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STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

BNSF RAILWAY COMPANY, and
MARATHON OIL COMPANY,

Defendants.

NO. 19203114-32

CONSENT DECREE
RE: BNSF RAILWAY BLACK TANK
PROPERTY SITE

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I. INTRODUCTION

1. The mutual objective of the State of Washington, Department of Ecology (Ecology, Plaintiff) and BNSF Railway Company and Marathon Oil Company (BNSF and Marathon, Defendants) 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 Defendants to perform remedial actions at the BNSF Railway Black Tank Property Site (Site) as specified in a Cleanup Action Plan (CAP) issued by Ecology and attached as an exhibit to this Decree. These remedial actions include, but are not limited to:

A. Excavating and removing shallow contaminated soil, a substantial portion of which has already occurred under Amendment No. 1 to Agreed Order No. 9188.

B. Installing and operating bioventing/biosparging systems, which will be optimized and added to as necessary in order to meet performance criteria established in the CAP. If the remediation systems will not meet the performance criteria as specified in the CAP, a contingent remedial technology (steam enhanced extraction) will be initiated if steam enhanced extraction is determined to be technically feasible based on steam propagation testing and pilot testing as specified in the CAP.

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

3. 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.

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

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

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

9 7. The Court is fully advised of the reasons for entry of this Decree, and good cause
10 having been shown:

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

12 **II. JURISDICTION**

13 1. This Court has jurisdiction over the subject matter and over the Parties pursuant
14 to the Model Toxics Control Act (MTCA), RCW 70.105D. However, BNSF reserves the right
15 to challenge the application of state law as being preempted by federal law, in the particular
16 context and as prescribed in Sections VI.6 (Institutional Controls), XIII (Resolution of Disputes),
17 XVII (Covenant Not to Sue), and XXII (Implementation of Remedial Action).

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

23 3. Ecology has determined that a release or threatened release of hazardous
24 substances has occurred at the Site that is the subject of this Decree.

25 4. Ecology has given notice to Defendants of Ecology's determination that
26 Defendants are PLPs for the Site, as required by RCW 70.105D.020(26) and WAC 173-340-500.

1 deposited, stored, disposed of, or placed, or otherwise come to be located as the result of
2 a release or releases from the fixtures, infrastructure, and equipment described in
3 Section V.1.B. The Site is generally congruent with property located at 3202 East
4 Wellesley Avenue in Spokane as shown in the Site Diagram (Exhibit A).

5 B. Consent Decree or Decree: Refers to this Consent Decree and each of the
6 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent
7 Decree.

8 C. Defendants: Refers to BNSF Railway Company (BNSF) and Marathon
9 Oil Company (Marathon).

10 D. Parties: Refers to the State of Washington, Department of Ecology and
11 Defendants.

12 **V. FINDINGS OF FACT**

13 1. Ecology makes the following findings of fact without any express or implied
14 admissions of such facts by Defendants.

15 A. Based upon factors currently known to Ecology, the Site is generally
16 congruent with property located at 3202 East Wellesley Avenue in Spokane as shown in
17 the Site Diagram (Exhibit A). The Site consists of approximately 18 acres and is
18 generally bounded by Market Street to the west, Wellesley Avenue to the north, Western
19 States Asphalt Inc. and undeveloped land to the south, and the former Aluminum
20 Recycling Corporation closed Site to the east.

21 B. This property was the location of a 50-foot diameter aboveground storage
22 tank (the "Black Tank") and associated piping and pumping infrastructure that was in
23 use from possibly as early as 1910 until final tank removal in 2006. At some point or
24 points in time, a release or releases of petroleum products occurred to the environment
25 from the Black Tank and other fixtures, infrastructure, or equipment known as the Red
26

1 Tank dispensers, Liquid Asphalt Pipeline, Black Tank sump, and the Black Tank and
2 Chemical Solution Pipelines and Dispensers.

3 C. In 2006, BNSF had the Black Tank decommissioned and removed from
4 the Site. In addition, petroleum-contaminated soil was removed from beneath and
5 adjacent to the Black Tank. The results of this effort and associated groundwater
6 sampling are set forth in the following reports:

- 7 i. *Black Tank Removal, Remedial Excavation, and Supplemental*
8 *Assessment Report*, dated May 14, 2008, prepared by
9 GeoEngineers;
- 10 ii. *Black Tank Supplemental Well Installation and Groundwater*
11 *Monitoring Report*, dated August 5, 2010, prepared by
12 GeoEngineers;
- 13 iii. *Groundwater Monitoring Report, Third and Fourth Quarters*
14 *2010*, dated March 28, 2011, prepared by GeoEngineers;
- 15 iv. *Groundwater Monitoring Report, First Quarter 2011*, dated
16 July 8, 2011, prepared by GeoEngineers.

17 D. These reports document that surface and subsurface soil and groundwater
18 samples were collected and analyzed, and groundwater monitoring wells were installed
19 hydraulically upgradient and downgradient on and around the Site. Investigations have
20 demonstrated that at least eight (8) wells downgradient and adjacent to the previous
21 location of the Black Tank contain free product.

22 E. In certified correspondence dated October 5, 2011, Ecology notified
23 BNSF of the preliminary finding of potential liability and requested comment on that
24 finding.

25 F. In certified correspondence dated October 26, 2011, Ecology notified
26 Marathon of the preliminary finding of potential liability and requested comment on that
finding.

