

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

THE HONORABLE JAMAL N. WHITEHEAD

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

MAKAH INDIAN TRIBE,

Plaintiff,

v.

EXXON MOBIL CORPORATION,
EXXONMOBIL OIL CORPORATION, BP
P.L.C., BP AMERICA INC., CHEVRON
CORPORATION, CHEVRON USA, INC.,
SHELL PLC, SHELL OIL COMPANY,
CONOCOPHILLIPS, CONOCOPHILLIPS
COMPANY, PHILLIPS 66, and PHILLIPS 66
COMPANY,

Defendants.

No. 2:24-cv-00157-JNW

**STIPULATED MOTION AND
ORDER REGARDING
CONSOLIDATED BRIEFING ON
MOTION FOR REMAND**

Noted for March 15, 2024

STIPULATED MOTION

SHER EDLING LLP
100 MONTGOMERY STREET, SUITE 1410
SAN FRANCISCO, CALIFORNIA 94104
TELEPHONE: (628) 231-2500

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

RECITALS

Plaintiff, the Makah Indian Tribe (“Plaintiff”), and Defendants B.P. p.l.c., BP America Inc., Chevron Corporation, Chevron U.S.A. Inc., Exxon Mobil Corp., ExxonMobil Oil Corporation, Shell plc, Shell USA, Inc. (f/k/a Shell Oil Company), ConocoPhillips, ConocoPhillips Company, Phillips 66, and Phillips 66 Company (collectively, “Defendants”) (Plaintiff and Defendants are collectively referred to herein as “the Parties”), hereby stipulate and agree to the following motion to consolidate briefing with respect to the Plaintiffs’ motion to remand in this matter and in the matter of *Shoalwater Bay Indian Tribe v. Exxon Mobil Corporation et. al.*, 2:24-CV-0158-JNW.

WHEREAS, on December 20, 2023, Plaintiff filed a complaint against the Defendants in the Superior Court of the State of Washington in and for the County of King, No. 23-2-25216-1-SEA, and the Shoalwater Bay Indian Tribe separately filed a substantially similar complaint against the Defendants in the Superior Court of the State of Washington in and for the County of King, No. 23-2-25215-2 SEA (the “SBIT action”).

WHEREAS, on February 6, 2024, Defendants Chevron Corporation and Chevron U.S.A. Inc., with the consent of all properly named and served Defendants, removed this action and the SBIT action from the Superior Court to this Court;

WHEREAS, Defendants’ removal notices in this action and the SBIT action are substantially similar with the sole exception that, in this action, the Defendants raise a treaty rights argument for removal and do not make a similar argument in their removal notice in the SBIT case;

1 **WHEREAS**, Plaintiff and the Shoalwater Bay Indian Tribe (collectively, "Plaintiffs")
2 each intend to file a Motion to Remand in this action and in the SBIT action, which Defendants
3 intend to oppose;

4 **WHEREAS**, the Plaintiffs and Defendants agree that it would be most efficient for all
5 briefing on the Motion to Remand to be consolidated, with Plaintiffs filing a single motion and
6 brief, Defendants filing a single opposition brief, and the Plaintiffs filing a single reply brief;

7 **WHEREAS**, the Plaintiffs and Defendants further agree that to accommodate such
8 consolidated briefing in the two cases, the word limitations should be extended to provide for up
9 to 10,000 words for the Plaintiffs' motion and brief and the Defendants' brief in opposition and
10 up to 5,000 words for the Plaintiffs' reply brief;

11 **WHEREAS**, this Stipulated Motion does not operate as an admission of any factual
12 allegation or legal conclusion and is submitted subject to and without waiver of any right,
13 defense, affirmative defense, claim, or objection, including lack of subject matter jurisdiction,
14 or lack of personal jurisdiction, insufficient process, or insufficient service of process;

15 16 17 **STIPULATED MOTION**

18 **NOW THEREFORE**, the Parties hereby agree and stipulate, and respectfully move the
19 Court to enter an order, as follows:

20 1. Briefing on the Plaintiffs' Motion to Remand in this action and in *Shoalwater*
21 *Bay Indian Tribe v. Exxon Mobil Corporation et. al.*, 2:24-CV-0158-JNW, shall be consolidated
22 with the Plaintiffs filing a single motion and brief, the Defendants filing a single opposition brief,
23 and the Plaintiffs filing a single reply brief.
24
25
26

1 2. The Plaintiffs' motion and brief and the Defendants' opposition brief shall not
2 exceed 10,000 words. The Plaintiffs' reply brief shall not exceed 5,000 words.

