



# Lower Duwamish Waterway Superfund Site Cleanup Consent Decree and Settlements

Regional Water Quality Committee

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PRESENTED BY

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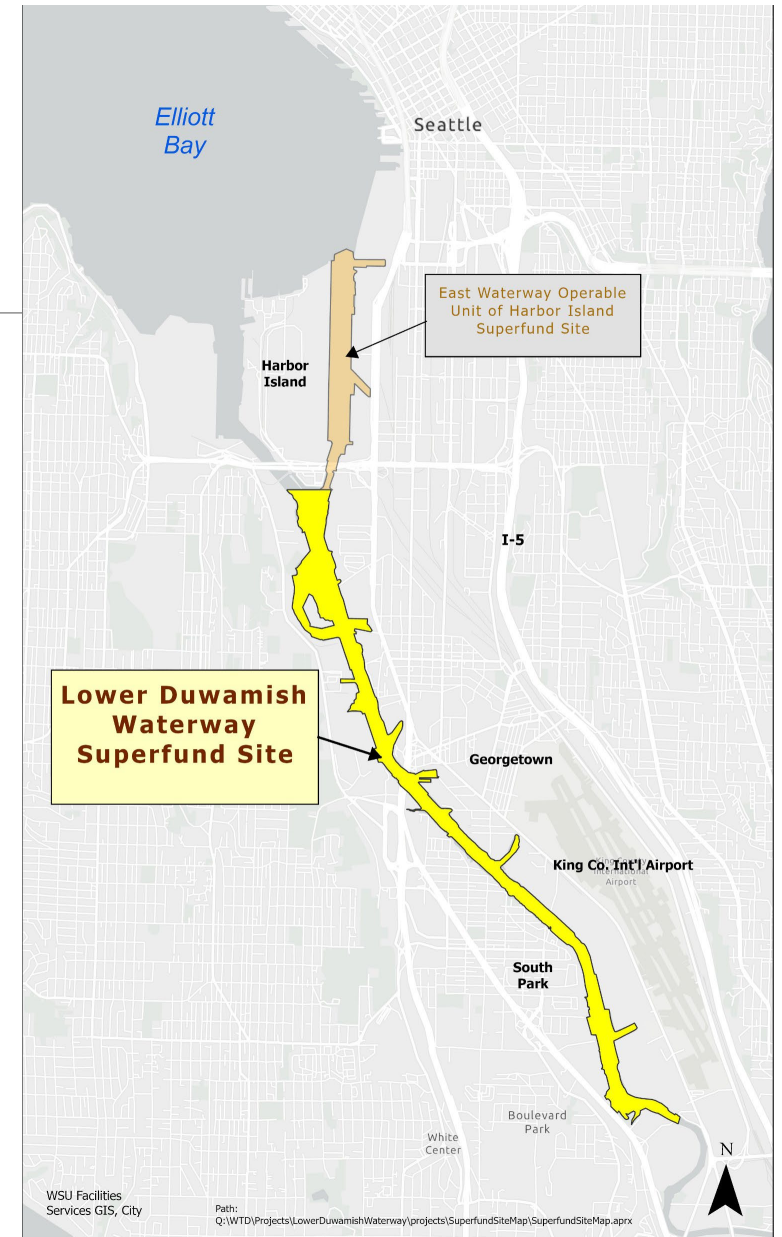
# Agenda

- 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*

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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*

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- 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 1<sup>st</sup> 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:

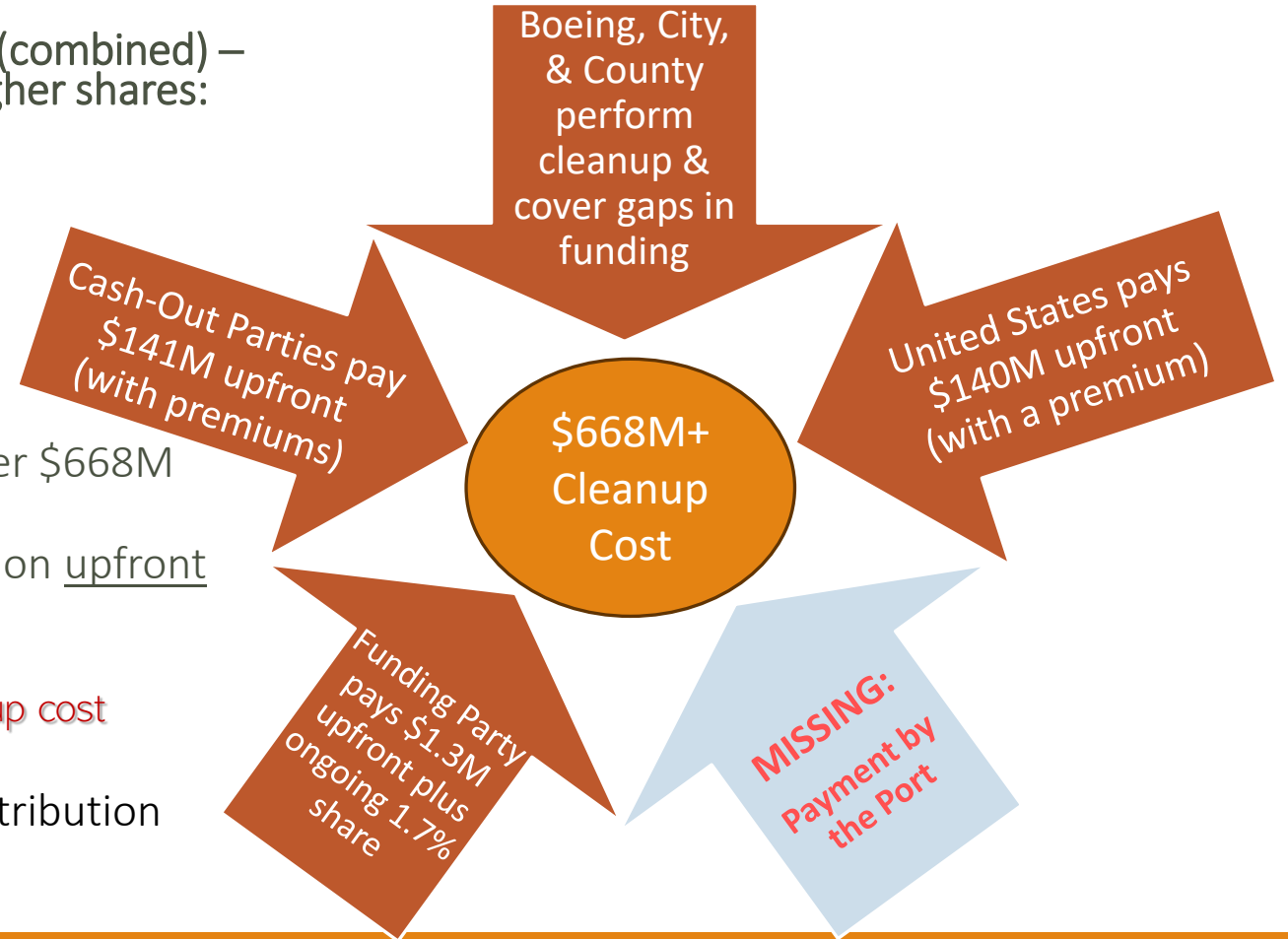
	Allocated Share	Performance Share
Boeing	30.1%	53.6%
City	17.7%	31.5%
County	8.4%	14.9%

