



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

and

STATE OF OREGON,

Plaintiff-Intervenor,

v.

ERNEST MONIZ, Secretary of the
United States Department of Energy,
and the UNITED STATES
DEPARTMENT OF ENERGY,

Defendants.

NO: 2:08-CV-5085-RMP

ORDER DENYING MOTION TO
REMOVE TECHNICAL ADVISOR

BEFORE THE COURT is the United States' Motion to Remove Technical Advisor, ECF No. 217. The Court has reviewed the motion, the supporting documents, and is fully informed.

The Department of Energy ("DOE") argues that Ms. Suzanne Dahl-Crumpler, whom the Court previously had appointed to serve as a technical advisor, ECF No. 206, be removed from the technical advisor panel. ECF No. 217

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1 at 1. DOE asserts that Ms. Dahl-Crumpler should be removed as (1) Ms. Dahl-
2 Crumpler was involved in preparing the State of Washington's latest Consent
3 Decree modification proposal; and (2) Ms. Dahl-Crumpler's participation might be
4 barred by Washington State law. *Id.* at 6–10.

5 The Court previously has noted but overruled DOE's objection as to
6 potential bias. ECF No. 192 at 2. As discussed in the Court's prior Order, "[t]he
7 Court is aware of the potential bias of both Ms. Dahl-Crumpler and Mr. [Jeffrey]
8 Trent and will evaluate their comments accordingly." *Id.* at 3. The fact that
9 Ms. Dahl-Crumpler may have been involved in preparing the State of
10 Washington's modification proposal has no impact on the Court's analysis.

11 Further, DOE continues to misconstrue the technical advisors' role in this
12 matter. The technical advisors did not serve as expert witnesses or as advocates;
13 the panel merely assisted the Court by providing the Court with appropriate
14 analytical frameworks through which to evaluate the parties' submissions. *Id.* at
15 3–4.

16 In order to save Washington and Oregon from having to waste their
17 resources needlessly to reargue issues about Ms. Dahl-Crumpler's participation as
18 a Technical Advisor, an issue on which the Court previously ruled, the Court is
19 issuing this Order denying DOE's request without waiting for an additional
20 response by Washington beyond the letter by Washington's counsel to DOE that
21 was attached to the Motion to Remove. ECF No. 217.

1 The Court agrees with Washington's analysis that there is no issue of bias
2 that restricts Ms. Dahl-Crumpler from being a Technical Advisor in this matter. In
3 addition, it is surprising that DOE's counsel fails to understand the Court's prior
4 orders regarding the scope and purpose of the Technical Advisor Panel. It is clear
5 from the pleadings that Washington's counsel fully understands the role of the
6 Technical Advisor Panel and disagrees that there is any issue with Ms. Dahl-
7 Crumpler's serving as a Technical Advisor in this matter. *See* ECF No. 217-2
8 (Washington's February 12, 2016, letter explaining to Department of Justice
9 attorneys exactly why their objections to Ms. Dahl-Crumpler as a technical advisor
10 are not well taken).

11 Alternatively, DOE now argues for the first time that Ms. Dahl-Crumpler is
12 barred from serving as a technical advisor by RCW 42.52.020. ECF No. 217 at 8.
13 Under RCW 42.52.020:

14 No state officer or state employee may have an interest, financial or
15 otherwise, direct or indirect, or engage in a business or transaction or
16 professional activity, or incur an obligation of any nature, that is in
conflict with the proper discharge of the state officer's or state
employee's official duties.

17 RCW 42.52.020. DOE asserts that RCW 42.52.020 "precludes a State employee's
18 outside employment when such employment could require the State employee to
19 provide a 'private perspective [that] may conflict with the agency perspective.'" *See*
20 ECF No. 217 at 8 (quoting Advisory Opinion 97-03, Washington State Executive
21 Ethics Board (approved Feb. 14, 1997; reviewed on Nov. 29, 2010), *available at*

1 [http://www.ethics.wa.gov/ADVISORIES/opinions/2013%20Updates%20Opinions/](http://www.ethics.wa.gov/ADVISORIES/opinions/2013%20Updates%20Opinions/Updated%20Advop%2097-03.htm)
2 [Updated%20Advop%2097-03.htm](http://www.ethics.wa.gov/ADVISORIES/opinions/2013%20Updates%20Opinions/Updated%20Advop%2097-03.htm)).

