDOT Environmental Services Office – Operations Manager
310 Maple Park Avenue SE
Olympia, WA 98504
Wolined@wsdot.wa.gov

Yasmine Tarhouni

CONSENT DECREE

Office of Attorney General
Transportation and Public Construction Division
P.O. Box 40113
Olympia, WA 98504
Yasmine.Tarhouni@atg.wa.gov

XIV. RETENTION OF JURISDICTION

29. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction of this Consent Decree, or to effectuate or enforce compliance with its terms.

XV. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

30. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. §162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2)(iii)(A), performance by Defendants of Section XII (Retention of Records), Paragraphs 24, 25, and 27, and the payments plus interest and purchase of credits made pursuant to Section VI (Payment of Assessment Costs and Natural Resource Damages; Purchase of Restoration Credits), Paragraphs 5, 7 & 8, are restitution, remediation, or required to come into compliance with law.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

1 32. If for any reason this Court does not approve this Decree in the form presented,
2 this Decree may be voided at the sole discretion of any Party, and the terms of the agreement
3 may not be used as evidence in any litigation among the Parties.

4
5 **XVII. SIGNATORIES/SERVICE**

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

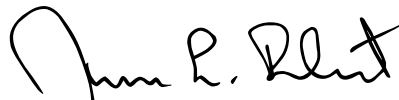
11
12 34. Defendants agree not to oppose entry of this Decree by this Court or to challenge
13 any provision of this Decree unless any Plaintiff has notified Defendants in writing that it no
14 longer supports entry of the Decree.

15
16 35. Defendants will identify on the attached signature page the name and address of
17 an agent who is authorized to accept service of process by mail on behalf of each of them with
18 respect to all matters relating to this Decree. Defendants agree to accept service in that manner
19 and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil
20 Procedure and any applicable local rules of this Court, including but not limited to service of a
21 summons. Defendants need not file an answer to the Complaint in this action unless or until the
22 Court expressly declines to enter this Decree.

XVIII. FINAL JUDGMENT

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

SO ORDERED THIS 13th DAY OF MAY, 2024



JAMES L. ROBART
UNITED STATES DISTRICT JUDGE

Signature Page for Consent Decree regarding the Lower Duwamish River
U.S., et al., v. Crowley Marine Services, Inc., et al.

FOR THE UNITED STATES OF AMERICA:

TODD KIM
Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 1/30/2024


ERIKA M. WELLS, OSBA# 055004
Senior Counsel
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
c/o NOAA Damage Assessment
7600 Sand Point Way, NE
Seattle, Washington 98115
(202) 532-3258
Erika.wells@usdoj.gov

OF COUNSEL:

JOSEPH EDGELL
Attorney Advisor
National Oceanic and Atmospheric Administration, Office of General Counsel

DEIRDRE DONAHUE
U.S. Department of the Interior
Office of the Solicitor

1 Signature Page for Consent Decree regarding the Lower Duwamish River
2 *U.S., et al., v. Crowley Marine Services, Inc., et al.*

3 **FOR THE STATE OF WASHINGTON:**

4
5 Date: 1/23/24 Barry Rogowski

6 Barry Rogowski
7 Program Manager
8 Toxic Cleanup Program
9 Department of Ecology
Post Office Box 47600
Olympia, WA 98504-7600

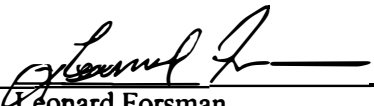
10
11
12 Date: 1/23/24 J. Level

13 John Level
14 Assistant Attorney General
15 2425 Bristol Court S.W.
16 P.O. Box 40117
Olympia, WA 98504 0117

Signature Page for Consent Decree regarding the Lower Duwamish River
U.S., et al., v. Crowley Marine Services, Inc., et al.

FOR THE SUQUAMISH TRIBE:

Date:

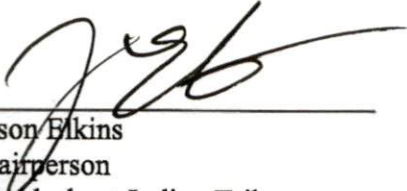
1-12-24 

Leonard Forsman
Chairman
Suquamish Tribe
Post Office Box 498
Suquamish, Washington 98392

1 Signature Page for Consent Decree regarding the Lower Duwamish River
2 U.S., et al., v. Crowley Marine Services, Inc., et al.

3 **FOR THE MUCKLESHOOT INDIAN TRIBE:**

4
5
6 Date: 03/05/2024


7 Jaison Elkins
8 Chairperson
9 Muckleshoot Indian Tribe
10 39015 172nd Ave. S.E.
11 Auburn, WA 98092-9763
12
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14
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28 CONSENT DECREE

31

U. S. DEPARTMENT OF JUSTICE
Environment and Natural Resources Division
7600 Sand Point Way NE
Seattle, WA 98115

Signature Page for Consent Decree regarding the Lower Duwamish River
U.S., et al., v. Crowley Marine Services, Inc., et al.