1 G. In certified correspondence dated November 9, 2011, Ecology notified
2 BNSF of its status as a potentially liable person with regard to the release of hazardous
3 substances at the Site.

4 H. In certified correspondence dated February 3, 2012, Ecology notified
5 Marathon of its status as a potentially liable person with regard to the release of hazardous
6 substances at the Site.

7 I. On August 23, 2012, the Parties entered into Agreed Order No. 9188,
8 which required the Defendants to conduct a remedial investigation/feasibility study
9 (RI/FS) for the Site. The Agreed Order was amended on July 12, 2018, to include an
10 interim action for shallow soil contamination. On the effective date of this Consent
11 Decree, any outstanding obligations under Agreed Order No. 9188, as amended, shall be
12 subsumed within this Decree as provided in Sections VI and XXI of the Decree and the
13 Agreed Order shall be deemed satisfied pursuant to Section IX of the Agreed Order.

14 J. The final RI/FS report, dated March 2017, and prepared by ERM-West,
15 Inc., documented the nature and extent of hazardous substances in various media
16 including soil and groundwater. The RI demonstrated the following contaminants of
17 concern that exceed MTCA cleanup levels are present in soil at the Site: petroleum
18 hydrocarbons (total, diesel, heavy oil, free product), naphthalene, and carcinogenic
19 polycyclic aromatic hydrocarbons (cPAHs). Contaminants of concern in groundwater at
20 the Site that exceed MTCA cleanup levels are petroleum hydrocarbons (total, diesel,
21 heavy oil, free product) and cPAHs.

22 K. The Site is listed on Ecology's Hazardous Sites List as the "BNSF
23 Railway Black Tank Property Site," Facility Site ID No. 98615712. In February 2001, a
24 Site Hazard Assessment was completed by Ecology and the site was assigned an overall
25 priority ranking of three (3) pursuant to WAC 173-340-330.
26

1 L. As documented in the CAP (Exhibit B), Ecology has chosen a final
2 cleanup action to be implemented at the Site.

3 **VI. WORK TO BE PERFORMED**

4 1. This Decree contains a program designed to protect human health and the
5 environment from the known release, or threatened release, of hazardous substances or
6 contaminants at, on, or from the Site. All remedial action(s) conducted by Defendants at the Site
7 shall be done in accordance with WAC 173-340.

8 2. The Defendants shall implement the CAP (Exhibit B) in accordance with the
9 Scope of Work and Schedule attached to this Decree (Exhibit C).

10 3. All plans or other deliverables submitted by Defendants for Ecology's review and
11 approval under the CAP (Exhibit B) or Scope of Work and Schedule (Exhibit C) shall, upon
12 Ecology's approval, become integral and enforceable parts of this Decree.

13 4. If Defendants learn of a significant change in conditions at the Site, including but
14 not limited to a statistically significant increase in contaminant and/or chemical concentrations
15 in soil or groundwater, Defendants, within seven (7) days of learning of the change in condition,
16 shall notify Ecology in writing of said change and provide Ecology with any reports or records
17 (including laboratory analyses, sampling results) relating to the change in conditions.

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

22 A. Within ninety (90) days of the effective date of this Decree, Defendants
23 shall submit to Ecology for review and approval an estimate of the costs associated with
24 the operation and maintenance of the remedial action at the Site that it will incur in
25 carrying out the terms of this Decree. Within sixty (60) days after Ecology approves the
26 aforementioned cost estimate, or by March 31, 2020, whichever occurs later, Defendants

1 shall provide proof of financial assurances sufficient to cover those costs in a form
2 acceptable to Ecology.

3 B. Defendants shall adjust the financial assurance coverage and provide
4 Ecology's project coordinator with documentation of the updated financial assurance for:

5 i. Inflation, annually, within thirty (30) days of the anniversary date
6 of the entry of this Decree; or if applicable, the modified anniversary date
7 established in accordance with this section, or if applicable, ninety (90) days after
8 the close of Defendants' fiscal year if the financial test or corporate guarantee is
9 used.

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

18 C. Any Defendant may submit, at any time, a request to reduce the amount,
19 or change the form or terms, of the financial assurance mechanism. Any such request
20 must include an explanation of the bases for the request, an estimate of the cost of the
21 remaining remedial action, an explanation of the bases for the cost calculation, and a
22 description of the proposed changes, if any, to the form or terms of the financial
23 assurance. Ecology will notify Defendant(s) of its decision to approve or disapprove a
24 requested reduction or change pursuant to this section. A Defendant may reduce the
25 amount of the financial assurance mechanism only in accordance with: (a) Ecology's
26 approval; or (b) if there is a dispute, the agreement, final administrative decision, or final

1 judicial decision resolving such dispute under Section XIII (Resolution of Disputes).
2 Within thirty (30) days after receipt of Ecology's approval of, or the agreement or
3 decision resolving a dispute relating to, the requested modifications pursuant to this
4 section, a Defendant shall submit to Ecology documentation of the reduced, revised, or
5 alternative financial assurance mechanism in accordance with this section.

6 D. Defendants may release, cancel, or discontinue any financial assurance
7 provided under this section only after receiving a written notification from Ecology that
8 the requirements of this Decree have been satisfactorily completed or if there is a dispute
9 regarding the release, cancellation or discontinuance of any financial assurance
10 mechanism, in accordance with the agreement, final administrative decision, or final
11 judicial decision resolving such dispute under Section XIII (Resolution of Disputes).

