

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
IN AND FOR LARAMIE COUNTY, STATE OF WYOMING

Docket No. 78-374

HUSKY OIL COMPANY,
a corporation,

Plaintiff,

vs.

STATE OF WYOMING, by and through
the STATE BOARD OF CONTROL
and GEORGE L. CHRISTOPULOS,
EARL MICHAEL, PAUL KAWULOK,
CRAIG COOPER, and JOHN TEICHERT,
its members; GEORGE L. CHRISTOPULOS,
State Engineer of the State of
Wyoming; ENVIRONMENTAL QUALITY
COUNCIL and JOHN V. CROW, RICHARD
GRAY, GLEN A. GOSS, MAXINE PATTERSON,
LEE E. KEITH, DAVID B. PARK and
RONALD C. SURDAM,, its members;
DEPARTMENT OF ENVIRONMENTAL QUALITY,
by and through ROBERT E. SUNDIN,
its Director,

Defendants.

FILED

JUL 5 1983

GERRIE E. BISHOP
CLERK DISTRICT COURT

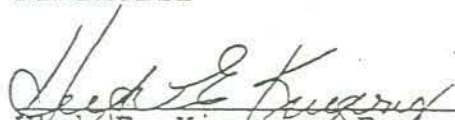
JOINT MOTION OF ALL PARTIES
FOR APPROVAL OF SETTLEMENT
AGREEMENT AND DISMISSAL WITH PREJUDICE

COMES NOW, all parties to the above-referenced action,
by and through their respective counsel of record, and
respectfully moves this Court for its order approving the Set-
tlement Agreement entered into by all parties on
June 27, 1983, a copy of which is attached and by reference
incorporated herein, and dismissing the above-referenced action
with prejudice with all parties to bear their own costs.

Respectfully submitted this 27 day of

June, 1983.

HUSKY OIL COMPANY,
Plaintiff

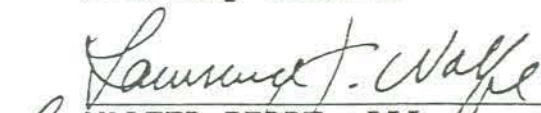


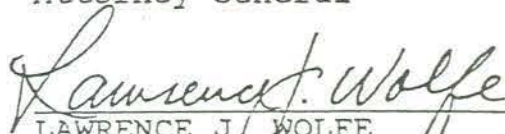
Hugh E. Kingery, Esq.
6060 South Willow Drive
Englewood, Colorado 80111

STATE OF WYOMING, by and
through the STATE BOARD OF
CONTROL and GEORGE L.
CHRISTOPULOS, EARL MICHAEL
PAUL KAWULOK, CRAIG COOPER
and JOHN TEICHERT, its
members; GEORGE L.
CHRISTOPULOS, State
Engineer of the State of
Wyoming; ENVIRONMENTAL
QUALITY COUNCIL and JOHN
V. CROW, RICHARD GRAY,
GLEN A. GOSS, MAXINE
PATTERSON, LEE E. KEITH,
DAVID B. PARK and RONALD
C. SURDAM, its members;
DEPARTMENT OF ENVIRON-
MENTAL QUALITY, by and
through ROBERT E. SUNDIN,
its Director,
Defendants

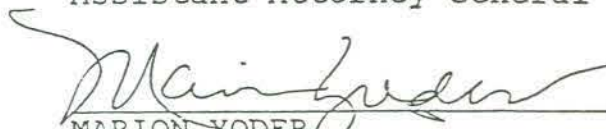


A. G. McCLINTOCK
Attorney General


for _____
WALTER PERRY, III
Senior Assistant
Attorney General



LAWRENCE J. WOLFE
Assistant Attorney General



MARION YODER
Assistant Attorney General

State of Wyoming
123 Capitol Building
Cheyenne, Wyoming 82002
(307) 777-7841

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
IN AND FOR LARAMIE COUNTY, STATE OF WYOMING

Docket No. 78-374

HUSKY OIL COMPANY,)
a Delaware corporation,)
)
Plaintiff,)
)
vs.)
)
STATE OF WYOMING, by and)
through the STATE BOARD OF)
CONTROL and GEORGE L.)
CHRISTOPULOS, EARL MICHAEL,)
PAUL KAWULOK, CRAIG COOPER)
and JOHN TEICHERT, its)
members; GEORGE L.)
CHRISTOPULOS, State Engineer)
of the State of Wyoming;)
ENVIRONMENTAL QUALITY COUNCIL)
and JOHN V. CROW, RICHARD)
GRAY, GLEN A. GOSS, MAXINE)
PATTERSON, LEE E. KEITH,)
DAVID B. PARK and RONALD C.)
SURDAM, its members;)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY, by and through)
ROBERT E. SUNDIN, its)
Director,)
)
Defendants.)

