



Lower Duwamish Waterway Superfund Site Cleanup Consent Decree and Settlements

Regional Water Quality Committee

PRESENTED BY

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MARCH 5, 2025

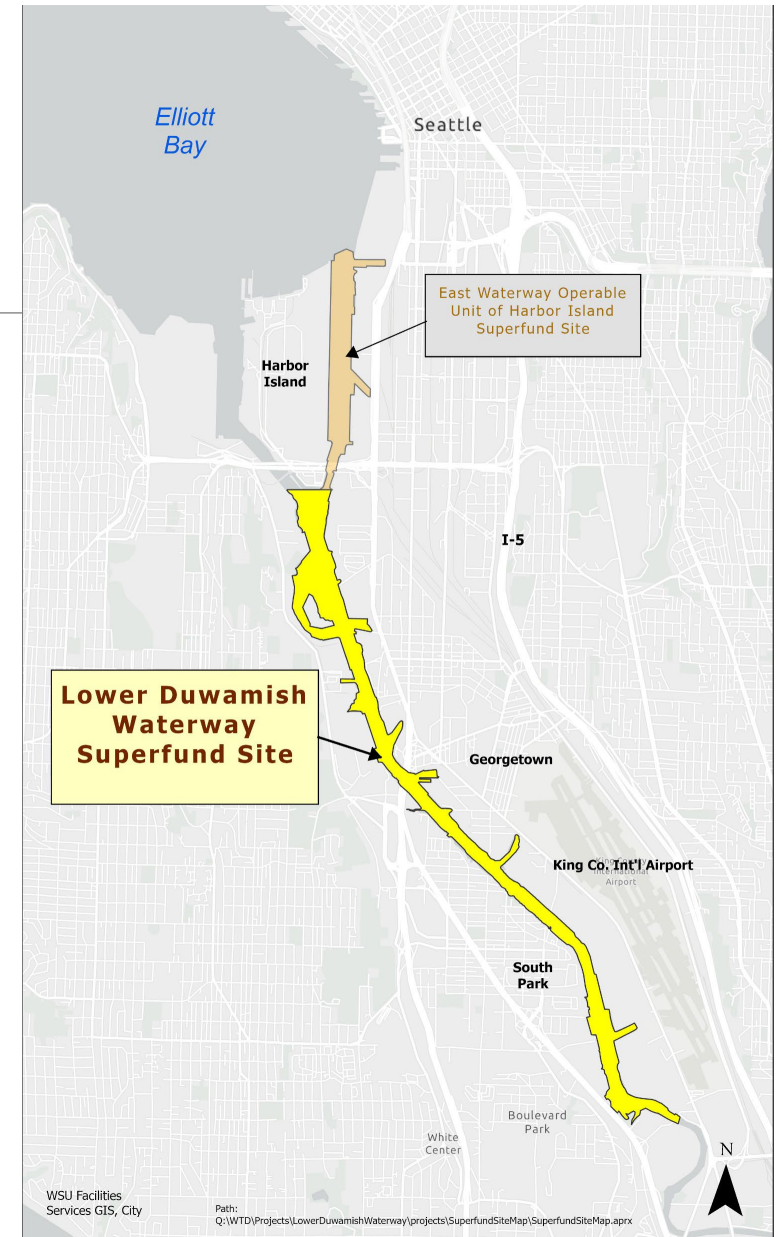
Agenda

- Background
- Cleanup Update
- Settlement Package
- Settlement Funds
- Risks and Reopeners
- Communications
- Key Milestones



Lower Duwamish Waterway (LDW) Site

- 5 mile stretch of Duwamish River listed as a:
 - Federal Superfund Site in 2001
 - State Hazardous Site in 2002
- Dredged corridor with 100+ years of industrial use
- Area supports 100,000 jobs and 25% of King County's manufacturing
- Communities face economic, health, access challenges
- Health risk to subsistence fishers from PCBs drives most of the need for cleanup
- Muckleshoot and Suquamish Tribal Usual and Accustomed Fishing Areas



