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**STATE OF WASHINGTON
WHATCOM COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

TRANS MOUNTAIN PIPELINE
(PUGET SOUND) LLC,

Defendant.

NO. 14 2 01294 9

CONSENT DECREE
RE: LAUREL STATION SITE

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10	EXHIBIT A	Cleanup Action Plan
11	EXHIBIT B	Site Diagram
12	EXHIBIT C	SEPA Checklist
13	EXHIBIT D	List of Substantive Requirements
14	EXHIBIT E	List of Permits

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I. INTRODUCTION

A. The mutual objective of the State of Washington, Department of Ecology (Ecology) and Trans Mountain Pipeline (Puget Sound) LLC (Trans Mountain) under this Decree is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires Trans Mountain to implement the activities described in the Cleanup Action Plan (CAP), attached as Exhibit A to this Decree.

B. Ecology has determined that these actions are necessary to protect human health and the environment.

C. The Complaint in this action is being filed simultaneously with this Decree. An Answer has not been filed, and there has not been a trial on any issue of fact or law in this case. However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the Parties agree that settlement of these matters without litigation is reasonable and in the public interest, and that entry of this Decree is the most appropriate means of resolving these matters.

D. By signing this Decree, the Parties agree to its entry and agree to be bound by its terms.

E. By entering into this Decree, the Parties do not intend to discharge non-settling parties from any liability they may have with respect to matters alleged in the Complaint. The Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for sums expended under this Decree.

F. This Decree shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an admission of any facts; provided, however, that Trans Mountain shall not challenge the authority of the Attorney General and Ecology to enforce this Decree.

1 G. The Court is fully advised of the reasons for entry of this Decree, and good
2 cause having been shown:

3 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

4 **II. JURISDICTION**

5 A. This Court has jurisdiction over the subject matter and over the Parties pursuant
6 to the Model Toxics Control Act (MTCA), RCW 70.105D.

7 B. Authority is conferred upon the Washington State Attorney General by
8 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,
9 after public notice and any required hearing, Ecology finds the proposed settlement would lead
10 to a more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that
11 such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

12 C. Ecology has determined that a release or threatened release of hazardous
13 substances has occurred at the Site that is the subject of this Decree.

14 D. Ecology has given notice to Trans Mountain of Ecology's determination that it
15 is a PLP for the Site, as required by RCW 70.105D.020(26) and WAC 173-340-500.

16 E. The actions to be taken pursuant to this Decree are necessary to protect public
17 health and the environment.

18 F. This Decree has been subject to public notice and comment.

19 G. Ecology finds that this Decree will lead to a more expeditious cleanup of
20 hazardous substances at the Site in compliance with the cleanup standards established under
21 RCW 70.105D.030(2)(e) and WAC 173-340.

22 H. Trans Mountain has agreed to undertake the actions specified in this Decree and
23 consents to the entry of this Decree under MTCA.
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III. PARTIES BOUND

This Decree shall apply to and be binding upon the Parties to this Decree, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Decree and to execute and legally bind such party to comply with this Decree. Trans Mountain agrees to undertake all actions required by the terms and conditions of this Decree. No change in ownership or corporate status shall alter Trans Mountain’s responsibility under this Decree. Trans Mountain shall provide a copy of this Decree to all agents, contractors, and subcontractors retained to perform work required by this Decree, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Decree.

IV. DEFINITIONS

Unless otherwise specified herein, all definitions in RCW 70.105D.020 and WAC 173-340-200 shall control the meanings of the terms in this Decree.

A. Site: The Site is referred to as Laurel Station and is generally located at 1009 East Smith Road, approximately four miles north of Bellingham, Washington. The Site is more particularly described in the Site Diagram (Exhibit B). The Site constitutes a Facility under RCW 70.105D.020(8).

B. Parties: Refers to the State of Washington, Department of Ecology and Trans Mountain Pipeline (Puget Sound) LLC.

C. Consent Decree or Decree: Refers to this Consent Decree and each of the exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree. The terms “Consent Decree” or “Decree” shall include all exhibits to this Consent Decree.

