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Judge: The Honorable Samuel J. Steiner
Date/time: Submitted on consent
Chapter: 11
Location: Seattle

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In Re:
THE OLYMPIC PIPE LINE COMPANY,
a Delaware corporation,
Debtor

No. 03-14059

CONSENT DECREE
AND
SETTLEMENT
AGREEMENT

FILED
Western District of Washington
at Seattle

NOV 12 2004

U.S. Bankruptcy Court

CONSENT DECREE - 1

U.S. Department of Justice
NOAA GC-DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
206-526-6616

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CONSENT DECREE

This Consent Decree and Settlement Agreement (“Decree”) is made and entered into by and between the United States of America, on behalf of the National Oceanic and Atmospheric Administration (“NOAA”) and the Department of the Interior (“DOI”) (collectively, the “United States”); the State of Washington, by the Department of Ecology (“State”); the Lummi Nation; the Nooksack Indian Tribe of Washington; and the City of Bellingham (“City”); and Olympic Pipe Line Company (“Olympic”); Shell Pipeline Company LP (fka Equilon Pipeline Company LLC); Equilon Enterprises LLC dba Shell Oil Products US; Equiva Services LLC; and Shell Oil Company (all collectively, the “Parties”).

I. INTRODUCTION

A. On June 10, 1999, a refined petroleum products pipeline owned by Olympic Pipe Line Company ruptured, spilling approximately 236,000 gallons of gasoline into Hannah Creek, and subsequently into Whatcom Creek (the “Creek”). Whatcom Creek is a 3 to 4- mile coastal stream which runs through a city park, residential neighborhoods, and urban industrial areas before emptying into Bellingham Bay in Bellingham, Washington. As the gasoline was carried down the creeks through both the soil and surface water, the fumes encountered an ignition source, resulting in a fire. The discharge and resulting fire impacted a variety of natural resources in approximately 26 acres of the Creek and riparian zone. Much of the free product burned or volatilized, but some of it became embedded in the stream sediments and/or located in the ground water.

B. The discharge and subsequent fire resulted in significant natural resource injuries, including mortalities to aquatic organisms within Whatcom Creek and to terrestrial organisms within the riparian burn zone. Aquatic life was most heavily impacted and the spill and fire caused an almost complete destruction of the benthic macroinvertebrate fauna and amphibians. Fish losses included juvenile salmon (coho, chinook, chum, sockeye), steelhead, rainbow and

1 cutthroat trout, lamprey, and other species. Approximately 26 acres of terrestrial vegetation was
2 burned, including 16 acres of mature riparian forest within Whatcom Falls Park, and
3 approximately 10 acres of third or fourth growth floodplain forest below the park. Ecological
4 services of the riparian forest, including provision of wildlife habitat, erosion control, pollution
5 reduction, and stream shading, were lost for varying durations. Ecological services were also lost
6 in the Creek in the form of a reduction of both fishery production and macroinvertebrate
7 abundance.

8 C. Recreational services were curtailed through a large portion of Whatcom Falls
9 Park during the months following the incident. Curtailments in recreational services were
10 reduced through progressive re-openings, with the exception of a continuing closure within the
11 burn zone. Services lost include hiking, swimming, fishing, picnicking, and nature enjoyment.
12 Some closures remain for public safety purposes, for the protection of resident fish and newly
13 planted vegetation, and for the minimization of erosion potential.

14 D. At the time of the incident, the pipeline was owned by Olympic. Equilon Pipeline
15 Company LLC, which is now known as Shell Pipeline Company LP, owned 37.452% of the
16 shares of Olympic. Equilon Pipeline Company LLC was wholly owned by Equilon Enterprises
17 LLC dba Shell Oil Products US, which at the time of the incident was jointly owned by
18 subsidiaries of Shell Oil Company and Texaco Inc. Equilon Enterprises LLC dba Shell Oil
19 Products US was insured by Heddington Insurance (U.K.) Ltd. ("Heddington") and Noble
20 Assurance Company ("Noble") ("the Insurers") under certain policies which, subject to certain
21 conditions, may provide limited coverage for Olympic. Equiva Services LLC, which at the time
22 of the incident was jointly owned by Equilon Enterprises LLC dba Shell Oil Products US and
23 Motiva Enterprises LLC, provided various services to Olympic.

24 E. NOAA, DOI, the State, the Lummi Nation, the Nooksack Indian Tribe of
25 Washington and the City (collectively, the "Natural Resource Trustees") have assessed the
26 injuries to natural resources, and/or their services, resulting from the gasoline spill and fire, and

1 have proposed certain Restoration Projects to restore and/or compensate for such injuries
2 pursuant to the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.* (“OPA”), 40 CFR §§ 990.50
3 - 990.56, and under state law pursuant to RCW Chapters 90.48 and 90.56. Those Restoration
4 Projects are identified in *Final Restoration Plan and Environmental Assessment for the June 10,*
5 *1999, Olympic Pipeline Gasoline Spill into Whatcom Creek, Bellingham, Washington (August*
6 *2002)* (“Restoration Plan”), developed by the Natural Resource Trustees in consultation with
7 Olympic and adopted by the Natural Resource Trustees following public review and comment
8 (attached hereto as Attachment A).

