



SUMMARY OF THE CONSENT DECREE

AND

SETTLEMENT AGREEMENT

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January 15, 1998

BACKGROUND

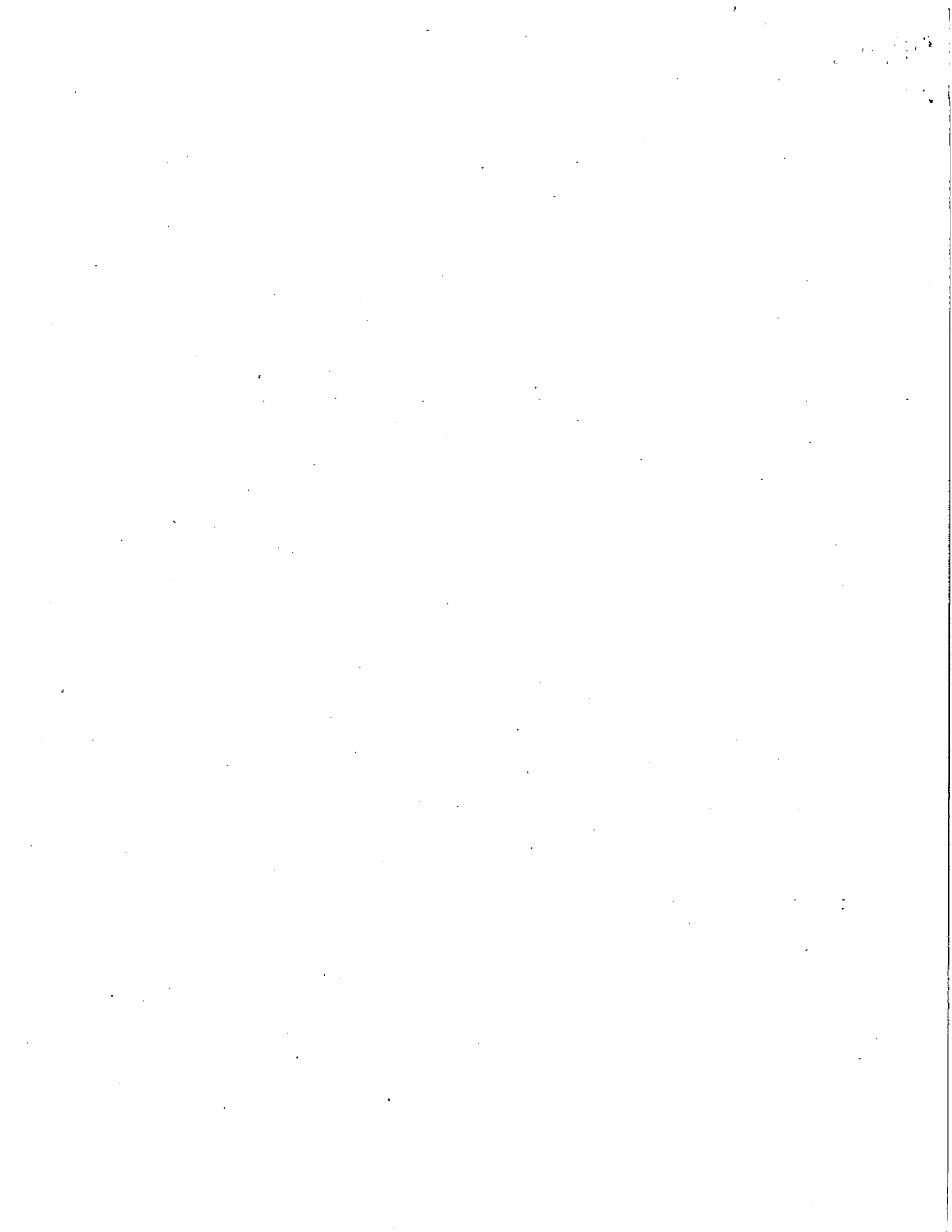
The U.S. Environmental Protection Agency (EPA) recently signed a settlement of a lawsuit concerning Clean Water Act (CWA) issues brought by the Northwest Environmental Advocates and the Northwest Environmental Defense Center (Plaintiffs). The Plaintiffs had asserted that EPA had not fulfilled its responsibility to ensure that the condition of waters in the State of Washington was adequately assessed, and that for those waters not meeting state water quality standards, total maximum daily loads (TMDLs) were developed. The settlement package consists of four main components. This fact sheet summarizes the Consent Decree and Settlement Agreement. The remaining two components, which are attached to the Settlement Agreement, are a fifteen year TMDL development schedule for the 1996 CWA §303(d) listed waters and a Memorandum of Agreement (MOA) between EPA and Ecology which defines how the two agencies will work together to address the listed waters. The MOA is described by Ecology in another fact sheet included in your briefing package.

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- * Establishes a five year timeframe for completing TMDLs on a specified number of waters.

SETTLEMENT AGREEMENT

- * Documents EPA and Plaintiffs' agreement to a 15 year schedule for completing TMDLs for all waters listed on the State of Washington's 1996 CWA §303(d) list.
- * Identifies interim deadlines for EPA to evaluate the State's compliance with the 15 year TMDL development schedule;
- * Establishes that if the State fails to meet its commitments within the interim deadlines as defined in the 15 year schedule, EPA will, within two years after the interim deadlines, take the steps necessary to ensure that the targeted TMDLs are completed;
- * Establishes that EPA will provide TMDL development progress reports every two years beginning on January 31, 1999.



1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF WASHINGTON

3 NORTHWEST ENVIRONMENTAL ADVOCATES)
4 and NORTHWEST ENVIRONMENTAL)
5 DEFENSE CENTER,)

6 Plaintiffs,)

7 v.)