V. FINDINGS OF FACT

Ecology makes the following findings of fact without any express or implied admissions of such facts by Trans Mountain.

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- Record and maintain Institutional Controls and an Environmental Restrictive Covenant for soil at Tank 180 Area;
- Excavate and dispose of contaminated soil at Material Storage Area (SU-B7), perform confirmation sampling and backfill with clean fill;
- At the Former Oily Water Sump and Pump Station Area (collectively called Pump Station Area):
 - Install/renovate surface features to restrict stormwater infiltration;
 - Excavate and dispose of accessible contaminated soil, backfill;
 - Install Dual Phase Extraction system to treat inaccessible soil;
 - Monitor groundwater quality during system operation;
 - Collect confirmation soil and groundwater samples at completion of treatment; and
 - Record and maintain Institutional Controls and an Environmental Restrictive Covenant for soil remaining above cleanup levels.

Trans Mountain agrees not to perform any remedial actions outside the scope of this Decree unless the Parties agree to modify the CAP to cover these actions. All work conducted by Trans Mountain under this Decree shall be done in accordance with WAC 173-340 unless otherwise provided herein.

VII. DESIGNATED PROJECT COORDINATORS

The project coordinator for Ecology is:

David L. South
 Senior Engineer
 Washington State Department of Ecology
 Toxics Cleanup Program, Northwest Regional Office
 3190 160th Avenue SE
 Bellevue, WA 98008-5452
 (425) 649-7200

The project coordinator for Trans Mountain is:

Michael L. Droppo
 Manager, Environment
 Kinder Morgan Canada, Inc.
 Suite 2700, 300 5th Ave SW
 Calgary, AB T2P 5J2
 (403) 514-6537

Each project coordinator shall be responsible for overseeing the implementation of this Decree. Ecology’s project coordinator will be Ecology’s designated representative for the Site.

1 To the maximum extent possible, communications between Ecology and Trans Mountain and
2 all documents, including reports, approvals, and other correspondence concerning the activities
3 performed pursuant to the terms and conditions of this Decree, shall be directed through the
4 project coordinators. The project coordinators may designate, in writing, working level staff
5 contacts for all or portions of the implementation of the work to be performed as required by
6 this Decree.

7 Any party may change its respective project coordinator. Written notification shall be
8 given to the other party at least 10 calendar days prior to the change.

9 **VIII. PERFORMANCE**

10 All geologic and hydrogeologic work performed pursuant to this Decree shall be under
11 the supervision and direction of a geologist or hydrogeologist licensed by the State of
12 Washington or under the direct supervision of an engineer registered by the State of
13 Washington, except as otherwise provided for by RCW 18.220 and RCW 18.43.

14 All engineering work performed pursuant to this Decree shall be under the direct
15 supervision of a professional engineer registered by the State of Washington, except as
16 otherwise provided for by RCW 18.43.130.

17 All construction work performed pursuant to this Decree shall be under the direct
18 supervision of a professional engineer or a qualified technician under the direct supervision of
19 a professional engineer. The professional engineer must be registered by the State of
20 Washington, except as otherwise provided for by RCW 18.43.130.

21 Any documents submitted containing geologic, hydrologic, or engineering work shall
22 be under the seal of an appropriately licensed professional as required by RCW 18.220 and
23 RCW 18.43.

1 Trans Mountain shall notify Ecology in writing of the identity of any engineer(s) and
2 geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms
3 of this Decree, in advance of their involvement at the Site.

4 **IX. ACCESS**

5 Ecology or any Ecology authorized representative shall have access to enter and freely
6 move about all property at the Site that Trans Mountain either owns, controls, or has access
7 rights to at all reasonable times while escorted by Trans Mountain staff or its designates for the
8 purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work
9 being performed pursuant to this Decree; reviewing Trans Mountain's progress in carrying out
10 the terms of this Decree; conducting such tests or collecting such samples as Ecology may
11 deem necessary; using a camera, sound recording, or other documentary type equipment to
12 record work done pursuant to this Decree; and verifying the data submitted to Ecology by
13 Trans Mountain. Ecology or any Ecology authorized representative shall give reasonable
14 notice before entering any Site property owned or controlled by Trans Mountain unless an
15 emergency prevents such notice. All Parties who access the Site pursuant to this section shall
16 comply with any applicable health and safety plan(s). Ecology employees and their
17 representatives shall not be required to sign any liability release or waiver as a condition of Site
18 property access but will be required to comply with Trans Mountain's safety procedures.