12 E. All financial assurance submittals and correspondence should be directed
13 to both Ecology's project coordinator and Ecology's financial assurance officer.
14 Ecology's current financial assurance officer is:

15 Kimberly Goetz
16 Department of Ecology
17 Hazardous Waste and Toxics Reduction Program
18 P.O. Box 47600
19 Olympia, WA 98504-7600
20 Phone: 360-407-6754
21 Fax: 360-407-6715
22 E-mail: kimberly.goetz@ecy.wa.gov

23 6. As detailed in the CAP, institutional controls are required at the Site. Institutional
24 controls will be identified in the Engineering Design Report, which will be submitted to Ecology
25 for review and approval and implemented in accordance with the Scope of Work and Schedule
26 (Exhibit C). Institutional controls will include an Environmental (Restrictive) Covenant
prohibiting excavation of contaminated soil or the extraction of contaminated groundwater for
purposes other than remediation and restricting future activities and uses of the Site as agreed to
by Ecology and Defendants.

1 A. In consultation with Defendants, Ecology will prepare the Environmental
2 (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70 (Uniform
3 Environmental Covenants Act), and any policies or procedures specified by Ecology.

4 B. After approval by Ecology, Defendants shall record the Environmental
5 (Restrictive) Covenant for affected properties they own with the office of the Spokane
6 County Auditor as detailed in the Scope of Work and Schedule (Exhibit C). Defendants
7 shall provide Ecology with the original recorded Environmental (Restrictive) Covenants
8 within thirty (30) days of the recording date.

9 C. BNSF reserves the right to challenge the provisions of institutional
10 controls as being preempted by federal law, as provided in Section XIII of this Decree.

11 7. Defendants shall submit to Ecology written Progress Reports that describe the
12 actions taken during the previous reporting period to implement the requirements of this Decree.
13 All Progress Reports shall be submitted by the tenth (10th) day of the month in which they are
14 due after the effective date of this Decree. Unless otherwise directed by Ecology, progress reports
15 will be submitted quarterly from the effective date of this Decree through the first year of
16 operation of the bioventing/biosparging system and semi-annually thereafter through completion
17 of the remedial action. Ecology may direct Defendants to change the reporting frequency if site
18 activities warrant. Unless otherwise specified in writing by Ecology, Progress Reports and any
19 other documents submitted pursuant to this Decree shall be sent by first class mail and e-mail to
20 Ecology's project coordinator. The Progress Reports shall include the following:

- 21 A. A list of on-site activities that have taken place during the month.
- 22 B. Description of any sample results which deviate from the norm.
- 23 C. Description of any deviations from required tasks not otherwise
24 documented in project plans or amendment requests.
- 25 D. Description of all deviations from the Scope of Work and Schedule
26 (Exhibit C) during the current month and any planned deviations in the upcoming month.

1 E. For any deviations in schedule, a plan for recovering lost time and
2 maintaining compliance with the schedule, when practicable.

3 F. All raw data (including laboratory analyses) received during the previous
4 quarter (if not previously submitted to Ecology), together with a detailed description of
5 the underlying samples collected.

6 G. A list of planned activities for the upcoming month.

7 8. Except in the case of an emergency, Defendants agree not to perform any
8 remedial actions at the Site outside the scope of this Decree without prior written approval of
9 Ecology. In the case of an emergency, Defendants must notify Ecology of the event and remedial
10 action(s) as soon as practical, but no later than twenty-four (24) hours after discovery of the
11 emergency.

12 VII. DESIGNATED PROJECT COORDINATORS

13 1. The project coordinator for Ecology is:

14 Jeremy Schmidt, P.E.
15 4601 N. Monroe Street
16 Spokane, WA 99205-1295
17 Phone: 509-329-3484
18 E-mail: jeremy.schmidt@ecy.wa.gov

19 2. The project coordinators for Defendants are:

20 For BNSF:
21 Shane DeGross
22 BNSF Railway Company
23 605 Puyallup Avenue
24 Tacoma, WA 98134
25 Phone: 253-591-2567
26 E-mail: Shane.DeGross@BNSF.com

For Marathon:
Renée Bellavance
Senior Environmental Advisor, Corporate Responsibility
Husky Oil Operations Limited
707 8th Avenue S.W.
Box 6525, Station D

1 Calgary, AB T2P 3G7
2 Phone: 403-298-6278 Cell: 587-226-6561
3 E-mail: Renee.Bellavance@huskyenergy.com

4 3. Each project coordinator shall be responsible for overseeing the implementation
5 of this Decree. Ecology's project coordinator will be Ecology's designated representative for the
6 Site. To the maximum extent possible, communications between Ecology and Defendants and
7 all documents, including reports, approvals, and other correspondence concerning the activities
8 performed pursuant to the terms and conditions of this Decree shall be directed through the
9 project coordinators. The project coordinators may designate, in writing, working level staff
10 contacts for all or portions of the implementation of the work to be performed required by this
11 Decree.

12 4. Any party may change its respective project coordinator. Written notification
13 shall be given to the other party at least ten (10) calendar days prior to the change.

14 **VIII. PERFORMANCE**

15 1. Except as otherwise provided for by RCW 18.43 and 18.220, all geologic and
16 hydrogeologic work performed pursuant to this Decree shall be under the supervision and
17 direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct
18 supervision of an engineer registered by the State of Washington.