8 CAROL BROWNER, Administrator)
9 of the United States Environmental)
10 Protection Agency,)

11 Defendant.)

Case No. C91-427

12 CONSENT DECREE

13 A. WHEREAS, on April 2, 1991, Plaintiffs Northwest
14 Environmental Advocates and Northwest Environmental Defense
15 Center ("Plaintiffs") filed a complaint (C.A. Number C91-427R) in
16 this action against Defendant Carol M. Browner ("the
17 Administrator") in her official capacity as Administrator of the
18 United States Environmental Protection Agency ("EPA"), pursuant
19 to Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d);

20 B. WHEREAS, on or about November 15, 1994, Plaintiffs
21 filed an amended complaint in this action;

22 C. WHEREAS, Section 303(d) of the Act, 33 U.S.C.
23 § 1313(d), and EPA's implementing regulations, 40 C.F.R.
24 § 130.7(b)-(e), provide for: (1) identification of waters for
25 which applicable technology-based effluent limitations and other

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Exhibit A

1 controls are not stringent enough to implement water quality
2 standards (the "Section 303(d) list"); (2) establishment of a
3 priority ranking for such waters; and (3) establishment of total
4 maximum daily loads ("TMDLs") for those waters which are not in
5 attainment with water quality standards;

6 D. WHEREAS, the subject of C.A. Number C91-427R concerns,
7 inter alia, EPA's alleged duty to either approve or disapprove
8 TMDLs submitted to EPA by the State;

9 E. WHEREAS, the State of Washington has lead
10 responsibility for the identification and prioritization of
11 waters still requiring TMDLs and the establishment of TMDLs
12 pursuant to Clean Water Act Section 303(d), 33 U.S.C. § 1313(d);

13 F. WHEREAS, in order to resolve this lawsuit, the parties
14 also have entered into a Settlement Agreement which has been
15 filed separately with the Court for informational purposes only;
16 its terms are not incorporated into this Consent Decree and the
17 Settlement Agreement is not an enforceable order of this Court;

18 G. WHEREAS, Plaintiffs and Defendant have agreed to a
19 settlement of this action without any admission of fact or law,
20 which they consider to be a just, fair, adequate and equitable
21 resolution of the claims raised in this action;

22 H. WHEREAS, it is in the interest of the public, the
23 parties and judicial economy to resolve the issues in this action
24 without protracted litigation, including a trial; and

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1 I. WHEREAS, the Court finds and determines that this
2 Consent Decree represents a just, fair, adequate and equitable
3 resolution of the claims raised in this action.

4 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED
5 as follows:

6 GENERAL TERMS

7 1. The parties to this Consent Decree are Plaintiffs
8 Northwest Environmental Advocates and Northwest Environmental
9 Defense Center, and Defendant Carol Browner. The parties
10 understand that: (a) Carol Browner was sued in her official
11 capacity as Administrator of the United States Environmental
12 Protection Agency; and (b) the obligations arising under this
13 Decree are to be performed by EPA and not by Carol Browner in her
14 individual capacity.

15 2. This Consent Decree applies to, is binding upon, and
16 inures to the benefit of Plaintiffs (and their successors,
17 assigns, and designees) and Defendant (and her successors,
18 assigns, and designees).

19 3. For purposes of entry and enforcement of this Consent
20 Decree only, the parties to this Consent Decree agree that the
21 Court has jurisdiction over any disputes pertaining to any
22 alleged violations of this Decree.

23 4. For the purposes of this Decree, the following terms
24 shall have the meaning provided below:

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1 A. "EPA" means the United States Environmental
2 Protection Agency;

3 B. The "United States" means the United States of
4 America, including its officers, agencies, departments
5 and instrumentalities;

6 C. "Water Quality Limited Segments" has the meaning
7 provided at 40 C.F.R. § 130.2(j), as amended;

8 D. "Total Maximum Daily Load" has the meaning
9 provided at 40 C.F.R. § 130.2(i), as amended;

10 E. "Water Quality Standards" has the meaning provided
11 at 40 C.F.R. § 130.2(d), as amended.

12 **ESTABLISHMENT OF TMDLS**

13 5. The parties understand that the State of Washington has
14 primary responsibility for the establishment of TMDLs pursuant to
15 Clean Water Act Section 303(d), 33 U.S.C. § 1313(d). However,
16 EPA agrees that it will take all steps necessary to ensure that
17 thirty-eight (38) TMDLs are completed for waters listed pursuant
18 to CWA Section 303(d) within five (5) years of the date of entry
19 of this Consent Decree, through approval of TMDLs submitted by
20 the State or establishment of TMDLs. Solely for purposes of
21 determining compliance with this Paragraph, a TMDL submitted by
22 the State and approved by EPA, or established by EPA, that
23 addresses a single pollutant for a single WQLS will count as
24 completion of one TMDL toward compliance with this Paragraph.

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1 EFFECTIVE DATE

2 6. This Consent Decree shall become effective upon the
3 date of its entry by the Court. If for any reason the Court does
4 not enter this Consent Decree, the obligations set forth in this
5 Decree are null and void.

6 REMEDY AND SCOPE OF JUDICIAL REVIEW

7 7. Nothing in the terms of this Consent Decree shall be
8 construed to confer upon this Court jurisdiction to review any
9 decision, either procedural or substantive, to be made by EPA
10 pursuant to this Decree, except for the purpose of determining
11 EPA's compliance with this Decree.

12 8. Nothing in this Consent Decree alters or affects the
13 standards for judicial review of final EPA action.

14 RELEASE BY PLAINTIFFS

15 9. Upon approval and entry of this Consent Decree by the
16 Court, this Decree and the Settlement Agreement (filed separately
17 for informational purposes only) shall constitute a complete and
18 final settlement of all claims which were asserted or could have
19 been asserted by Plaintiffs against the United States, based on
20 the facts existing at the time the complaint in C.A. Number C91-
21 427R was filed.

22 10. Plaintiffs hereby release, discharge, and covenant not
23 to assert (by way of the commencement of an action, the joinder
24 of the Administrator and/or EPA in an existing action, or in any

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1 other fashion) any and all claims, causes of action, suits or
2 demands of any kind whatsoever in law or in equity which they may
3 have had or may now or hereafter have against the United States,
4 based upon matters which were asserted or could have been
5 asserted by Plaintiffs, based on the facts existing at the time
6 the complaint in C.A. Number C91-427R was filed.

7 TERMINATION OF CONSENT DECREE AND DISMISSAL OF CLAIMS

8 11. Upon fulfillment of EPA's obligations under this
9 Decree, this Consent Decree shall terminate and Counts 7 and 8 in
10 the above captioned action shall be dismissed with prejudice.
11 The parties shall file the appropriate notice with the Court so
12 that the Court may issue the appropriate order of dismissal.