9 F. As the Restoration Plan was being developed, the Natural Resource Trustees and
10 Olympic contemplated that Olympic would perform most of the actions addressed in the
11 Restoration Plan. Among those actions is the acquisition by Olympic of an approximately 9.2
12 acre parcel along Whatcom Creek (“Jansen Property”) and the transfer of the parcel to the City
13 after the construction of specified recreational improvements on the parcel. In anticipation of
14 implementing the Restoration Plan and in connection with settling other litigation, Heddington
15 provided funds for Olympic to purchase the Jansen Property in August 2000. Subsequently,
16 Olympic initiated reorganization proceedings pursuant to Chapter 11 of the Bankruptcy Code.

17 G. In light of the reorganization proceedings, the Natural Resource Trustees have
18 determined that timely implementation of the Restoration Plan will require the Natural Resource
19 Trustees to implement the Plan themselves. The Natural Resource Trustees have determined the
20 cost to complete implementation of the Restoration Plan, including the costs of the monitoring
21 and maintenance program, oversight, and reimbursement of Assessment Costs, assuming the
22 Natural Resource Trustees can obtain and utilize the Jansen Property at no cost. In settlement of
23 the Natural Resource Trustees’ claims for Natural Resource Damages (as defined below), the
24 Insurers have agreed to pay on behalf of Olympic and Equilon Enterprises LLC dba Shell Oil
25 Products US all costs calculated by the Natural Resource Trustees to complete implementation
26 of the Restoration Plan and Olympic has agreed to transfer the Jansen Property to the City at no

1 cost.

2 H. The Parties agree and the Court finds that settlement of these civil matters, by
3 facilitating timely restoration and avoiding the costs and risks of litigation, is in the public
4 interest, and that entry of this Consent Decree is the most appropriate means of resolving these
5 matters.

6 I. The Parties agree, and by entering this Decree the Court finds, that settlement of
7 this matter as provided for in this Decree is fair, reasonable and in the public interest.

8 J. The Parties recognize that this Decree is a settlement of a contested matter and
9 that neither the agreement to provide payment and transfer of property nor the acceptance of any
10 consideration represents an admission or finding of liability or responsibility by any Defendant.
11 This Decree shall not prejudice the rights and defenses of the Parties to any claims or causes of
12 action against parties not bound by this Decree. By entering into this Decree, none of Olympic,
13 Shell Pipeline Company LP, Equilon Enterprises LLC dba Shell Oil Products US, Equiva
14 Services LLC, and Shell Oil Company admits any, and each hereby denies all, factual and legal
15 claims with respect to Natural Resources Damages (as that term is defined herein) related to the
16 Oil Spill (as that term is defined herein), nor does any of them admit any, and each hereby denies
17 all, liability to the United States, the State or any other Natural Resource Trustee, or to any third
18 party, arising out of the Oil Spill or out of the transactions or occurrences relating thereto. This
19 Decree may not be used in any civil or administrative proceeding of any type as evidence or
20 proof of any fact or as evidence of the violation of any law, rule, regulation or court decision,
21 except in a proceeding to enforce this Decree.

22 K. The United States, the State, the Lummi Nation, the Nooksack Indian Tribe of
23 Washington and the City shall be deemed to have a filed a proof of claim for matters addressed
24 in this Decree, which proof of claim shall be deemed satisfied in full upon performance by
25 Olympic of its obligations under this Decree and upon payment by Heddington and Noble as
26 provided in Paragraph 7 of this Decree.

1 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED as
2 follows:

3 **II. JURISDICTION**

4 1. This Court has jurisdiction over the subject matter and over the Parties to this
5 action pursuant to 28 U.S.C. §157. This Court also retains jurisdiction over both the subject
6 matter of this Decree and Parties hereto for the duration of the performance of the terms and
7 conditions of this Consent Decree solely for the purpose of enforcing those terms and conditions.

8 **III. PARTIES BOUND**

9 2. This Decree shall apply to and be binding upon and inure to the benefit of the
10 Parties. Neither a change in Olympic's ownership or corporate status nor any change in the
11 ownership of all or a portion of the pipeline shall in any way alter Olympic's obligation pursuant
12 to this Consent Decree to transfer the Jansen Property to the City at no cost.

13 **IV. DEFINITIONS**

14 3. Whenever the following terms are used in this Decree, they shall have the
15 following meanings:

- 16 a. "Consent Decree" or "Decree" shall mean this document and the attached
17 Appendices.
18 b. "Creek" means Whatcom Creek.
19 c. "Day" means a calendar day.
20 d. "DOI" means the United States Department of the Interior.
21 e. "Heddington" means Heddington Insurance (U.K.) Ltd.
22 f. "Insurers" means Heddington and Noble.
23 g. "Jansen Property" means that property identified as Whatcom County parcel
24 number 380329 544370 0000, located on Woburn Street in Bellingham, Washington,
25 described as:
26 All of that part of the East Half of the Southeast Quarter of the Northeast Quarter of