3 Counsel certifies that this memorandum contains 520 words, in compliance with the
4 Local Civil Rules.

5 Dated: March 15, 2024

6 SHER EDLING LLP

7 ORRICK, HERRINGTON &
8 SUTCLIFFE LLP

9 By: /s/ Katie Jones

9 By: s/ Robert M. McKenna

10 Katie Jones (*pro hac vice*)
11 Corrie J. Yackulic, WSBA No. 16063
12 Victor M. Sher (*pro hac vice*)
13 Matthew K. Edling (*pro hac vice*)
14 100 Montgomery St., Ste. 1410
15 San Francisco, CA 94104
16 Tel: (628) 231-2500
17 Fax: (628) 231-2929
18 Email: katie@sheredling.com
19 corrie@sheredling.com
20 vic@sheredling.com
21 matt@sheredling.com

22 Robert M. McKenna (WSBA No. 18327)
23 rmckenna@orrick.com
24 Mark S. Parris (WSBA No. 13870)
25 mparris@orrick.com
26 Andrew Cook (WSBA No. 34004)
 andrew.cook@orrick.com
 401 Union Street, Suite 3100
 Seattle, WA 98101
 Telephone: 206.839.4300
 Facsimile: 206.839.4301

27 DRUMMOND WOODSUM & MACMAHON

27 GIBSON, DUNN & CRUTCHER LLP

28 Kaighn Smith Jr. (*pro hac vice*)
29 84 Marginal Way, Ste. 600
30 Portland, ME 04101
31 Tel: (207) 253-0559
32 Email: ksmith@dwmlaw.com

33 Theodore J. Boutrous, Jr. (*pro hac vice*)
34 tboutrous@gibsondunn.com
35 Andrea Neuman (*pro hac vice*)
36 aneumann@gibsondunn.com
37 William E. Thomson (*pro hac vice*)
38 wthomson@gibsondunn.com
39 Joshua D. Dick (*pro hac vice*)
40 jdick@gibsondunn.com
41 333 South Grand Ave.,
42 Los Angeles, CA 90071
43 Tel: (213) 229-7000
44 Fax: (213) 229-7520

45 Attorneys for Plaintiff Makah Indian Tribe

46 Attorneys for Defendants Chevron
 Corporation and Chevron U.S.A. Inc.

1 BRYNES KELLER CROMWELL LLP

2 By: s/ Bradley S. Keller
Bradley S. Keller, WSBA #10665

3 By: s/ Joshua B. Selig
Joshua B. Selig, WSBA No. 39628
4 1000 Second Avenue, 38th Floor
Seattle, WA 98104
5 Tel: (206) 622-2000
6 Fax: (206) 622-2522
Email: bkeller@byrneskeller.com
jselig@byrneskeller.com

7
8 PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP

9 Theodore V. Wells, Jr. (*pro hac vice*)
Daniel J. Toal (*pro hac vice*)
10 Yahonnes Cleary (*pro hac vice*)
Caitlin E. Grusauskas (*pro hac vice*)
11 1285 Avenue of the Americas
New York, NY 10019-6064
12 Tel.: (212) 373-3000
Fax: (212) 757-3990
13 Email: twells@paulweiss.com
Email: dtoal@paulweiss.com
14 Email: ycleary@paulweiss.com
Email: cgrusauskas@paulweiss.com

15
16 *Attorneys for Defendants EXXON MOBIL
CORPORATION and EXXONMOBIL OIL
CORPORATION*

STOEL RIVES LLP

By: s/ Vanessa Soriano Power
Vanessa Soriano Power, WSBA
No. 30777
vanessa.power@stoel.com
Rachel H. Cox, WSBA No. 45020
rachel.cox@stoel.com
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
Telephone: (206) 624-0900