19 **X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

20 With respect to the implementation of this Decree, Trans Mountain shall make the
21 results of all sampling, laboratory reports, and/or test results generated by it or on its behalf
22 available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted
23 to Ecology in both printed and electronic formats in accordance with Section XI (Progress
24 Reports), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements),
25 and/or any subsequent procedures specified by Ecology for data submittal.
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1 If requested by Ecology, Trans Mountain shall allow Ecology and/or its authorized
2 representative to take split or duplicate samples of any samples collected by Trans Mountain
3 pursuant to the implementation of this Decree. Trans Mountain shall notify Ecology seven
4 days in advance of any sample collection or work activity at the Site. Ecology shall, upon
5 request, allow Trans Mountain and/or its authorized representative to take split or duplicate
6 samples of any samples collected by Ecology pursuant to the implementation of this Decree,
7 provided that doing so does not interfere with Ecology's sampling. Without limitation on
8 Ecology's rights under Section IX (Access), Ecology shall notify Trans Mountain seven days
9 prior to any sample collection activity unless an emergency prevents such notice.

10 In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be
11 conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be
12 conducted, unless otherwise approved by Ecology.

13 **XI. PROGRESS REPORTS**

14 Trans Mountain shall submit to Ecology written monthly Progress Reports during the
15 time period that it constructs and installs the remedial actions. For one year following the
16 construction and installation of the remedial actions, Trans Mountain shall submit to Ecology
17 quarterly written progress reports. Thereafter, Trans Mountain shall submit to Ecology semi-
18 annual written progress reports. Ecology may direct Trans Mountain to change the reporting
19 frequency to monthly if site activities warrant. The Progress Reports shall include the
20 following, unless otherwise directed by Ecology:

21 A. A list of on-site activities that have taken place during the preceding applicable
22 time period;

23 B. Detailed description of any deviations from required tasks not otherwise
24 documented in project plans or amendment requests;

1 C. Description of all deviations from the Scope of Work and Schedule (Exhibit A,
2 Table 3) during the current month and any planned deviations in the upcoming applicable time
3 period;

4 D. For any deviations in schedule, a plan for recovering lost time and maintaining
5 compliance with the schedule;

6 E. All raw data (including laboratory analyses, with concomitant submittal to
7 Ecology's Environmental Information Management System) received by Trans Mountain
8 during the preceding applicable time period and an identification of the source of the sample;
9 and

10 F. A list of deliverables for the upcoming applicable time period if different from
11 the schedule.

12 All Progress Reports shall be submitted by the 10th day of the month in which they are
13 due after the effective date of this Decree. Progress reports shall be submitted electronically
14 via email as Adobe Acrobat files.

15 **XII. RETENTION OF RECORDS**

16 During the pendency of this Decree, and for 10 years from the date this Decree is no
17 longer in effect as provided in Section XXVIII (Duration of Decree), Trans Mountain shall
18 preserve all records, reports, documents, and underlying data in its possession relevant to the
19 implementation of this Decree and shall insert a similar record retention requirement into all
20 contracts with project contractors and subcontractors. Upon request of Ecology, Trans
21 Mountain shall make all records available to Ecology and allow access for review within a
22 reasonable time.

23 Nothing in this Decree waives any right Trans Mountain may have under applicable
24 law to limit disclosure of documents protected by the attorney work-product privilege and/or
25 the attorney-client privilege. If Trans Mountain withholds any requested records based on an
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1 | assertion of privilege, Trans Mountain shall provide Ecology with a privilege log specifying
2 | the records withheld and the applicable privilege. No Site-related data collected pursuant to
3 | this Decree shall be considered privileged.