1 Section 29, Township 38 North, Range 3 East of W.m., lying southeasterly of Yew
2 Street and east of Woburn Street;

3 Except two acres in the southeast corner of said East Half of the Southeast
4 Quarter of the Northeast Quarter, said except two acres described as
5 follows:

6 Beginning at the southeast corner of the Northeast Quarter of said Section
7 29; thence north 16 rods; thence west 20 rods; thence south 16 rods;
8 thence east 20 rods to the point of beginning. Also except any portion
9 thereof contained in Deed for Street to City of Bellingham, recorded under
10 Auditor's File Nos. 361564 and 903863. Also except all of that part of the
11 East Half of the Southeast Quarter of the Northeast Quarter of Section 29,
12 Township 38 North, Range 3 East of W.m., lying east of Woburn Street,
13 west of a line parallel to and 330 feet west of the east line of the Northeast
14 Quarter of said Section 29 and South of a line parallel to and 554.40 feet
15 north of the south line of the Southeast Quarter of the Northeast Quarter of
16 said Section 29. Further except any portion thereof lying northerly and
17 westerly of Whatcom Creek.

18 Situate in County of Whatcom, State of Washington.

19 h. "Monitoring and Maintenance Plan" means the *Monitoring and Maintenance Plan*
20 *Associated with the Whatcom Creek Restoration Plan Developed for the June 10,*
21 *1999 Olympic Pipe Line Gasoline Spill (July 2003)*, which sets out performance
22 criteria, monitoring protocols, maintenance activities, and adaptive management
23 contingency measures for the Restoration Projects described in the Restoration Plan.
24 The Monitoring and Maintenance Plan is attached hereto as Attachment B and
25 incorporated by reference.

26 i. "NOAA" means the National Oceanic and Atmospheric Administration.

27 j. "Natural Resource" or "Natural Resources" means land, fish, wildlife, biota, air,

1 water, ground water, drinking water supplies, and other such resources belonging to,
2 managed by, held in trust by, appertaining to, or otherwise controlled by the United
3 States (including the resources of the Exclusive Economic Zone) or by the State of
4 Washington or local government or Indian tribe, or any foreign government and/or
5 the services provided by such resources to other resources and/or humans as defined
6 in § 1001(20) of OPA (33 U.S.C. § 2701(20)) and pursuant to 15 CFR § 990.30.

7 k. "Natural Resource Damages" means the compensation provided for injury to,
8 destruction of, loss of, or loss of use of, natural resources, including the reasonable
9 costs of assessing the damage to natural resources pursuant to OPA, 33 U.S.C. § 2702
10 (b)(2)(A), and/or RCW 90.48.142. Any claims or causes of action under OPA other
11 than those in 33 U.S.C. § 2702(b)(2)(A) are not covered by this Decree.

12 l. "Natural Resource Trustees" means those federal and state agencies, local
13 governments, and/or tribal entities designated or authorized pursuant to OPA (33
14 U.S.C. § 2706(b)) and 15 CFR § 990.30, and/or state law to act on behalf of the
15 public as trustees for the natural resources belonging to, managed by, controlled by or
16 appertaining to the United States, the State of Washington, the City of Bellingham,
17 the Lummi Nation, or the Nooksack Indian Tribe of Washington. Specifically, as
18 used in this Decree, the Natural Resource Trustees are NOAA of the United States
19 Department of Commerce, the United States Fish and Wildlife Service (USFWS) of
20 DOI, the State as represented by the Department of Ecology, the Lummi Nation, the
21 Nooksack Indian Tribe of Washington, and the City as designated by the Governor
22 for the State of Washington.

23 m. "Noble" means Noble Assurance Company

24 n. "Oil Spill" means the discharge of gasoline from a ruptured pipeline on June 10,
25 1999 in Bellingham, Washington, and the resulting gasoline spill and fire on riparian
26 lands, parks, and navigable waters.

1 o. "Olympic" means Olympic Pipe Line Company and its successors and assigns.

2 p. "OPA" means the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*

3 q. "Party" or "Parties" means the United States on behalf of NOAA and DOI; the
4 State; the Lummi Nation; the Nooksack Indian Tribe of Washington; the City;
5 Olympic; Shell Pipeline Company LP (fka Equilon Pipeline Company LLC); Equilon
6 Enterprises LLC dba Shell Oil Products US; Equiva Services LLC; and Shell Oil
7 Company.

8 r. "Reasonable Assessment Costs" or "Assessment Costs" means those costs incurred
9 or to be incurred by the Natural Resource Trustees for damage assessment,
10 restoration planning, restoration implementation, restoration oversight, or restoration
11 monitoring as described in the Restoration Plan and Monitoring and Maintenance
12 Plan, and pursuant to 15 CFR § 990.30 and other applicable federal and/or state law.

13 s. "Restore" or "Restoration" means any action (or alternative), or combination of
14 actions (or alternatives), to restore, rehabilitate, replace, or acquire the equivalent of
15 any injured natural resource or its services injured, lost, or destroyed as a result of the
16 gasoline spill and fire, pursuant to 15 CFR § 990.30.

