



# Oregon

Tina Kotek, Governor

Department of Environmental Quality  
Office of Compliance and Enforcement  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100  
(503) 229-5696  
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TTY 711

October 26, 2023

CERTIFIED MAIL: 9589 0710 5270 0110 6011 94

Winchester Water Control District  
c/o Ryan Beckley  
P.O. Box 661  
Winchester, OR 97495

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/401-WR-2023-596

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued the Winchester Water Control District a civil penalty of \$106,778 for violations of the 401 Water Quality Certification (401 WQC) issued to you for the Winchester Dam Repair Project. Specifically, you violated at least ten conditions of the 401 WQC by performing work that was inconsistent with the project description contained in the permit application materials, failing to install erosion and sediment controls, discharging concrete into the North Umpqua River, installing tire mats in the river, operating equipment in the flowing channel of the river, failing to install a turbidity curtain upstream of the dam gates, failing to fully isolate the in-water work area, failing to report concrete discharges to the Oregon Emergency Response Service (OERS), performing in-water work outside the approved in-water work window, and failing to maintain unobstructed fish passage.

DEQ issued this penalty because your failure to follow the conditions set forth in the 401 WQC posed a significant risk of harm to the environment, particularly with respect to the concrete discharges and placement of tire mats in the river. Discharges of uncured concrete can cause rapid increases in the pH level of the surrounding water, which poses a significant risk of harm to aquatic species. Tires leach toxic chemicals, microplastics, and heavy metals that are known to be harmful to aquatic life, particularly coho salmon. Additionally, your failure to maintain unobstructed fish passage during the project had a significant adverse impact on the migration of native fish species.

You may pay the civil penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order.

If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us)

Via fax – 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Erin Saylor at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Chance Plunk, DEQ 401 Program  
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:

4 WINCHESTER WATER CONTROL  
5 DISTRICT

6 Respondent.

)  
) NOTICE OF CIVIL PENALTY  
) ASSESSMENT AND ORDER

)  
) CASE NO. WQ/401-WR-2023-596

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,  
10 ORS Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions  
11 011, 012, and 048.

12 II. FINDINGS OF FACT

13 1. Respondent is the owner and operator of the Winchester Dam. The Winchester Dam is a  
14 133 year-old, 450-foot-long structure that completely spans the North Umpqua River just outside the  
15 City of Roseburg. The dam is comprised of a rock-filled timber crib weir with a concrete fishway on  
16 the north end and a concrete spillway-powerhouse structure on the south end.

17 2. The North Umpqua River is a water of the state, pursuant to ORS 468B.005(10). The  
18 river is habitat to Endangered Species Act (ESA)-listed salmonid species, as well as other native  
19 migratory aquatic species. The river is designated as Essential Salmonid Habitat by the Department of  
20 State Lands (DSL) and as Essential Fish Habitat for coho and Chinook salmon by the National Marine  
21 Fisheries Service (NMFS). Larval lamprey (ammocoete) beds are prevalent in the substrate of the river  
22 upstream from the dam.

23 3. On or about February 2, 2022, Respondent submitted a Joint Permit Application (JPA)  
24 to the U.S. Army Corps of Engineers (USACE) and DEQ for approval to undertake maintenance work  
25 to repair the dam. The project was assigned Project No. NWP-2018-505-1. On March 15, 2022,  
26 Respondent withdrew the JPA. On or about October 5, 2022, Respondent resubmitted the JPA. On July  
27 7, 2023, in response to information requested by DEQ, Respondent submitted a revised JPA.

1           4.       On July 18, 2023, DEQ issued a 401 Water Quality Certification (WQC) to Respondent  
2 for the Winchester Dam Repair Project. The 401 WQC approval was based on the revised JPA  
3 submitted to DEQ on July 7, 2023.

4           5.       On July 26, 2023, USACE authorized Respondent's dam repair work pursuant to  
5 Nationwide Permit (NWP) No. 3, Maintenance. In the authorization letter, USACE specified that "[a]ll  
6 in-water work shall be performed during the in-water work period of July 7, 2023 to 28 August 2023,  
7 with an in-water work period of August 7-28, 2023 for fish passage stoppage at the fish ladder."

8           6.       On August 25, 2023, USACE authorized an extension of the in-water work window to  
9 "July 7, 2023 to September 1, 2023, with an in-water work period of August 7, 2023 to August 31,  
10 2023 for fish passage stoppage at the fish ladder."