13 FORCE MAJEURE

14 12. The parties recognize that the performance of this
15 Consent Decree is subject to fiscal and procurement laws and
16 regulations of the United States which include, but are not
17 limited to the Anti-Deficiency Act, 31 U.S.C. § 1341, et seq.
18 The possibility exists that circumstances outside the reasonable
19 control of EPA could delay compliance with the deadline contained
20 in this Consent Decree. Such situations include, but are not
21 limited to, sufficient funds not being appropriated as requested,
22 appropriated funds not being available for expenditure, or
23 catastrophic environmental events requiring an immediate and/or
24 time-consuming response by EPA. Should a delay occur due to such

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1 circumstances, any resulting failure to meet the deadline set
2 forth herein shall not constitute a failure to comply with the
3 terms of this Consent Decree, and the deadline shall be extended
4 one day for each day of the delay. EPA will provide Plaintiffs
5 with reasonable notice in the event that EPA invokes this term of
6 the Consent Decree. Any dispute regarding invocation of this
7 provision shall be resolved in accordance with the dispute
8 resolution provision of Paragraph 13 below.

9 DISPUTE RESOLUTION

10 13. In the event of a disagreement between the parties
11 concerning the interpretation or performance of any aspect of
12 this Decree, the dissatisfied party shall provide the other party
13 with written notice of the dispute and a request for
14 negotiations. The parties shall meet and confer in order to
15 attempt to resolve the dispute within 30 days of the written
16 notice, or such time thereafter as is mutually agreed. If the
17 parties are unable to resolve the dispute within 60 days of such
18 meeting, then either party may petition the Court to resolve the
19 dispute.

20 MODIFICATIONS AND EXTENSIONS

21 14. This Consent Decree may be modified by written
22 agreement of the parties and approval by the Court. Nothing in
23 this Consent Decree, or in the parties' agreement to its terms,
24 shall be construed to limit the equitable powers of the Court to

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1 modify those terms upon a showing of good cause by any party.
2 Good cause includes, but is not limited to, changes in the law
3 affecting EPA's commitments under this Decree.

4 15. The deadline set forth in this Consent Decree may be
5 extended by written agreement of the parties and notice to court.
6 To the extent the parties are not able to agree to an extension,
7 EPA may seek a modification of this Consent Decree in accordance
8 with the procedures specified below.

9 A. If EPA files a motion requesting modification of
10 the deadline established by this Consent Decree totaling more
11 than thirty (30) days and provides notice to the Plaintiffs at
12 least thirty (30) days prior to filing such motion, and files the
13 motion at least sixty (60) days prior to the date for which
14 modification is sought, then the filing of such motion shall,
15 upon request, automatically extend the date for which
16 modification is sought. Such automatic extension shall remain in
17 effect until the earlier to occur of (i) a dispositive ruling by
18 this Court on such motion, or (ii) the date sought in such
19 motion. EPA may move the Court for a longer extension.

20 B. If EPA files a motion requesting modification of
21 the deadline established by this Consent Decree totaling thirty
22 (30) days or less, provides notice to the Plaintiffs at least
23 fifteen (15) days prior to the filing of such motion, and files
24 the motion at least seven (7) days prior to the date for which

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1 modification is sought, then the filing of such motion shall,
2 upon request, automatically extend the date for which
3 modification is sought. Such extension shall remain in effect
4 until the earlier to occur of (i) a dispositive ruling by this
5 Court on such motion, or (ii) the date sought in the
6 modification.

7 C. If EPA does not provide notice pursuant to
8 Subparagraphs 15.A or 15.B above, EPA may move the Court for a
9 stay of the date for which modification is sought. EPA shall
10 give notice to the Plaintiffs as soon as reasonably possible of
11 its intent to seek a modification and/or stay of the date sought
12 to be modified.

13 D. If the Court denies a motion by EPA to modify the
14 deadline established by this Consent Decree, then the date for
15 performance for which modification had been requested shall be
16 such date as the Court may specify.

17 E. Any motion to modify the schedule established in
18 this Consent Decree shall be accompanied by a motion for
19 expedited consideration. The parties to this Decree shall join
20 in any such motion for expedited consideration.

21 CONTINUING JURISDICTION

22 16. The Court retains jurisdiction for the purposes of
23 resolving any disputes arising under this Consent Decree, and
24 issuing such further orders or directions as may be necessary or

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1 appropriate to construe, implement, modify, or enforce the terms
2 of this Consent Decree, and for granting any further relief as
3 the interests of justice may require.

4 AGENCY DISCRETION

5 17. Except as expressly provided herein, nothing in this
6 Consent Decree shall be construed to limit or modify the
7 discretion accorded EPA by the Clean Water Act, or by general
8 principles of administrative law.

9 18. Nothing in this Consent Decree shall be construed to
10 limit or modify EPA's discretion to alter, amend, or revise from
11 time to time any actions EPA may perform pursuant to this Decree,
12 or to promulgate superseding regulations.

13 COSTS

14 19. EPA agrees that Plaintiffs are entitled to reasonable
15 attorneys' fees and costs accrued as of the effective date of
16 this Consent Decree. The parties will attempt to reach agreement
17 as to the appropriate amount of the recovery. If they are unable
18 to do so, Plaintiffs may file an application with the Court for
19 the recovery of reasonable fees and costs within ninety (90) days
20 of entry of this Consent Decree, or by such later date as set by
21 the Court upon motion or otherwise.

22 NOTICE

23 20. Any notice required or made with respect to this
24 Consent Decree shall be in writing and shall be effective upon

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1 receipt. For any matter relating to this Consent Decree, the
2 contact persons are:

3
4 For Plaintiffs:

5 Nina Bell
6 Northwest Environmental Advocates
7 133 S.W. 2d Avenue
8 Portland, Oregon 97204

9 and

10 Karl Anuta
11 735 S.W. 1st Avenue
12 Portland, Oregon 97204

13 and

14 James S. Coon
15 Swanson, Thomas & Coon
16 621 S.W. Morrison, Suite 900
17 Portland, Oregon 97205

18 and

19 Thane Tienson
20 3500 Wells Fargo Center
21 Portland, Oregon 97201

22 For Defendant:

23 Susmita Dubey
24 Office of General Counsel (2355)
25 U.S. Environmental Protection Agency
26 401 M Street, S.W.
Washington, D.C. 20460

and

Adrienne Allen
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10
1200 6th Avenue
Seattle, Washington 98101

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and

Russell M. Young
Environmental Defense Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

Upon written notice to the other parties, any party may designate a successor contact person for any matter relating to this Consent Decree.

