

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
OREGON DEPARTMENT OF TRANSPORTATION-FUELS TAX GROUP**

IN THE MATTER OF:) RULING ON SUMMARY
) DETERMINATION AND
COUGAR DEN, INC.) PROPOSED ORDER
)
) OAH Case No.: 1102410

HISTORY OF THE CASE

On November 19, 2010, the Oregon Department of Transportation-Fuels Tax Group (ODOT-FTG) issued a letter to Cougar Den, Inc. (Cougar Den), informing Cougar Den that it would not process its application for an Oregon motor vehicle fuel dealer's license until Cougar Den provided proof of a valid motor vehicle fuel dealer's license or its equivalent issued by the State of Washington.

Cougar Den on April 12, 2011 requested a final decision from ODOT-FTG on its application.

On April 26, 2011, ODOT-FTG informed Cougar Den in writing that its determination as expressed in its November 19, 2010 letter remained unchanged.

On June 13, 2011, Cougar Den informed ODOT-FTG that it considered ODOT-FTG's April 26, 2011 letter a denial of its application for an Oregon motor vehicle fuel dealer's license, and requested a hearing.

ODOT-FTG referred the case to the Office of Administrative Hearings on July 7, 2011. The case was assigned to Senior Administrative Law Judge Ken L. Betterton.

A telephone pre-hearing conference was held on August 3, 2011. Attorney Craig J. Dorsay (Dorsay) represented Cougar Den. Assistant Attorney General (AAG) Ethan R. Hasenstein (Hasenstein) represented ODOT-FTG. The parties posited that the case presented solely a legal question, and that each party would be filing a motion for summary determination.

On September 20, 2011, the parties filed stipulated findings of fact, which are set forth below. The parties subsequently filed their respective motions for summary determination, responses and replies. The parties also filed their respective exhibits.

Oral argument on the cross motions for summary determination was held on December 1, 2011, by telephone. Attorney Dorsay represented Cougar Den. AAG Hasenstein represented ODOT-FTG.

The record closed on December 1, 2011, and the matter was taken under advisement.

ISSUE

Whether Cougar Den meets the requirements for issuance of an Oregon motor vehicle fuel dealer's license under ORS chapter 319.

EVIDENTIARY RULING

Exhibits A1 through A12, offered by ODOT-FTG, were admitted and considered in this matter. Cougar Den's Exhibits 1 through 17 were also admitted and considered in this matter.

Cougar Den objected to the relevance in this proceeding of the 1994 consent decree and the 2006 amendments to the decree (Exs. A11 and A12). Stipulated Findings of Fact No. 22. I believe those exhibits are relevant to a determination of the issue before me and I will consider them.

Cougar Den also provided Exhibit 18, a legal memorandum from a law clerk to Cougar Den's attorney summarizing testimony before a legislative committee in 2003 considering HB 2223. ODOT-FTG objected to Exhibit 18. In lieu of Exhibit 18, Cougar Den directed me to the official link for the testimony before the legislative committee considering HB 2223 in 2003. I believe I can take official notice of that legislative history of that testimony. The testimony, rather than a summary of the testimony, is the best evidence. Therefore, I will not admitted and not consider the summary in Exhibit 18.

STIPULATED FINDINGS OF FACT

(1) The Yakama Indian Nation, also known as the Confederated Tribes and Bands of the Yakama Nation (referred to in this proceeding as "Yakama Nation"), is a federally recognized Indian Tribe.

(2) The Yakama Nation entered into a treaty with the United States in 1855 that was ratified by the United States Senate. Article 2 of this Treaty describes the Reservation set aside for the Yakama nation to permanently reside upon.

(3) No part of the Yakama Indian Reservation is located within the State of Oregon. The Yakama Indian Nation is located completely outside the State of Oregon.

(4) The Yakama Nation is a governmental authority that exercises jurisdiction over the Yakama Indian Reservation.

(5) Richard "Kip" Ramsey is an enrolled member of the Yakama Nation.

(6) Richard "Kip" Ramsey is the owner and president of Cougar Den, Inc.

(7) Cougar Den, Inc. is a Yakama corporation currently licensed to do business under the corporation laws of the Yakama Nation. Cougar Den, Inc.'s office and business operations are located on the Yakama Reservation. Cougar Den, Inc. is owned and operated by a member of the Yakama Nation. Cougar Den, Inc. is not directly owned or operated directly by the Yakama Nation.

