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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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**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.

1 A. The Site is located in Whatcom County, Washington, approximately four miles  
2 north of Bellingham at 1009 East Smith Road and consists of approximately 15 developed  
3 acres. The Site is bounded on three sides by 135 acres of undeveloped or agricultural land  
4 owned by Trans Mountain. A diagram of the Site is attached as Exhibit B.

5 B. Since 1956, the Site has been used by Trans Mountain and its predecessors for  
6 supplying crude oil to refineries in Ferndale and Anacortes, Washington. Contamination at the  
7 Site is related to historical releases of crude oil and natural gas condensate.

8 C. In October 1991, Ecology issued Enforcement Order No. DE 91-N192 (Order),  
9 which directed Trans Mountain to assess and clean up releases at the Site. Ecology amended  
10 the Order in 1992. The amended Order superseded the original order and has governed  
11 remedial activities at the site since 1992. Pursuant to the amended Order, Trans Mountain  
12 completed a Remedial Investigation/Feasibility Study (RI/FS) in 1992, soil assessment of the  
13 containment areas associated with Tank Nos. 170 and 180 (2008), and a Supplemental RI/FS  
14 (2013). Trans Mountain has also completed interim cleanup actions that removed soil  
15 exceeding MTCA cleanup levels in certain areas of the Site.

16 D. The contaminants of concern at the Site that exceed MTCA cleanup levels in  
17 soil are total petroleum hydrocarbons (TPH) (gasoline-, diesel-, and oil-range) and for perched  
18 shallow groundwater contaminants of concern are TPH (gasoline-, diesel-, and oil-range) and  
19 polycyclic aromatic hydrocarbons (PAHs). Contaminants of concern are discussed in greater  
20 detail in the CAP, Exhibit A to this Decree.

21 **VI. WORK TO BE PERFORMED**

22 This Decree contains a program designed to protect human health and the environment  
23 from the known release, or threatened release, of hazardous substances or contaminants at, on,  
24 or from the Site. Trans Mountain will implement the following remedial actions at the Site,  
25 which are documented in detail in the CAP (Exhibit A):  
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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.  
26

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.

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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1 to obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other  
2 federal, state, or local requirements that the agency has determined are applicable and that are  
3 known at the time of entry of this Decree have been identified in the CAP (Exhibits D, E).

4 B. Pursuant to RCW 70.105D.090(1), Trans Mountain is exempt from the  
5 procedural requirements of RCW 70.94, RCW 70.95, RCW 70.105, RCW 77.55, RCW 90.48,  
6 and RCW 90.58 and of any laws requiring or authorizing local government permits or  
7 approvals. However, Trans Mountain shall comply with the substantive requirements of such  
8 permits or approvals. The exempt permits or approvals and the applicable substantive  
9 requirements of those permits or approvals, as they are known at the time of entry of this  
10 Decree, have been identified in Exhibit D. A List of Permits is identified in Exhibit E.

11 Trans Mountain has a continuing obligation to determine whether additional permits or  
12 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial  
13 action under this Decree. In the event either Ecology or Trans Mountain determines that  
14 additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be  
15 required for the remedial action under this Decree, it shall promptly notify the other party of  
16 this determination. Ecology shall determine whether Ecology or Trans Mountain shall be  
17 responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Trans  
18 Mountain shall promptly consult with the appropriate state and/or local agencies and provide  
19 Ecology with written documentation from those agencies of the substantive requirements those  
20 agencies believe are applicable to the remedial action. Ecology shall make the final  
21 determination on the additional substantive requirements that must be met by Trans Mountain  
22 and on how it must meet those requirements. Ecology shall inform Trans Mountain in writing  
23 of these requirements. Once established by Ecology, the additional requirements shall be  
24 enforceable requirements of this Decree. Trans Mountain shall not begin or continue the  
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1 remedial action potentially subject to the additional requirements until Ecology makes its final  
2 determination.

3 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the  
4 exemption from complying with the procedural requirements of the laws referenced in  
5 RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is  
6 necessary for the state to administer any federal law, the exemption shall not apply and Trans  
7 Mountain shall comply with both the procedural and substantive requirements of the laws  
8 referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

#### 9 **XXIV. REMEDIAL ACTION COSTS**

10 Trans Mountain shall pay to Ecology costs incurred by Ecology pursuant to this Decree  
11 and consistent with WAC 173-340-550(2). These costs shall include work performed by  
12 Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial  
13 actions and Decree preparation, negotiation, oversight, and administration. These costs shall  
14 include work performed both prior to and subsequent to the entry of this Decree. Ecology's  
15 costs shall include costs of direct activities and support costs of direct activities as defined in  
16 WAC 173-340-550(2). Ecology has accumulated \$4,672.20 in outstanding remedial action  
17 costs related to this facility as of February 28, 2014. Payment for this amount shall be  
18 submitted within 30 days of the effective date of this Decree. For all costs incurred subsequent  
19 to February 28, 2014, Trans Mountain shall pay the required amount within 30 days of  
20 receiving from Ecology an itemized statement of costs that includes a summary of costs  
21 incurred, an identification of involved staff, and the amount of time spent by involved staff  
22 members on the project. A general statement of work performed will be provided upon  
23 request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4),  
24 failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will  
25 result in interest charges at the rate of 12 percent per annum, compounded monthly.  
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1 In addition to other available relief, pursuant to RCW 70.105D.055, Ecology has  
2 authority to recover unreimbursed remedial action costs by filing a lien against real property  
3 subject to the remedial actions.