King County Shares in Responsibility for the LDW Site

King County is a named potentially responsible party (PRP) for the LDW Site

- Responsibility for cleanup, natural resource damages (NRD), and source control

County responsibility stems from:

- Regional Sewer System (Combined Sewer Overflow (CSO)) ownership/operation
- King Co International Airport (KCIA) ownership, leasing and operation
- Harbor Bond properties and other current/former property ownership, leasing or operation
- Stormwater drainage from County roads and bridges

Other PRPs include:

- The Boeing Co. (single largest industrial polluter)
- The City of Seattle (storm/sewer conveyance systems, and landowner/operator)
- The Port of Seattle (single largest landowner)
- The United States (wartime impacts)
- 100s of other parties, many of whom are now defunct

King County has invested over 20 years effort toward cleanup

- Lower Duwamish Waterway Group (LDWG) formed voluntarily in 2000 to address Site contamination*
 - King County (County)
 - City of Seattle (City)
 - The Boeing Company (Boeing)
- Each party signed a 2000 Order with EPA and Ecology to investigate and assess options for cleanup
- EPA selected the remedy (cleanup) for Site in 2014
 - Cleanup to include dredging, capping, monitoring and institutional controls (e.g., restrictions for capped areas)
- Order amended several times since 2000 to advance site work toward cleanup



** The Port of Seattle (Port) withdrew from LDWG but remains under 2000 Order contributing to pre-cleanup costs*

Cleanup work now underway

- In-water construction began November 2024
- Construction to occur yearly (Oct–Feb) over next 10 years

Cleanup estimated to cost \$668M (federal estimate)

- Actual cost likely to be higher

Boeing, City, County covering 100% of cost for now

- Under 2024 Cleanup Order EPA issued to start work
- County's interim cost sharing is subject to appropriation(s)
- County is lead for 1st construction phase (\$51.7M appropriation)

Proposed Consent Decree will:

- Supersede EPA's 2024 Order to govern cleanup
- Secure substantial funds for cleanup from dozens of parties



A barge holds excavated sediment from Sediment Management Area (SMA) 6.

Proposed Consent Decree follows:

10-year Allocation process with 45 parties

- Neutral mediator (“Allocator”) assigned 100% of the cost to 45 parties plus the United States
- Parties could accept or reject their shares – *Port of Seattle rejected its allocated share*
- Paved way for one “global” consent decree with dozens of parties settling in contribution
- EPA calling this process “exemplary”

Multi-year negotiation with United States

- United States (US) did not participate in Allocation, but was allocated a significant share
- Separate negotiations over US contribution extended past expected start date for cleanup

Regulatory expectations for cleanup

- EPA expected LDWG members to perform and fund cleanup
- The Port did not make a “good faith offer” to perform
- Onus put on Boeing, City, County to perform and secure funding from other parties

Typical settlement terms

- Department of Justice (DOJ) ‘Model Consent Decree’
- EPA’s “Guidance on Premium Payments in CERCLA Settlements”

Full Settlement Package:

Cleanup Consent Decree

- Federal-State Consent Decree with EPA and Ecology
- Sets scope of work for implementing cleanup
- Reflects settling party roles and funding for cleanup (from supportive settlements)
- Settles party liability subject to reservations and reopeners
- Settles US liability: US to pay upfront with a premium to cash out on cost of cleanup, subject to reopeners

Supportive Settlements

- Performing Parties: Boeing, City, and County perform cleanup and cover gaps in funding
- Cash-Out Parties: Most Allocation parties to pay upfront at a premium to cash out on all future liability
- Funding Party: One Allocation party to pay ongoing share of costs, subject to cost overruns and reopeners
- Allocation Costs: Reallocates Allocation fees among remaining Allocation participants

Settlements secure substantial funds upfront

Boeing, City, County were allocated 56.2% responsibility (combined) – but are covering 100% of the ongoing cleanup cost at higher shares:

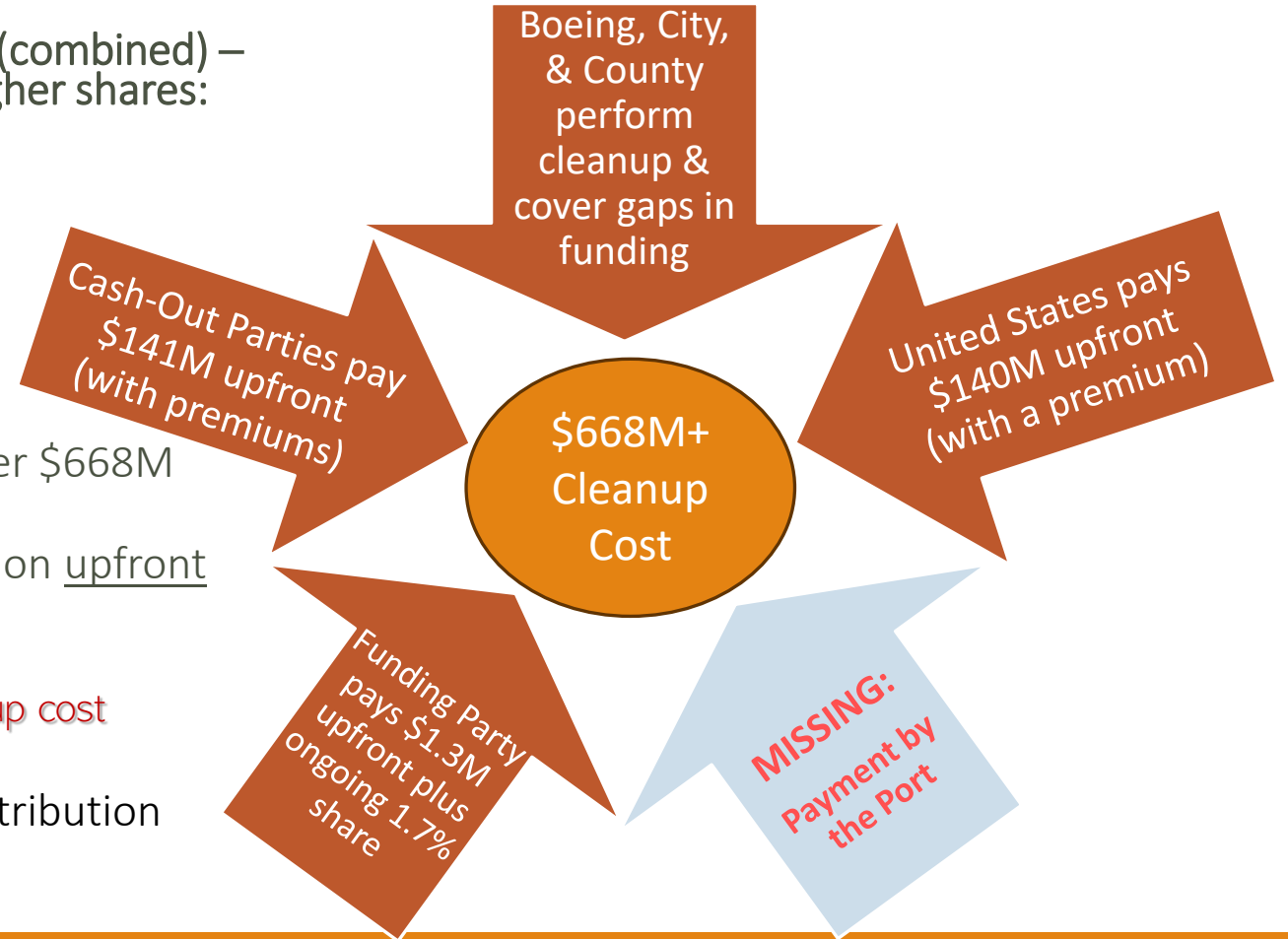
	Allocated Share	Performance Share
Boeing	30.1%	53.6%
City	17.7%	31.5%
County	8.4%	14.9%