(8) Cougar Den, Inc. has been issued a Petroleum Permit by the Yakama Nation and is currently authorized under said tribal permit to sell petroleum within the Yakama Reservation pursuant to the laws of the Yakama Nation.

(9) Cougar Den, Inc. was issued a Bulk User Petroleum Permit under tribal law by the Yakama Nation prior to the pendency of this action and is currently authorized under said permit and its renewal to take delivery of bulk petroleum without the assessment of state fuel taxes, provided that Cougar Den complies with the laws of the Yakama Nation.

(10) In 1993, Cougar Den, Inc. was formally designated by the Yakama Nation and Yakama Nation Tribal Council as an agent of the Yakama Nation for the purpose of collecting and transmitting tribal fuel taxes to the Yakama Nation, and for the purpose of obtaining petroleum products for sale and delivery to the Yakama Nation and its members.

(11) Cougar Den, Inc. is registered as a foreign corporation in the States of Oregon and Washington, incorporated under the laws of the Yakama Nation.

(12) Cougar Den, Inc. has not been issued a motor vehicle fuel dealers license or its equivalent issued by the State of Washington.

(13) Cougar Den, Inc. has applied for an Oregon Fuel Dealer License in an application dated July 1, 2010, received by the Oregon Department of Transportation on July 23, 2010.

(14) On July 29, 2010, the Oregon Department of Transportation conditionally denied Cougar Den, Inc.'s application for an Oregon Fuel Dealer License on the ground that Cougar Den, Inc. had its license revoked in the State of Washington.

(15) On August 12, 2010, the Oregon Department of Transportation rescinded its denial of Cougar Den, Inc.'s for an Oregon Fuel Dealer License because ODOT could not, after consultation with the State of Washington, corroborate that Cougar Den, Inc.

had had a Washington Fuel Dealer license revoked. In this letter, ODOT requested a bond of \$1,000, and requested proof of a license from the State of Washington. The letter stated that a Yakama Nation Petroleum Permit does not satisfy the requirement of ORS 319.240(1)(b) that a dealer exporting fuel must have a valid fuel dealer's license or its equivalent issued by the state, territory or country to which the fuel is exported and where it is unloaded, and that Cougar Den, Inc. must obtain a Washington state license.

(16) Cougar Den, Inc.'s July 1, 2010 application for an Oregon Fuel Dealer License states on Page 2, paragraph 13, that Cougar Den, Inc. intends to export petroleum products to the Yakama nation, and lists and attaches Cougar Den, Inc.'s Yakama Nation petroleum permits.

(17) On November 19, 2010, the Oregon Department of Transportation reiterated to Cougar Den, Inc. that its application for an Oregon Fuel Dealer License would not be processed until Cougar Den, Inc. provided proof of a valid motor vehicle fuel dealer's license or its equivalent issued by the State of Washington.

(18) On April 12, 2011, Cougar Den, Inc. requested in writing a final decision on Cougar Den, Inc.'s application for an Oregon Fuel Dealer License.

(19) On April 26, 2011, the Oregon Department of Transportation informed Cougar Den, Inc. that its determination as expressed in its letter dated November 19, 2011 still stands.

(20) On June 13, 2011, Cougar Den, Inc. informed ODOT that it construed ODOT's previous letters as a denial of Cougar Den, Inc.'s application for an Oregon Fuel Dealer License, and requested a contested case hearing pursuant to ORS 319.042(3).

(21) On June 30, 2011, ODOT referred Cougar Den, Inc.'s request for a contested case hearing to the Office of Administrative Hearings.

(22) On November 2, 1994, the United States District Court for the Eastern District of Washington entered a consent decree agreed to by the Yakama Nation and other plaintiffs, including Cougar Den, Inc., with the State of Washington and State agencies, employees and officials including, but not limited to, the Department of Licensing and its officials, in *Teo, et al. Steffenson, et al.*, No. CY-93-3050-AAM (E.D. Wash.). That Consent Decree was changed and amended in a Settlement Agreement entered on August 19, 2006, in *Teo, et al. v. Steffenson, et al.*, No. CV-04-3079-CI (E.D. Wash.). (Cougar Den objects to the relevance of these legal actions in this proceeding.)