3 First, the Court notes that the State of Washington, the party allegedly
4 prejudiced under DOE's reading of RCW 42.52.020, not only proffered Ms. Dahl-
5 Crumpler as a technical advisor but actively disputes DOE's interpretation of
6 Washington State law. *See* ECF No. 176-2 at 2; ECF No. 217-2. Second, the
7 Court identified Ms. Dahl-Crumpler as a presumptive technical advisor on October
8 14, 2015, ECF No. 192, and appointed Ms. Dahl-Crumpler on December 10, 2015.
9 ECF No. 206. DOE has provided the Court with no explanation concerning why
10 their current argument under RCW 42.52.020, filed March 10, 2016, was raised in
11 such an untimely manner, especially considering DOE's prior opportunities to raise
12 objections. *See* ECF Nos. 184 and 190.

13 The Court finds that Mr. Fitz's February 12, 2016, letter to DOE's counsel,
14 attached to DOE's motion at ECF No. 217-2, both accurately and concisely
15 analyzes the factual and legal situation involving Ms. Dahl-Crumpler. The Court
16 agrees with Washington's position as stated in its letter and rejects all of
17 DOE's arguments and contentions.

18 As an example of how DOE's lack of timeliness affects their motion, the
19 Court will explain that the Court met with the Technical Advisors on one day for
20 approximately seven hours over one month ago. That has been the extent of the
21 Technical Advisors' direct involvement with the Court. In addition, the Court's

1 ruling on the Motions to Modify Consent Decrees is forthcoming, and there will be
2 no additional interaction with the Technical Advisors Panel regarding the pending
3 motions.

4 The Court is disappointed that while DOE repeatedly has claimed that
5 budgetary restrictions and limited financial resources have hindered DOE's ability
6 to perform its agreed duties at Hanford, too much time and public money has been
7 wasted in this case needlessly, due in part to the inappropriate insertion of
8 litigation tactics by DOE's counsel. The instant motion is an example of the
9 misunderstanding that DOE's counsel appears to have about the nature of these
10 proceedings.

11 This case is not litigation in the ordinary sense. The parties voluntarily
12 entered into Consent Decrees in order to avoid litigation. The parties have asked
13 the Court to modify the Consent Decrees to adapt to changed circumstances. The
14 parties each have been entrusted by the public to safeguard the health and welfare
15 of the people and to protect the environment. The Court views DOE's repeated,
16 baseless objections to Ms. Dahl-Crumpler as evidence of wasting time and
17 resources on DOE's part, as well as forcing Washington and the Court to waste
18 time and resources in dealing with DOE's objections.

19 One final issue that was raised in Mr. Fitz's response to DOE's counsel
20 concerns DOE's failure to comply with the joint proposal that DOE agreed to in
21 October 2015, to enter into services contract with each of the Technical Advisors.

1 ECF No. 193 at 2–3. Apparently DOE has failed to provide Ms. Dahl-Crumpler
2 with a services contract to pay one-half of her compensation for serving as a
3 Technical Advisor in this matter. DOE is ordered to provide the services contract
4 to Ms. Dahl-Crumpler within ten days of the date of this Order. In addition, DOE
5 is expected to pay each of the Technical Advisors promptly upon receipt of the
6 Technical Advisors’ billing calculation.

7 Accordingly, **IT IS HEREBY ORDERED** that:

- 8 1. The United States’ Motion to Remove Technical Advisor, **ECF No. 217**,
9 is **DENIED**; and
- 10 2. DOE is ordered to provide Ms. Dahl-Crumpler with a services contract
11 within ten days of the date of this Order, pursuant to DOE’s agreement in
12 ECF No. 193 at 2–3.

13 The District Court Clerk is directed to enter this Order and provide copies to
14 counsel and to the Technical Advisors.

15 **DATED** this 11th day of March 2016.

16
17 *s/ Rosanna Malouf Peterson*
18 **ROSANNA MALOUF PETERSON**
19 United States District Judge
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