

ELLEN F. ROSENBLUM
Attorney General



FREDERICK M. BOSS
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

November 10, 2016

BY E-MAIL AND REGULAR US MAIL

Alison Greene Webster
Administrative Law Judge
Office of Administrative Hearings
7995 SW Mohawk Street
Tualatin, OR 97062

Re: In the Matter of Coyote Island Terminal; Port of Morrow
OAH Case Nos.: 1403883 and 1403884
Agency Case No.: APP0049123-RF
DOJ File No.: 141031-GN0386-12

Dear Judge Webster:

Enclosed for filing today from the Oregon Department of State Lands in the above-captioned matters:

1. NOTICE OF WITHDRAWAL, with certificate of filing/service.

Sincerely,

Lore Bensel
Senior Assistant Attorney General
Natural Resources Section

Enclosure

LMB:jrs/7808225
c: Service List

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE
OREGON DEPARTMENT OF STATE LANDS

IN THE MATTER OF:)	OAH Case Nos.: 1403883 and 1403884
)	Agency Case No.: APP0049123-RF
)	
COYOTE ISLAND TERMINAL, LLC)	NOTICE OF WITHDRAWAL
and)	
)	
PORT OF MORROW)	

Pursuant to OAR 137-003-0515(4)(b), the Department of State Lands is withdrawing both of the contested cases from the Office of Administrative Hearings because all of the issues in the case have resolved without the need for a hearing. A copy of the Consent Agreement and Final Order are attached for your reference as Exhibit A.

DATED this 10th day of November 2016.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

Lore Benschel

Lore Benschel, #891646
Senior Assistant Attorney General
Of Attorneys for the Department of State Lands

EXHIBIT A

(Consent Agreement and Final Order)

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
FOR THE
DEPARTMENT OF STATE LANDS**

IN THE MATTER OF:)
) OAH Case No.: 1403883
COYOTE ISLAND TERMINAL, LLC) Agency Case No.: APP0049123-RF
)
PORT OF MORROW) OAH Case No.: 1403884
) Agency Case No.: APP0049123-RF
)
) **CONSENT AGREEMENT AND**
) **FINAL ORDER**
)

CONSENT AGREEMENT

WHEREAS, on August 18, 2014, the Oregon Department of State Lands (ODSL) issued a denial in the form of Findings & Order (F&O) on Joint Permit Application No. 49123-RF (JPA) submitted by Coyote Island Terminal LLC (Coyote);

WHEREAS, Coyote and the Port of Morrow each appealed the F&O by filing a written request for hearing on September 8, 2014;

WHEREAS, the ODSL determined Coyote's request for hearing was timely and referred the matter to the Office of Administrative Hearings as OAH Case No. 1403883 and Agency Case No. APP049123-RF;

WHEREAS, the ODSL granted the Port of Morrow party status as an aggrieved party and referred the matter to the Office of Administrative Hearing as OAH Case No. 1403884 and Agency Case No. APP049123-RF;

WHEREAS, the Office of Administrative Hearings consolidated OAH Case Nos. 1403883 and 1403884 for the contested case process and issued Rulings on Motions for Summary Determination (Rulings);

WHEREAS, the ODSL granted limited party status to the Columbia Riverkeepers, Friends of the Columbia Gorge, and Sierra Club (collectively "Columbia Riverkeeper"), the Yakama Nation, Confederated Tribes of the Umatilla Reservation, the Nez Perce Tribe, and Confederated Tribes of the Warm Springs Reservation (collectively the "Tribes"), and the State of Wyoming and State of Montana (collectively the "States") (altogether the "Limited Parties");

WHEREAS, Coyote no longer intends to build the Morrow Pacific Project, as described in the JPA, and on October 13, 2016, Coyote and the Port of Morrow executed an Assignment that states, among other things, that Coyote "transfers, sets over and assigns to [the Port of Morrow]

all right, title and interest of [Coyote] in, to and under the Joint Permit Application No. 49123-RF and Contested Case Hearing [OAH Case No. 1403883]”;

WHEREAS, the ODSL, Columbia Riverkeeper, and the Tribes dispute the effects of the Assignment;

WHEREAS, the F&O includes findings about a “small but important long-standing fishery” that are disputed by the Port of Morrow and the States, but not by Columbia Riverkeeper or the Tribes;

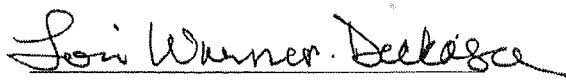
WHEREAS, the Port of Morrow and the States require that the Rulings be vacated through this Final Order as a condition of waiving their right to judicial review under this agreement;

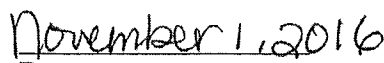
WHEREAS, the ODSL, Columbia Riverkeeper, and the Tribes require that the JPA be withdrawn in writing at the same time that the F&O is withdrawn;

THEREFORE, the ODSL, the Port of Morrow, Coyote, and the Limited Parties agree to resolve these matters on the following terms:

1. The Recitals set forth above are material terms on which ODSL, the Port of Morrow, Coyote, and the Limited Parties have based their agreement to resolve these matters through a Consent Agreement and Final Order;
2. The Port of Morrow and Coyote hereby jointly withdraw the JPA;
3. The ODSL, the Port of Morrow, Coyote, and the Limited Parties all agree that this Consent Agreement is an informal disposition and waive all judicial review as provided in ORS 183.417(3);
4. The Final Order states that the F&O and Rulings, including their findings, will not be relied on and are not precedent, and that the F&O and Rulings, including their findings, will not be cited to or used as grounds from which to deny future applications at the Port of Morrow;
5. The Final Order withdraws and abates the F&O and vacates the Rulings; and
6. The ODSL withdraws the contested cases from the Office of Administrative Hearings under OAR 137-003-0515(a) and (b) within two working days of the execution of this Consent Agreement and Final Order.