FOR DEFENDANT

CROWLEY MARINE SERVICES, INC.:

Date: 11/21/2023

DocuSigned by:
Reece Alford
8DB1D0515BFA47C...

Reece Alford
Corporate Secretary
Crowley Marine Services, Inc.
9487 Regency Square Blvd.
Jacksonville, FL 32225

FOR DEFENDANT

8th AVENUE TERMINALS, INC.:

Date: 11/21/2023

DocuSigned by:
Reece Alford
8DB1D0515BFA47C...

Reece Alford
Corporate Secretary
8th Avenue Terminals, Inc.
9487 Regency Square Blvd.
Jacksonville, FL 32225

Service of process will be accepted by:

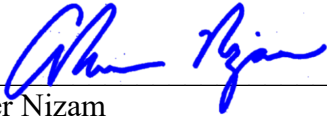
Joshua M. Lipsky
Cascadia Law Group PLLC
1201 Third Avenue, Suite 320
Seattle, WA 98101

Signature Page for Consent Decree regarding the Lower Duwamish River
U.S., et al., v. Crowley Marine Services, Inc., et al.

FOR DEFENDANT

WASHINGTON DEPARTMENT OF TRANSPORTATION:

Date: November 15, 2023


Ahmer Nizam
Environmental Services Director
Washington State Department of Transportation
310 Maple Park Ave. SE
Olympia, WA 98501

**Appendix A –
Legal Description and Map of Covered Facilities**

Legal Description

King County Tax Parcel Number 2136200641

THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 24 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHWESTERLY MARGIN OF EAST MARGINAL WAY SOUTH, WITH THE NORTH MARGIN OF SOUTH WEBSTER STREET, AS PER PLAT OF ABRAM'S ADDITION, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 11 OF PLATS, PAGE 30, RECORDS OF KING COUNTY, WASHINGTON;

THENCE NORTH 49°00'12" WEST, ALONG SAID SOUTHWESTERLY MARGIN, 519.00 FEET; THENCE SOUTH 40°59'48" WEST 10.00 FEET;

THENCE NORTH 49°00'12" WEST, PARALLEL WITH SAID SOUTHWESTERLY MARGIN, 75.00 FEET;

THENCE NORTH 40°59'48" EAST 10.00 FEET TO SAID SOUTHWESTERLY MARGIN;

THENCE NORTH 49°00'12" WEST ALONG SAID SOUTHWESTERLY MARGIN, 35.00 FEET;

THENCE SOUTH 23°43'29" WEST 62.83 FEET;

THENCE NORTH 49°00'12" WEST PARALLEL WITH SAID SOUTHWESTERLY MARGIN, 98.66 FEET;

THENCE NORTH 40°59'48" EAST 60.00 FEET TO SAID SOUTHWESTERLY MARGIN;

THENCE NORTH 49°00'12" WEST ALONG SAID SOUTHWESTERLY MARGIN, 479.05 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT, SAID POINT BEING ON THE EASTERLY MARGIN OF THAT CERTAIN EASEMENT FOR INGRESS AND EGRESS CONVEYED BY DOCUMENT RECORDED UNDER RECORDING NUMBER 5614834, RECORDS OF SAID COUNTY;

THENCE CONTINUING NORTH 49°00'12" WEST ALONG SAID SOUTHWESTERLY MARGIN, 146.25 FEET TO THE NORTHEAST CORNER OF LOT C IN BLOCK 5 OF DUWAMISH INDUSTRIAL ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 21 OF PLATS, PAGE 65, RECORDS OF KING COUNTY,

THENCE NORTH 89°58'01" WEST ALONG THE NORTH LINE OF SAID BLOCK 5, A DISTANCE OF 344.85 FEET TO THE NORTHWEST CORNER OF SAID LOT 7, SAID BLOCK 5;

THENCE SOUTH 00°08'06" EAST ALONG THE WEST LINE OF SAID LOT 7 AND THE WEST LINE OF LOT 22, SAID BLOCK 5, AND THEIR SOUTHERLY PROLONGATION, 269.99 FEET TO THE NORTH LINE OF BLOCK 6 OF SAID DUWAMISH INDUSTRIAL ADDITION;

THENCE NORTH 89°58'01" WEST ALONG SAID NORTH LINE 259.69 FEET TO THE EAST LINE OF EIGHTH AVENUE SOUTH, FORMERLY CARLETON AVENUE;

