

Public Notice

DEQ Requests Comments on Proposed Certification for the Balm Grove Dam Removal and Stream Restoration Project



State of Oregon
Department of
Environmental
Quality

The Oregon Department of Environmental Quality invites the public to provide written comment on a proposed Section 401 water quality certification for the Balm Grove Dam Removal and Stream Restoration Project in Washington County.

Project proposal

Clean Water Services proposes to remove the Balm Grove Dam located at river mile 13 on Gales Creek near Forest Grove, Washington County. The stream restoration work will include the placement of large wood, boulders, and limited channel grading to promote aquatic habitat complexity, functional fluvial conditions and the maintenance of fish passage and habitat. In addition, 8.4-acres of floodplain adjacent to Gales Creek will be planted with riparian and upland native vegetation.

Applicant

Abbey Rhode
Clean Water Services
2550 SW Hillsboro Highway
Hillsboro, OR 97123

Project location

The project is located at river mile 13 on Gales Creek, Forest Grove, Washington County, Oregon (Township 1 North/Range 4 West/Sections 5 and 6).

DEQ's role:

One way DEQ protects Oregon's water quality is by issuing Section 401 certifications. Section 401 of the federal Clean Water Act requires federal agencies to obtain a water quality certification from the state if the proposed activity may result in a discharge to surface waters.

The certification states that the discharge will comply with applicable sections of the Clean Water Act.

How do I participate?

To submit your comments for the public record, send them by mail, fax or email to:

401 Public Comments
Oregon Department of Environmental Quality
700 NE Multnomah St., Suite No. 600
Portland, OR 97232

Fax: 503-229-6945

Email: 401publiccomments@deq.state.or.us

Written Comments Due: June 24, 2019

Where can I get more information?

A link to the proposed certification is provided with this notice. You can review the file in its entirety at the DEQ Northwest Region office, 700 NE Multnomah Street Suite 600, Portland. For a review appointment, contact Blair Edwards at 503-229-5051 or email edwards.blair@deq.state.or.us.

What legal authorities apply?

- Federal Clean Water Act
- Oregon Revised Statutes 468B
- Oregon Administrative Rules Chapter 340, Divisions 041 and 048

What happens next?

DEQ may hold a public hearing on the proposal, if one is requested by 10 or more people or an organization representing 10 or more members. DEQ will review and consider all comments received. The certification may be issued as proposed, modified or denied.

You will be notified of DEQ's final decision if you submit written comments during the comment period. Otherwise, if you would like to receive notification, please call or write DEQ.

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.

401 Water Quality Certification Program
700 NE Multnomah St., Suite 600
Portland, OR 97232
Phone: 503-229-5696
800-452-4011
Fax: 503-229-6762
Contact: Blair Edwards

www.oregon.gov/DEQ

DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.



Oregon

Kate Brown, Governor

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Northwest Region Portland Office/Water Quality
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(503) 229-5263
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TTY 711

2019

Abbey Rhode
Clean Water Services
2550 SW Hillsboro Hwy
Hillsboro, OR 97123

RE: 2018-00607; Balm Grove Dam Removal and Stream Restoration Project 401 Water Quality Certification

The Oregon Department of Environmental Quality has reviewed the U.S. Army Corps of Engineers permit application #2018-00607 (Department of State Lands [DSL] #61834), in response to a request for a Clean Water Act Section 401 Water Quality Certification received on March 11, 2019. DEQ's 401 Water Quality Certification public comment information was circulated with the Corps' public notice, and DEQ received no water quality comments.

According to the Joint Permit Application, Abbey Rhode of Clean Water Services, proposes to impact Gales Creek in order to remove the Balm Grove Dam. The project is located in Gales Creek, Forest Grove, Washington County, Oregon (Township 1 North /Range 4 West/Sections 5 and 6).