Absent settlements, they would continue to pay higher “performance” shares for the full cost of cleanup, at over \$668M

With settlements, other parties will pay them \$282 million upfront – which frontloads funding for cleanup:

- \$18.5M paid upfront toward \$75M in past costs
- \$263.9M paid upfront toward the estimated \$668M cleanup cost

Every Allocation participant will have also settled in contribution – but for the Port



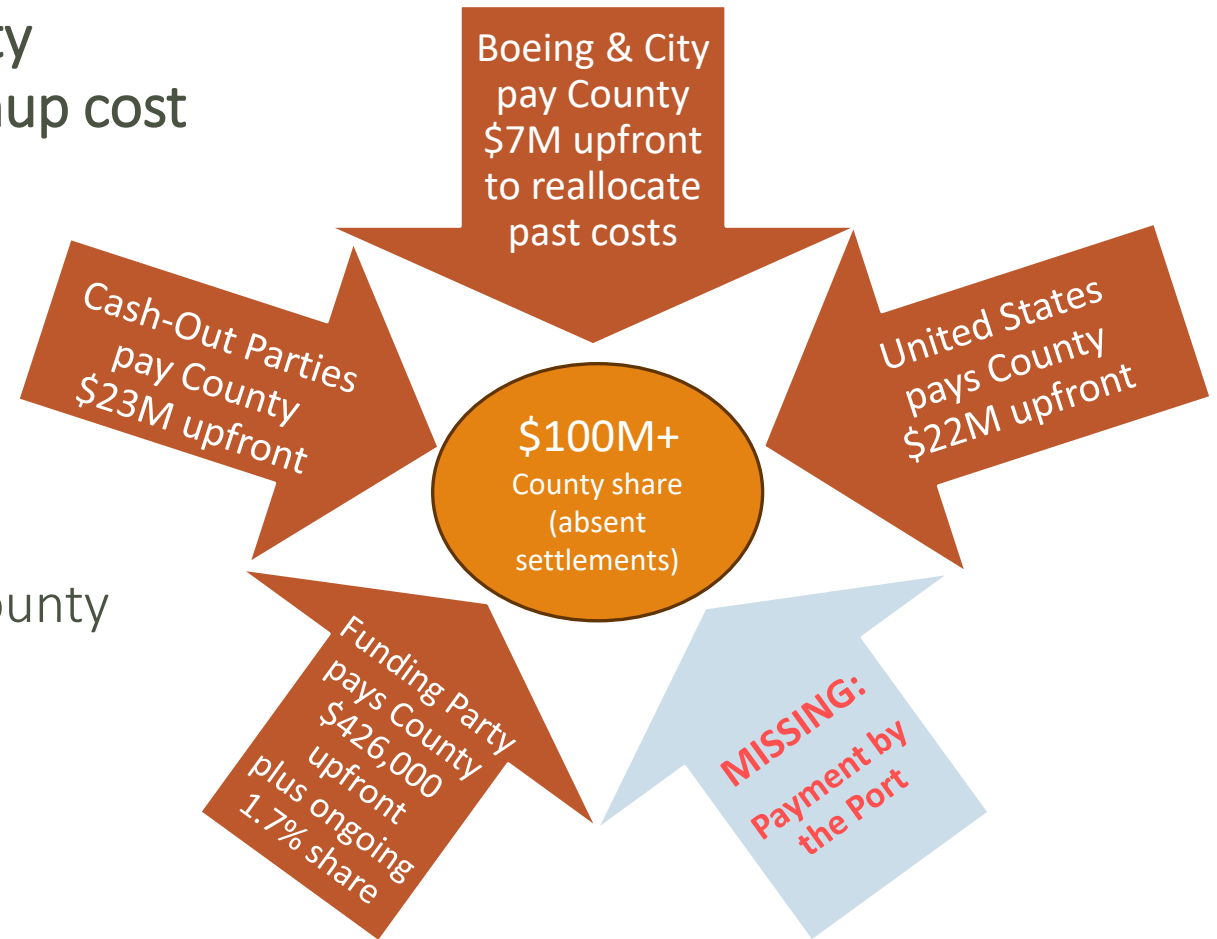
Distribution of Settlement Funds to County