19 2. Except as otherwise provided for by RCW 18.43.130, all engineering work
20 performed pursuant to this Decree shall be under the direct supervision of a professional engineer
21 registered by the State of Washington.

22 3. Except as otherwise provided for by RCW 18.43.130, all construction work
23 performed pursuant to this Decree shall be under the direct supervision of a professional engineer
24 registered by the State of Washington or a qualified technician under the direct supervision of a
25 professional engineer registered by the State of Washington.
26

1 4. As required by RCW 18.43 and 18.220, any documents submitted containing
2 geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed
3 professional.

4 5. Defendants shall notify Ecology in writing of the identity of any engineer(s) and
5 geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms
6 of this Decree, in advance of their involvement at the Site.

7 **IX. ACCESS**

8 1. Ecology or any Ecology authorized representative shall have access to enter and
9 freely move about all property at the Site that Defendants either own, control, or have access
10 rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs,
11 and contracts related to the work being performed pursuant to this Decree; reviewing
12 Defendants' progress in carrying out the terms of this Decree; conducting such tests or collecting
13 such samples as Ecology may deem necessary; using a camera, sound recording, or other
14 documentary type equipment to record work done pursuant to this Decree; and verifying the data
15 submitted to Ecology by Defendants.

16 2. Nothing in this Decree is intended by the Defendants to waive any right they may
17 have under applicable law to limit disclosure of documents protected by the attorney work-
18 product privilege and/or the attorney-client privilege. If Defendants withhold any requested
19 records based on an assertion of privilege, they shall provide Ecology with a privilege log
20 specifying the records withheld and the applicable privilege. No Site-related data collected
21 pursuant to this Decree shall be considered privileged.

22 3. Defendants shall make all reasonable efforts to secure access rights for those
23 properties within the Site not owned or controlled by Defendants where remedial activities or
24 investigations will be performed pursuant to this Decree.

25 4. Ecology or any Ecology authorized representative shall give reasonable notice
26 before entering any Site property owned or controlled by Defendants unless an emergency

1 prevents such notice. All Parties who access the Site pursuant to this section shall comply with
2 any applicable health and safety plan(s). Ecology employees and their representatives shall not
3 be required to sign any liability release or waiver as a condition of Site property access. All
4 persons who access BNSF's railyard property will be required to complete BNSF's Contractor
5 Safety Training Program (www.BNSFcontractor.com), unless they are escorted by someone
6 who has completed the program.

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

8 1. With respect to the implementation of this Decree, Defendants shall make the
9 results of all sampling, laboratory reports, and/or test results generated by them or on their behalf
10 available to Ecology by submitting data as detailed in this section. Pursuant to WAC 173-340-
11 840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in
12 accordance with Section VI.7 (Progress Reports), Ecology's Toxics Cleanup Program
13 Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by
14 Ecology for data submittal.

15 2. If requested by Ecology, Defendants shall allow Ecology and/or its authorized
16 representative to take split or duplicate samples of any samples collected by Defendants pursuant
17 to the implementation of this Decree. Defendants shall notify Ecology seven (7) days in advance
18 of any sample collection or work activity at the Site. Ecology shall, upon request, allow
19 Defendants and/or their authorized representative to take split or duplicate samples of any
20 samples collected by Ecology pursuant to the implementation of this Decree, provided that doing
21 so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under
22 Section IX (Access), Ecology shall notify Defendants prior to any sample collection activity
23 unless an emergency prevents such notice.

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

1 **XI. RETENTION OF RECORDS**

2 1. During the pendency of this Decree, and for ten (10) years from the date this
3 Decree is no longer in effect as provided in Section XXV (Duration of Decree), Defendants shall
4 preserve all records, reports, documents, and underlying data in their possession relevant to the
5 implementation of this Decree. Defendants shall provide copies of this Decree to project
6 contractors and subcontractors and give them written instruction to preserve records, reports,
7 documents, and underlying data as required by this Decree. Maintenance of records in electronic
8 Portable Document Format (PDF) shall be deemed compliant with the requirements in this
9 section. Upon request of Ecology, Defendants shall make all records available to Ecology and
10 allow access for review within a reasonable time.

11 2. Nothing in this Decree is intended by Defendants to waive any right they may
12 have under applicable law to limit disclosure of documents protected by the attorney work-
13 product privilege and/or the attorney-client privilege. If Defendants withhold any requested
14 records based on an assertion of privilege, Defendants shall provide Ecology with a privilege log
15 specifying the records withheld and the applicable privilege. No Site-related data collected
16 pursuant to this Decree shall be considered privileged.

17 **XII. TRANSFER OF INTEREST IN PROPERTY**

18 1. No voluntary conveyance or relinquishment of title, easement, leasehold, or other
19 interest in any portion of the Site shall be consummated by BNSF without provision for
20 continued operation and maintenance of any containment system, treatment system, and/or
21 monitoring system installed or implemented pursuant to this Decree.

22 2. Prior to BNSF's transfer of any interest in all or any portion of the Site, and during
23 the effective period of this Decree, BNSF shall provide a copy of this Decree to any prospective
24 purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30)
25 days prior to any transfer, BNSF shall notify Ecology of said transfer. Upon their transfer of any
26

1 interest, BNSF shall notify all transferees of the restrictions on the activities and uses of the
2 property under this Decree and incorporate any such use restrictions into the transfer documents.

