

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,  
except in a proceeding to enforce this Decree.

21 K. The United States, the State, the Lummi Nation, the Nooksack Indian Tribe of  
22 Washington and the City shall be deemed to have a filed a proof of claim for matters addressed  
23 in this Decree, which proof of claim shall be deemed satisfied in full upon performance by  
24 Olympic of its obligations under this Decree and upon payment by Heddington and Noble as  
25 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,  
described as:  
25 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,  
28



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  
Attachment A and incorporated by reference.

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

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

#### **V. TRANSFER OF JANSEN PROPERTY**

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

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

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

#### **VI. PAYMENT OF NATURAL RESOURCE DAMAGES AND ASSESSMENT COSTS**

7. Within thirty (30) days following entry of this Consent Decree, pursuant to an 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<br/>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  
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27 CONSENT DECREE - 11

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Seattle, WA 98115-0070  
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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  
10          P.O. Box 7611  
11          Washington, D.C. 20044-7611  
12          DOJ # 90-5-1-1-06967/1

13          Robert A. Taylor  
14          NOAA Office of General Counsel GCNR/NW  
15          7600 Sand Point Way NE  
16          Seattle, WA 98115-0070

17          Jeffrey Krausmann  
18          U.S. Dept. of the Interior  
19          U.S. Fish and Wildlife Service  
20          North Pacific Coast Ecoregion  
21          Western Washington Office  
22          510 Desmond Dr. SE, Suite 102  
23          Lacey, WA 98503-1263

24 Notice and submissions to the State:

25          Joan M. Marchioro  
26          Attorney General's Office  
27          2425 Bristol Court SW  
28          P.O. Box 40117  
29          Olympia, WA 98504-0117

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

31          Robert Kelly, Director  
32          Natural Resources Department  
33          Nooksack Indian Tribe of Washington  
34          5048 Mt. Baker Highway  
35          P.O. Box 157  
36          Deming, WA 98244

37          Thomas P. Schlosser

38 CONSENT DECREE - 15

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206-526-6616



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

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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.

#### 18 **XVIII. COSTS**

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

#### 21 **XIX. SIGNATORIES/SERVICE**

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

26  
27 CONSENT DECREE - 18

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Seattle, WA 98115-0070  
206-526-6616

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  
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27 CONSENT DECREE - 19

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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  
Thomas L. Sansonetti  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

Dated: 10 - 28 - 04

6 By:

JL Nicoll  
James L. Nicoll  
Environmental Enforcement Section  
U.S. Department of Justice  
NOAA GC-DOJ DARC  
7600 Sand Point Way NE  
Seattle, WA 981105-0070  
(206) 526-6616

Dated: 11/1/04

13 FOR THE STATE OF WASHINGTON

14 Date: \_\_\_\_\_

15 Name: \_\_\_\_\_  
16 Title: \_\_\_\_\_  
17 For Natural Resource Trustee State of Washington

18 Date: \_\_\_\_\_

19 Jay D. Geck  
20 Senior Counsel  
21 Office of the Attorney General  
22 State of Washington

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 THE UNDERSIGNED SETTLING PARTIES entered into this Consent Decree and  
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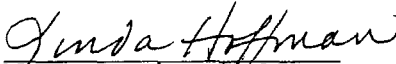
4 FOR THE UNITED STATES OF AMERICA

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

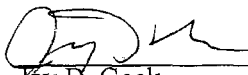
19 FOR THE STATE OF WASHINGTON

20 Date: 10/27/04

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

24 Approved as to form:

25 Date: 10/27/04

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

29 CONSENT DECREE - 20

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: 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: \_\_\_\_\_

9 EXECUTED, this the \_\_\_\_\_ day of \_\_\_\_\_, 2004, for the CITY OF BELLINGHAM:

11 Departmental Approval

13 \_\_\_\_\_  
Mayor

\_\_\_\_\_  
Department Head

15 Attest:

Approved as to Form:

17 \_\_\_\_\_  
Finance Director

\_\_\_\_\_  
Office of the City Attorney

20 FOR THE OLYMPIC PIPE LINE COMPANY

22 Date: \_\_\_\_\_

27 CONSENT DECREE - 21

26 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: \_\_\_\_\_

4  
5 FOR THE NOOKSACK INDIAN TRIBE OF WASHINGTON

6 Date: October 18, 2004

Thomas P. Ashlauer  
*Attorney for Nooksack Indian Tribe*  
*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

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 27th day of October, 2004, for the CITY OF BELLINGHAM:

13 Mark H. Hunsaker  
Mayor

Departmental Approval

Richard E. McKinley  
Department Head

15 Attest:

16 Theresa H. H.  
Finance Director

Approved as to Form:

[Signature]  
Office of the City Attorney

20 FOR THE OLYMPIC PIPE LINE COMPANY

22 Date: \_\_\_\_\_

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

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 \_\_\_\_ 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: 10/18/04

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

25

26

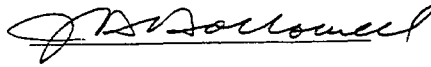
27 CONSENT DECREE - 21

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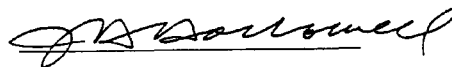
1 FOR SHELL PIPELINE COMPANY LP

2 Date: 10/25/04



3  
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



13  
14  
15 Service of Process related to this Decree for  
16 Shell Pipeline Company LP, Equilon Enterprises  
LLC DBA Shell Oil Products US, Equiva Services  
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  
22  
23  
24  
25  
26

27 CONSENT DECREE - 23

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