REPRESENTATIVE AUTHORITY

21. Each undersigned representative of the parties to this Consent Decree certifies that he or she is fully authorized by the party to enter into and execute the terms and conditions of this Consent Decree, and to legally bind such party to this Consent Decree. By signature below, all of the parties consent to entry of this Consent Decree.

MUTUAL DRAFTING

22. It is hereby expressly understood and agreed that this Consent Decree was jointly drafted by Plaintiffs and EPA. Accordingly, the parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent Decree.

COUNTERPARTS

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1 under the laws of the United States.

2 THIRD-PARTY BENEFICIARIES

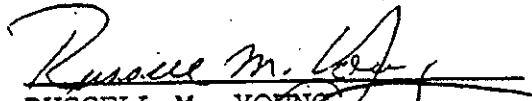
3 27. Nothing in this Consent Decree shall be construed to
4 make any other person or entity not executing this Consent Decree
5 a third-party beneficiary to this Consent Decree.

6 The parties consent to the form, substance and entry of
7 the foregoing Consent Decree.

8 For CAROL M. BROWNER
9 ADMINISTRATOR,
10 U.S. ENVIRONMENTAL PROTECTION
11 AGENCY

12 By: LOIS J. SCHIFFER
13 Assistant Attorney General
14 Environment and Natural
15 Resources Division

16 Date: 6 January, 1998

17 
18 RUSSELL M. YOUNG
19 Environmental Defense Section
20 U.S. Department of Justice
21 P.O. Box 23986
22 Washington, D.C. 20026-3986
23 (202) 514-2640

24 Of Counsel:

25 SUSMITA DUBEY
26 U.S. Environmental Protection
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(202) 260-7866

ADRIANNE ALLEN
U.S. Environmental Protection
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Region 10
1200 6th Avenue

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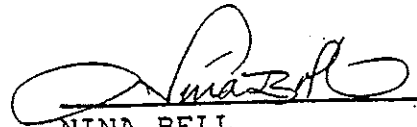
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Seattle, Washington 98101
(206) 553-8694

For NORTHWEST ENVIRONMENTAL
ADVOCATES AND
NORTHWEST ENVIRONMENTAL
DEFENSE CENTER:

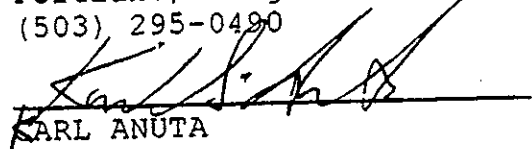
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Date: 12/19/97



NINA BELL
Northwest Environmental
Advocates
133 S.W. 2d Avenue
Portland, Oregon 97204
(503) 295-0490

Date: 12/19/97



KARL ANUTA
735 S.W. 1st Avenue
Portland, Oregon 97204
(503) 228-6469

Date: 12/19/97



JAMES COON
Swanson, Thomas & Coon
621 S.W. Morrison, Suite 900
Portland, Oregon 97205
(503) 228-5222

Date: 12/19/97



THANE TIENSON
Copeland, Landye, Bennett
& Wolf
3500 Wells Fargo Center
Portland, Oregon 97201
(503) 224-4100

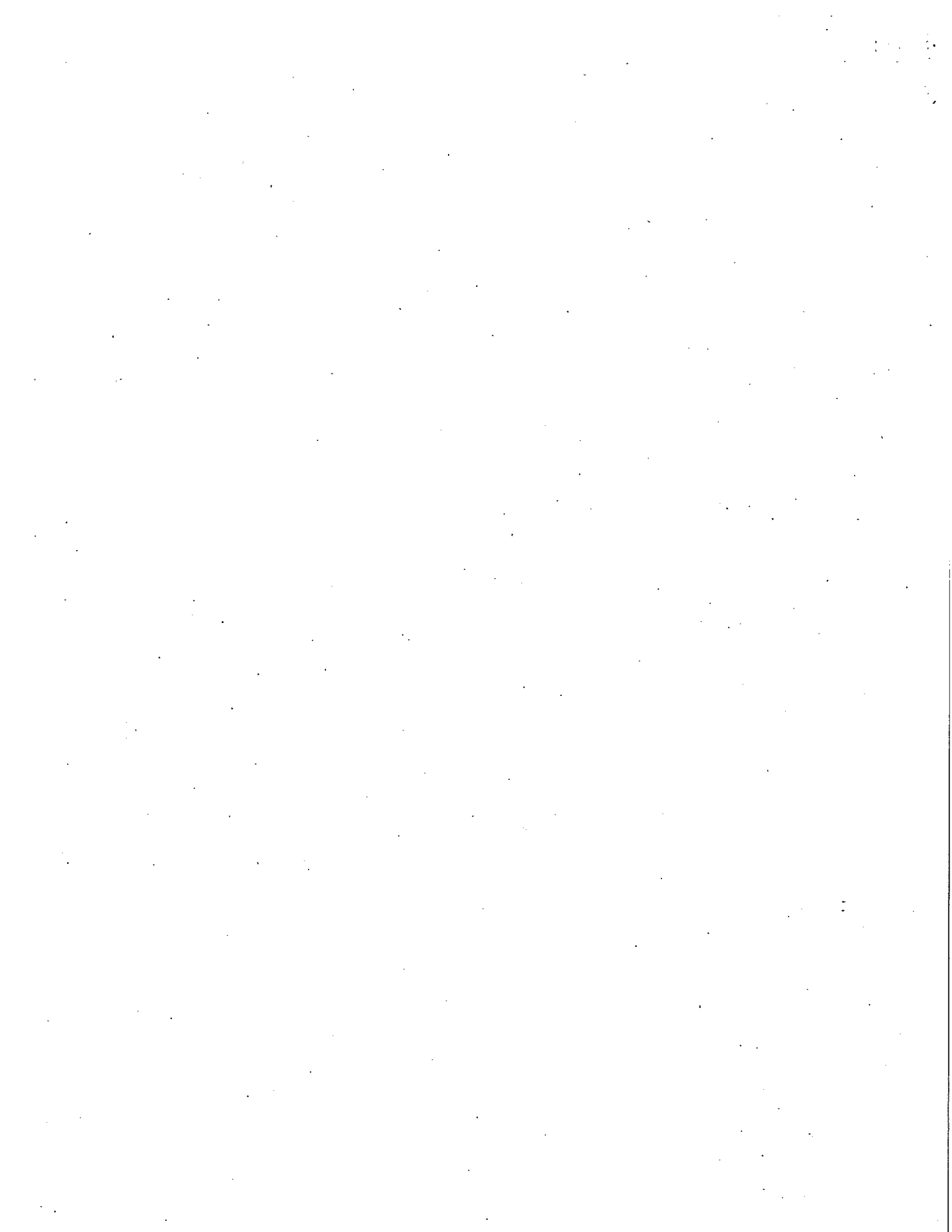
IT IS SO ORDERED.

