20CV38607

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6	IN THE CIRCUIT COURT OF THE STATE OF OREGON	
7	FOR THE COUNTY OF MULTNOMAH	
8	COLUMDIA DIVEDKEEDED on d)) Case No. 20CV38607
9	COLUMBIA RIVERKEEPER and FRIENDS OF THE COLUMBIA)
10	GORGE,) ORDER ON MOTIONS TO DISMISS
11	Petitioners,	
12		
13	OREGON DEPARTMENT OF ENERGY; and PERENNIAL-	
14	WINDCHASER LLC,	
15	Respondents.)
16		
17	This matter came before the Court via a videoconference hearing on June 4, 2021, on	
18	Respondents' Motions to Dismiss. Petitioners appeared through their counsel Erin Saylor, Karl	
19	G. Anuta, and Maura Fahey. Respondent Oregon Department of Energy ("ODOE") appeared	
20	through its counsel Sadie Forzley and Abigail Fallon. Respondent Perennial Wind Chaser	
21	("PWC") appeared through its counsel Richard Allan.	
22	The Court invited supplemental briefing from the parties on Petitioners' argument that	
23	this Court has jurisdiction to review non-final orders under ORS 469.563 if the agency is	
24	proceeding without probable cause. See ORS 183.480(3). ODOE filed its supplemental brief or	
25	June 18, 2021. Petitioners filed their brief on June 25, 2021.	
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1	Having reviewed and considered the briefing of the parties and their arguments, and		
2	being otherwise fully advised, and for the reasons stated by the Court in its October 21, 2021		
3	Opinion regarding Respondents' Motions to Dismiss, the Court rules and ORDERS as follows:		
4	1. As to the September 2, 2020 ODOE letter, Respondents' Motions to Dismiss are		
5	GRANTED. The Court concludes that the September 2, 2020 letter was not a "final		
6	order" subject to judicial review under ORS 183.484. However, the Court finds that		
7	ODOE's position outlined in the September 2, 2020 letter can nonetheless be		
8	considered in reviewing the ultimate determinations made in the subsequent final		
9	orders.		
10	2. Respondents' Motions to Dismiss as to the September 18, 2020 letter are DENIED.		
11	The Court concludes that the letter was a final order subject to judicial review under		
12	ORS 183.484.		
13	3. The Court declines to make a finding on whether the September 18, 2020 letter is also		
14	reviewable pursuant to ORS 183.480(3), because it is unnecessary to do so given the		
15	Court's ruling that the letter is subject to review as a final order.		
16	4. Respondents' Motions to Dismiss for lack of standing are also DENIED. Petitioners		
17	are "adversely affected or aggrieved" by Respondent ODOE's final orders within the		
18	meaning of ORS 183.480(1).		
19			
20	It is so ORDERED. 11/4/2021 11:41:20 AM		
21	Madde Houshile		
22	Circuit Court Judge Michael A. Greenlick		
23			
24			
25	Submitted by:		
26	Maura C. Fahey Attorney for Petitioners		
27			

1	CERTIFICATE OF READINESS		
2	This proposed ORDER ON MOTIONS TO DISMISS is ready for judicial signature		
3	because:		
4 5	1. [] Each party affected by this order or judgment has stipulated to the order or		
6	judgment, as shown by each opposing party's signature on the document being submitted.		
7	2. [X] Each party affected by this order or judgment has approved the order or judgment,		
8	as shown by each party's signature on the document being submitted or by written		
9	confirmation of approval sent to me.		
10	3. [] I have served a copy of this order or judgment on each party entitled to service		
11	and:		
12 13	a. [] No objection has been served on me.		
14	b. [] I received objections that I could not resolve with a party despite		
15	reasonable efforts to do so. I have filed a copy of the objections I received and		
16	indicated which objections remain unresolved.		
17	c. [] After conferring about objections, [role and name of objecting party]		
18	agreed to independently file any remaining objection.		
19	4. [] Service is not required pursuant to subsection (3) of this rule, or by statute, rule,		
20 21	or otherwise.		
22	5. [] This is a proposed judgment that includes an award of punitive damages and notice		
23	has been served on the Director of the Crime Victims' Assistance Section as required by		
24	subsection (5) of this rule.		
25	6. [] Other:		
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2	DATED this 27th day of October, 2021.	
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4		<u>/s/ Maura C. Fahey</u> Maura C. Fahey, OSB #133549
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