4 | **XIII. TRANSFER OF INTEREST IN PROPERTY**

5 | No voluntary conveyance or relinquishment of title, easement, leasehold, or other
6 | interest in any portion of the Site shall be consummated by Trans Mountain without provision
7 | for continued operation and maintenance of the remedial actions installed or implemented
8 | pursuant to this Decree.

9 | Prior to Trans Mountain's transfer of any interest in all or any portion of the Site, and
10 | during the effective period of this Decree, Trans Mountain shall provide a copy of this Decree
11 | to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest;
12 | and, at least 30 days prior to any transfer, Trans Mountain shall notify Ecology of said transfer.
13 | Upon transfer of any interest, Trans Mountain shall notify all transferees of the restrictions on
14 | the activities and uses of the property under this Decree and incorporate any such use
15 | restrictions into the transfer documents.

16 | **XIV. RESOLUTION OF DISPUTES**

17 | A. In the event a dispute arises as to an approval, disapproval, proposed change, or
18 | other decision or action by Ecology's project coordinator, or an itemized billing statement
19 | under Section XXIV (Remedial Action Costs), the Parties shall utilize the dispute resolution
20 | procedure set forth below.

21 | 1. Upon receipt of Ecology's project coordinator's written decision, or the
22 | itemized billing statement, Trans Mountain has 14 days within which to notify
23 | Ecology's project coordinator in writing of its objection to the decision or itemized
24 | statement.
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2. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within 14 days, Ecology's project coordinator shall issue a written decision.

3. Trans Mountain may then request regional management review of the decision. This request shall be submitted in writing to the Northwest Region Toxics Cleanup Program Section Manager (Regional Section Manager) within seven days of receipt of Ecology's project coordinator's written decision.

4. Ecology's Regional Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within 30 days of Trans Mountain's request for review.

5. If Trans Mountain finds Ecology's Regional Section Manager's decision unacceptable, Trans Mountain may then request final management review of the decision. This request shall be submitted in writing to the Toxics Cleanup Program Manager within seven days of receipt of the Regional Section Manager's decision.

6. Ecology's Toxics Cleanup Program Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within 30 days of Trans Mountain's request for review of the Regional Section Manager's decision. The Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the disputed matter.

B. If Ecology's final written decision is unacceptable to Trans Mountain, it has the right to submit the dispute to the Court for resolution. The Parties agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under this Decree. In the event Trans Mountain presents an issue to the Court for review, the Court shall review the action or decision of Ecology on the basis of whether such action or decision was arbitrary and capricious and render a decision based on such standard of review.

1 C. The Parties agree to only utilize the dispute resolution process in good faith and
2 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
3 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,
4 the other party may seek sanctions.

5 D. Implementation of these dispute resolution procedures shall not provide a basis
6 for delay of any activities required in this Decree, unless Ecology agrees in writing to a
7 schedule extension or the Court so orders.

8 **XV. AMENDMENT OF DECREE**

9 The project coordinators may agree to minor changes to the work to be performed
10 without formally amending this Decree. Minor changes will be documented in writing by
11 Ecology.

12 Substantial changes to the work to be performed shall require formal amendment of this
13 Decree. This Decree may only be formally amended by a written stipulation among the Parties
14 that is entered by the Court, or by order of the Court. Such amendment shall become effective
15 upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld
16 by any party.

17 Trans Mountain shall submit a written request for amendment to Ecology for approval.
18 Ecology shall indicate its approval or disapproval in writing and in a timely manner after the
19 written request for amendment is received. If the amendment to the Decree is a substantial
20 change, Ecology will provide public notice and opportunity for comment. Reasons for the
21 disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does
22 not agree to a proposed amendment, the disagreement may be addressed through the dispute
23 resolution procedures described in Section XIV (Resolution of Disputes).
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XVI. EXTENSION OF SCHEDULE

A. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least 30 days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

1. The deadline that is sought to be extended;
2. The length of the extension sought;
3. The reason(s) for the extension; and
4. Any related deadline or schedule that would be affected if the extension were granted.