11          7.       On September 1, 2023, USACE authorized another extension of the in-water work  
12 window to 5:00PM, Pacific Time on September 6, 2023. The approval letter was clear that "[a]ll in-  
13 water work, to include the refilling of the reservoir and removal of temporary fill material" must be  
14 performed by that date. USACE did not provide an extension to fish passage stoppage at the fish  
15 ladder.

16          8.       Respondent engaged TERRAFIRMA Foundation Systems to complete the repair work.

17          9.       Pursuant to Condition 1 of the 401 WQC, Respondent "is responsible for the work of its  
18 contractors and sub-contractors, as well as any other entity that performs work related to this WQC."

19          10.       Respondent commenced the dam repair work on August 7, 2023.

20          11.       A DEQ inspector was present at the work site August 7, 8, 9, 15, and 22, 2023.

21          12.       Pursuant to Condition 2 of the 401 WQC, "[w]ork authorized by [the] 401 WQC is  
22 limited to the work described in the Permit Application and additional application materials . . . unless  
23 otherwise authorized by DEQ. If the project is operated in a manner not consistent with the project  
24 description contained in the permit application materials, [Respondent] is not in compliance with [the]  
25 401 WQC and may be subject to enforcement."

26          13.       Pursuant to Condition 8 of the 401 WQC, "[d]uring construction, erosion control  
27 measures must be implemented to prevent or control movement of soil into waters of the state. The

1 Applicant is required to develop and implement an effective erosion and sediment control plan.”  
2 Additionally, Condition 8 of the 401 WQC requires that an adequate supply of erosion control materials  
3 be maintained at the construction site.

4 14. In the JPA, Respondent represented that “[c]onstruction access to the riverbed will be  
5 via previously disturbed areas on both banks of the river on the upstream side of the dam. There are  
6 existing gravel access roads on both sides of the dam leading to the riverbank. From the northern  
7 riverbank, access will be via existing fill material along the upstream portion of the dam fill prism.  
8 Some minor temporary grading may be necessary to transition from the upstream gravel roads to the  
9 instream work areas and may include importing temporary work area surfacing material (e.g.,  
10 aggregate), as shown on Figure 6E.” Respondent noted that “[v]egetation removal, minor grading, and  
11 the installation of aggregate material to stabilize the road may be required, resulting in up to 1,380 SF  
12 of temporary impacts with 51 CY of fill and 51 CY of removal.” Respondent further represented that  
13 “[f]or work areas below OHW [Ordinary High Water] of the North Umpqua River, equipment will be  
14 operated from existing adjacent areas above OHW, or from existing and proposed work platforms  
15 prepared with temporary aggregate surfaces. Temporary access roads will only require minor grading  
16 below OHW to transition from upland access roads to the existing work platform above the dam. The  
17 proposed temporary work platform below the dam will include the installation of geotextile fabric and  
18 aggregate that will be entirely removed once construction is complete. The contractor will clean and  
19 inspect all machinery when working near or below OHW to confirm that it is free of weeds, leaks, and  
20 grease. Erosion control measures are not anticipated as ground disturbance will be limited.”

21 15. During dam repair work upstream of the dam, Respondent conducted removal/fill  
22 activities along the north bank of the North Umpqua River in an area outside the work area described in  
23 the JPA and indicated on Figure 6E. Equipment was operated below OHW directly on the exposed  
24 riverbed without the prior installation of temporary aggregate surfaces. Ground disturbance was more  
25 than “limited.” Fill removed from below OHW was deposited in a stockpile just above OHW. At no  
26 point during the work period did Respondent install erosion control measures that would prevent the  
27 movement of soil into the river. No erosion or sediment control supplies were apparent at the

1 construction site.

2 16. As part of an effort to install a bridge for access to the downstream portion of the dam,  
3 Respondent discharged temporary fill material including super sacks and gravel outside the work area  
4 described in the JPA and indicated on Figure 6E. The impacted area was approximately 128 square feet  
5 in size.

6 17. Below the dam, Respondent constructed temporary access roads to the work area and a  
7 temporary work platform using mats constructed of tires rather than aggregate and geotextile fabric as  
8 described in the JPA.

9 18. On August 15, 2023, DEQ notified Respondent via email that the JPA indicated that the  
10 work area downstream of the dam would be constructed of aggregate and that “[t]ires are considered a  
11 deleterious waste material per Condition #9 of your 401 WQC and must be removed from areas where  
12 they currently are or could enter waters.”