17 t. "Restoration Plan" means the *Final Restoration Plan and Environmental*
18 *Assessment for the June 10, 1999, Olympic Pipeline Gasoline Spill into Whatcom*
19 *Creek, Bellingham, Washington (August 2002)*, which sets out the summary of the
20 injury assessment procedures used, the description of the extent of the injuries
21 resulting from this incident, the range of restoration alternatives considered, the
22 preferred restoration alternative, or combination of alternatives, chosen to restore,
23 rehabilitate, replace, or acquire the equivalent of injured natural resources and
24 services as a result of this incident. The Restoration Plan is attached hereto as
25 Attachment A and incorporated by reference.

26 u. "Restoration Project(s)" means those activities which will restore Natural

1 Resources injured as a result of the oil spill as described in the Restoration Plan and
2 other relevant documents.

3 V. TRANSFER OF JANSEN PROPERTY

4 4. Immediately upon entry of this Consent Decree, Olympic shall provide
5 representatives of the Natural Resource Trustees unrestricted access to all parts of the Jansen
6 Property, provided, that such access is supervised by Olympic or its representatives, that
7 appropriate safety precautions are taken and that no construction or other improvements are
8 commenced on the Property until title is transferred to the City.

9 5. Within thirty (30) days following the entry of this Consent Decree, Olympic shall
10 transfer to the City title to the Jansen Property by recordable warranty deed free and clear of any
11 and all liens and encumbrances. Olympic shall bear all costs of transfer and shall provide the
12 City with standard ALTA form of title insurance subject only to standard exceptions. All taxes or
13 other assessments on the Jansen Property shall be prorated as of the date of such transfer. Notice
14 of the transfer shall be sent to the United States and to the Natural Resource Trustees as specified
15 in Section XI (Notices and Submissions).

16 6. The primary purposes of this transfer are to increase public access to park trail
17 systems and other outdoor recreation uses, enhance fish and wildlife habitat, prevent pollution
18 that would further degrade the Creek and environment, and avoid further increases to storm
19 water runoff within the Whatcom Creek watershed. Within thirty (30) days after the later of
20 entry of this Consent Decree or transfer of the property to the City, the City shall record a
21 restrictive covenant satisfactory to the Natural Resource Trustees to preserve the property in
perpetuity for such purposes.

22 VI. PAYMENT OF NATURAL RESOURCE DAMAGES 23 AND ASSESSMENT COSTS

24 7. Within thirty (30) days following entry of this Consent Decree, pursuant to an
25 agreement between Olympic, Equilon Enterprises LLC dba Shell Oil Products US and the

1 Insurers (a copy of which is attached hereto as Attachment C), the Insurers will pay to the
2 Natural Resource Trustees on behalf of Olympic and Equilon Enterprises LLC dba Shell Oil
3 Products US the sum of three million five hundred forty-four thousand dollars (\$3,544,000),
4 which represents all costs calculated by the Natural Resource Trustees to complete
5 implementation of the Restoration Plan. Heddington will pay a total of one million five hundred
6 fifty-nine thousand three hundred sixty dollars (\$1,559,360) and Noble shall pay a total of one
7 million nine hundred eighty-four thousand six hundred forty dollars (\$1,984,640). Payments
8 shall be made in accordance with the attached Order directing the deposit of Natural Resource
9 Damages into the Registry of the Court. Notice of the payments shall be sent to the United States
10 and to the Natural Resource Trustees as specified in Section XI (Notices and Submissions)

11 8. The Natural Resource Trustees shall use the recovered Natural Resource Damages
12 to implement the Restoration Plan, to fund monitoring and maintenance for the Restoration
13 Projects in accordance with the Monitoring and Maintenance Plan, to fund Natural Resource
14 Trustee oversight of the implementation of the Restoration Plan and the Monitoring and
15 Maintenance Plan and to pay unreimbursed Assessment Costs.

16 VII. STIPULATED PENALTIES

17 9. Olympic shall be liable to the Natural Resource Trustees for stipulated penalties as
18 provided in Paragraph 10 for failure to timely complete transfer of the Jansen Property.

19 10. As a stipulated penalty for failure to comply with the property transfer
20 requirements of this Decree, Olympic shall make the following additional payments of Natural
21 Resource Damages per violation per day for such failure:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,000	1st through 30th day
\$ 2,500	31st day and beyond

22 11. All penalties for late performance shall begin to accrue on the day after the
23 performance is due. Penalties shall continue to accrue through the day of the performance. All
24

1 penalties accruing under this Section shall be immediately due and payable.

2 12. All payments of penalties and/or interest under this Section shall be made in
3 accordance with the payment instructions in Paragraph 7. Within ten (10) days of the date of the
4 payment, Olympic shall submit notice of all payments made pursuant to this Paragraph to the
5 United States and to the Natural Resource Trustees as specified in Section XI (Notices and
6 Submissions). The Natural Resource Trustees shall use such penalties and/or interest in their
7 discretion to further the implementation of the Restoration Plan, to fund actions pursuant to the
8 Monitoring and Maintenance Plan, and/or to pay unreimbursed Assessment Costs.

9 13. The payment of penalties shall not alter in any way Olympic's obligation to
10 complete the performance of any of its obligations under this Decree.