SETTLEMENT AGREEMENT

The parties enter into this Agreement to settle disputes and conflicting claims by and among the parties, as more specifically described in the pleadings. This Agreement is not intended as an adjudication of the rights of the respective parties to waters of the Shoshone River, but rather as a compromise settlement of claims involving the effluent discharge from the Husky Refinery at Cody, Wyoming. The parties do not waive any rights they may have with respect to persons or matters not herein specifically identified and set forth.

DEFINITIONS

A. "NPDES Permit" means that permit issued February 27, 1976, to Husky Oil Company, a Delaware corporation, by the Wyoming Department of Environmental Quality (DEQ) entitled "Authorization to Discharge Under the National Pollutant Discharge Elimination System," identified as Permit No. WY-0000451, and which authorizes a discharge from the Cody, Wyoming Refinery into receiving waters named the Shoshone River, and all subsequent renewals of that permit.

B. "Water Rights" means the permit issued to the Husky Oil Company by the Wyoming State Engineer, Permit No. 22055, with a priority date of October 9, 1959, for the appropriation of 4.5 cfs. of water from the Shoshone River for industrial, domestic and manufacturing purposes. This permit was adjudicated on March 9, 1962, as evidenced by Proof No. 26683, Certificate Record No. 65, page 500.

C. "Refinery Effluent" means the untreated wastewater stream from Husky's Cody refinery denominated in the Permit to Construct No. 76-73RR, issued by the Department of Environmental Quality, Water Quality Division, on May 28, 1976. As used here, the term includes the wastewater applied directly to the land leased by Husky or adjoining it, as well as that placed in the Impoundment in conformity with Permit No. 76-73RR.

D. "Impoundment" means a series of lined ponds constructed by Husky, north of the refinery, in which Refinery Effluent is placed for storage and/or evaporation, pursuant to Permit 76-73 RR.

E. "Impoundment System" consists of the pipeline system, pumps, dams, and all appurtenant works to the Impoundment.

F. "Reclamation Water" refers to reservoir water comparable to that found in the Buffalo Bill Reservoir and presently purchased by Husky from the United States Bureau of Reclamation, or other water of equally clean quality.

G. "Shoshone River" refers to said river, its tributaries, and its drainage.

H. "Waters of the State" has the same meaning as in W.S. 35-11-103(c)(vi), and includes, but is not limited to, the Shoshone River, as well as the groundwater underlying Husky's Impoundment and land upon which direct land application of a portion of the effluent is presently being made.

RECITALS

1. The parties are now engaged in litigation in the District Court of the First Judicial District of the

State of Wyoming in which Husky appears as Plaintiff and the State of Wyoming and its agencies appear as Defendants, said action being identified by Docket No. 78-374.

2. In this action, Husky alleges, and the State of Wyoming acknowledges, that Husky is the owner of certain Water Rights for the beneficial use of water as described in the above definitions.

3. For many years, Husky's Water Rights have been utilized in the operation of its refinery at Cody, Wyoming. The resulting effluent from such refinery process has been returned to the Shoshone River.

4. Pursuant to the provisions of the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., and the Wyoming Environmental Quality Act, W.S. 35-11-101, et seq., the State has notified Husky that it may no longer discharge a portion of said untreated effluent into the Waters of the State unless and until such effluent meets certain statutory and regulatory standards.

5. Thereafter, and for the purpose of conforming its operations to the requirements of the Federal Government and the Wyoming Environmental Quality Council, Husky has constructed and now operates facilities near its refinery to transport, store, impound, reuse, recycle and otherwise utilize part of said untreated effluent without discharging same into the Waters of the State. Such untreated effluent not so used in the refinery process or discharged into the Shoshone River or otherwise recycled (the Refinery Effluent) is placed in the Impoundment System and stored in the Impoundment.