3 3. The parties acknowledge that BNSF and the Washington State Department of
4 Transportation (WSDOT) are negotiating a transfer of property under which WSDOT will have
5 a long-term easement over part of the Site. A definitive agreement is expected to be signed in
6 2019.

7 4. As of the date of entry of this Decree, Marathon does not hold title, easement,
8 leasehold, or other interest in any portion of the Site. In the event Marathon obtains any such
9 interest in any portion of the Site, the provisions of this Section shall also apply to Marathon.

10 XIII. RESOLUTION OF DISPUTES

11 1. In the event that Defendants elect to invoke dispute resolution, Defendants must
12 utilize the procedure set forth below.

13 A. Upon the triggering event (receipt of Ecology's project coordinator's
14 written decision or an itemized billing statement), Defendants have fourteen (14)
15 calendar days within which to notify Ecology's project coordinator in writing of its
16 dispute (Informal Dispute Notice).

17 B. The Parties' project coordinators shall then confer in an effort to resolve
18 the dispute informally. The parties shall informally confer for up to fourteen (14)
19 calendar days from receipt of the Informal Dispute Notice. If the project coordinators
20 cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar
21 days Ecology's project coordinator shall issue a written decision (Informal Dispute
22 Decision) stating: the nature of the dispute; the Defendants' position with regards to the
23 dispute; Ecology's position with regards to the dispute; and the extent of resolution
24 reached by informal discussion.

25 C. Defendants may then request regional management review of the dispute.
26 This request (Formal Dispute Notice) must be submitted in writing to the Eastern Region

1 Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's
2 Informal Dispute Decision. The Formal Dispute Notice shall include a written statement
3 of dispute setting forth: the nature of the dispute; the disputing Party's position with
4 respect to the dispute; and the information relied upon to support its position.

5 D. The Section Manager shall conduct a review of the dispute and shall issue
6 a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar
7 days of receipt of the Formal Dispute Notice.

8 E. If Defendants find Ecology's Regional Section Manager's decision
9 unacceptable, Defendants may then request final management review of the decision.
10 This request (Final Review Request) shall be submitted in writing to the Toxics Cleanup
11 Program Manager within seven (7) calendar days of Defendants' receipt of the Decision
12 on Dispute. The Final Review Request shall include a written statement of dispute setting
13 forth: the nature of the dispute; the disputing Party's position with respect to the dispute;
14 and the information relied upon to support its position.

15 F. Ecology's Toxics Cleanup Program Manager shall conduct a review of
16 the dispute and shall issue a written decision regarding the dispute (Final Decision on
17 Dispute) within thirty (30) calendar days of receipt of the Final Review Request. The
18 Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the
19 disputed matter.

20 2. If Ecology's Final Decision on Dispute is unacceptable to Defendants,
21 Defendants have the right to submit the dispute to the Court for resolution. The Parties agree that
22 one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute
23 arising under this Decree. Under RCW 70.105D.060, Ecology's investigative and remedial
24 decisions shall be upheld unless they are arbitrary and capricious. BNSF additionally reserves
25 the right to challenge any Ecology decision not to grant a schedule extension under Section XV
26 (Extension of Schedule), or to apply land use restrictions (institutional controls) on BNSF's

1 property under Section VI.6, as being preempted by federal law. Any schedule extension or
2 change to Ecology's decision resulting from BNSF's challenge shall likewise modify
3 Marathon's obligations under this Decree.

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

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

11 5. In case of a dispute, failure to either proceed with the work required by this
12 Decree or timely invoke dispute resolution may result in Ecology's determination that
13 insufficient progress is being made in preparation of a deliverable, and may result in Ecology
14 undertaking the work under Section XXII (Implementation of Remedial Action).

15 **XIV. AMENDMENT OF DECREE**

16 1. The Parties may agree to minor changes to the work to be performed without
17 formally amending this Decree. Minor changes will be documented in writing by Ecology.

18 2. Substantial changes to the work to be performed shall require formal amendment
19 of this Decree. This Decree may only be formally amended by a written stipulation among the
20 Parties that is entered by the Court, or by order of the Court. Ecology will provide its written
21 consent to a formal amendment only after public notice and opportunity to comment on the
22 formal amendment. Such amendment shall become effective upon entry by the Court.
23 Agreement to amend the Decree shall not be unreasonably withheld by any party.

24 3. When requesting a change to the Decree, Defendants shall submit a written
25 request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing
26 and in a timely manner after the written request is received. If Ecology determines that the

1 change is substantial, then the Decree must be formally amended. Reasons for the disapproval
2 of a proposed change to this Decree shall be stated in writing. If Ecology does not agree to the
3 requested change, the disagreement may be addressed through the dispute resolution procedures
4 described in Section XIII (Resolution of Disputes).

5 **XV. EXTENSION OF SCHEDULE**

6 1. Defendants' request for an extension of schedule shall be granted only when a
7 request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior
8 to expiration of the deadline for which the extension is requested, and good cause exists for
9 granting the extension. All extensions shall be requested in writing. The request shall specify:

- 10 A. The deadline that is sought to be extended.
- 11 B. The length of the extension sought.
- 12 C. The reason(s) for the extension.
- 13 D. Any related deadline or schedule that would be affected if the extension
14 were granted.