THENCE SOUTH 00°08'06" EAST ALONG SAID EAST LINE, 796.66 FEET TO THE

NORTHEASTERLY RIGHT OF WAY LINE OF THE DUWAMISH RIVER;
THENCE SOUTH 49°00'00" EAST ALONG THE NORTHEASTERLY RIGHT OF WAY
LINE OF THE DUWAMISH WATERWAY A DISTANCE OF 317.89 FEET TO THE
REVISED MEDIAN LINE OF SLIP NO. 4 OF THE DUWAMISH WATERWAY;
THENCE NORTH 55°21'36" EAST, ALONG SAID MEDIAN LINE, 290.27 FEET;
THENCE CONTINUING ALONG SAID MEDIAN LINE NORTH 42°00'00" EAST 292.65
FEET;
THENCE NORTH 52°16'07" WEST 137.48 FEET;
THENCE NORTH 22°06'48" EAST 441.07 FEET;
THENCE NORTH 67°53'12" WEST 19.35 FEET TO INTERSECT THE ARC OF A CURVE
TO THE LEFT HAVING A RADIUS OF 2148.98 FEET, THE CENTER OF WHICH BEARS
NORTH 83°21'29" WEST;
THENCE NORTHERLY ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL
ANGLE OF 5°09'46" AN ARC DISTANCE OF 193.64 FEET TO A POINT OF COMPOUND
CURVE; THENCE NORTHERLY ALONG A CURVE TO THE LEFT HAVING A RADIUS
OF 304.80 FEET, THROUGH A CENTRAL ANGLE OF 19°43'31" AN ARC DISTANCE OF
104.93 FEET TO THE SOUTHWESTERLY MARGIN OF EAST MARGINAL WAY AND
THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT.

(ALSO KNOWN AS PARCEL A OF CITY OF SEATTLE LOT BOUNDARY ADJUSTMENT
NO. 3005372, RECORDED OCTOBER 10, 2007, UNDER RECORDING NO.
20071010900018, IN KING COUNTY, WASHINGTON.)

Crowley/WSDOT
Lower Duwamish River, Seattle WA
NRD Settlement Facilities

Map for illustration purposes.
For conflicts between the legal
description and this map, the
legal description controls.



Appendix B



1880 West Oak Parkway
Suite 106
Marietta, GA 30062
770-973-2100
www.Bluefieldholdings.com

March 7, 2022

Via Email: Marla.steinhoff@noaa.gov
Trustees of the Elliott Bay Trustee Council
c/o Regional Resource Coordinator
Office of Response and Restoration
Assessment and Restoration Division
7600 Sand Point Way NE, Bldg. 1,
Seattle, WA 98115-6349

Re: Acknowledgement that performance of obligations of Bluefield Holdings, Inc. in the consent decree entered in *United States et al. v. City of Seattle* (W.D. Wash.), Civ. No. 16-1486, also supports the consent decree entered in *United States et al. v. Crowley Marine Services, Inc., and Washington Department of Transportation* (W.D. Wash.).

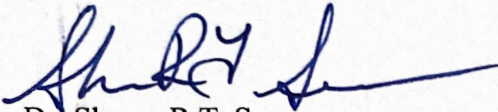
Dear Trustees:

This letter is written at your request in connection with a proposed consent decree captioned *United States et al. v. Crowley Marine Services, Inc., and Washington Department of Transportation* (W.D. Wash.). As with the consent decree entered in *United States et al. v. City of Seattle* (W.D. Wash.), Civ. No. 16-1486, the proposed consent decree in *United States et al. v. Crowley Marine Services, Inc., and Washington Department of Transportation* uses restoration credits from Bluefield's Project One as the basis of resolving the defendants' liability.

Bluefield acknowledges that its obligations in the consent decree in *United States et al. v. City of Seattle* apply to the entirety of Project One, not just with respect to the Project One restoration credits used by the City of Seattle in that consent decree. As such, Bluefield's performance of its obligations in *United States et al. v. City of Seattle* directly supports, and is the basis of, the Trustees' acceptance of Project One restoration credits in *United States et al. v. Crowley Marine Services, Inc., and Washington Department of Transportation*. Bluefield further acknowledges that in entering into the proposed consent decree in *United States et al. v. Crowley Marine Services, Inc., and Washington Department of Transportation*, the Trustees are relying on Bluefield's complete performance of its obligations in the previously-entered consent decree in *United States et*

al. v. City of Seattle, Civ. No. 16-1486 (W.D. Wash.). Finally, Bluefield acknowledges that the foregoing arrangement enables the Trustees to enter into multiple settlements with multiple defendants, all of which use restoration credits from Project One. This arrangement makes it possible for the Trustees to accept, and for Bluefield to sell, restoration credits generated by Project One in settlements other than the consent decree in *United States et al. v. City of Seattle*

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shawn R.T. Severn', with a long horizontal flourish extending to the right.

Dr. Shawn R.T. Severn
Bluefield Holding, Inc.

Cc: Erika Wells; Erika.Wells@usdoj.gov
Joseph Edgell; joseph.edgell@noaa.gov