B. The burden shall be on Trans Mountain to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

1. Circumstances beyond the reasonable control and despite the due diligence of Trans Mountain including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by Trans Mountain;
2. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
3. Endangerment as described in Section XVII (Endangerment).

However, neither increased costs of performance of the terms of this Decree nor changed economic circumstances shall be considered circumstances beyond the reasonable control of Trans Mountain.

1 C. Ecology shall act upon any written request for extension in a timely fashion.
2 Ecology shall give Trans Mountain written notification of any extensions granted pursuant to
3 this Decree. A requested extension shall not be effective until approved by Ecology or, if
4 required, by the Court. Unless the extension is a substantial change, it shall not be necessary to
5 amend this Decree pursuant to Section XV (Amendment of Decree) when a schedule extension
6 is granted.

7 D. An extension shall only be granted for such period of time as Ecology
8 determines is reasonable under the circumstances. Ecology may grant schedule extensions
9 exceeding 90 days only as a result of:

- 10 1. Delays in the issuance of a necessary permit which was applied for in a
11 timely manner;
- 12 2. Other circumstances deemed exceptional or extraordinary by
13 Ecology; or
- 14 3. Endangerment as described in Section XVII (Endangerment).

15 **XVII. ENDANGERMENT**

16 In the event Ecology determines that any activity being performed at the Site under this
17 Decree is creating or has the potential to create a danger to human health or the environment,
18 Ecology may direct Trans Mountain to cease such activities for such period of time as it deems
19 necessary to abate the danger. Trans Mountain shall immediately comply with such direction.

20 In the event Trans Mountain determines that any activity being performed at the Site
21 under this Decree is creating or has the potential to create a danger to human health or the
22 environment, Trans Mountain may cease such activities. Trans Mountain shall notify
23 Ecology's project coordinator as soon as possible, but no later than 24 hours after making such
24 determination or ceasing such activities. Upon Ecology's direction, Trans Mountain shall
25 provide Ecology with documentation of the basis for the determination or cessation of such
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1 activities. If Ecology disagrees with Trans Mountain's cessation of activities, it may direct
2 Trans Mountain to resume such activities.

3 If Ecology concurs with or orders a work stoppage pursuant to this section, Trans
4 Mountain's obligations with respect to the ceased activities shall be suspended until Ecology
5 determines the danger is abated, and the time for performance of such activities, as well as the
6 time for any other work dependent upon such activities, shall be extended, in accordance with
7 Section XVI (Extension of Schedule), for such period of time as Ecology determines is
8 reasonable under the circumstances.

9 Nothing in this Decree shall limit the authority of Ecology, its employees, agents, or
10 contractors to take or require appropriate action in the event of an emergency.

11 **XVIII. COVENANT NOT TO SUE**

12 A. Covenant Not to Sue: In consideration of Trans Mountain's compliance with
13 the terms and conditions of this Decree, Ecology covenants not to institute legal or
14 administrative actions against Trans Mountain regarding the release or threatened release of
15 hazardous substances covered by this Decree.

16 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit B)
17 and those hazardous substances that Ecology knows are located at the Site as of the date of
18 entry of this Decree. This Decree does not cover any other hazardous substance or area.
19 Ecology retains all of its authority relative to any substance or area not covered by this Decree.

20 This Covenant Not to Sue shall have no applicability whatsoever to:

- 21 1. Criminal liability;
 - 22 2. Liability for damages to natural resources; and
 - 23 3. Any Ecology action, including cost recovery, against PLPs not a party to
24 this Decree.
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1 If factors not known at the time of entry of this Decree are discovered and present a
2 previously unknown threat to human health or the environment, the Court shall amend this
3 Covenant Not to Sue.

