

1 **UNITED STATES DISTRICT COURT**
2 **EASTERN DISTRICT OF WASHINGTON**

3 STATE OF WASHINGTON,

4 Plaintiff,

5 v.

6 STEVEN CHU, Secretary of the
7 United States Department of
8 Energy, and the UNITED STATES
9 DEPARTMENT OF ENERGY,

10 Defendants.

NO. 08-5085-FVS

JOINT MOTION TO ENTER
CONSENT DECREE

Noticed for Hearing Without
Oral Argument: October 6, 2010,
at 6:30 pm

11 Plaintiff State of Washington and Defendants Secretary Steven Chu and
12 the United States Department of Energy (“Defendants” or “DOE”) (collectively
13 the “Parties”) hereby move the Court for entry of the proposed and previously
14 lodged Consent Decree, an executed copy of which is submitted to the Court
15 simultaneously with the filing of this motion. In support of this motion, the
16 Parties state as follows:

17 1. Plaintiff’s suit alleges, among other things, that DOE’s continued
18 storage of land disposal restricted tank waste, as well as the conditions of and
19 continued storage of waste in single-shell tanks at the Hanford Nuclear
20 Reservation (“Hanford”), violate applicable regulations promulgated under
21 Washington’s Hazardous Waste Management Act, and which are authorized
22 under the federal Resource Conservation and Recovery Act. Entry of the
Consent Decree would result in resolution of this suit as described in the
Consent Decree.

1 2. On August 11, 2009, the Parties lodged a proposed Consent Decree
2 with the Court, while the Parties conducted a public notice and comment
3 process on that Decree. The public comment period on the proposed Consent
4 Decree ran from October 1, 2009, to December 11, 2009. The public notice
5 and comment process also addressed various proposed modifications to the
6 Hanford Federal Facility Agreement and Consent Order (“HFFACO”), a
7 separate, existing administrative compliance agreement pertaining to the
8 Hanford cleanup. That notice and comment process is now complete and the
9 Parties have completed preparation of a responsiveness summary. The
10 responsiveness summary has been posted on both of the Parties’ websites.

11 3. Among other things, the Consent Decree requires that DOE complete
12 construction and achieve initial plant operations of the Waste Treatment Plant
13 at Hanford, CD § IV A; retrieve waste contained in certain single-shell
14 underground tanks at Hanford, id. § IV B; and report on the progress of
15 meeting the requirements of the Consent Decree, id. § IV C, in accordance with
16 the schedule set out in the Decree. Under the Decree, the Court will retain
17 jurisdiction in order to enforce or modify the Decree or to resolve disputes as
18 may be necessary or appropriate. Id. §§ IX & XII. The Decree now executed
19 by the parties and tendered for entry by the Court is the same as that previously
20 lodged, except for certain non-substantive changes.

21 4. The Court should approve a settlement if it is fair, adequate,
22 reasonable and consistent with the applicable law. United States v. State of
Oregon, 913 F.2d 576, 580-81 (9th Cir. 1990). Where the United States or a
State is a party to the Consent Decree, a court should pay deference to the

1 agency's expertise and to the law's policy of encouraging settlement. See, e.g.,
2 Securities and Exchange Commission v. Randolph, 736 F.2d 525, 529 (9th Cir.
3 1984); Officers for Justice v. Civil Service Comm. Of the City and County of
4 San Francisco, 688 F.2d 615, 625 (9th Cir. 1982); Officers for Justice v. Civil
5 Service Comm. Of the City and the County of San Francisco., 688 F.2d 615,
6 625 (9th Cir. 1982).

7 5. DOE and Intervenor State of Oregon have entered a separate
8 proposed Consent Decree, which they have separately lodged with the Court
9 and for which they have filed a separate motion to enter. Plaintiff State of
10 Washington supports the entry of that proposed Consent Decree.

11 6. The entry of this Consent Decree is in the public interest and is the
12 most appropriate means of resolving the State's claims against Defendants in
13 this case.

14 THEREFORE, the State of Washington and the United States request
15 that the Court enter the Consent Decree at this time.

16 Respectfully submitted,

17 IGNACIA S. MORENO
18 Assistant Attorney General
19 Environment and Natural
20 Resources Division

21 ROBERT M. MCKENNA
22 Attorney General

23 /S/ David J. Kaplan
24 DAVID J. KAPLAN
25 CYNTHIA J. MORRIS
26 AMANDA SHAFER BERMAN
27 Environmental Defense Section
28 P.O. Box 23986
29 Washington, D.C. 20026-3986
30 (202) 514-0997

31 /S/ Andrew A. Fitz
32 MARY SUE WILSON, WSBA #19257
33 Sr. Assistant Attorney General
34 ANDREW A. FITZ, WSBA #22169
35 Senior Counsel
36 Ecology Division
37 P.O. Box 40117
38 Olympia, WA 98504-0117
39 (360) 586-6770

1 JAMES A. MCDEVITT
United States Attorney
2 ROLF H. TANGVALD
Assistant United States Attorney
3 920 W. Riverside Ave., Suite 300
Spokane, Washington 99201
4 (509) 353-2767

5 ATTORNEYS FOR DEFENDANTS ATTORNEYS FOR PLAINTIFF
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

1 CERTIFICATE OF SERVICE

2 I certify that on the 6th day of October, 2010, I electronically filed the
3 foregoing, and the accompanying Consent Decree, with the Clerk of the Court
4 using the CM/ECF system which will send notification of such filing to the
5 following:

6 Allyson Zipp
7 Office of the Attorney General
8 2425 Bristol Court SW
9 PO Box 40117
10 Olympia, WA 98504-0117

11 Andrew A. Fitz
12 Attorney General of Washington - OLY
13 Ecology Division
14 7141 Cleanwater Drive SW
15 PO Box 40126
16 Olympia, WA 98504-0126

17 Thomas J. Young
18 Attorney General of Washington - OLY
19 Olympia Division
20 PO Box 40100
21 Olympia, WA 98504-0100

22 Mary Sue Wilson
Attorney General of Washington - OLY
Olympia Division
PO Box 40100
Olympia, WA 98504-0100

Roger J DeHoog
Oregon Department of Justice
1162 Court Street
Salem , OR 97301-4096

Cynthia J Morris
U S Department of Justice - DC
PO Box 23986
Washington, DC 20026

David Kaplan
U S Department of Justice - DC
PO Box 23986
Washington, DC 20026

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Amanda Shafer Berman
United States Department of Justice
PO Box 23986
Washington, DC 20026

/S/ Andrew A. Fitz