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

- 18 A. Circumstances beyond the reasonable control and despite the due
19 diligence of Defendants including delays caused by unrelated third parties or Ecology,
20 such as (but not limited to) delays by Ecology in reviewing, approving, or modifying
21 documents submitted by Defendants.
- 22 B. Acts of God, including fire, flood, blizzard, extreme temperatures, storm,
23 or other unavoidable casualty.
- 24 C. Endangerment as described in Section XVI (Endangerment).
- 25 D. For BNSF, unanticipated circumstances that would cause scheduled
26 cleanup actions, if not rescheduled, to unduly restrict mainline operations or to

1 unreasonably burden interstate commerce. Any determination of good cause as to BNSF,
2 however, shall likewise apply to Marathon's obligations under this Decree.

3 3. However, neither increased costs of performance of the terms of this Decree nor
4 changed economic circumstances shall be considered circumstances beyond the reasonable
5 control of Defendants.

6 4. Ecology shall act upon any Defendants' written request for extension in a timely
7 fashion. Ecology shall give Defendants written notification of any extensions granted pursuant
8 to this Decree. A requested extension shall not be effective until approved by Ecology or, if
9 required, by the Court. Unless the extension is a substantial change, it shall not be necessary to
10 amend this Decree pursuant to Section XIV (Amendment of Decree) when a schedule extension
11 is granted.

12 5. At Defendants' request an extension shall only be granted for such period of time
13 as Ecology determines is reasonable under the circumstances. Ecology may grant schedule
14 extensions exceeding ninety (90) days only as a result of one of the following:

15 A. Delays in the issuance of a necessary permit which was applied for in a
16 timely manner.

17 B. Other circumstances deemed exceptional or extraordinary by Ecology,
18 which may include the circumstances described in subsection 2.A-D above.

19 **XVI. ENDANGERMENT**

20 1. In the event Ecology 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, Ecology may direct Defendants to cease such activities for such period of time as
23 it deems necessary to abate the danger. Defendants shall immediately comply with such
24 direction.

25 2. In the event Defendants determine that any activity being performed at the Site
26 under this Decree is creating or has the potential to create a danger to human health or the

1 environment, Defendants may cease such activities. Defendants shall notify Ecology's project
2 coordinator as soon as possible, but no later than twenty-four (24) hours after making such
3 determination or ceasing such activities. Upon Ecology's direction, Defendants shall provide
4 Ecology with documentation of the basis for the determination or cessation of such activities. If
5 Ecology disagrees with Defendants' cessation of activities, it may direct Defendants to resume
6 such activities.

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

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

15 **XVII. COVENANT NOT TO SUE**

16 1. Covenant Not to Sue: In consideration of Defendants' compliance with the terms
17 and conditions of this Decree, Ecology covenants not to institute legal or administrative actions
18 against Defendants regarding the release or threatened release of hazardous substances at the
19 Site, as defined in Section IV (Definitions) and as described in Section V (Findings of Fact).
20 This Covenant Not to Sue does not cover any other hazardous substance(s) or area. Ecology
21 retains all of its authority relative to any hazardous substance(s) or area not covered by this
22 Decree.

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

24 A. Criminal liability.

25 B. Liability for damages to natural resources.
26

1 C. Any Ecology action, including cost recovery, against PLPs not a party to
2 this Decree.

3 2. Pursuant to RCW 70.105D.040(4)(c), the Court shall amend this Covenant Not
4 to Sue if factors not known at the time of entry of this Decree are discovered and present a
5 previously unknown threat to human health or the environment.

6 3. Reopeners: Ecology specifically reserves the right to institute legal or
7 administrative action against Defendants to require it to perform additional remedial actions at
8 the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050, under any of
9 the following circumstances:

10 A. Upon Defendants' failure to meet the requirements of this Decree.

11 B. Failure of the remedial action to meet the cleanup standards identified in
12 the CAP (Exhibit B).

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

16 D. Upon the availability of information previously unknown to Ecology
17 regarding Site factors including the nature, quantity, migration, pathway, or mobility of
18 hazardous substances, and Ecology's determination, in light of this information, that
19 further remedial action is necessary at the Site to protect human health or the
20 environment.

21 E. Upon Ecology's determination that additional remedial actions are
22 necessary to achieve cleanup standards within the reasonable restoration time frame set
23 forth in the CAP.

24 4. Except in the case of an emergency, prior to instituting legal or administrative
25 action against Defendants pursuant to this section, Ecology shall provide Defendants with fifteen
26 (15) calendar days' notice of such action. In the event Ecology seeks to reopen the Decree under

1 this section, BNSF reserves its right to challenge the imposition of different or additional cleanup
2 actions as being preempted by federal law. However, if a reopening event occurs, Defendants
3 and Ecology agree to first explore in good faith whether different or additional actions that the
4 Parties agree would not be subject to preemption could be implemented to address the reopening
5 event. All Parties then reserve their right to all claims and defenses if good faith efforts to agree
6 to different or additional actions do not result in agreement between the Parties. Nevertheless,
7 BNSF agrees the Court shall have jurisdiction to decide the controversy. Any limitation on
8 Ecology's ability to impose different or additional cleanup actions on BNSF based on BNSF's
9 preemption challenge shall likewise limit Ecology's ability to impose such different or additional
10 cleanup actions on Marathon.