11 14. Notwithstanding any other provision of this Section, the Natural Resource
12 Trustees, in their unreviewable discretion, may waive any portion of stipulated penalties owed to
13 them that have accrued pursuant to this Decree.

14 **VIII. RELEASES AND COVENANTS NOT TO SUE**

15 15. In consideration of the property transfer and payments specified herein and
16 actions previously taken by the Parties to further the restoration of Natural Resources, effective
17 upon fulfillment of all obligations of Olympic under this Decree and upon payment in full by
18 Heddington and Noble of the amounts stipulated above in Paragraph 7, each Party hereby
19 releases and covenants not to sue or take any civil or administrative action against each of the
20 other Parties for Natural Resource Damages related to the Oil Spill under OPA or RCW Chapters
21 90.48 and 90.56, except as specifically reserved in Section X (Reservation of Rights) below.
22 Compliance with this Decree shall satisfy any Natural Resource Damages obligations of
23 Olympic, Shell Pipeline Company LP, Equilon Enterprises LLC dba Shell Oil Products US,
24 Equiva Services LLC, and Shell Oil Company relating to the Oil Spill and arising under OPA or
RCW Chapters 90.48 and 90.56, except as specifically reserved in Section X below.

25 16. In addition, each of Olympic, Shell Pipeline Company LP, Equilon Enterprises

1 LLC dba Shell Oil Products US, Equiva Services LLC, and Shell Oil Company agrees that it will
2 not raise as a defense, or assert as a claim, in any proceeding brought on behalf of the United
3 States or any of the Natural Resource Trustees which seeks recovery of costs, damages, and/or
4 expenses of any sort arising from the Oil Spill, that the United States or any of the Natural
5 Resource Trustees should have brought such claims or causes of action in this action; provided
6 that nothing in this Paragraph shall affect or diminish the mutual releases and covenants not to
7 sue set forth in Paragraph 15.

8 **IX. COVENANT NOT TO PRESENT CLAIMS TO**
9 **OIL SPILL LIABILITY TRUST FUND**

10 17. All Parties covenant not to present any claim for removal costs or Natural
11 Resource Damages arising from the Oil Spill, pursuant to OPA, 33 U.S.C. §§ 2708 and 2713, to
12 the Oil Spill Liability Trust Fund.

13 **X. RESERVATION OF RIGHTS**

14 18. Reservation of Rights by the United States and the Natural Resource Trustees.

- 15 a. Nothing in this Decree creates, nor shall it be construed as creating, any claims or
16 causes of action in favor of any person not a Party to this Decree.
17 b. The releases and covenants not to sue in Paragraph 15 above shall apply only to
18 matters set forth expressly in this Decree and shall not apply to any other claims,
19 causes of action or matters, including but not limited to:

20 (1) Claims or causes of action based on a failure of Olympic to satisfy any
21 requirement of this Decree. In the event the United States seeks to enforce any
22 provision of this Decree, the United States may elect to withdraw reference to the
23 District Court. Olympic will not oppose any such motion to the extent it seeks to
24 withdraw reference to the District Court.

25 (2) Claims or causes of action brought on behalf of the United States, including
26 the United States Environmental Protection Agency and the Oil Spill Liability Trust

1 Fund, or any of the Natural Resource Trustees, for costs, damages, and expenses of
2 any sort, other than for Natural Resource Damages arising from the Oil Spill.

3 (3) Claims or causes of action for criminal liability brought by the United States
4 or the State.

5 (4) Claims or causes of action under OPA other than those in 33 U.S.C.
6 § 2702(b)(2)(A).

7 (5) Claims or causes of action for any past, current, or future violation of federal
8 or state law not specifically addressed in Paragraph 15.

9 19. Reservations of Rights by Olympic, Shell Pipeline Company LP, Equilon

10 Enterprises LLC dba Shell Oil Products US, Equiva Services LLC, and Shell Oil Company.

11 Nothing in this Decree shall be construed to create any rights in, or grant any cause of action to,
12 any person or entity not a Party to this Decree. Each of Olympic, Shell Pipeline Company LP,
13 Equilon Enterprises LLC dba Shell Oil Products US, Equiva Services LLC, and Shell Oil
14 Company reserves any and all rights, defenses, claims, demands and causes of action that it may
15 have with respect to any matter, transaction or occurrence relating in any way to the Oil Spill,
16 against any person not a Party to this Decree. Each of Olympic, Shell Pipeline Company LP,
17 Equilon Enterprises LLC dba Shell Oil Products US, Equiva Services LLC, and Shell Oil
18 Company further expressly reserves any and all rights, defenses, claims, demands and causes of
19 action that it may have with respect to any matter, transaction or occurrence not related to the Oil
20 Spill. In the event that the United States, the State or other Natural Resource Trustees exercise
21 their reserved rights pursuant to Paragraph 18, and except as provided in Paragraph 15 and
22 Paragraph 16, each of Olympic, Shell Pipeline Company LP, Equilon Enterprises LLC dba Shell
23 Oil Products US, Equiva Services LLC, and Shell Oil Company reserves the right to assert any
24 defenses or claims that it may have with respect to the matters raised by the United States, the
25 State or other Natural Resource Trustees pursuant to Paragraph 18.