(23) The State of Oregon and the Oregon Department of Transportation are not parties to or beneficiaries of these federal court actions. Neither the Yakama Nation nor Cougar Den, Inc. in that litigation or Consent Decree have expressly waived their sovereign immunity with respect to the issues decided in that case in favor of the State of Oregon or ODOT.

(Stipulated Findings Facts, September 20, 2011.)

SUMMARY DETERMINATION

OAR 137-003-0580 governs motions for summary determination. That administrative rule provides, in relevant part:

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

(9) A party or the agency may satisfy the burden of producing evidence through affidavits. Affidavits shall be made on personal knowledge, establish that the affiant is competent to testify to the matters stated therein and contain facts that would be admissible at the hearing.

(10) When a motion for summary determination is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's pleading.

(11) The administrative law judge's ruling may be rendered on a single issue and need not resolve all issues in the contested case.

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order * * * incorporating that ruling * * *.

CONCLUSION OF LAW

Cougar Den meets the requirements for an Oregon motor vehicle fuel dealer's license under ORS chapter 319.

OPINION

The parties agree there are no genuine issues of material fact, and that the case presents solely a legal issue, i.e., whether Cougar Den meets the requirements for an Oregon motor vehicle fuel dealer's license.

Each party contends that it is entitled to judgment as a matter of law. Cougar Den argues that it meets all the requirements for a license in ORS chapter 319. ODOT-FTG argues that Cougar Den does not meet the requirement under ORS 319.240(1).

Oregon law requires that a "dealer" as that term is defined in ORS chapter 319 must secure a motor vehicle fuel dealer's license pursuant to ORS 319.010 to 319.430 before selling, using or distributing any motor vehicle fuel. ORS 319.040. "Dealer" is defined in ORS 319.010(6) to include any person who acquires title to or possession of motor vehicle fuel in Oregon and exports the product out of Oregon. Transactions are classified as "export sales" if the motor vehicle fuel is delivered by an Oregon licensed dealer to a destination outside Oregon where the recipient is licensed in the destination state, territory or country. OAR 735-170-0050.

The application for a motor vehicle fuel dealer's license must be made on a form prescribed, prepared and furnished by ODOT-FTG, and certain conditions must be met. ORS 319.040. The application must be accompanied by a duly acknowledged certificate certifying specific facts. ORS 319.040(3). The applicant must be properly registered as a foreign corporation doing business in Oregon. ORS 319.040(4). The application must be accompanied by an appropriate bond. ORS 319.040(5).

ORS 319.042 sets out the grounds for ODOT-FTG to refuse to issue a dealer license. ODOT-FTG may refuse to issue a dealer license under ORS 319.042(1) if it finds that the person:

- (a) Was the holder of a license revoked under ORS 319.100;
- (b) Is applying for a license on behalf of a real party in interest whose license was revoked under ORS 319.100;
- (c) Was an officer, director, owner or managing employee of a nonindividual licensee whose license was revoked under ORS 319.100;
- (d) Owes a debt to the state under ORS 319.010 to 319.430;

(e) Had a license issued by a jurisdiction other than Oregon to sell or buy untaxed motor vehicle fuel that was revoked or canceled for cause, whether the license was held by the person as an individual or as an officer, director, owner or managing employee on behalf of a real party in interest;

(f) In any jurisdiction, pleaded guilty to or was convicted of a crime directly related to the sale, use or distribution of motor vehicle fuel, whether as an individual or as an officer, director, owner or managing employee of a business engaged in the sale or distribution of motor vehicle fuel;

(g) Had a civil judgment imposed for conduct involving fraud, misrepresentation, conversion or dishonesty, as an individual or as an officer, director, owner or managing employee of a business engaged in the sale or distribution of motor vehicle fuel;

(h) Misrepresented or concealed a material fact in obtaining a license or in the reinstatement thereof;

(i) Violated a statute or administrative rule regarding fuel taxation or distribution;

(j) Failed to cooperate with the department's investigations by:

(A) Not furnishing requested documents;

(B) Not furnishing when requested to do so a full and complete written explanation of a matter under investigation by the department; or

(C) Not responding to a subpoena issued by the department; or

(k) Failed to comply with an order issued by the department.

ODOT-FTG may also, in addition to the reasons specified in ORS 319.042(1), refuse to issue a dealer license for any other reason the department deems sufficient. ORS 319.042(2). There is no case law interpreting ORS 319.042(2).

