Hon. Robert J. Bryan

FILED LODGED
RECEIVED
OCT 07 1993
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
BY DEPUTY

FILED RECEIVED LODGED
OCT - 8 1993
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
BY DEPUTY

c/Financial

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

ENTERED
ON DOCKET
OCT 8 1993
By Deputy

UNITED STATES OF AMERICA, ON BEHALF OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, THE UNITED STATES DEPARTMENT OF THE INTERIOR, AND THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION; STATE OF WASHINGTON; PUYALLUP TRIBE OF INDIANS; MUCKLESHOOT INDIAN TRIBE; Plaintiffs, v. PORT OF TACOMA Defendant	Civil No. C93-5462B ORDER DIRECTING THE DEPOSIT OF NATURAL RESOURCE DAMAGES INTO THE REGISTRY OF THE COURT

This Order is entered in furtherance of a Consent Decree in the above captioned matter between Plaintiffs the United States of America, State of Washington, Puyallup Tribe of Indians and Muckleshoot Indian Tribe and Defendant the Port of Tacoma ("Settling Defendant"). Under the Consent Decree, Settling Defendant has agreed, among other matters, to pay $12,000,000

U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

Consent Decree - Appendix B

9

(twelve million dollars), in installments as identified in the Consent Decree, to the Natural Resource Trustees (National Oceanic and Atmospheric Administration of the U.S. Department of Commerce, the U.S. Department of the Interior, the Washington Department of Ecology (on behalf of the Washington Department of Fisheries, the Washington Department of Natural Resources, and the Washington Department of Wildlife), the Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe) in settlement of Settling Defendant's liability for Natural Resource Damages caused by releases of hazardous substances from property owned, managed or operated by Settling Defendant within the Commencement Bay Environment, as defined in the Consent Decree. This Order addresses handling and investment of those funds by the Registry of the Court.

Pursuant to Rule 67 of the Federal Rules of Civil Procedure, 28 U.S.C. § 2041, and Local Rule GR 6, and in accordance with the terms of the Consent Decree, it is hereby

1. ORDERED that Settling Defendant, following entry of the Consent Decree and in accordance with the payment schedules established therein, pay to the Clerk of the Court all sums specified in paragraph 51.b. of the Consent Decree, which sums constitute recovery for Natural Resource Damages and Future Trustee Assessment Costs, as defined in the Consent Decree; and it is

U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

2. ORDERED that Settling Defendant shall make the aforementioned payments by checks made payable to the Clerk of the Court, bearing the notation Civil Action No. C93-5462B (W.D. Wash.), which checks 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 Settling Defendant shall cause photocopies 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; and to Robert A. Taylor, NOAA Damage Assessment and Restoration Center, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; and it is

3. ORDERED that an account shall be established in the Registry for payments received in the above captioned matter and for such other payments as may be received from time to time in connection with restoration and protection of the ecosystem of the Commencement Bay watershed, and that the account shall be titled Commencement Bay Natural Resource Restoration Account ("Commencement Bay Restoration Account"); and it is

4. ORDERED that the Clerk of the Court shall administer the funds so received as follows:

U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

a) $100,000 of the funds received shall be deposited in such interest-bearing federally insured commercial bank account or accounts as the Clerk deems appropriate;

b) the balance of the funds received shall be used to purchase 91-day Treasury Securities, at the highest prevailing interest rate available for such Treasury Securities;

c) upon maturity of the Treasury Securities referred to in subparagraph b), the Clerk shall consult with counsel for the United States regarding the allocation of the proceeds of such Treasury Securities between the bank account or accounts identified in subparagraph a) and the purchase of additional short-term Treasury Securities. Counsel for the United States shall consult with representatives of the Natural Resource Trustees and, depending upon the Natural Resource Trustees' anticipated funding needs, shall advise the Clerk regarding the desired allocation of such proceeds between the bank account or accounts and reinvestment in Treasury Securities. The Clerk may make any such allocations of funds as directed by counsel for the United States without further Order of the Court; and it is

5. ORDERED that all income earned as interest on funds so invested or deposited shall be credited to the Commencement Bay Restoration Account; and it is

6. ORDERED that the Natural Resource Trustees may apply to the Court for an Order establishing an investment procedure or vehicle alternative to that identified in paragraph 4 above that

U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

provides a comparable level of security and earnings potential, which application may be acted upon by the Court without notice to or consent by Settling Defendant; and it is

7. ORDERED that the Clerk shall prepare quarterly reports on the status and activity of the Commencement Bay Restoration Account showing payments received, disbursements made, income earned, maturity dates of securities held, and principal balance, and shall distribute the reports to counsel for the United States; and it is

8. ORDERED that funds in the Commencement Bay Restoration Account shall remain in the Registry until further order of this Court; and it is

9. ORDERED that the Natural Resource Trustees shall establish such decision making procedures regarding expenditures of funds from the Commencement Bay Restoration Account as they deem appropriate. Applications for orders for disbursements from the Commencement Bay Restoration Account shall be made by the United States on behalf of the Natural Resource Trustees. The application shall be supported by a certification of the Natural Resource Trustees that their determination to make such disbursement was in compliance with said decision making procedures and is consistent with the terms of the Consent Decree and other applicable law. Such applications may be acted upon by the Court without notice to or consent by Settling Defendant. Any of the Natural Resource Trustees may petition the Court for

U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

review of a decision by the United States to seek or not to seek an application for an order for disbursement, provided that the party or parties seeking review have complied with any dispute resolution provisions adopted as part of the decision making procedures referred to above; and it is

10. ORDERED that counsel for the United States shall serve as the point of contact for the Clerk on behalf of the Natural Resource Trustees, and shall distribute copies of the reports referred to in paragraph 7 of this Order to the other Natural Resource Trustees; and it is

11. ORDERED that the Clerk is authorized and directed by this Order to deduct for maintaining funds in the Registry Account the fee as authorized in the Federal Register Vol. 56, No. 213 at page 56356 (November 4, 1991); and it is

12. ORDERED that a certified copy of this Order shall be served upon the Clerk of this Court.

Dated 8 October 1993

Hon. Robert J. Bryan, Judge
United States District Court
Western District of Washington

U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044