11 **XVIII. CONTRIBUTION PROTECTION**

12 1. With regard to claims for contribution against Defendants, the Parties agree that
13 Defendants are entitled to protection against claims for contribution for matters addressed in this
14 Decree as provided by RCW 70.105D.040(4)(d). For purposes of this section, the "matters
15 addressed" in this Decree are hazardous substances released at the Site as defined in Section IV
16 (Definitions) and as described in Section V (Findings of Fact), including from the Black Tank
17 and associated piping and pumping infrastructure that was in use from possibly as early as 1910
18 until final tank removal in 2006, as well as all investigations and remedial or interim actions
19 taken or to be taken and all costs incurred or to be incurred, at or in connection with such
20 hazardous substances within the scope of this Decree.

21 **XIX. INDEMNIFICATION**

22 1. Defendants agree to indemnify and save and hold the State of Washington, its
23 employees, and agents harmless from any and all claims or causes of action (1) for death or
24 injuries to persons, or (2) for loss or damage to property to the extent arising from or on account
25 of acts or omissions of Defendants, its officers, employees, agents, or contractors in entering into
26 and implementing this Decree. However, Defendants shall not indemnify the State of

1 Washington nor save nor hold its employees and agents harmless from any claims or causes of
2 action to the extent arising out of the negligent acts or omissions of the State of Washington, or
3 the employees or agents of the State, in entering into or implementing this Decree.

4 **XX. COMPLIANCE WITH APPLICABLE LAWS**

5 1. *Applicable Law.* All actions carried out by Defendants pursuant to this Decree
6 shall be done in accordance with all applicable federal, state, and local requirements, including
7 requirements to obtain necessary permits, except as provided in RCW 70.105D.090. The permits
8 or specific federal, state, or local requirements that the agency has determined are applicable and
9 that are known at the time of the execution of this Decree have been identified in Exhibit B.
10 Defendants have a continuing obligation to identify additional applicable federal, state, and local
11 requirements which apply to actions carried out pursuant to this Decree, and to comply with
12 those requirements. As additional federal, state, and local requirements are identified by Ecology
13 or the Defendants, Ecology will document in writing if they are applicable to actions carried out
14 pursuant to this Decree, and the Defendants must implement those requirements.

15 2. *Relevant and Appropriate Requirements.* All actions carried out by Defendants
16 pursuant to this Decree shall be done in accordance with relevant and appropriate requirements
17 identified by Ecology. The relevant and appropriate requirements that Ecology has determined
18 apply have been identified in Exhibit B. If additional relevant and appropriate requirements are
19 identified by Ecology or the Defendants, Ecology will document in writing if they are applicable
20 to actions carried out pursuant to this Decree and the Defendants must implement those
21 requirements.

22 3. Pursuant to RCW 70.105D.090(1), Defendants are, subject to Section XX.5
23 below, exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48,
24 and 90.58 and of any laws requiring or authorizing local government permits or approvals.
25 However, Defendants shall comply with the substantive requirements of such permits or
26 approvals. For permits and approvals covered under RCW 70.105D.090(1) that have been issued

1 by local government, the Parties agree that Ecology has the non-exclusive ability under this
2 Decree to enforce those local government permits and/or approvals. At this time, no state or local
3 permits or approvals have been identified as being applicable but procedurally exempt under this
4 section.

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

20 5. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
21 exemption from complying with the procedural requirements of the laws referenced in
22 RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary
23 for the state to administer any federal law, the exemption shall not apply and Defendants shall
24 comply with both the procedural and substantive requirements of the laws referenced in
25 RCW 70.105D.090(1), including any requirements to obtain permits or approvals.
26

1 **XXII. IMPLEMENTATION OF REMEDIAL ACTION**

2 1. If Ecology determines that the Defendants have failed without good cause to
3 make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology
4 may, after notice to Defendants, perform any or all portions of the remedial action or at Ecology's
5 discretion allow the Defendants opportunity to correct. If Ecology performs all or portions of the
6 remedial action because of the Defendants failure to comply with their obligations under this
7 Decree, the Defendants shall reimburse Ecology for the costs of doing such work in accordance
8 with Section XXI (Remedial Action Costs), provided that, without waiving Ecology's authority
9 to seek reimbursement pursuant to RCW 70.105D.050(3), the Defendants are not obligated under
10 this section to reimburse Ecology for costs incurred for work inconsistent with or beyond the
11 scope of this Decree. The Defendants and Ecology agree to meet and confer to informally resolve
12 any dispute about performance of the remedial action, before Ecology exercises its option under
13 this section, provided that in an emergency, Ecology is not required to provide notice to
14 Defendants, or an opportunity for dispute resolution. If the Parties cannot agree to a resolution,
15 BNSF reserves the right to seek an injunction from the Court to prevent Ecology from
16 performing any cleanup actions on BNSF's railyard facility property that would be preempted
17 under federal law. BNSF agrees the Court shall have jurisdiction to decide the controversy.

18 2. Except where necessary to abate an emergency situation or where required by
19 law, the Defendants shall not perform any remedial actions at the Site outside those remedial
20 actions required by this Decree to address the contamination that is the subject of this Decree,
21 unless Ecology concurs, in writing, with such additional remedial actions pursuant to
22 Section XIV (Amendment of Decree). In the event of an emergency, or where actions are taken
23 as required by law, Defendants must notify Ecology in writing of the event and remedial action(s)
24 planned or taken as soon as practical after the discovery of the event, which shall generally be
25 no later than within twenty-four (24) hours of such discovery.