Date: _____

BARBARA J. ROTHSTEIN
United States District Judge

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SETTLEMENT AGREEMENT

A. WHEREAS, Northwest Environmental Advocates and Northwest Environmental Defense Center (collectively, "NWEA") filed a complaint (C.A. Number C91-427R) in the District of Washington on April 2, 1991, against Carol M. Browner ("the Administrator") in her official capacity as Administrator of the United States Environmental Protection Agency ("EPA") pursuant to Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d);

B. WHEREAS, on or about November 15, 1994, Plaintiffs filed an amended complaint in this action;

C. WHEREAS, Section 303(d) of the Act, 33 U.S.C. § 1313(d), and EPA's implementing regulations, 40 C.F.R. § 130.7(b)-(e), provide for: (1) identification of waters for which applicable technology-based effluent limitations and other controls are not stringent enough to implement water quality standards (the "Section 303(d) list"); (2) establishment of a priority ranking for such waters; and (3) establishment of total maximum daily loads ("TMDLs") for those waters which are not in attainment with water quality standards;

D. WHEREAS, the subject of C.A. Number C91-427R includes EPA's alleged duty (1) to act timely on certain Section 303(d) lists and TMDLS submitted to EPA by the State; (2) to either approve or disapprove Section 303(d) lists and TMDLS submitted to EPA by the State; (3) to disapprove the State's 1994 Section 303(d) list; (4) to establish a TMDL schedule for all waters on

the State of Washington's 1994 Section 303(d) list; and, (5) to disapprove the States's Continuing Planning Process pursuant to Section 313(e) of the Act;

E. WHEREAS, on April 1, 1997, EPA approved the 1996 Section 303(d) list submitted by the State of Washington;

F. WHEREAS, the parties have entered into a Consent Decree that sets forth EPA commitments regarding establishment of a specific number of TMDLs for WQLSs on the 1996 CWA Section 303(d) list;

G. WHEREAS, the parties intend this Settlement Agreement to set forth terms for, among other matters, establishment of TMDLs for the waters on the 1996 Section 303(d) list that are not addressed in the Consent Decree;

H. WHEREAS, the State of Washington has submitted to EPA a schedule for completion of TMDLs for all waters listed on the 1996 Section 303(d) list over a 15-year period ending December 31, 2013 ("the Schedule"), attached as Attachment A hereto;

I. WHEREAS, on October 31, 1997, EPA and the Washington State Department of Ecology entered into the attached Memorandum of Agreement ("MOA") (Attachment B), under which the State of Washington committed to submit to EPA TMDLs for the WQLSs identified on the 1996 Section 303(d) list in accordance with the deadlines set forth in the Schedule;

J. WHEREAS, based upon the above-referenced commitment, the parties understand that by the dates set forth as interim

deadlines in Attachment A, the State of Washington shall either (a) submit TMDLs, as appropriate, to EPA for the WQLSs listed on Attachment A; or (b) determine that TMDLs are not necessary for those WQLSs consistent with Paragraph 5 below;

K. WHEREAS, in the MOA, the State also agreed to undertake certain measures to implement the TMDLs that are established for waters on the 1996 Section 303(d) list;

L. WHEREAS, the parties recognize that the MOA is not enforceable under the Consent Decree and this Settlement Agreement, and creates no cause of action, right or benefit, either substantive or procedural, enforceable at law or in equity, against EPA;

M. WHEREAS, the parties also recognize that the MOA does not constitute an explicit or implicit agreement by either EPA or the State to subject EPA or the State to the jurisdiction of any federal or state court;

N. WHEREAS, the parties also intend this Settlement Agreement to set forth terms concerning a database-list maintained by the State of Washington (known as the "Matrix") on (1) waters for which TMDLs have been developed, and (2) WQLSs for which TMDLs have not been developed because other pollution controls are stringent enough to implement applicable water quality standards;

O. WHEREAS, the parties understand that the State will supplement the above-referenced Matrix as necessary to identify

all waters for which TMDLs have been developed and to indicate for those waters, based upon existing and readily available data and information, whether the applicable water quality standard(s) have been met, and an estimate of the time necessary to obtain applicable water quality standards; the State will maintain the referenced TMDL waters on this list until such data and information show that the applicable water quality standard(s) have been met;

P. WHEREAS, the parties also understand that the State will supplement the Matrix as necessary to identify, based on existing and readily available data and information, all WQLSs that are not included on the Section 303(d) list because other pollution controls have been deemed stringent enough to implement applicable water quality standards, based upon such data and information; for each such WQLS the Matrix will indicate (a) the basis for not having included the WQLS on the Section 303(d) list; (b) the degree of the WQLS's impairment; and (c) the time within which the WQLS is expected to meet water quality standards; the State will maintain the referenced WQLSs on the Matrix until existing and readily available data and information show that the applicable water quality standard(s) have been met;

Q. WHEREAS, Plaintiffs' agreement to enter into this settlement is based in part on the issuance of a June 1, 1997, letter from Chuck Clarke, Regional Administrator, EPA Region 10, to Tom Fitzsimmons, Director of the Washington State Department

of Ecology ("Chuck Clarke letter"), a copy of which is attached hereto as Attachment C;