King County was allocated 8.4% responsibility
– but is covering 14.9% of the ongoing cleanup cost

Absent settlements, the County would continue to pay its 14.9% “performance” share for the full cost of cleanup, at over \$100M

With settlements, other parties will pay King County \$52M upfront toward costs:

- \$13M paid upfront toward \$24M in County past costs
- \$39M paid upfront toward cleanup cost



Additional settlement benefit for County

- ~\$5M in benefits for Orphan Share Relief (*from EPA waiving \$23M in oversight costs under the Consent Decree for defunct parties*)

Likely need to pursue the Port and others for gap(s) in funding

- Despite best efforts at resolution, litigation is likely to recover the Port's allocated share (*which remains mediation confidential*)
- Two parties allocated much smaller shares will have paid less in settlements due to bankruptcy or financial hardship
- Future gaps could occur if US or Cash-Out party premiums are exhausted from cost overruns
- Other parties that did not participate in Allocation can be pursued for additional minor amounts

Collateral funds already recovered help the County pay its share:

- Insurance recovery (*\$79 million recovered for multiple sites/liabilities*)
- Monsanto PCB class action settlement awards (*over \$25 million recovered for multiples sites/liabilities*)
 - *Collateral funds are sufficient to cover the cost shares allocated to KCIA, FMD, and Roads – but only part of WTD's share*
 - *LDW cleanup therefore has a minor effect on WTD's sewer rate and forecast*

Risks and Reopeners



- **Cleanup cost may exceed current estimates**
 - The Performing Parties and Funding Party risk covering cost overruns that exceed the cost estimate and premiums paid by the US and Cash-Out Parties
- **PCB standard may not be achievable**
 - The PCB cleanup level may be unachievable in this urban waterway; PCB levels on sediment transported from the Green River (upstream) currently exceed it
- **Future Additional Work May Be Required**
 - For remedy failure: If following cleanup, source control, and years of monitoring standard(s) are not achieved; though the most cleanup practicable is already being required, and the PCB standard may ultimately need to be revised or waived as Technically Impracticable to achieve ('TI waiver').
 - For new information or changed circumstances: If the cleanup is no longer protective
 - The Performing Parties, US, and Funding Party retain “future liability” under reopeners
 - Material changes to the scope or cost of cleanup would require amendment of the Consent Decree

Communications

Key takeaway messages:

- **Commitment to cleanup:** King County and partners are committed to cleaning up the Duwamish Waterway to benefit people and wildlife for generations to come
- **Clean Water and Healthy Habitats:** Cleanup means healthier habitat to support salmon and other wildlife, improved water quality, and reduced toxics; sediments contaminated by a century of heavy industrial and commercial use being removed
- **Equity:** Communities will benefit from a healthier river and see fewer risks
- **Fairness:** King County share of cleanup cost is fair to wastewater ratepayers and other King Co funders (KCIA, etc.)

Coordination with performance partners and regulators on external communications (media and stakeholders)

County and City are coordinating on respective legislative processes

Key Milestones

July 2024: EPA issues 2024 Cleanup Order requiring that cleanup begin

November 2024: In-water cleanup work (“construction”) timely begins

January 2025: Negotiations conclude with private party signatures on Consent Decree

February – May 2025: County Council review and approval; Executive signature

May 2025: DOJ signs and lodges proposed Consent Decree in federal court

May - June 2025: Public comment under federal and state cleanup laws

September 2025: Motion to enter Consent Decree filed

November 2025: Consent Decree entered in court (Effective Date)

2025 – 2035: Cleanup continued and completed under Consent Decree

2035-2050+: Remedy monitoring and protective controls implemented



Questions?