#### 4 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

5 If Ecology determines that Trans Mountain has failed without good cause to implement  
6 the remedial action, in whole or in part, Ecology may, after notice to Trans Mountain, perform  
7 any or all portions of the remedial action that remain incomplete. If Ecology performs all or  
8 portions of the remedial action because of Trans Mountain's failure to comply with its  
9 obligations under this Decree without good cause, Trans Mountain shall reimburse Ecology for  
10 the costs of doing such work in accordance with Section XXIV (Remedial Action Costs),  
11 provided that Trans Mountain is not obligated under this section to reimburse Ecology for costs  
12 incurred for work inconsistent with or beyond the scope of this Decree.

13 Except where necessary to abate an emergency situation, Trans Mountain shall not  
14 perform any remedial actions at the Site outside those remedial actions required by this Decree,  
15 unless Ecology concurs, in writing, with such additional remedial actions pursuant to  
16 Section XV (Amendment of Decree).

#### 17 **XXVI. PERIODIC REVIEW**

18 As remedial action, including groundwater monitoring, continues at the Site, the Parties  
19 agree to review the progress of remedial action at the Site, and to review the data accumulated  
20 as a result of monitoring the Site as often as is necessary and appropriate under the  
21 circumstances. At least every five years after the initiation of cleanup action at the Site the  
22 Parties shall meet to discuss the status of the Site and the need, if any, for further remedial  
23 action at the Site. At least 90 days prior to each periodic review, Trans Mountain shall submit  
24 a report to Ecology that documents whether human health and the environment are being  
25 protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the right to  
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1 require further remedial action at the Site under appropriate circumstances. This provision  
2 shall remain in effect for the duration of this Decree.

3 **XXVII. PUBLIC PARTICIPATION**

4 A Public Participation Plan is required for this Site. Trans Mountain and Ecology have  
5 developed a Public Participation Plan for the Site. Ecology shall maintain the responsibility  
6 for public participation at the Site. However, Trans Mountain shall cooperate with Ecology,  
7 and shall:

8 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of  
9 public notices and fact sheets at important stages of the remedial action, such as the submission  
10 of work plans, remedial investigation/feasibility study reports, cleanup action plans, and  
11 engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact  
12 sheets and prepare and distribute public notices of Ecology's presentations and meetings.

13 B. Notify Ecology's project coordinator prior to the preparation of all press  
14 releases and fact sheets, and before major meetings with the interested public and local  
15 governments. Likewise, Ecology shall notify Trans Mountain prior to the issuance of all press  
16 releases and fact sheets, and before major meetings with the interested public and local  
17 governments. For all press releases, fact sheets, meetings, and other outreach efforts by Trans  
18 Mountain that do not receive prior Ecology approval, Trans Mountain shall clearly indicate to  
19 its audience that the press release, fact sheet, meeting, or other outreach effort was not  
20 sponsored or endorsed by Ecology.

21 C. When requested by Ecology, participate in public presentations on the progress  
22 of the remedial action at the Site. Participation may be through attendance at public meetings  
23 to assist in answering questions, or as a presenter.

24 D. When requested by Ecology, arrange and/or continue information repositories at  
25 the following locations:  
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1. Bellingham Public Library Central  
210 Central Avenue  
CS-9701  
Bellingham, WA 98227-9719
2. Ecology's Northwest Regional Office  
3190 160th Ave. SE  
Bellevue, WA 98008-5452

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Northwest Regional Office in Bellevue, Washington.

#### **XXVIII. DURATION OF DECREE**

The remedial program required pursuant to this Decree shall be maintained and continued until Trans Mountain has received written notification from Ecology that the requirements of this Decree have been satisfactorily completed. This Decree shall remain in effect until dismissed by the Court. When dismissed, Section XVIII (Covenant Not to Sue) and Section XIX (Contribution Protection) shall survive.

#### **XXIX. CLAIMS AGAINST THE STATE**

Trans Mountain hereby agrees that it will not seek to recover any costs accrued in implementing the remedial action required by this Decree from the State of Washington or any of its agencies; and further, that Trans Mountain will make no claim against the State Toxics Control Account or any local Toxics Control Account for any costs incurred in implementing this Decree. Except as provided above, however, Trans Mountain expressly reserves its right to seek to recover any costs incurred in implementing this Decree from any other PLP. This section does not limit or address funding that may be provided under WAC 173-322 WAC.

#### **XXX. EFFECTIVE DATE**

This Decree is effective upon the date it is entered by the Court.


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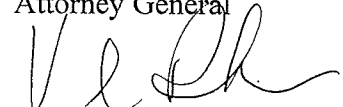
XXXI. WITHDRAWAL OF CONSENT

If the Court withholds or withdraws its consent to this Decree, it shall be null and void at the option of any party and the accompanying Complaint shall be dismissed without costs and without prejudice. In such an event, no party shall be bound by the requirements of this Decree.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON  
Attorney General


  
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Date: 5/28/14

Date: 5/29/14

TRANS MOUNTAIN PIPELINE (PUGET SOUND) LLC

  
HUGH HARDEN  
Vice President, Operations & Engineering  
Trans Mountain Pipeline (Puget Sound) LLC  
(403) 514-6424

Date: 9 APRIL 2014

ENTERED this \_\_\_\_\_ day of JUN 06 2014 2014.

**Leon F. Henley**

Commissioner  
JUDGE  
Whatcom County Superior Court