R. WHEREAS, the parties recognize that the Chuck Clarke letter is not enforceable under the Consent Decree and this Settlement Agreement, and creates no cause of action, right or benefit, either substantive or procedural, enforceable at law or in equity, against EPA;

S. WHEREAS, the parties also recognize that the Chuck Clarke letter does not constitute an explicit or implicit agreement by either EPA or the State to subject EPA or the State to the jurisdiction of any federal or state court; and

T. WHEREAS, NWEA and EPA have agreed to a settlement of C.A. Number C91-427R without any admission of fact or law, which they consider to be a just, fair, adequate and equitable resolution of the claims raised in the action;

NOW, THEREFORE, the parties agree as follows:

GENERAL TERMS

1. The parties to this Settlement Agreement are Plaintiffs Northwest Environmental Advocates and Northwest Environmental Center and Defendant Carol M. Browner. The parties understand that: (a) Carol Browner was sued in her official capacity as Administrator of the United States Environmental Protection Agency; and (b) the obligations arising under this Settlement Agreement are to be performed by EPA and not by Carol Browner in her individual capacity.

2. This Settlement Agreement applies to, is binding upon, and inures to the benefit of NWEA (and their successors, assigns, and designees), the Administrator and EPA.

3. For the purposes of this Settlement Agreement, the following terms shall have the meaning provided below:

A. "EPA" means the United States Environmental Protection Agency;

B. "NWEA" means Northwest Environmental Advocates and Northwest Environmental Defense Center;

C. The "United States" means the United States of America, including its officers, agencies, departments and instrumentalities;

D. "1996 Section 303(d) list" means the list of Water Quality Limited Segments identified on the Clean Water Act Section 303(d) list approved by EPA;

E. "Water Quality Limited Segments" has the meaning provided at 40 C.F.R. § 130.2(j), as of the date of entry of the Consent Decree or as subsequently amended;

F. "Total Maximum Daily Loads" has the meaning provided at 40 C.F.R. § 130.2(i), as of the date of entry of the Consent Decree or as subsequently amended;

G. "Water Quality Standards" has the meaning provided at 40 C.F.R. § 130.2(d), as of the date of entry of the Consent Decree or as subsequently amended;

H. "Existing and readily available water quality-related data and information" has the meaning provided at 40 C.F.R. § 130.7(b)(5), as of the date of entry of the Consent Decree or, as subsequently amended;

I. "the Schedule" means the 15-year schedule for the submission of TMDLs by the State of Washington for waters on the 1996 Section 303(d) list, appended as Attachment A.

SETTLEMENT AGREEMENT OBLIGATIONS

4. The parties agree to the Schedule set forth in Attachment A, the terms of which are incorporated by reference in this Settlement Agreement, for the State of Washington to establish TMDLs for WQLSSs identified on the 1996 Section 303(d) list, subject to Paragraph 5 below. Plaintiffs' agreement to the Schedule is based upon the understanding that the State will carry out the terms of the MOA regarding implementation of the referenced TMDLs.

5. In fulfilling its commitments under this Settlement Agreement, EPA is under no obligation to establish TMDLs for any water quality limited segments that are determined not to need TMDLs consistent with Section 303(d) of the Clean Water Act and its implementing regulations, including 40 C.F.R. § 130.7(b)(1), as amended, or are not included on Washington's future Section 303(d) lists consistent with the provisions of the Clean Water Act and its implementing regulations.

6. The parties understand that the State of Washington has primary responsibility for the establishment of TMDLs pursuant to Clean Water Act Section 303(d), 33 U.S.C. § 1313(d). However, EPA agrees that if the State of Washington fails to submit TMDLs for waters identified on the 1996 Section 303(d) list in substantial compliance with the interim deadlines set forth in the Schedule (i.e., the years 2003 and 2008), then, within 2 years of the State's interim deadline(s), EPA will take all steps necessary to ensure completion of the requisite number of TMDLs targeted for the interim deadline(s) at issue, consistent with Paragraph 5. EPA also commits that it will take all steps necessary to ensure that TMDLs for all WQLSs on the 1996 Section 303(d) list are completed by June 30, 2013, consistent with Paragraph 5 above, through establishment of TMDLs or approval of the TMDLs submitted by the State. Solely for purposes of determining compliance with this Paragraph, a TMDL submitted by the State and approved by EPA, or established by EPA, that addresses a single pollutant for a single WQLS will count as completion of one TMDL toward compliance with this Paragraph.

7. The parties understand that future CWA Section 303(d) lists may include waters that may warrant TMDL development prior to waters listed on the 1996 Section 303(d) list. The parties agree that the State and /or EPA may substitute one or more such future-listed waters for one or more waters on the 1996 303(d) list. Any TMDL that is established for such future-listed waters

shall be counted for purposes of determining whether EPA is meeting its commitments under this Settlement Agreement, provided that the substitution is between waters of comparable TMDL complexity. Plaintiffs reserve the right to dispute any such substitution for which EPA seeks to receive TMDL credit under this Settlement Agreement, in accordance with the dispute resolution provision in Paragraph 15 below.

TMDL PROGRESS REPORTS AND DOCUMENTATION

8. EPA agrees to recommend to Ecology that it place NWEA (but not NEDC) on Ecology's public mailing lists for all Ecology public mailings concerning TMDLs and CWA Section 303(d).

9. In order to assist Plaintiffs to assess EPA's satisfaction of its commitments in Paragraph 6 above, EPA shall provide Plaintiffs with an initial progress report on or before January 31, 1999, and every two years thereafter until the termination of this Settlement Agreement, which report shall identify the following:

- (a) the TMDLs submitted by the State during the two-year period, the date of each submission, EPA action taken on each submission and the date of the action taken;
- (b) the TMDLs that EPA has established during the two-year reporting period;
- (c) all WQLSs that are on the 1996 Section 303(d) list that are not included on subsequent Section 303(d)

lists because other pollution controls are stringent enough to implement applicable water quality standards;

10. EPA also agrees to provide Plaintiffs with copies of EPA-approved TMDLs within a reasonable time after receipt by EPA of a written request by Plaintiffs for such documentation.

