

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 Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

OLYMPIC FOREST COALITION, a
Washington non-profit corporation,

Plaintiff,

v.

COAST SEAFOODS COMPANY, a
Washington corporation,

Defendant.

Civil Action No. 3:16-cv-05068-RBL

AMENDED ORDER GRANTING
DEFENDANT'S MOTION TO CERTIFY
ORDER FOR INTERLOCUTORY APPEAL
AND MOTION TO STAY

THIS MATTER having come before the Court on Defendant's Motion to Certify Order for Interlocutory Appeal and Motion to Stay, and the Court having considered the records and files herein, the Court expressly finds as follows:

1. The Court's order denying defendant Coast Seafoods Company's ("Coast") motion to dismiss, entered June 3, 2016 (Dkt. 21) (the "Order"), involves a controlling question of law as to which there is a substantial ground for difference of opinion.

2. The question of law presented in the Order is whether the Clean Water Act, 33 U.S.C. §§ 1251-1376, requires an aquatic animal production facility that is not a concentrated facility under 40 C.F.R. § 122.24, but that discharges effluent from a discrete conveyance, to obtain a National Pollutant Discharge Elimination System ("NPDES") permit.

1 This question turns on the applicability and interpretation of *Ass'n to Protect Hammersley, Eld.*
2 & *Totten Inlets v. Taylor Res., Inc.*, 299 F.3d 1007 (9th Cir. 2002), *League of Wilderness*
3 *Defenders/Blue Mountain Biodiversity Project v. Forsgren*, 309 F.3d 1181 (9th Cir. 2002), and
4 *Nw. Env'tl. Def. Cir. v. Brown*, 640 F.3d 1063 (9th Cir. 2011), *rev'd on other grounds*, 133 S.Ct.
5 1326 (2013).

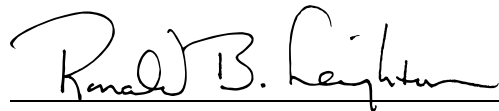
6 3. An immediate appeal from the Order may materially advance the
7 termination of this litigation.

8 Based on these findings:

9 IT IS HEREBY ORDERED that Coast Seafoods Company's motion to certify the
10 Order for interlocutory appeal is GRANTED.

11 IT IS FURTHER ORDERED that, in the event the Ninth Circuit accepts
12 certification, this proceeding is stayed during the pendency of the interlocutory appeal.

13 DATED this 8th day of August, 2016.

14 

15 Ronald B. Leighton
16 United States District Judge

17 Presented by:

18
19 By: s/ Joseph Vance, P.C.
20 Joseph Vance, P.C., WSB No. 25531
21 Hong N. Huynh, WSB No. 45044
22 Miller Nash Graham & Dunn LLP
23 111 S.W. Fifth Avenue, Suite 3400
24 Portland, Oregon 97204
25 Telephone: (503) 224-5858
26 Fax: (503) 224-0155
E-mail: hong.huynh@millernash.com
E-mail: joseph.vance@millernash.com
Attorneys for Defendant Coast Seafoods Company