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## Port of Morrow v. Aylett, 62 P.3d 427 (Or. Ct. App. 2003)

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private organization with members in the timber, forest, and wood chip mill industries, claimed that this new permit would subject its members to burdensome additional administrative procedures and requirements.

NCFA argued that the trial court erred in determining that DWQ had the authority to issue a general permit and erred in finding the Commission's decision was timely. The DWQ claimed the trial court erred in finding that NCFA had standing. The appellate court reviewed de novo whether the North Carolina Administrative Procedure Act ("NCAPA") conferred standing on NCFA by examining North Carolina General Statute section 143-215.1. The appellate court determined that the statute authorized the Commission to issue water pollution permits and general permits. The statute did not require the Commission to make general permits available. The appellate court stated that wood chip mills had no more rights to general permitting than any other segment of the timber industry that was excluded from general permits.

Next, the appellate court explained that any aggrieved person is entitled to a contested case hearing, but NCFA was not an aggrieved person since NCFA did not claim that DWQ denied it or any of its members a permit as a result of the new general permit exclusion of wood chip mills. The appellate court stated that no abrogation of any right occurred because neither NCFA nor any of its members filed an application for a permit since implementation of the new procedures.

*Stefania Niro*

## OREGON

**Port of Morrow v. Aylett, 62 P.3d 427 (Or. Ct. App. 2003)** (reversing and remanding lower court's judgment of relief on the grounds relief granted specifically disavowed by party seeking relief).

Port of Morrow ("Port") owned an irrigation system capable of delivering water to certain property owned by Port and also property owned ("Section 21") and leased ("Sections 27 and 28") by the Aylett family ("Ayletts"). Due to previous litigation in 1993 between the Ayletts and Port's predecessors in interest, the Ayletts operated two pumps to control water flow through Section 21 to Sections 27 and 28. Port sued the Ayletts in the Morrow County Circuit Court, and alleged that although the Ayletts had the right to use the water delivery system for the delivery of water to Section 21, no similar right of delivery to Section 27 and 28 applied. Port noted that neither the control of the two pumps operated by the Ayletts nor the price of the water flowing into Section 21 were at issue in this case. The trial court concluded that the agreement pursuant to which the Ayletts claimed a right to delivery of water to Sections 27 and 28 did not give them such a right.

Thus, the court enjoined them from such delivery of water without written consent of Port and awarded damages. The judgment additionally gave Port exclusive right to operate the water delivery system providing Port did not interfere with the Ayletts' right to uninterrupted use of the system on Section 21. The trial court also stated Port had the right to charge the Ayletts actual costs of future use of the irrigation system for delivery of water to Section 21.

On appeal to the Oregon Court of Appeals, the Ayletts made two arguments concerning the ruling: (1) that the relief granted went beyond the relief sought and the additional terms were erroneous in light of Port's assurances that those issues were not before the court and would be litigated at a later date if necessary; and (2) that the trial court erred as a matter of law because previous 1993 litigation established the Ayletts' right to operate the irrigation system. The court here agreed with the Ayletts' first argument and thus did not address the second. The court likened the Ayletts' case to *Ellison v. Watson* where the relief erroneously granted by the court concerned subject matter that was not only not the grounds for litigation but was specifically disavowed by the party seeking relief. Port argues that the present case is distinguishable from *Ellison* because the relief at issue in the instant case was "logically connected" to the relief requested. The court rejected the connection argument because it failed to see a connection between the Ayletts' rights to irrigate Sections 27 and 28 and the amount that Port could charge defendant to irrigate Section 21.

Therefore, the court reversed the trial court's ruling on the issue of additional relief and remanded for entry of an amended judgment. The court otherwise affirmed the judgment.

*Gerritt James Koser*

**Hale v. Water Res. Dep't, 55 P.3d 497 (Or. Ct. App. 2002)** (holding that lack of continuity regarding beneficial use barred plaintiffs from receiving a permit to use river water for irrigation).

In 1965, the Water Resources Department ("Department") created Permit 30789 ("Permit"), allowing for the Stanfield Irrigation District, including Robert Hoskins and Ralph and Albert Seibel, to divert water from the Umatilla River for irrigation. The Department would grant a permit if the parties, within the district, applying could establish that they were putting water to beneficial use. At the final application deadline—December 31, 1988—the Department determined whether the district was using the water beneficially by conducting a survey. Hoskins and the Seibels, owners of two adjacent sections of land, both sought permits. The Seibel brothers were attempting to irrigate both the land they owned as well as the neighboring section they leased from Hoskins. The irrigation began in the early 1970s but ceased in the early 1980s due to one of the brothers' illness. At this time, the