6. Under the above-described Impoundment System, the Refinery Effluent is not discharged into the Shoshone River. The Impoundment System is constructed according to plans and specifications approved by the Wyoming DEQ/Water Quality Division and is designed to contain such effluent.

7. The present configuration of water use by the refinery is illustrated by the following table which shows the average daily water use during 1981:

Average daily withdrawal
from the river ----- 3.3 mgd.*

Return Discharge into
Shoshone River ----- 2.7 mgd.

Refinery Effluent Discharged
into the Impoundment ---- 0.4 mgd.

Consumption in refinery
operation ----- 0.2 mgd.

TOTAL ----- 3.3 mgd.

*(mgd. = million gallons per day)

The water returned to the Shoshone River consists of cooling water discharged in accordance with the NPDES Permit. The parties recognize that Husky's average daily withdrawal from the river of 3.3 mgd. exceeds its lawful appropriation of 4.5 cfs. Husky has been able to exceed its permitted diversion rate because there has been no call for regulation by downstream appropriators. Regulation is only instituted when a downstream senior appropriator makes a call for regulation. It is not the intent of this agreement to validate or otherwise give legal significance to Husky's diversion of water in excess of its permitted amount. The parties understand that Husky's diversion may be regulated in the future to supply senior downstream rights and that this agreement shall not be interpreted to permit Husky to divert water in excess of its legally permitted diversion rate.

8. Husky has entered into a contract with the United States Bureau of Reclamation, a copy of which is attached and incorporated herein, whereby Husky is now purchasing 250 acre feet of Reclamation Water per annual irrigation season, which Husky has caused to be released and discharged into the Shoshone River in lieu of and in substitution for the quantity of Refinery Effluent which Husky now impounds and does not return into the Shoshone River from its refinery operation.

9. The parties now desire to settle and compromise the litigation now pending before the Court while at the same time reserving and preserving all rights which said parties and each of them now have in respect to the subject matter of said litigation, except as hereinafter set forth and further except as to the extent the contractual rights and obligations of the parties hereto may indefinitely postpone and/or delay the enforcement of said rights.

NOW, THEREFORE, for and in consideration of the mutual promises, agreements and undertakings of the respective parties, it is hereby mutually agreed:

CONTRACTUAL UNDERTAKINGS

10(a) So long as this agreement remains in effect, and so long as Husky does not substantially modify the present configuration of water usage at the refinery, Husky agrees:

(i) To continue to operate the refinery in essentially the manner that it has in the past, which operation results in a substantial percentage of the water appropriated from the Shoshone River being returned to the river. Husky returned to the Shoshone River an estimated 2.7 million gallons per day in 1981 of the 3.3 million gallons per day that it diverted. Husky agrees to discharge back into the Shoshone River as much water as reasonably possible, and at least a minimum of 65% (on an average daily basis, calculated annually) of the water that it appropriates from the Shoshone River for use in its refinery operations.

(ii) To purchase at least 250 acre feet of Reclamation Water per annual irrigation season, and release same into the Shoshone River.

10(b) If Husky does substantially modify the configuration of water usage

(i) So that it appropriates less than 1.0 mgd of water (average daily water use), then it need not comply with 10(a)(i); or

(ii) So that it begins to return to the Shoshone River an amount of treated Refinery Effluent equivalent to 75% of Refinery Effluent previously placed in the Impoundment, then it may terminate the contract with the Bureau of Reclamation.

10(c) If the refinery is permanently abandoned and is no longer utilized by Husky or its successors and assigns, or if the State otherwise so permits, Husky may terminate its contract with the Bureau of Reclamation as provided in Article 4 of that contract.

10(d) If the refinery is permanently shut down and abandoned, Husky's water right will be abandoned or transferred in the manner provided by law.