Project Description: Clean Water Services is proposing to remove the Balm Grove Dam located at river mile 13 on Gales Creek and restore a 1,200-foot section of the creek in the immediate vicinity of the dam. The dam structure is 35- feet long, 100-feet wide, and has a hydraulic height of 3-feet with an additional 4-feet of height with the flashboards installed. Approximately 8.4-acres of the creek's floodplain will be vegetated with riparian and upland plants native to the region. An isolated in-water-work area and stream bypass system will be installed during work within Gales Creek, which includes: removing the concrete dam and wing walls, spot grading of the stream bed and banks, installation of large wood and habitat boulders within the stream bed, streambank stabilization measures, removal of the temporary isolation and bypass system, and restoring stream flow within the creek's channel. The project will have two phases performed over two years. The expected completion date is October 31, 2020.

Status of Affected Waters of the State: Gales Creek is classified as water quality limited under the federal Clean Water Act. Gales Creek is on the Section 303(d) list of impaired water bodies for chromium, copper, dissolved oxygen, iron, and lead; and has an EPA approved Total Maximum Daily Load that have been developed for *E. coli*.

The above listed parameters impair the following beneficial uses in the Willamette River Basin: Public Domestic Water Supply, Private Domestic Water Supply, Industrial Water Supply, Irrigation, Livestock Watering, Fish and Aquatic Life, and Wildlife and Hunting. Additional

beneficial uses include: Fishing, Boating, Water Contact Recreation, and Aesthetic Quality. Additional beneficial uses include: Hydropower, Commercial Navigation and Transportation.

Certification Decision: Based on the information provided by the applicant and the Corps, DEQ is reasonably assured the project will be consistent with applicable provisions of Sections 301, 302, 303, 306 and 307 of the federal Clean Water Act, state water quality standards set forth in Oregon Administrative Rules Chapter 340 Division 41 and other requirements of state law, provided the following conditions are strictly adhered to by the Applicant.

401 WQC GENERAL CONDITIONS

- 1) **Responsible parties:** This 401 WQC applies to the applicant. The applicant is responsible for the work of its contractors and subcontractors, as well as any other entity that performs work related to this Water Quality Certification.
- 2) **Work Authorized:** Work authorized by this 401 Water Quality Certification is limited to the work described in the Joint Permit Application signed on March 5, 2019 and additional application materials, unless otherwise authorized by DEQ. If the project is operated in a manner that's not consistent with the project description in the permit application materials, the applicant is not in compliance with this 401 Water Quality Certification and may face enforcement penalties.
- 3) **Duration of Certificate:** This 401 Water Quality Certification for impacts to waters, including dredge and fill activities, is valid until closure of the in-water timing window (see Condition 2) of the fifth year from the date of issuance of the USACE 404 permit. A new or modified 401 certification must be requested before any modification of the US Army Corps of Engineers 404 permit.
- 4) **401 WQC on Site:** A copy of this 401 Water Quality Certification letter must be kept on the job site and readily available for reference by the applicant and its contractors and subcontractors, as well as by DEQ, US Army Corps of Engineers, National Marine Fisheries Service, Oregon Department of Fish and Wildlife and other state and local government inspectors.
- 5) **Modification:** Any approved modifications to this certification will incur a Tier 1 fee of \$985 at a minimum. A higher fee will be assessed for complex modifications.
- 6) **Notification:** The applicant must notify DEQ of any change in ownership or control of this project within 30 days, and obtain DEQ review and approval before undertaking any change to the project that may potentially affect water quality.
- 7) **Project Changes:** DEQ may modify or revoke this certification, in accordance with Oregon Administrative Rules 340-048-0050, if the project changes or project activities are having an adverse impact on state water quality or beneficial uses, or if the applicant violates any of the conditions of this certification.
- 8) **Access:** The applicant and its contractors must allow DEQ access to the project site with or without prior notice, including staging areas, and mitigation sites to monitor compliance with these certification conditions, including:

- a. Access to any records, logs, and reports that must be kept under the conditions of this certification
 - b. To inspect best management practices, monitoring or equipment or methods
 - c. To collect samples or monitor any discharge of pollutants
- 9) Failure of any person or entity to comply with this order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