ARNOLD & PORTER KAYE SCHOLER
LLP

Nancy G. Milburn (*pro hac vice*)
Diana E. Reiter (*pro hac vice*)
250 West 55th Street
New York, NY 10019-9710
Tel.: (212) 836-8383
Fax: (212) 715-1399
Email: nancy.milburn@arnoldporter.com
Email: diana.reiter@arnoldporter.com

John D. Lombardo (*pro hac vice*)
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
Tel.: (213) 243-4000
Fax: (213) 243-4199
Email: john.lombardo@arnoldporter.com

Jonathan W. Hughes (*pro hac vice*)
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024
Tel.: (415) 471-3100
Fax: (415) 471-3400
Email: jonathan.hughes@arnoldporter.com

Attorneys for Defendant BP America Inc.

1 CORR CRONIN LLP

2 By: s/ Timothy A. Bradshaw
3 Timothy A. Bradshaw, WSBA No. 17983
4 Jeff Bone, WSBA No. 43965
5 Victoria E. Ainsworth, WSBA No.
6 49677
7 1015 Second Avenue, Floor 10
8 Seattle, WA 98104-1001
9 (206) 625-8600 Phone
10 (206) 625-0900 Fax
11 tbradshaw@correronin.com
12 jbone@correronin.com
13 tainsworth@correronin.com

14 WILMER CUTLER PICKERING HALE
15 AND DORR LLP

16 Hallie B. Levin (*pro hac vice*
17 *forthcoming*)
18 7 World Trade Center
19 250 Greenwich Street
20 New York, NY 10007
21 Telephone: (212) 295-6710
22 Facsimile: (212) 230-8888
23 Email: hallie.levin@wilmerhale.com

24 Matthew T. Martens (*pro hac vice*
25 *forthcoming*)
26 2100 Pennsylvania Avenue NW
Washington, DC 20037
Telephone: (202) 663-6921
Facsimile: (202) 663-6363
Email:
matthew.martens@wilmerhale.com

Robert Kingsley Smith (*pro hac vice*
forthcoming)
60 State Street
Boston, MA 02109
Telephone: (617) 526-6759
Facsimile: (617) 526-5000
Email: robert.smith@wilmerhale.com

*Attorneys for Defendants Conocophillips
and Conocophillips Company*

SUMMIT LAW GROUP, PLLC

By: s/ Alexander A. Baehr
Alexander A. Baehr, WSBA No. 25320
alexba@summitlaw.com
By: s/ Molly J. Gibbons
Molly J. Gibbons WSBA #58357
mollyg@summitlaw.com

LATHAM & WATKINS LLP

Nicole C. Valco (*pro hac vice pending*)
nicole.valco@lw.com
Katherine A. Rouse (*pro hac vice pending*)
kathrine.rouse@lw.com
505 Montgomery St., Suite 2000
San Francisco, CA 94111-6538
Telephone: (415) 391-0600

*Attorneys for Defendants Phillips 66 and
Phillips 66 Company*

K&L GATES LLP

By: s/ Kari L. Vander Stoep
Kari L. Vander Stoep, WSBA # 35923
925 Fourth Avenue, Suite 2900
Seattle, Washington 98104-1158
Tel: +1 206 623 7580
Fax: +1 206 623 7022
Email: kari.vanderstoep@klgates.com

KELLOGG, HANSEN, TODD, FIGEL &
FREDERICK, P.L.L.C.

David C. Frederick (*pro hac vice forthcoming*)
James M. Webster, III (*pro hac vice*
forthcoming)
Daniel S. Severson (*pro hac vice forthcoming*)
Daren G. Zhang (*pro hac vice forthcoming*)
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999
Email: dfrederick@kellogghansen.com
Email: jwebster@kellogghansen.com
Email: dseverson@kellogghansen.com
Email: dzhang@kellogghansen.com

*Attorneys for Shell plc and Shell USA, Inc.
(f/k/a Shell Oil Company)*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ORDER

For the reasons above, and finding good cause, the Court hereby grants the Parties' stipulated motion. It is so ordered.

Dated this 19th day of March, 2024.



Jamal N. Whitehead
United States District Judge