ODOT-FTG initially refused Cougar Den's application for a dealer's license because Cougar Den had a motor vehicle fuel license revoked by the State of Washington. Ex. A9. Cougar Den appealed that denial and pointed out that it had never had a motor vehicle fuel license from the State of Washington. ODOT-FTG then refused to process the application for other reasons. When Cougar Den established that denial for those reasons was erroneous (Exs. A6 and A7), ODOT-FTG, in a letter to Cougar Den dated August 12, 2010, refused to process the application because Cougar Den failed to

provide “[p]roof of license with the [S]tate of Washington.” Ex. A7 at 1. In its August 12, 2010 denial letter, ODOT-FTG cited ORS 319.240(1) as follows:

319.240 Exemption of export fuel. (1) The license tax imposed by ORS 319.020 may not be imposed on motor vehicle fuel that is exported by a dealer:

(a) From this state to another state, territory or country, not including a federally recognized Indian reservation located wholly or partially within the borders of this state, where the motor vehicle fuel is unloaded; and

(b) Who has a valid motor vehicle dealer’s license or its equivalent issued by the state, territory or country to which the fuel is exported and where it is unloaded.

Upon consultation with our legal department, the Yakama Nation Petroleum Permit does not satisfy this requirement. A Washington state license is required.

Ex. A7 at 2; emphasis in original.

Cougar Den responded to ODOT-FTG’s August 1, 2010 letter in a letter dated October 25, 2010, and presented arguments to support its position that the Yakama Reservation was a “territory” for purposes of ORS 319.240(1). Ex. A6. In a response dated November 19, 2010, ODOT-FTG’s final determination letter refusing to process Cougar Den’s application, ODOT-FTG shifted its reasoning for its denial of the application. ODOT-FTG stated that while it recognized the fuel permit issued to Cougar Den by the Yakama Nation, it did so “only to the same extent as recognized by the State of Washington, i.e., consistent with the 1994 consent decree.” Ex. A5.

At oral argument on this matter, ODOT-FTG conceded that the Yakama Nation is a “territory” for purposes of ORS 319.240(1). Case law supports the conclusion that Indian tribes and their reservations are territories. *Worcester v. Georgia*, 31 US (6 Pet.) 515, 561 (1832) (“Cherokee Nation is a distinct community, occupying its own territory.”); *North Pacific Ins. Co. v. Switzler*, 143 Or App 223, 234 (1996) (“The tribes occupy their own territory, within particular boundaries, in which the laws of Oregon have no force.”)

ODOT-FTG at the point of its November 19, 2010 final denial letter, relied solely on the consent decree as the reason to deny Cougar Den’s application for a license. ORS 319.042(2). ODOT-FTG relied on a 1994 consent decree, as revised by the 2006 agreement, (Exs. A11 and A12), entered into between the State of Washington and the Yakama Nation to resolve litigation over Washington’s attempt to tax on-reservation fuel sales.

ODOT-FTG relies on ¶ 4.8 in the 1994 consent decree, unchanged by the 2006 revision, as the linchpin for its argument that Cougar Den must have a fuel dealer’s

license from the State of Washington in order to obtain a fuel dealer's license in Oregon. Paragraph 4.8 reads as follows:

The Yakama Indian Nation, a federally-recognized Indian tribe providing essential governmental services on the Yakama Indian Reservation, shall act as the sole distributor of motor vehicle fuel and specific fuel to Yakama businesses that operate filling stations on the Reservation. The Yakama Indian Nation shall not sell, distribute, or otherwise transfer motor vehicle or special fuel to any person or entity except to (a) Yakama businesses operating filling stations on the Reservation under license by the Tribe, for resale through the filling stations' pumps, or to (b) Tribal members or Yakama businesses Tribally-licensed to purchase bulk fuel. The Tribe shall purchase fuel for distribution, sale, or transfer only from businesses that are properly licensed in accordance with Chapter 82.35 RCW and Chapter 82.38 RCW, whether the business is located within or without the State of Washington.

Ex. A11 at 9-10.

ODOT-FTG argues that ¶ 4.8 of the consent decree is "law" that it can and must interpret. ODOT-FTG argues that the provision requires Cougar Den to have a fuel dealer's license from the State of Washington before ODOT-FTG can issue Cougar Den a fuel dealer's license in Oregon.

