

BEFORE THE OREGON FISH AND WILDLIFE COMMISSION

**IN THE MATTER OF DENNIS LEE
STURGELL**
Hammond, Oregon

) **DECLARATION OF THANE W.
) TIENSON IN SUPPORT OF
) AMENDED PETITION FOR HEARING
) AND FOR DETERMINATION OF
) APPLICABILITY OF THE 60-DAY
) PERIOD TO REQUEST A HEARING OF
) THE DEPARTMENT'S NOTICE OF
) INTENT TO REVOKE COMMERCIAL
) FISHING LICENSES**

UNDER PENALTY OF PERJURY:

I, THANE W. TIENSON, do hereby declare that the statements herein are made based on personal knowledge and I am competent to testify.

1. I am the attorney for Dennis Lee Sturgell in this matter, and I make this Affidavit on the basis of personal knowledge and belief.

2. I first received notice of this matter when I received a telephone call from Astoria attorney Harold "Hal" Snow on Monday, June 1, 2009, the same day that Mr. Snow received notice as well. Mr. Snow is Mr. Sturgell's personal attorney and represents him on non-trial matters.

3. It is my understanding and belief, based upon conversations with Mr. Sturgell and with his bookkeeper, Kelly Smith, that while she did sign for the receipt of the Notice of Proposed Revocation several days after it was mailed while Mr. Sturgell was out fishing, Mr. Sturgell himself did not personally receive notification until Saturday, May 30, 2009.

4. Initially, I called Steve Sanders, the Commission's attorney, on June 11, 2009 regarding the matter, and he said he was always interested in talking about settlement. On June 12, 2009, a telephone conference call between Mr. Sturgell, Mr. Snow, Stephen Sanders, and me was held in Mr. Snow's office in Astoria in which we discussed the settlement prospects for this matter in detail. Mr. Sanders was very receptive and stated that he believed that the Commission would look favorably upon a settlement of this matter, and that he was always looked for ways to avoid contested cases. We discussed potential resolutions and issues presented by the case, and Mr. Sanders stated that he would confer with Roy Elicker, Director of the Department of Fish and Wildlife, and Marla Rae, Chair of the Commission, to sound them out and get back to us.

5. I spoke again with Mr. Sanders on June 24, June 26, July 2, and July 10, 2009, and Mr. Sturgell was involved in the June 24 call. We specifically discussed a settlement that would allow Mr. Sturgell the ability to sell the crab permit that was being revoked for a year. We also discussed the potential impact of the Wildlife Violator Compact to which Oregon and Washington are signatories and potential ways in which a settlement could be structured to avoid triggering a similar revocation in Washington where Mr. Sturgell also holds licenses. For that reason, Mr. Sanders said that he would speak with Fronda Woods or Mike Grossman, the two attorneys who represent the Washington Department of Fish and Wildlife, with whom I am also familiar, to discuss their willingness and receptivity toward a global settlement because of a pending unresolved violation in Washington involving Mr. Sturgell.

6. Again, Mr. Sanders said that he would have to confer with Mr. Elicker and Ms. Rae and report back. He did not do so. I called him again on July 2, 2009 and he called me on July 10, 2009. In the July 10, 2009 telephone conference, Mr. Sanders specifically stated that he would follow up on the Wildlife Violator Compact issue because of its potential significance and discuss Mr. Sturgell's ability to sell the transferred permit and have it be fishable during the next calendar year if it was not sold, including its potential sale to one of his children.

7. There was no discussion about the necessity of requesting a hearing in any of these conversations with Mr. Sanders. In fact, I specifically recall saying that I would hold off requesting a hearing in our discussion of June 12, 2009. The whole point of our settlement discussions was to avoid a hearing and the costs and risks associated with the process.

8. Hearing nothing from Mr. Sanders after July 10, 2009, I tried several times to contact him by telephone and left several messages with him on his office telephone. In late July 2009, Mr. Sturgell called and said that he was in Newport and had spoken with DeAnna Erickson of the Department and had been informed that because the period for requesting a hearing had lapsed, his license would be revoked without further ability on his part to negotiate a settlement. I was literally stunned by this news. I asked Mr. Sturgell to have Mr. Sanders call me. He said that he would, but he did not do so until July 29, 2009, when he confirmed that the Commission was going to issue a Final Order revoking Mr. Sturgell's licenses. I immediately filed a Request for Hearing that same day.

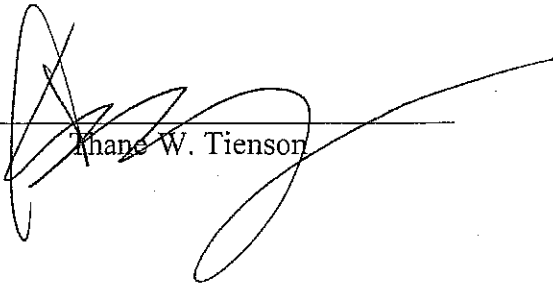
9. Based upon my numerous conversations with Mr. Sanders between June 11 and July 10, 2009, I believed Mr. Sturgell's case would be resolved by settlement without the necessity of a hearing or the necessary of requesting a hearing.

10. If Mr. Sanders had not always been so encouraging regarding settlement prospects, I would have filed a request for a hearing on a timely basis.

11. I believe the above circumstances constitute circumstances beyond Mr. Sturgell's reasonable control or, alternatively, are circumstances that allow us to assert that the

Commission had actual notice that a timely request for a hearing would have been made but for the positive tone of the ongoing settlement negotiations.

DATED this 21st day of August, 2009.



Thane W. Tienson

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2009, I served the foregoing **TIENSON**
DECLARATION IN SUPPORT OF AMENDED PETITION FOR HEARING AND FOR
DETERMINATION OF APPLICABILITY OF 60-DAY RULE on the following
individual(s):

DeAnna Erickson
Oregon Dept. of Fish and Wildlife
3406 Cherry Avenue NE
Salem, OR 97303

Marla Rae, Chair
Oregon Dept. of Fish and Wildlife
3406 Cherry Avenue NE
Salem, OR 97303

Roy Elicker, Director
Oregon Dept. of Fish and Wildlife
3406 Cherry Avenue NE
Salem, OR 97303

Stephen Sanders
Oregon Department of Justice
1515 SW 5th Avenue, Ste. 410
Portland, OR 97201

via first class mail.

DATED this 21st day of August, 2009.



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