TERMINATION OF SETTLEMENT AGREEMENT AND DISMISSAL OF CLAIMS

11. Upon entry of the Consent Decree, NWEA shall move to dismiss without prejudice Counts 1-6 and 9-12 in the complaint filed in C.A. Number C91-427R. Upon fulfillment of EPA's obligations under this Settlement Agreement, the Settlement Agreement shall terminate and the parties shall file a joint motion to dismiss with prejudice the above-referenced Counts.

EFFECTIVE DATE

12. This Settlement Agreement shall become effective upon the entry of the Consent Decree by the Court. If for any reason the District Court does not enter the Consent Decree, the obligations set forth in this Settlement Agreement are null and void.

RELEASE BY PLAINTIFFS

13. This Settlement Agreement and the Consent Decree entered in C.A. Number C91-427R shall constitute a complete and final settlement of all claims which were asserted or could have been asserted by NWEA against the United States, based on the facts existing at the time the complaint in C.A. Number C91-427R was filed.

14. NWEA hereby releases, discharges, and covenants not to assert (by way of the commencement of an action, the joinder of the Administrator and/or EPA in an existing action, or in any other fashion) any and all claims, causes of action, suits or demands of any kind whatsoever in law or in equity which they may have had or may now or hereafter have against the United States, based upon matters which were asserted or could have been asserted by NWEA, based on the facts existing at the time the complaint in C.A. Number C91-427R was filed.

DISPUTE RESOLUTION AND REMEDY FOR NON-COMPLIANCE

15. In the event of a disagreement between the parties concerning the interpretation or performance of any aspect of this Settlement Agreement, the dissatisfied party shall provide the other party with written notice of the dispute and a request for negotiations. The parties shall meet and confer in order to attempt to resolve the dispute within 30 days of the written notice, or such time thereafter as is mutually agreed. If the parties are unable to resolve the dispute within 60 days of such meeting, then NWEA's sole remedy is to reactivate the litigation in C.A. Number C91-427R. EPA does not waive or limit any defense relating to such litigation. The parties agree that contempt of court is not an available remedy under this Settlement Agreement.

FORCE MAJEURE

16. The parties recognize that the performance of this Settlement Agreement is subject to fiscal and procurement laws and regulations of the United States which include, but are not limited to the Anti-Deficiency Act, 31 U.S.C. § 1341, et seq. The possibility exists that circumstances outside the reasonable control of EPA could delay compliance with the timetables contained in this Settlement Agreement. Such situations include, but are not limited to, sufficient funds not being appropriated as requested, appropriated funds not being available for expenditure, or catastrophic environmental events requiring an immediate and/or time-consuming response by EPA. Should a delay occur due to such circumstances, any resulting failure to meet the timetables set forth herein shall not constitute a failure to comply with the terms of this Settlement Agreement, and any deadlines so affected shall be extended one day for each day of the delay. EPA will provide NWEA with reasonable notice in the event that EPA invokes this term of the Settlement Agreement. Any dispute regarding invocation of this provision shall be resolved in accordance with the dispute resolution provision of Paragraph 15.

MODIFICATIONS

17. If a subsequent change in law alters or relieves EPA of its obligations concerning matters addressed in this Settlement Agreement, then the Settlement Agreement shall be amended to

conform to such changes. Any dispute regarding invocation of this provision shall be resolved in accordance with the dispute resolution provision of Paragraph 15.

AGENCY DISCRETION

18. Except as expressly provided herein, nothing in this Settlement Agreement shall be construed to limit or modify the discretion accorded EPA by the Clean Water Act or by general principles of administrative law.

19. Nothing in this Settlement Agreement shall be construed to limit or modify EPA's discretion to alter, amend, or revise from time to time any actions EPA may perform pursuant to this Agreement, or to promulgate superseding regulations.

NOTICE

20. Any notice required or made with respect to this Settlement Agreement shall be in writing and shall be effective upon receipt. For any matter relating to this Settlement Agreement, the contact persons are:

For Plaintiffs:

Nina Bell
Northwest Environmental Advocates
133 S.W. 2d Avenue
Portland, Oregon 97204

and

Karl Anuta
735 S.W. 1st Avenue
Portland, Oregon 97204

and

James S. Coon
Swanson, Thomas & Coon
621 S.W. Morrison, Suite 900
Portland, Oregon 97205

and

Thane Tienson
3500 Wells Fargo Center
Portland, Oregon 97201

For EPA:

Susmita Dubey
Office of General Counsel (2355)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

and

Adrienne Allen
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10
Seattle, Washington

and

Russell M. Young
Environmental Defense Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

Upon written notice to the other parties, any party may designate a successor contact person for any matter relating to this Settlement Agreement.

REPRESENTATIVE AUTHORITY

21. Each undersigned representative of the parties to this Settlement Agreement certifies that he or she is fully authorized

by the party to enter into and execute the terms and conditions of this Agreement, and to bind such party to this Agreement.

MUTUAL DRAFTING

22. It is hereby expressly understood and agreed that this Settlement Agreement was jointly drafted by NWEA and EPA. Accordingly, the parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Agreement.

COUNTERPARTS

23. This Settlement Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

EFFECT OF SETTLEMENT AGREEMENT

24. This Settlement Agreement shall not constitute an admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of the United States, its officers, or any person affiliated with it.

COMPLIANCE WITH OTHER LAWS

25. No provision of this Settlement Agreement shall be interpreted as or constitute a commitment or requirement that EPA

obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or take actions in contravention of the Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-706, the Clean Water Act, or any other law or regulation, either substantive or procedural.

APPLICABLE LAW

26. This Settlement Agreement shall be governed and construed under the laws of the United States.

THIRD-PARTY BENEFICIARIES


27. Nothing in this Settlement Agreement shall be construed to make any other person or entity not executing this Agreement a third-party beneficiary to this Agreement.

The parties consent to the form and substance of the foregoing Agreement.