26 **XI. NOTICES AND SUBMISSIONS**

27 CONSENT DECREE - 14

28 U.S. Department of Justice
NOAA GC-DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
206-526-6616

1 20. Except as otherwise expressly provided in this Decree, whenever under the terms
2 of this Decree written notice is required to be given or a report or other document is required to
3 be forwarded by one Party to another, it shall be directed to the following individuals at the
4 addresses specified below. Any change in the individuals designated by any Party must be made
5 in writing to the other Parties.

6 Notice and submissions to the United States:

7 Chief, Environmental Enforcement Section
8 Environment and Natural Resources Division
9 U.S. Department of Justice
 P.O. Box 7611
 Washington, D.C. 20044-7611
 DOJ # 90-5-1-1-06967/1

10 Robert A. Taylor
11 NOAA Office of General Counsel GCNR/NW
12 7600 Sand Point Way NE
 Seattle, WA 98115-0070

13 Jeffrey Krausmann
14 U.S. Dept. of the Interior
15 U.S. Fish and Wildlife Service
16 North Pacific Coast Ecoregion
 Western Washington Office
 510 Desmond Dr. SE, Suite 102
 Lacey, WA 98503-1263

17 Notice and submissions to the State:

18 Joan M. Marchioro
19 Attorney General's Office
20 2425 Bristol Court SW
 P.O. Box 40117
 Olympia, WA 98504-0117

21 Notice and submissions to the Nooksack Indian Tribe of Washington:

22 Robert Kelly, Director
23 Natural Resources Department
24 Nooksack Indian Tribe of Washington
 5048 Mt. Baker Highway
 P.O. Box 157
 Deming, WA 98244

25 Thomas P. Schlosser

26
27 CONSENT DECREE - 15

U.S. Department of Justice
NOAA GC-DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
206-526-6616

28

1 Attorney at Law
2 Morisset, Schlosser, Homer, Jozwiak & McGaw
3 801 Second Avenue, Suite 1115
4 Seattle, WA 98104

5 Notice and submissions to the Lummi Nation:

6 Merle Jefferson, Director
7 Lummi Department of Natural Resources
8 2616 Kwina Rd.
9 Bellingham, WA 98226

10 Daniel A. Raas, Special Counsel
11 P.O. Box 5746
12 Bellingham, WA 98227

13 Notice and submissions to the City of Bellingham:

14 Amy Kraham
15 Assistant City Attorney
16 210 Lottie Street
17 Bellingham, WA., 98225

18 Notice and submissions to Olympic

19 Jim Clark
20 Mike Condon
21 Olympic Pipe Line Company
22 Suite 270
23 220 Lind Avenue SW
24 Renton, WA 98055

25 Harold Malkin
26 Yarmuth Wilsdon Calfo
27 Suite 2500
28 925 Fourth Avenue
Seattle, WA 98104

Notice and submissions to Shell Oil Company, Shell Pipeline Company LP (fka Equilon Pipeline Company LLC), Equilon Enterprises LLC dba Shell Oil Products US and Equiva Services LLC:

Lance S. Tolson
Senior Counsel
Shell Oil Company - Legal Services US
910 Louisiana, OSP 1120
P.O. Box 4254
Houston, TX 77002

Richard W. Elliott
Davis Wright Tremaine LLP
777 108th Avenue NE, Suite 2300

CONSENT DECREE - 16

U.S. Department of Justice
NOAA GC-DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
206-526-6616

1 Bellevue, WA 98004-5149

2
3 **XII. INTEGRATION CLAUSE**

4 21. This Decree, including its appendices, encompasses the entire agreement of the
5 Parties with respect to the subject matter hereof and supersedes all prior agreements or
6 understandings, whether oral or in writing.

7 **XIII. TERMINATION**

8 22. After Olympic has satisfied all its requirements under this Decree and
9 Heddington and Noble have made the payments described above in Paragraph 7, this Decree
10 shall terminate upon written notice by Olympic to all Parties and subsequent written notice by
11 the United States, on behalf of the other Natural Resource Trustees, approving the performance
12 by Olympic of its obligations under this Consent Decree and confirming payment by Heddington
13 and Noble. Notice by the United States approving or, if appropriate, disapproving the
14 performance of Olympic under this Consent Decree and confirming, or if appropriate, denying
15 that payment by Heddington and Noble has been made shall be sent within ten (10) days of
16 receipt by all Natural Resource Trustees of notice from the submitting party. The mutual releases
and covenants not to sue provided by Paragraph 15 shall survive termination of this Decree.

17 **XIV. MODIFICATION**

18 23. No modifications of this Decree may be made unless the Parties to this Decree
19 agree in writing to the modification and the Court approves of the requested modification. If
20 modification of the Decree is sought, the Parties agree that they will jointly move to withdraw
21 reference to the District Court for a decision. Nothing in this Paragraph shall diminish the
22 Court's authority to exercise its jurisdiction, as set forth above in Paragraph 1.