26

1 **XXIII. PERIODIC REVIEW**

2 1. So long as remedial action continues at the Site, the Parties agree to review the
3 progress of remedial action at the Site, and to review the data accumulated as a result of
4 monitoring the Site as often as is necessary and appropriate under the circumstances. As shown
5 in Table 6 of Exhibit B, periodic reviews will be performed annually after the initiation of
6 cleanup action at the Site. The frequency of the periodic reviews can be revised to every five (5)
7 years with Ecology's approval. During each periodic review, Parties shall confer regarding the
8 status of the Site and the need, if any, for further remedial action at the Site. Under Section XVII
9 (Covenant Not to Sue), Ecology reserves the right to require further remedial action at the Site
10 under appropriate circumstances. This provision shall remain in effect for the duration of this
11 Decree.

12 **XXIV. PUBLIC PARTICIPATION**

13 1. Ecology shall maintain the responsibility for public participation at the Site.
14 However, Defendants shall cooperate with Ecology, and shall:

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

21 B. Notify Ecology's project coordinator prior to the preparation of all press
22 releases and fact sheets, and before meetings related to remedial action work to be
23 performed at the Site with the interested public and/or local governments. Likewise,
24 Ecology shall notify Defendants seven (7) days prior to the issuance of all press releases
25 and fact sheets related to remedial action work to be performed at the Site, and before
26 meetings related to remedial action work to be performed at the Site with the interested

1 public and/or local governments. For all press releases, fact sheets, meetings, and other
2 outreach efforts by Defendants that do not receive prior Ecology approval, Defendants
3 shall clearly indicate to its audience that the press release, fact sheet, meeting, or other
4 outreach effort was not sponsored or endorsed by Ecology.

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

8 D. When requested by Ecology, arrange and/or continue information
9 repositories at the following locations:

- 10 i. Spokane Public Library, Hillyard Branch
11 4005 N. Cook Street
Spokane, WA 99207
- 12 ii. Ecology's Eastern Regional Office
13 4601 N. Monroe Street
Spokane, WA 99205-1295
- 14 iii. Ecology's Website
15 <https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=3243>

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

20 **XXV. DURATION OF DECREE**

21 1. The remedial program required pursuant to this Decree shall be maintained and
22 continued until Defendants have received written notification from Ecology that the
23 requirements of this Decree have been satisfactorily completed. This Decree shall remain in
24 effect until dismissed by the Court. When dismissed, Section XI (Retention of Records), and
25 Section XVII (Covenant Not to Sue) shall survive.
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XXVI. CLAIMS AGAINST THE STATE

1. Defendants hereby agree that they 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 except as provided in contractual arrangements between BNSF and the Washington State Department of Transportation; and further, that Defendants will make no claim against the State Toxics Control Account, the Local Toxics Control Account, the Environmental Legacy Stewardship Account, or a MTCA Cleanup Settlement Account for any costs incurred in implementing this Decree. Except as provided above, however, Defendants expressly reserve their 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 173-322A.

XXVII. EFFECTIVE DATE

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

XXVIII. WITHDRAWAL OF CONSENT

1. 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



James J. Pendowski
Program Manager
Toxics Cleanup Program
360-407-7177

Andrew A. Fitz, WSBA #22169
Senior Counsel
360-586-6752

Date: 4/28/19

Date: 6/28/19

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BNSF RAILWAY COMPANY

MARATHON OIL COMPANY

John Lovenburg
Vice President, Environmental
817-352-1459

Dan Kalisek
Dan Kalisek
HES Director
713-629-6600



Date: _____

Date: 4 March 2019

ENTERED this 19 day of JULY 2019.

Jacquelyn M. High-Edward
Court Commissioner
JUDGE Commissioner
Spokane County Superior Court

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BNSF RAILWAY COMPANY

MARATHON OIL COMPANY

Katie Farmer

Dan Kalisek
HES Director
713-629-6600

Katie Farmer
Executive Vice President, Operations
817-352-1215

Date: 3/8/2019

Date: _____

ENTERED this _____ day of _____ 2019.

JUDGE
Spokane County Superior Court

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7 **STATE OF WASHINGTON**
8 **SPOKANE COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON,
10 DEPARTMENT OF ECOLOGY,

11 Plaintiff,

12 v.

13 BNSF RAILWAY COMPANY, and
14 MARATHON OIL COMPANY,

15 Defendants.

NO.

DECLARATION OF ANDREW A. FITZ

RE: SCANNED SIGNATURE
PURSUANT TO GR 17 – CONSENT
DECREE

16 I, ANDREW A. FITZ, declare under penalty of perjury under the laws of the state of
17 Washington that the following is true and correct:

18 1. I am over the age of 18 years, competent to be a witness herein, and make this
19 declaration in that capacity. I state the following based upon my personal knowledge and pursuant
20 to the provisions of GR 17.

21 2. I received the foregoing scanned signature of Katie Farmer, Executive Vice
22 President, Operations, BNSF Railway Company, for filing with the attached Consent Decree. I
23 have examined the attached Consent Decree Re: BNSF Railway Black Tank Property Site,
24 determined that it consists of 105 pages (including this Declaration and the exhibits to the
25 Decree), and that it is complete and legible.
26

1 3. My address is 2425 Bristol Court SW, Olympia, Washington 98502. My phone
2 number is 360-586-6752. The email address where I received the document is
3 Andy.Fitz@atg.wa.gov.

4 DATED this 12th day of July 2019, at Olympia, Washington.



6 _____
7 ANDREW A. FITZ, WSBA #22169