Cougar Den argues that the consent decree is not "law" of a state or a tribe, but rather is a contractual agreement. Cougar Den contends that while ODOT-FTG must look at "law" to determine whether an applicant for an Oregon motor vehicle fuel dealer's license is currently licensed in the state, territory or country to which the fuel is exported and where it is unloaded, a consent decree is not part of that determination. Cougar Den relies on case law to support its position, including the following:

[C]onsent decrees are essentially contractual agreements that are given the status of a judicial decree. Contract principles are generally applicable in our analysis of consent decrees, provided contractual analysis does not undermine the judicial character of the decree. *See, e.g., Thompson v. Enomoto*, 915 F2d 1382, 1388 (9th Cir 1990), *cert den* 502 US 1071 (1992). Key to the present case consent decrees are construed as contracts for purposes of enforcement. [Citations omitted.]

Hook v. Ariz. Dep't of Corrections, 972 F2d 1012, 1014 (9th Cir 1992).

Paragraph 4.5 of the consent decree states that "[t]he Yakama Indian Nation shall have the initial responsibility to enforce the terms of this Consent Decree as to Tribal members and Yakama businesses through its Tribal laws." Ex. A11 at 7. Paragraph 4.16 of the consent decree, titled Tribal Law, requires the Yakama Nation to establish and implement a procedure for licensure of tribal businesses. *Id.* at 17. Paragraph 4.22 of the

consent decree requires Cougar Den, among other persons, to "comply with the terms of this Consent Decree and with the Tribal laws implementing ¶ 4.16." *Id.* at 22.

I believe Cougar Den is correct that the 1994 consent decree is not law, but rather is a contract between the State of Washington and the Yakama Nation. Cougar Den is not required to possess a motor vehicle fuel dealer's license from the State of Washington.

Next, is whether Cougar Den meets the remaining requirements for an Oregon motor vehicle fuel dealer's license under ORS chapter 319.

Cougar Den is a corporation licensed by the Yakama Nation pursuant to the Yakama Nation Corporation Code. Yakama Nation Tribal Code (YNTC) Chapter 30, Cougar Den Ex. 4; Statement of Stipulated Facts (SSF) 7. Kip Ramsey, the owner and president of Cougar Den, is an enrolled Yakama tribal member. SSF 5, 6, 7. Cougar Den's office and business operations are located on the Yakama Reservation. Cougar Den is not a corporation owned by the Yakama Nation. SSF 7. The Yakama Nation lies completely within the State of Washington. No part of the Yakama Nation lies in the State of Oregon. SSF 3. Cougar Den is not licensed as a corporation under either the laws of the State of Washington or of Oregon. Cougar Den has been registered as a foreign corporation under the laws of both the States of Oregon and Washington, and licensed under the jurisdiction of the Yakama Nation. Exs. 12, 15; SSF 11. Cougar Den does not have a Washington state motor vehicle fuel dealer's license or its equivalent. SSF 12.

Yakama law requires that all businesses on the reservation, both Indian and non-Indian, be licensed under Yakama law. YNTC §§ 30.02.07. The Yakama Nation Tribal Council has authority to make rules involving tribal corporations. YNTC § 30.02.15. Corporations formed under the Yakama Corporation Code must be owned by tribal members. YNTC § 30.05.01. A tribal petroleum license may be issued to a tribal member to sell or distribute petroleum products. YNTC § 30.11.02. The license is renewed annually. YNTC § 30.11.06. A tribal member selling petroleum products to non-members (non-Indians and Indians who are not members of the Yakama Nation) must collect Washington state fuel taxes on such sale. YNTC § 30.11.02. The Yakama Nation imposes fuel taxes on the sale of petroleum products by tribal members on the Yakama Reservation. YNTC § 30.11.10. A tribal fuel licensee may not allow a non-member to benefit or profit from the sale of petroleum products by a tribal business. YNTC § 30.11.11. The Yakama Nation uses tribal fuel tax revenues for tribal government operations. YNTC § 30.11.12.