CONSTRUCTION SPECIFIC CONDITIONS

- 10) **Erosion Control:** During construction, erosion control measures must be implemented to prevent soil from reaching waters of the state. The applicant is required to develop and implement an effective erosion and sediment control plan. Refer to DEQ's Oregon Sediment and Erosion Control Manual, January, 2013 at: <https://www.oregon.gov/deq/FilterPermitsDocs/ErosionSedimentControl.pdf>
Any project that disturbs more than one acre is required to obtain a National Pollutant Discharge Elimination System 1200-C construction stormwater general permit from DEQ. Contact DEQ for more information (Contact information can be found at: <https://www.oregon.gov/deq/wq/wqpermits/Pages/Stormwater-Construction.aspx>)

In addition, the applicant, unless otherwise authorized by DEQ in writing must:

- a. Maintain an adequate supply of materials necessary to control erosion at the construction site
- b. Deploy compost berms, impervious materials, or other effective methods during rain or when stockpiles are not moved or reshaped for more than 48 hours. Erosion of stockpiles is prohibited
- c. Inspect erosion control measures daily and maintain erosion control measures as often as necessary to ensure the continued effectiveness of measures. Erosion control measures must remain in place until all exposed soil is stabilized;
 - i. If monitoring or inspection shows that the erosion and sediment controls are ineffective, the applicant must act immediately to make repairs, install replacements, or install additional controls as necessary.
 - ii. If sediment has reached a third of the exposed height of a sediment or erosion control, the applicant must remove the sediment to its original contour.
- d. Use removable pads or mats to prevent soil compaction at all construction access points through, and staging areas in, riparian or wetland areas to prevent soil compaction, unless otherwise authorized by DEQ.
- e. Flag or fence off wetlands not specifically authorized to be impacted to protect from disturbance and/or erosion.
- f. Place dredged or other excavated material on upland areas with stable slopes to prevent materials from eroding back into waterways or wetlands.
- g. Place clean aggregate at all construction entrances, and utilize other best management practices, including, but not limited to truck or wheel washes, when earth-moving equipment is leaving the site and traveling on paved surfaces. Vehicles are prohibited from tracking sediment off site.
- h. This certification *does not* authorize the placement of best management practices into waters of the state unless specifically outlined in the application and authorized by DEQ.

- 11) **Deleterious waste materials:** The applicant is prohibited from placing biologically harmful materials and construction debris including, but not limited to: petroleum products, chemicals, cement cured less than 24 hours, welding slag and grindings, concrete saw cutting by-products, sandblasted materials, chipped paint, tires, wire, steel posts, and asphalt and waste concrete where such materials could enter waters of the state, including wetlands (wetlands are waters of the state).

The applicant must:

- a. Cure concrete, cement, or grout for at least 24 hours before any contact with flowing waters;
 - b. Use only clean fill, free of waste and polluted substances
 - c. Employ all practicable controls to prevent discharges or spills of harmful materials to surface or groundwater
 - d. Maintain at the project construction site, and deploy as necessary, an adequate supply of materials needed to contain deleterious materials during a weather event
 - e. Remove all foreign materials, refuse, and waste from the project area
 - f. Employ general good housekeeping practices at all times
- 12) **Spill Prevention:** The applicant must have a spill prevention and control plan. The applicant must fuel, operate, maintain and store vehicles and equipment, and must store construction materials, in areas that will not disturb habitat directly or result in potential discharges. In general, reasonable precautions and controls must be used to prevent any discharges of petroleum products or other harmful or toxic materials from entering the water as a result of any in-water activities. In addition, the following specific requirements apply:
- a. Vehicle and motorized equipment staging, cleaning, maintenance, refueling, and fuel storage must take place in a vehicle staging area 150 feet or more from any waters of the state. DEQ may approve in writing exceptions to this distance if all practical prevention measures are employed and this distance is not possible because of any of the following site conditions:
 - i. Physical constraints that make this distance not feasible (e.g., steep slopes, rock outcroppings)
 - ii. Natural resource features would be degraded as a result of this setback
 - iii. Equal or greater spill containment and effect avoidance is provided even if staging area is less than 150 feet away from waters of the state
 - b. If staging areas are within 150 feet of any waters of the state, as allowed under subsection (a)(iii) of this condition, full containment of potential contaminants must be provided to prevent soil and water contamination, as appropriate
 - c. All vehicles operated within 150 feet of any waters of the state must be inspected daily for fluid leaks before leaving the vehicle staging area. Any leaks detected in the vehicle-staging area must be repaired before the vehicle resumes operation
 - d. Before operations begin and as often as necessary during operation, equipment must be steam cleaned (or undergo an approved equivalent cleaning) until all visible oil, grease, mud, and other visible contaminants are removed if the equipment will be used below the bank of a waterbody
 - e. All stationary power equipment (e.g., generators, cranes, stationary drilling equipment) operated within 150 feet of any waters of the state must be covered by an absorbent mat to prevent leaks, unless other suitable containment is provided to prevent potential spills from entering any waters of the state