For CAROL M. BROWNER
ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION
AGENCY

By: LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural
Resources Division

Date: 6 January 1998


RUSSELL M. YOUNG
Environmental Defense Section
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

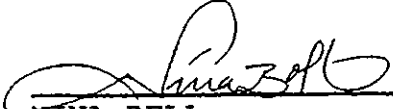
Of Counsel:

SUSMITA DUBEY
U.S. Environmental Protection
Agency
401 M St., S.W.
Washington, D.C. 20460

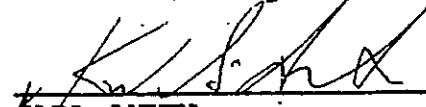
ADRIANNE ALLEN
U.S. Environmental Protection
Agency -Region 10
Office of Regional Counsel
1200 6th Avenue
Seattle, Washington 98101

For NORTHWEST ENVIRONMENTAL
ADVOCATES AND
NORTHWEST ENVIRONMENTAL
DEFENSE CENTER:

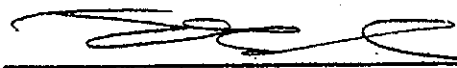
Date: 12/19/97


NINA BELL
Northwest Environmental
Advocates
133 S.W. 2d Avenue
Portland, Oregon 97204


Date: 12/19/97

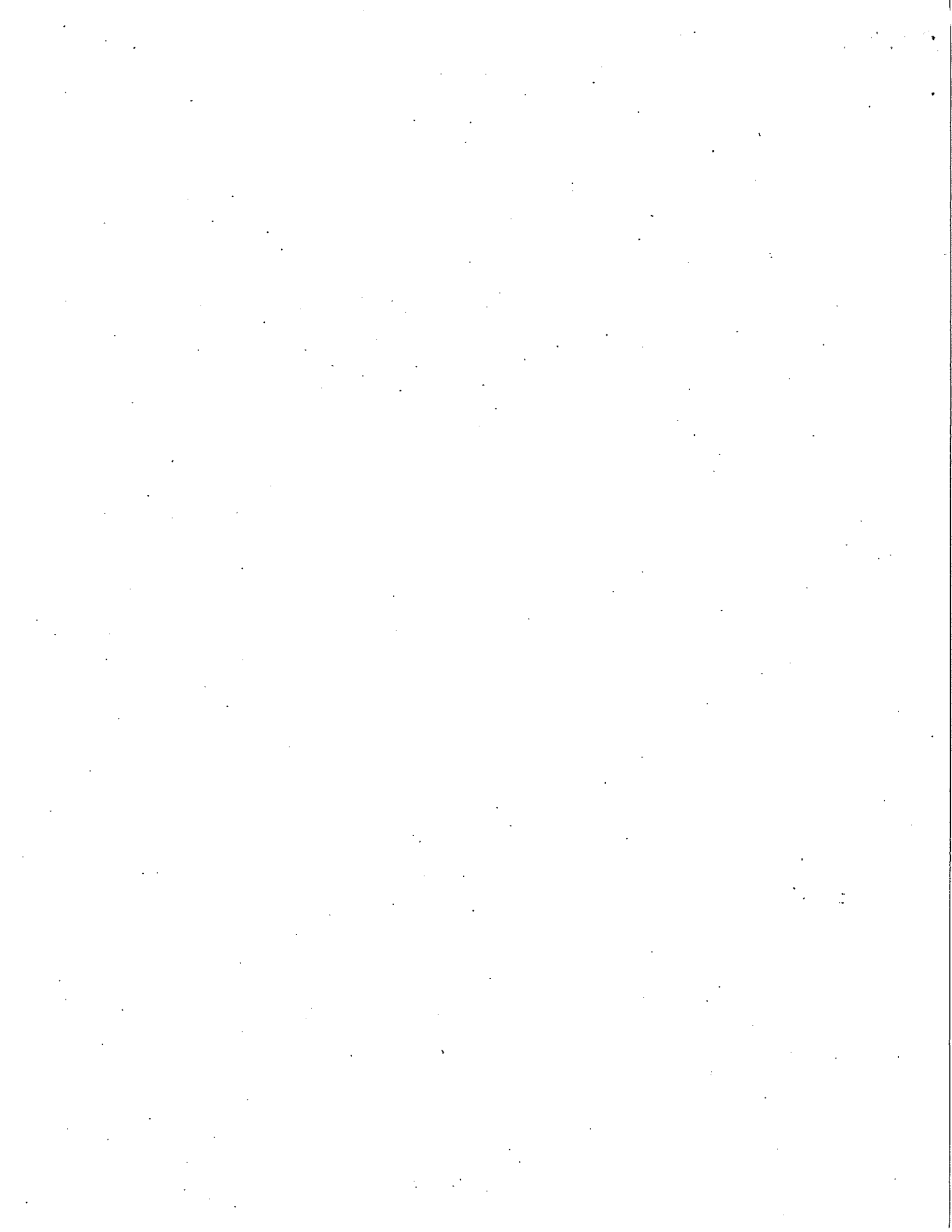

CARL ANUTA
735 S.W. 1st Avenue
Portland, Oregon 97204

Date: 12/19/97


JAMES COON
Swanson, Thomas & Coon
621 S.W. Morrison, Suite 900
Portland, Oregon 97205

Date: 12/19/97


THANE TIENSON
3500 Wells Fargo Center
Portland, Oregon 97201



WATERSHED APPROACH TO ESTABLISHING TMDLS

Schedule for TMDL Submittal

Water Quality Management Areas	State Fiscal Year (July 1 through June 30)												Total TMDLs					
	98	99	00	01	02	03	04	05	06	07	08	09		10	11	12	13	14
Skagit/Stillaguamish, Columbia Gorge, Horse Heaven/Klickitat, Upper Columbia, Pend Oreille	12				14					15					18			59
Island/Snohomish, South Puget Sound, Okanogan, Crab Creek, Esquatzel	20					4					11					13		48
Nooksack/San Juan, Western Olympic, Wenatchee, Upper Snake, Lower Snake	4	19*					44					32						99
Kitsap, Lower Columbia, Upper Yakima, Mid Columbia	1		14					29					13					57
Cedar/Green, Eastern Olympic, Lower Yakima, Spokane	22			24					53									135
State Wide Group						115					400					653		1168
TOTAL ANNUAL TMDLs	59	19*	14	24	14	119	44	29	53	15	411	32	13	36	18	666		1566*
TOTAL 5 YEAR CYCLE TMDLs						249					552					765		1566
CUMULATIVE PERCENT OF ALL TMDLs						16%					51%					100%		100%

NOTES: Shaded areas are implementation startup years. * includes Chehalis Temperature TMDLs not on the 1996 Section 303(d) list.

*Attachment A
To Settlement Agreement*