23 **XV. APPROVAL OF SETTLEMENT**

24 24. If for any reason (i) the Settlement Agreement is not approved by the Court, or
25 (ii) the Chapter 11 Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy

1 Code before the effective date of a Plan of Reorganization: (a) this Decree shall be null and void
2 and the Parties shall not be bound hereunder or under any documents executed in connection
3 herewith; (b) the Parties shall have no liability to one another arising out of or in connection with
4 this Decree or under any documents executed in connection herewith; (c) the United States and
5 the other Natural Resource Trustees shall be provided an opportunity to file a proof of claim by a
6 deadline to be established by the Court; (d) this Decree and any documents prepared in
7 connection herewith shall have no residual or probative effect or value except as provided in
8 subparagraph (c) above, and it shall be as if they had never been executed; and (e) this Decree
9 and any statements made in connection with settlement discussions, and any documents prepared
10 in connection herewith may not be used as evidence in any litigation between the Parties.

11 **XVI. EFFECTIVE DATE**

12 25. This Decree shall be effective upon the date of its entry by the Court.

13 **XVII. RETENTION OF JURISDICTION**

14 26. This Court retains jurisdiction over both the subject matter of this Decree and the
15 Parties for the duration of the performance of the terms and provisions of this Consent Decree
16 for the purpose of enabling any of the Parties to apply to the Court at any time for such further
17 order, direction, and relief as may be necessary or appropriate for the construction or material
18 modification of this Decree, or to effectuate or enforce compliance with its terms.

19 **XVIII. COSTS**

20 27. Each Party shall bear its own costs, including attorneys' fees, in the actions
21 resolved by this Decree.

22 **XIX. SIGNATORIES/SERVICE**

23 28. The undersigned representatives of Olympic, Shell Pipeline Company LP,
24 Equilon Enterprises LLC dba Shell Oil Products US, Equiva Services LLC, Shell Oil Company,
25 and the Natural Resource Trustees, as well as the Assistant Attorney General for the
26 Environment and Natural Resources Division of the Department of Justice, certify that they are

1 fully authorized to enter into the terms and conditions of this Decree and to execute and legally
2 bind such party to this document.

3 29. Olympic, Shell Pipeline Company LP, Equilon Enterprises LLC dba Shell Oil
4 Products US, Equiva Services LLC, and Shell Oil Company each hereby agrees not to oppose
5 approval of this Decree by the Court or to challenge any provision of this Decree.

6 30. Olympic, Shell Pipeline Company LP, Equilon Enterprises LLC dba Shell Oil
7 Products US, Equiva Services LLC, and Shell Oil Company each shall identify, on the attached
8 signature page, the name, address, and telephone number of an agent who is authorized to accept
9 service of process, if served by mail, on behalf of each of them with respect to all matters arising
10 under or relating to this Decree. Olympic, Shell Pipeline Company LP, Equilon Enterprises LLC
11 dba Shell Oil Products US, Equiva Services LLC, and Shell Oil Company each hereby agrees to
12 accept service in this manner and to waive formal service requirements as set forth in the Federal
13 Rules of Bankruptcy Procedure, the Federal Rules of Civil Procedure, or any applicable local
14 rules of the Court, including, but not limited
15 to, service of a summons.

16 Dated and entered this 12 day of NOV, 2004.

17
18 **SAMUEL J. STEINER**

19 The Honorable Samuel J. Steiner
20 United States Bankruptcy Judge
21 Western District of Washington

22
23
24
25
26
27 CONSENT DECREE - 19

28
U.S. Department of Justice
NOAA GC-DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
206-526-6616

1 THE UNDERSIGNED SETTLING PARTIES entered into this Consent Decree and
2 Settlement Agreement in the matter of In Re: The Olympic Pipe Line Company relating to
3 natural resource damages arising from the Whatcom Creek gasoline spill and fire.

4 FOR THE UNITED STATES OF AMERICA

5 By: Tom Sansonetti Dated: 10.28.04
6 Thomas L. Sansonetti
7 Assistant Attorney General
8 Environment and Natural Resources Division
9 U.S. Department of Justice
10 Washington, D.C. 20530

11 By: JL Nicoll Dated: 11/1/04
12 James L. Nicoll
13 Environmental Enforcement Section
14 U.S. Department of Justice
15 NOAA GC-DOJ DARC
16 7600 Sand Point Way NE
17 Seattle, WA 981105-0070
18 (206) 526-6616

19 FOR THE STATE OF WASHINGTON

20 Date: _____ Name: _____
21 Title: _____
22 For Natural Resource Trustee State of Washington

23 Date: _____ Jay D. Geck
24 Senior Counsel
25 Office of the Attorney General
26 State of Washington

1 THE UNDERSIGNED SETTLING PARTIES entered into this Consent Decree and
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3 natural resource damages arising from the Whatcom Creek gasoline spill and fire.