- f. An adequate supply of materials (such as straw matting/bales, geotextiles, booms, diapers, and other absorbent materials) needed to contain spills must be maintained at the project construction site and deployed as necessary
- g. All equipment operated in state waters must use bio-degradable hydraulic fluid
- h. A maintenance log documenting equipment maintenance inspections and actions must be kept on-site and available upon request

13) **Spill & Incident Reporting:**

- a. In the event that petroleum products, chemicals, or any other harmful materials are discharged into state waters, or onto land with a potential to enter state waters, the applicant must promptly report the discharge to the Oregon Emergency Response System (800-452-0311). The applicant must immediately begin containment and complete cleanup as soon as possible.
- b. If the project operations cause a water quality problem which results in distressed or dying fish, the applicant must immediately:
 - Cease operations
 - Take appropriate corrective measures to prevent further environmental damage
 - Note condition of fish (dead, dying, decaying, erratic, or unusual behavior)
 - Note the number, species, and size of fish in each condition
 - Note the location of fish relative to operations
 - Note the presence of any apparently healthy fish in the area at the same time
 - Collect fish specimens and water samples
 - Notify DEQ, Oregon Department of Fish and Wildlife, National Marine Fisheries Service and U.S. Fish and Wildlife Service as appropriate (reporting of listed fish mortality to National Marine Fisheries Service is required).

14) **Vegetation Protection and Restoration:**

- a. The applicant must protect riparian, wetland, and shoreline vegetation in the authorized project area (as defined in the permit application materials) from disturbance through one or more of the following:
 - i. Minimization of project and impact footprint
 - ii. Designation of staging areas and access points in open, upland areas
 - iii. Fencing and other barriers demarcating construction areas
 - iv. Use of alternative equipment (e.g., spider hoe or crane)
- b. If authorized work results in vegetative disturbance and the disturbance has not been accounted for in planned mitigation actions, the applicant must successfully reestablish vegetation to a degree of function equivalent or better than before the disturbance. The standard for success is 80 percent cover for native plant species. The vegetation must be reestablished by the completion of authorized work and include:
 - i. Restoring damaged streambanks to a natural slope, pattern, and profile suitable for establishment of permanent woody vegetation, unless precluded by pre-project conditions (e.g., a natural rock wall)

- ii. Replanting or reseeding each area requiring revegetation before the end of the first planting season following construction
- iii. Planting disturbed areas with native plants and trees in all cases except where the use of non-native plant materials may be essential for erosion control
- iv. The use of invasive species to re-establish vegetation is prohibited
- v. Herbicides, pesticides and fertilizers must be applied per manufacturer's instructions, and only if necessary for vegetation establishment. If chemical treatment is necessary, the applicant is responsible for ensuring that pesticide application laws, including with the National Pollutant Discharge Eliminations System 2300-A general permit are met. Please review the information on the following website for more information:
<https://www.oregon.gov/deq/wq/wqpermits/Pages/Pesticide.aspx>

Additionally:

- 1. Unless otherwise approved in writing by DEQ, applying surface fertilizer within stormwater treatment facilities or within 50 feet of any stream channel is prohibited.
 - 2. Other than spot application to cut stems, no herbicides are allowed within stormwater treatment facilities or within 150 feet of waters of the state. Mechanical, hand, or other methods may be used to control weeds and unwanted vegetation within stormwater treatment facilities or within 150 feet of waters of the state; and
 - 3. No pesticides may be used within stormwater treatment facilities or within 150 feet of waters of the state.
 - vi. Install wildlife-friendly fencing as necessary to prevent access to revegetated sites by livestock or unauthorized persons
 - vii. Minimize soil compaction, especially in areas that are designated for replanting. If soils are compacted, Loosen and aerate compacted soil in staging areas and work construction areas prior to replanting. Leave topsoil when possible. Chip materials from clear and grub operation and spread on soil surface, unless cleared areas contained invasive species.
- 15) Provide and maintain existing minimum **50-foot buffer zone during construction and post-construction to protect riparian areas and wetlands**, unless authorized in writing by DEQ.
- 16) **Previously Contaminated Soil and Groundwater:** If any contaminated soil or groundwater is encountered, it must be handled and disposed of in accordance with the soil and groundwater management plan for the site, as well as local, state and federal regulations. The applicant must notify the Environmental Cleanup Section of DEQ at 800-452-4011 Ex.6258.
- 17) **Notification to DEQ:** The applicant must provide pre-construction notification to DEQ one week before construction starts. Contact information can be found at the end of the certification.

SPECIFIC CONDITIONS FOR IN-STREAM WORK

- 18) **Fish Protection/ Oregon Department of Fish and Wildlife Timing:** The applicant must perform in-water work only within the Oregon Department of Fish and Wildlife preferred time window as specified in the *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources* (please follow the link: https://www.dfw.state.or.us/lands/inwater/Oregon_Guidelines_for_Timing_of_%20InWater_Work2008.pdf) or as authorized otherwise under a Department of State Lands removal/fill permit. Exceptions to the timing window must be recommended by Oregon Department of Fish and Wildlife and/or the National Marine Fisheries Services as appropriate.
- 19) **Aquatic Life Movements:** Any activity that may disrupt the movement of aquatic life living in the water body, including those species that normally migrate through the area, is prohibited. The applicant must provide unobstructed fish passage at all times during any authorized activity. Exceptions must be reviewed and recommended by Oregon Department of Fish Wildlife and/or the National Marine Fisheries Service as appropriate.
- 20) **Isolation of In-Water Work Areas:** The applicant must isolate in-water work areas from the active flowing stream, unless otherwise authorized as part of the approved application, or authorized by DEQ.
- 21) **Cessation of Work:** The applicant must cease project operations under high-flow conditions that will result in inundation of the project area. Only efforts to avoid or minimize turbidity or other resource damage as a result of inundation of the exposed project area are allowed during high-flow conditions.
- 22) **Turbidity:** The applicant must implement best management practices to minimize turbidity during in-water work. Any activity that causes turbidity to exceed 10 percent above natural stream turbidity is prohibited except as specifically noted below:
 - a. **Monitoring:** Turbidity monitoring must be conducted and recorded as described below. Monitoring must occur at two-hour intervals each day when in-water work is being conducted. A properly calibrated turbidimeter is required. Visual gauging may be acceptable with prior written approval from DEQ; however, *turbidity that is visible over background is prohibited.*
 - i. **Representative Background Point:** The applicant must take and record a turbidity measurement every two hours during in-water work at an undisturbed area 100 feet up-current from the in-water disturbance, in order to establish background turbidity levels. The background turbidity, location, date, tidal stage (if applicable) and time must be recorded immediately prior to monitoring down-current at the compliance point described below.
 - ii. **Compliance Point:** The applicant must monitor every two hours, 100 feet downcurrent from the disturbance, at approximately mid-depth of the waterbody and within any visible plume. The turbidity, location, date, tidal stage (if applicable) and time must be recorded for each measurement.
 - b. **Compliance:** The applicant must compare turbidity monitoring results from the compliance points to the representative background levels taken during each

two hour monitoring interval. Pursuant to Oregon Administrative Rules 340-041-0036, short-term exceedances are allowed as followed:

MONITORING WITH A TURBIDIMETER		
ALLOWABLE EXCEEDANCE TURBIDITY LEVEL	ACTION REQUIRED AT 1 ST MONITORING INTERVAL	ACTION REQUIRED AT 2 ND MONITORING INTERVAL
0 to 5 NTU above background	Continue to monitor every 2 hours	Continue to monitor every 2 hours
6 to 29 NTU above background	Modify BMPs & continue to monitor every 2 hours	Stop work after 4 hours at 6-29 NTU above background
30 to 49 NTU above background	Modify BMPs & continue to monitor every 2 hours	Stop work after 2 confirmed hours at 30-49 NTU above background
50 NTU or more above background	Stop work	Stop work

If an exceedance over the background level occurs, the applicant must modify the activity and continue to monitor every two hours. **If an exceedance over the background level continues after the second monitoring interval, the activity must stop.** If, however, turbidity levels return to background at or after second monitoring level due to implementation of best management practices or natural attenuation, work may continue with appropriate monitoring as above.

If an exceedance occurs at: 50 NTU or more over background; 30 NTU over background for two hours; or 5-29 NTU over background for four hours, the activity must stop immediately for the remainder of that 24-hour period.

- c. **Reporting:** The applicant must record all turbidity monitoring required by subsections (a) and (b) above in daily logs. The daily logs must include calibration documentation; background Nephelometric Turbidity Unit (NTU); compliance point NTUs; comparison of the points in NTUs; location; date; time; and tidal stage (if applicable) for each reading. Additionally, a narrative must be prepared discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions. Applicant must make available copies of daily logs for turbidity monitoring to DEQ, U.S. Army Corps of Engineers, National Marine Fisheries Service, U.S. Fish and Wildlife Service, and Oregon Department of Fish and Wildlife upon request. An example turbidity log is attached to this certification.

If turbidity monitoring cannot be conducted due to dry conditions, the applicant must provide photo documentation with a date and time stamp.

- d. **Best Management Practices to Minimize In-stream Turbidity:** The applicants must implement the following best management practices, unless accepted in writing by DEQ:
 - i. Sequence/Phasing of work – The applicant must schedule work activities to minimize in-water disturbance and duration of in-water disturbances
 - ii. Bucket control - All in-stream digging passes by excavation machinery and placement of fill in-stream using a bucket must be completed to minimize turbidity. All practical techniques such as employing an experienced equipment operator, not dumping partial or full buckets of material back into the wetted stream, adjusting the volume, speed, or

both of the load, or using a closed-lipped environmental bucket must be implemented

- iii. The applicant must limit the number and location of stream-crossing events. Establish temporary crossing sites as necessary at the least sensitive areas and amend these crossing sites with clean gravel or other temporary methods as appropriate, to discharge sediments to the waterbody
- iv. Machinery may not be driven into the flowing channel, unless authorized in writing by DEQ
- v. Excavated material must be placed so that it is isolated from the water's edge or wetlands, and not placed where it could re-enter waters of the state uncontrolled

Containment measures such as silt curtains, geotextile fabric, and silt fences must be in place and properly maintained in order to minimize in-stream sediment suspension and resulting turbidity.

- 23) **Corrective Action May Be Required:** DEQ retains the authority to require corrective action in the event the stormwater management facilities are not built or performing as described in the plan.

If the applicant is not satisfied with the conditions contained in this certification, a contested case hearing may be requested in accordance with Oregon Administrative Rule 340-048-0045. Such requests must be made in writing to the DEQ Office of Compliance and Enforcement at 700 NE Multnomah St, Suite 600, Portland Oregon 97232 within 20 days of the mailing of this certification.

DEQ hereby certifies this project, with the above conditions, in accordance with the Clean Water Act and state rules. If you have any questions, please contact Blair Edwards at Edwards.Blair@DEQ.state.or.us, by phone at (503)229-5051, or at the address on this letterhead.

Sincerely,

Steve Mrazik
Water Quality Manager
Northwest Region

ec: Danielle Erb, USACE
Anita Huffman, DSL
Marc Liverman, NOAA Fisheries
Stuart Myers, Mason, Bruce & Girard, Inc. Consultant