Cougar Den stated in its application that it intends to export motor vehicle fuel from Oregon to the Yakama Nation and unload the fuel there, as an agent of the Yakama Nation. The fuel will be stored and then sold by the Tribe to tribal businesses on the Yakama Reservation. Cougar Den acts as the agent for the Yakama Nation to obtain fuel in Oregon for export to the Yakama Nation. Cougar Den Ex. 9 (Yakama Petroleum Products License Responsibilities, Yakama Tribal Council, designating Cougar Den as an

agent of the Yakama Nation for the purpose of obtaining petroleum products for sale and delivery to the Yakama Nation and tribal members, September 29, 1993). Under ¶ 4.8 of the consent decree, Cougar Den will need to purchase fuel in Oregon as the Tribe's agent from businesses properly licensed under Washington law.

ORS 319.240(1)(b) requires Cougar Den to possess a valid fuel dealer's license or its equivalent from the Yakama Nation. The term "valid" is defined as "having legal strength or force[.]" *Webster's Third New Int'l Dictionary* 2529 (unabridged ed 2002). Cougar Den has a current business license from the Yakama Nation. Cougar Ex. 3; SSF 7. Cougar Den has a current permit from the Yakama Nation to sell petroleum products within the Yakama Reservation pursuant to tribal law. Cougar Den Ex. 5; SSF 8. Cougar Den has a bulk user petroleum permit issued by the Yakama Nation, granting Cougar Den the privilege of taking delivery of petroleum in bulk without payment of state fuel taxes provided that the laws of the Yakama Nation are complied with. Cougar Den Ex. 6; SSF 9. In addition, since 1993, Cougar Den has been formally designated by the Yakama Nation and the Yakama Nation Tribal Council as an "agent" of the Yakama Nation for the purposes of obtaining fuel products for sale and delivery to the Yakama Nation, and for collecting and transmitting fuel taxes to the Yakama Nation. Cougar Den Ex. 9; SSF 10.

ODOT-FTG argues in this appeal, for the first time, that Cougar Den's Yakama Nation permits and licenses are not the "equivalent" of an Oregon dealer's license. Without deciding whether ODOT-FTG can raise this issue on appeal from its denial of a license as stated in its November 19, 2010 letter (because the 1994 consent decree requires Cougar Den to possess a motor vehicle fuel dealer's license from the State of Washington), I believe that Cougar Den's licenses and permits from the Yakama Nation as set forth in the paragraph above are the equivalent of an Oregon dealer's license.

The consent decree establishes a framework for the taxation and regulation by the Yakama Nation and the State of Washington regarding the distribution, sale, transfer, use or possession of motor vehicle fuel on the Yakama Reservation. Ex. A11 at 2, ¶ 2.2. The consent decree also establishes an exclusive scheme for enforcement of the consent decree and for dispute resolution. Ex. A11 at 9, ¶ 4.7; Ex. A12 at 3, ¶ H. If Cougar Den were to try and purchase fuel and distribute it directly on the Yakama Reservation without going through the Tribe or without complying with the terms of the consent decree, Cougar Den would be subject to license revocation and civil and criminal penalties by the Yakama Nation. Ex. A11 at 17-18. If Cougar Den's license were to be revoked by the Yakama Nation, then Cougar Den's Oregon motor vehicle fuel dealer's license would be subject to revocation under ORS 319.042.

In sum, Cougar Den meets all of the requirements of Oregon statutes for issuance of an Oregon motor vehicle fuel dealer's license. Cougar Den possesses a valid motor vehicle fuel dealer's license or its equivalent issued by the Yakama Nation, the territory to which the fuel is exported and where it is unloaded.

ORDER

I propose that ODOT-FTG issue the following order:

Reverse the previous denial of Cougar Den's application for an Oregon motor vehicle fuel dealer's license, and issue an Oregon motor vehicle dealer's license to Cougar Den, Inc.

Ken L. Betterton

Senior Administrative Law Judge
Office of Administrative Hearings

NOTICE OF OPPORTUNITY TO FILE EXCEPTIONS

You are entitled, Under ORS 183.460 and OAR 137-003-0650, to file written exceptions and arguments in opposition to this proposed order. Exceptions must be received 20 days from the date of issuance of this order and should be mailed to:

Department of Transportation
c/o Office of Administrative Hearings
PO Box 14020
Salem OR 97309-4020

Following the period for exceptions, the Department will issue a Final Order in this matter.

CERTIFICATE OF MAILING

On January 9, 2012, I mailed the foregoing Ruling on Summary Determination and Proposed Order issued on this date in OAH Case No. 1102410.

By: First Class Mail

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