4 B. Reopeners: Ecology specifically reserves the right to institute legal or
5 administrative action against Trans Mountain to require it to perform additional remedial
6 actions at the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050
7 under the following circumstances:

8 1. Upon Defendant's failure to meet the requirements of this Decree;

9 2. Upon failure of the remedial action to meet the cleanup standards
10 identified in the Cleanup Action Plan (CAP), Exhibit A;

11 3. Upon Ecology's determination that remedial action beyond the terms of
12 this Decree is necessary to abate an imminent and substantial endangerment to human
13 health or the environment;

14 4. Upon the availability of new information regarding factors previously
15 unknown to Ecology, including the nature or quantity of hazardous substances at the
16 Site, and Ecology's determination, in light of this information, that further remedial
17 action is necessary at the Site to protect human health or the environment; or

18 5. Upon Ecology's determination that additional remedial actions are
19 necessary to achieve cleanup standards within the reasonable restoration time frame set
20 forth in the CAP.

21 C. Except in the case of an emergency, prior to instituting legal or administrative
22 action against Trans Mountain pursuant to this section, Ecology shall provide Trans Mountain
23 with 15 calendar days notice of such action.
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XIX. CONTRIBUTION PROTECTION

With regard to claims for contribution against Trans Mountain, the Parties agree that Trans Mountain is entitled to protection against claims for contribution for matters addressed in this Decree as provided by RCW 70.105D.040(4)(d).

XX. LAND USE RESTRICTIONS

In consultation with Trans Mountain, Ecology will prepare the Environmental (Restrictive) Covenant consistent with WAC 173-340-440 and RCW 64.70. After approval by Ecology, Trans Mountain shall record the Environmental (Restrictive) Covenant with the office of the Whatcom County Auditor within 10 days of Ecology's approval of the Final Completion Report. The Environmental (Restrictive) Covenant shall restrict future activities and uses of the Site as agreed to by Ecology and Trans Mountain. Trans Mountain shall provide Ecology with the original recorded Environmental (Restrictive) Covenant within 30 days of the recording date.

XXI. FINANCIAL ASSURANCES

Pursuant to WAC 173-340-440(11), Trans Mountain shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures.

Within 60 days of the effective date of this Decree, Trans Mountain shall submit to Ecology for review and approval an estimate of the costs that it will incur in carrying out the terms of this Decree, including operation and maintenance, and compliance monitoring. Within 60 days after Ecology approves the aforementioned cost estimate, Trans Mountain shall provide proof of financial assurances sufficient to cover all such costs in a form acceptable to Ecology.

1 Trans Mountain shall adjust the financial assurance coverage and provide Ecology's
2 project coordinator with documentation of the updated financial assurance for:

3 A. Inflation, annually, within 30 days of the anniversary date of the entry of this
4 Decree; or if applicable, the modified anniversary date established in accordance with this
5 section, or if applicable, 90 days after the close of Trans Mountain's fiscal year if the financial
6 test or corporate guarantee is used.

7 B. Changes in cost estimates, within 30 days of issuance of Ecology's approval of
8 a modification or revision to the CAP that result in increases to the cost or expected duration of
9 remedial actions. Any adjustments for inflation since the most recent preceding anniversary
10 date shall be made concurrent with adjustments for changes in cost estimates. The issuance of
11 Ecology's approval of a revised or modified CAP will revise the anniversary date established
12 under this section to become the date of issuance of such revised or modified CAP.

13 **XXII. INDEMNIFICATION**

14 Trans Mountain agrees to indemnify and save and hold the State of Washington, its
15 employees, and agents harmless from any and all claims or causes of action (1) for death or
16 injuries to persons, or (2) for loss or damage to property to the extent arising from or on
17 account of acts or omissions of Trans Mountain, its officers, employees, agents, or contractors
18 in entering into and implementing this Decree. However, Trans Mountain shall not indemnify
19 the State of Washington nor save nor hold its employees and agents harmless from any claims
20 or causes of action to the extent arising out of the negligent acts or omissions of the State of
21 Washington, or the employees or agents of the State, in entering into or implementing this
22 Decree.

23 **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

24 A. All actions carried out by Trans Mountain pursuant to this Decree shall be done
25 in accordance with all applicable federal, state, and local requirements, including requirements
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