DEPARTMENT OF STATE LANDS


Lori Warner-Dickason


Date

PORT OF MORROW

Harry Neal
Coastal

10-31-16
Date

COYOTE ISLAND TERMINAL, LLC

Date

SIERRA CLUB, COLUMBIA RIVERKEEPER,
AND FRIENDS OF THE COLUMBIA GORGE

Jan Hasselman

Date

THE CONFEDERATED TRIBES AND BANDS
OF THE YAKAMA NATION

Date

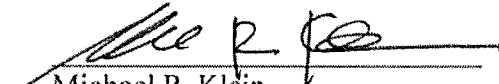
CONFEDERATED TRIBES OF THE
UMATILLA RESERVATION

Date

PORT OF MORROW

Date

COYOTE ISLAND TERMINAL, LLC


Michael R. Klein

OCTOBER 31, 2016
Date

SIERRA CLUB, COLUMBIA RIVERKEEPER,
AND FRIENDS OF THE COLUMBIA GORGE

Jan Hasselman

Date

THE CONFEDERATED TRIBES AND BANDS
OF THE YAKAMA NATION

Date

CONFEDERATED TRIBES OF THE
UMATILLA RESERVATION

Date

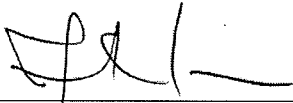
PORT OF MORROW

Date

COYOTE ISLAND TERMINAL, LLC

Date

SIERRA CLUB, COLUMBIA RIVERKEEPER,
AND FRIENDS OF THE COLUMBIA GORGE



Jan Hasselman

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Jan Hasselman

Date

THE CONFEDERATED TRIBES AND BANDS
OF THE YAKAMA NATION



R. Joseph Sexton,

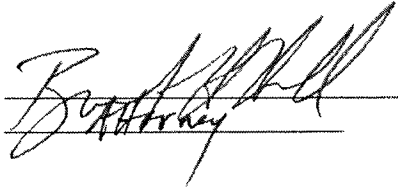
Attorney for Yakama Nation

11.8.16
Date

CONFEDERATED TRIBES OF THE
UMATILLA RESERVATION

Date

CONFEDERATED TRIBES OF THE
UMATILLA RESERVATION



10/31/2016
Date

NEZ PERCE TRIBE

Date

CONFEDERATED TRIBES OF THE
WARM SPRINGS RESERVATION

Date

STATE OF WYOMING

Date

STATE OF MONTANA

Date

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/

NEZ PERCE TRIBE

Mary Jane Miles

11-02-16

Date

Daniel Kane N.P.T.E.C. SECRETARY

11-2-16

THE CONFEDERATED TRIBES OF THE
WARM SPRINGS RESERVATION
OF OREGON

Date

STATE OF WYOMING

Michael J. McGrady

Date

STATE OF MONTANA

C. Robert Steringer

Date

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NEZ PERCE TRIBE

Date

THE CONFEDERATED TRIBES OF THE
WARM SPRINGS RESERVATION
OF OREGON

Michelle Stacona

SECRETARY-TREASURER

11-09-16

Date

STATE OF WYOMING

Michael J. McGrady

Date

STATE OF MONTANA

C. Robert Steringer

Date

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NEZ PERCE TRIBE

Date

THE CONFEDERATED TRIBES OF THE
WARM SPRINGS RESERVATION
OF OREGON

Date

STATE OF WYOMING



Michael J. McGrady

10/31/16

Date

STATE OF MONTANA

C. Robert Steringer

Date

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NEZ PERCE TRIBE

Date

THE CONFEDERATED TRIBES OF THE
WARM SPRINGS RESERVATION
OF OREGON

Date

STATE OF WYOMING

Michael J. McGrady

Date

STATE OF MONTANA



C. Robert Steringer

Attorney for
State of Montana

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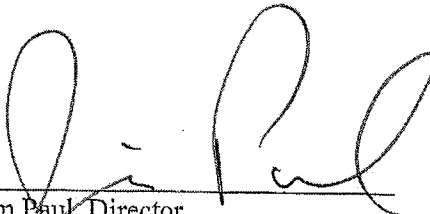
October 30, 2016
Date

FINAL ORDER

NOW THEREFORE, the Director of the Oregon Department of State Lands: finds that these matters have been fully resolved by informal disposition; hereby withdraws and abates the F&O; hereby vacates the Rulings; states that the F&O and the Rulings, including their findings, have no binding effect and are of no precedential value; and states that the F&O and Rulings, including their findings, will not be cited to or used as grounds from which to deny future applications at the Port of Morrow.

IT IS SO ORDERED

Dated this 10TH day of November, 2016.



Jim Paul, Director
Oregon Department of State Lands

CERTIFICATE OF FILING/SERVICE

I hereby certify that on November 10, 2016, I filed the NOTICE OF WITHDRAWAL by first-class mail with Alison Green Webster, Administrative Law Judge, of the Office of Administrative Hearings, 7995 SW Mohawk Street, Tualatin, Oregon, 97062, and by e-mail to alison.g.webster@oregon.gov and EMP.OAHREFERRAL@oregon.gov.

I further certify that on November 10, 2016, I served copies of the NOTICE OF WITHDRAWAL by electronic mail and first-class mail to the following persons at the addresses listed below:

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*Attorney for Columbia Riverkeeper, Friends
of the Columbia Gorge, and Sierra Club*

DATED this 10th day of November 2016.

Lore Bensel

Lore Bensel, #891646
Senior Assistant Attorney General
Of Attorneys for Oregon
Department of State Lands