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



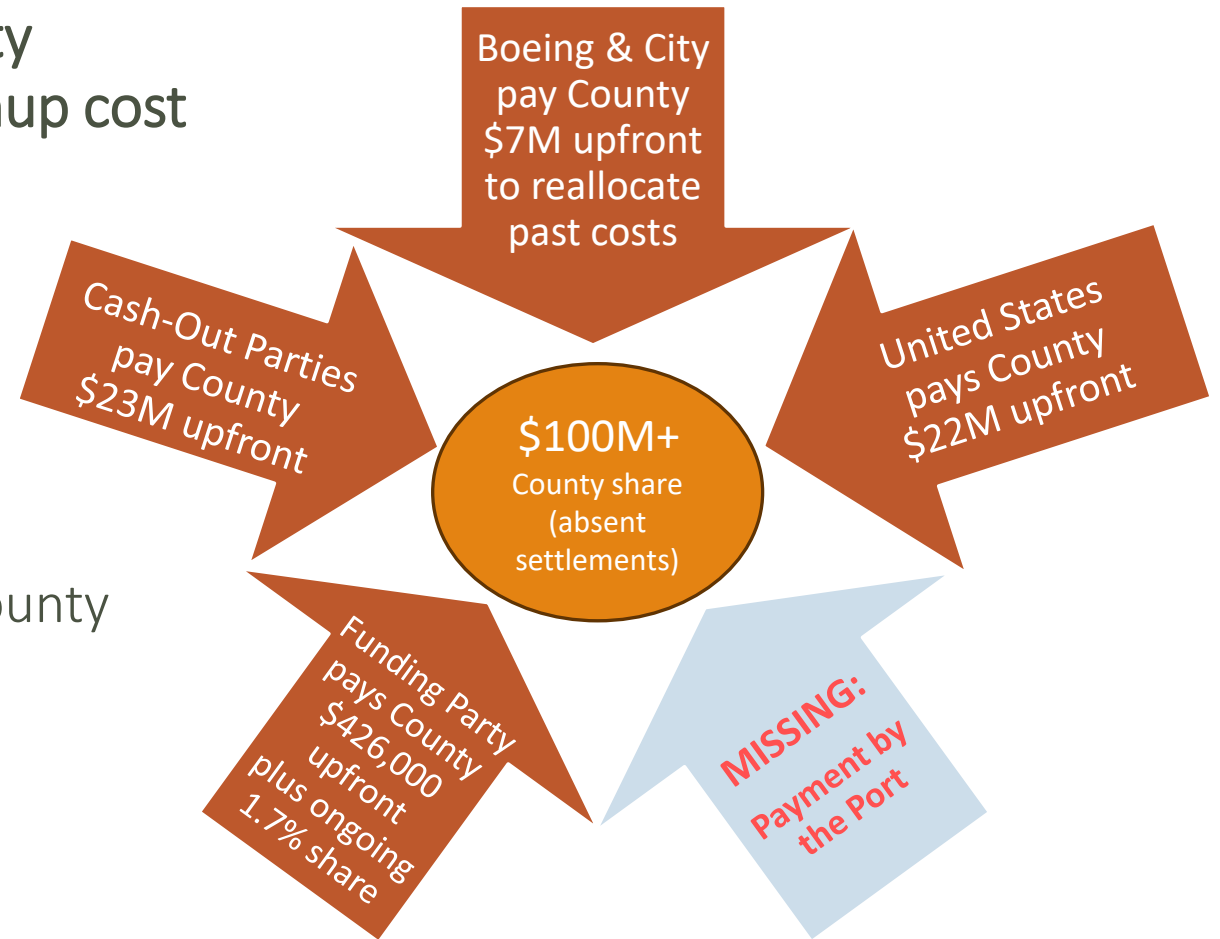
# Distribution of Settlement Funds to County

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

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## *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

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**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?