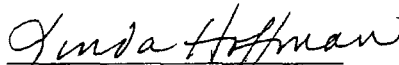
4 FOR THE UNITED STATES OF AMERICA

5 By: _____ Dated: _____
6 Thomas L. Sansonetti
7 Assistant Attorney General
8 Environment and Natural Resources Division
9 U.S. Department of Justice
10 Washington, D.C. 20530

11 By: _____ Dated: _____
12 James L. Nicoll
13 Environmental Enforcement Section
14 U.S. Department of Justice
15 NOAA GC-DOJ DARC
16 7600 Sand Point Way NE
17 Seattle, WA 981105-0070
18 (206) 526-6616


19 FOR THE STATE OF WASHINGTON

20 Date: 10/27/04

21 
22 Name: Linda Hoffman
23 Title: Director
24 For Natural Resource Trustee State of Washington

25 Approved as to form:

26 Date: 10/27/04

27 
28 Jay D. Geck
Senior Counsel
Office of the Attorney General
State of Washington

29 CONSENT DECREE - 20

30 U.S. Department of Justice
31 NOAA GC-DOJ DARC
32 7600 Sand Point Way NE
33 Seattle, WA 98115-0070
34 206-526-6616

1 FOR THE LUMMI NATION

2 Date: Oct. 29, 2004

Daniel A Raas

3 RAAS, JOHNSEN & STUEN, P.S.
4 DANIEL A. RAAS, WSBA# 4955
Attorney for the LUMMI NATION

5 FOR THE NOOKSACK INDIAN TRIBE OF WASHINGTON

1503 E Street P.O.Box 5746
Bellingham, WA 98227-5746

6 Date: _____

7

8

9

10 EXECUTED, this the _____ day of _____, 2004, for the CITY OF BELLINGHAM:

11

Departmental Approval

12

13

Mayor

Department Head

14

15

Attest:

Approved as to Form:

16

17

Finance Director

Office of the City Attorney

18

19

20 FOR THE OLYMPIC PIPE LINE COMPANY

21

22 Date: _____

23

24

25

26

27 CONSENT DECREE - 21

28

U.S. Department of Justice
NOAA GC-DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
206-526-6616

1 FOR THE LUMMI NATION

2 Date: _____
3 _____

4
5 FOR THE NOOKSACK INDIAN TRIBE OF WASHINGTON

6 Date: October 18, 2004 Thomas P. Ashlomen
7 Attorney for Nooksack Indian Tribe
8 of WA.
9

10 EXECUTED, this the _____ day of _____, 2004, for the CITY OF BELLINGHAM:

11 Departmental Approval

12
13 _____
14 Mayor

_____ Department Head

15 Attest:

Approved as to Form:

16
17 _____
18 Finance Director

_____ Office of the City Attorney

19
20 FOR THE OLYMPIC PIPE LINE COMPANY

21 Date: _____
22 _____

23
24
25
26
27 CONSENT DECREE - 21

U.S. Department of Justice
NOAA GC-DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
206-526-6616

28

1 FOR THE LUMMI NATION

2 Date: _____
3 _____

4
5 FOR THE NOOKSACK INDIAN TRIBE OF WASHINGTON

6 Date: _____
7 _____

8
9
10 EXECUTED, this the 27th day of October, 2004, for the CITY OF BELLINGHAM:

11
12
13 Mark A. Brown
14 Mayor

Departmental Approval

Richard E. McKinley
Department Head

15 Attest:

16
17 Theresa Hol
18 Finance Director

Approved as to Form:

[Signature]
Office of the City Attorney

19
20 FOR THE OLYMPIC PIPE LINE COMPANY

21
22 Date: _____
23 _____

24
25
26
27 CONSENT DECREE - 21

28
U.S. Department of Justice
NOAA GC-DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
206-526-6616

1 FOR THE LUMMI NATION

2 Date: _____

5 FOR THE NOOKSACK INDIAN TRIBE OF WASHINGTON

6 Date: _____

10 EXECUTED, this the ____ day of _____, 2004, for the CITY OF BELLINGHAM:

11 Departmental Approval

13 _____
14 Mayor

Department Head

15 Attest:

Approved as to Form:

17 _____
18 Finance Director

Office of the City Attorney

20 FOR THE OLYMPIC PIPE LINE COMPANY

21 Date: 10/18/04

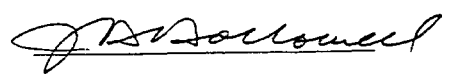
22 Bobby J. Talley
23 Bobby J. Talley
24 President - Olympic Pipe Line Co.

27 CONSENT DECREE - 21

28 U.S. Department of Justice
NOAA GC-DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
206-526-6616

1 FOR SHELL PIPELINE COMPANY LP

2 Date: 10/25/04

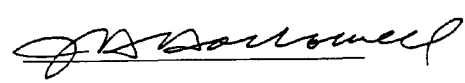


4

5

6 FOR EQUILON ENTERPRISES LLC DBA SHELL OIL PRODUCTS US, and EQUIVA SERVICES LLC

7 Date: 10/25/04



9

10

11 FOR SHELL OIL COMPANY

12 Date: 10/27/04



14

15 Service of Process related to this Decree for
16 Shell Pipeline Company LP, Equilon Enterprises
17 LLC DBA Shell Oil Products US, Equiva Services
18 LLC and Shell Oil Company

17 % Lance S. Tolson
18 Senior Counsel
19 Shell Oil Company - Legal Services US
20 910 Louisiana, OSP 4856
21 Houston, Texas 77002

21

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23

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27 CONSENT DECREE - 23

28

U.S. Department of Justice
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