11. Within 90 days of the execution of this Settlement Agreement, Husky agrees to apply to the Wyoming State Engineer for a permit to impound water in the Impoundment, and the State Engineer agrees to issue said permit. This permit will show the Shoshone River, as processed through the Husky refinery as a source of supply for the

Refinery Effluent stored in the Impoundment. This permit may contain certain conditions and limitations required by the Safety of Dams Laws, W.S. 41-3-307 through 41-3-317. However, the permit will not require Husky to modify or alter the Impoundment System, including existing dams, appurtenant works, pipeline system, or Impoundment, unless it becomes evident that said reservoir and dam have been constructed without compliance with the Safety of Dams Laws and pertinent Wyoming Statutes relating to dam construction in force at the time of the construction of said reservoir and dam. Application for the permit and issuance thereof does not constitute an admission or agreement by Husky that the statutes and regulations of the State of Wyoming require Husky to obtain a permit under the facts and circumstances of this case, which Husky specifically denies.

12. As long as Husky continues to operate the refinery so as to return a minimum of 65%, on an average daily basis, of the water diverted for use at the refinery to the Shoshone River and to release and discharge the Reclamation Water into the Shoshone River as set forth in Paragraph 10(a)(ii) above, the State of Wyoming agrees:

(a) To allow Husky to operate its wastewater treatment system according to the DEQ permit specifications and Husky may treat the Refinery Effluent by evaporation and dispose of it onto lands adjoining the Impoundment System, as mentioned in Paragraph 5 above, so long as none of the Refinery Effluent presents a threat of contamination to Waters of the State.

(b) To refrain from any action, directly or indirectly, to restrain Husky from the operation of said wastewater treatment system, according to the DEQ permit specifications and the provisions of the Wyoming Environmental Quality Act, specifically W.S. 35-11-301, and further to refrain from taking any action which, directly or indirectly, would require Husky to discharge said Refinery Effluent directly or indirectly into the Shoshone River, or other Waters of the State.

(c) To enter such orders as may be deemed necessary to ratify the operations, within DEQ permit specifications of said wastewater treatment system.

(d) The foregoing in no way limits the rights of the State in the future to enforce the provisions

of the Wyoming Environmental Quality Act and applicable rules and regulations.

13. The parties further mutually undertake and agree as follows:

(a) Upon execution of this Settlement Agreement, the parties shall join a motion to have the agreement approved by the Court, requesting that the above-entitled action be dismissed with prejudice, each party to bear its own costs.

(b) For as long as this Agreement remains in force and effect, neither party hereto shall take action against any other party with respect to the matters set forth in said action, Docket No. 78-374.

(c) This agreement shall be and remain in full force and effect until June 21, 2017, and from year to year thereafter unless written notice of cancellation thereof is given one of the parties to this agreement not less than three months prior to the expiration of said agreement or any renewal and extension thereof.

14. In the event of the default of Husky to continue to purchase and release into the Shoshone River the quantity of Reclamation Water herein agreed to be purchased by it for release into said river, which default shall continue for more than thirty (30) days following written notice by the State of Wyoming to correct said default, this Agreement shall cease and terminate and the parties shall have and be entitled to assert all claims, defenses, rights and privileges as though this Agreement had never been executed, except as to the claims for alleged misconduct or improper action during the time said Agreement was in force and effect. Cessation of such purchase and release under Paragraph 10 is not a default hereunder.

15. This Agreement shall not be construed as any admission by either party of validity of the claims of the other, in respect to this action or any other action now pending or hereafter commenced. Nor shall this Agreement be admissible in evidence in any action, except an action arising from or involving the enforcement of the provisions hereof.

16. The parties hereby mutually release and discharge each other of and from all claims, demands, actions or causes of action which such party has or may have or claim against the other arising out of or in respect to conduct of such other party in respect to the matters set forth in Plaintiff's Complaint and occurring prior to and including the date hereof.

17. This Agreement shall be assignable by Husky to its successors in interest. The Agreement shall be binding upon all parties hereto and their heirs, successors, personal representatives and assigns.

IN WITNESS WHEREOF, the parties have caused these presents to be executed by a duly authorized representative this 27th day of June, 1983.

HUSKY OIL COMPANY

Attest:

Assistant Secretary

[Signature]
Secretary

By

[Signature]
Vice President

STATE OF WYOMING

[Signature]
A. G. McCLINTOCK
Attorney General

for [Signature]
WALTER PERRY, III
Senior Assistant
Attorney General

[Signature]
LAWRENCE J. WOLFE
Assistant Attorney General

[Signature]
MARGON YODER
Assistant Attorney General

State of Wyoming
123 Capitol Building
Cheyenne, Wyoming 82002