13 19. Respondent did not remove the tire mats from the water until September 3, 2023.

14 20. Pursuant to Condition 17 of the 401 WQC, Respondent “must isolate in-water work  
15 areas from the active flowing stream, unless otherwise authorized as part of the approved application,  
16 or authorized by DEQ.”

17 21. In the JPA, Respondent indicated that a cofferdam constructed from sandbags and super  
18 sacks would be constructed downstream of the dam across the full length of the river. The area inside  
19 the cofferdam would be dewatered using a sump pump that would pump water from the isolation area  
20 into “a temporary water quality facility placed in an upland area on the south bank.”

21 22. Respondent started work on the project before the in-water work areas were fully  
22 isolated from the active flowing stream. Respondent never fully dewatered the isolation area between  
23 the cofferdam and the dam face. Respondent installed a water settling tank on the north bank of the  
24 river, but water pumped from the isolation areas was largely pumped to a makeshift settlement pond  
25 that was constructed of super sacks and plastic sheeting below OHW on the north bank of the river.

26 23. On at least August 13, 2023, and August 22, 2023, water flowed under the base of the  
27 dam over un-cured concrete that had been poured onto the sill at the base of the dam. Water within the

1 in-water work area surrounding the sills was visibly contaminated with concrete.

2 24. Pursuant to Condition 9 of the 401 WQC, Respondent “is prohibited from placing  
3 biologically harmful materials and construction debris where they could enter waters of the state . . .  
4 This includes, but is not limited to, petroleum products; chemicals; cement cured less than 24 hours;  
5 welding slag and grindings; concrete saw cutting by-products; sandblasted materials; chipped paint;  
6 tires; wire; steel posts; asphalt; and waste concrete.” Concrete, cement, and grout must be cured “for at  
7 least 24 hours before any contact with flowing waters.”

8 25. On August 21, 2023, while attempting to dewater the concrete contaminated in-water  
9 work area, Respondent pumped concrete contaminated water into the makeshift settling pond on the  
10 north bank of the river below OHW. Concrete contaminated water flowed from the makeshift settling  
11 pond onto the exposed rocks below the OHW and into the flowing river. Respondent did not contain  
12 the flow of concrete contaminated water from the settling pond into the river. Respondent reported the  
13 incident to DEQ via email but did not report the incident to OERS.

14 26. Pursuant to Condition 11 of the 401 WQC, “[i]n the event that deleterious materials are  
15 discharged into state waters, or onto land with a potential to enter state waters, the discharge must be  
16 promptly reported to the Oregon Emergency Response Service (OERS . . . .) within 24 hours.  
17 Containment and cleanup must begin immediately and be completed as soon as possible.”

18 27. Pursuant to Condition 10 of the 401 WQC, Respondent “must fuel, operate, maintain  
19 and store vehicles, and must store construction materials, in areas that will not disturb habitat directly  
20 or result in potential discharges.”

21 28. Pursuant to Condition 19 of the 401 WQC, Respondent “must implement BMPs [Best  
22 Management Practices] to minimize turbidity during in-water work.” Specifically, Condition 19.d.iv  
23 states that “[m]achinery may not be driven into the flowing channel, unless authorized in writing by  
24 DEQ.”

25 29. On at least August 7, 2023, Respondent operated excavators within the active flowing  
26 channel of the river.

27 30. In Attachment 8 of the JPA, Respondent indicated that it would “install a 50’ x 100’

1 membrane secured to the bottom of the reservoir immediately upstream from the spill gates. The  
2 membrane would provide a barrier protecting against mobilization of sediments in those high velocity  
3 areas near the gates.” In its July 26, 2023, authorization letter, USACE confirmed the expectation that  
4 prior to drawdown, Respondent would “install a 50 foot by 100 foot liner immediately upstream of the  
5 dam gates in the area of the greatest water velocity through the gates.”

6 31. Respondent never installed a membrane liner upstream of the spill gates.

7 32. Pursuant to Condition 15 of the 401 WQC, Respondent “must perform in-water work  
8 only within the ODFW preferred time window as specified in the *Oregon Guidelines for Timing of In-*  
9 *Water Work to Protect Fish and Wildlife Resources*, or as authorized otherwise under a USACE permit  
10 and/or DSL removal/fill permit. Exceptions to the timing window must be recommended by ODFW  
11 [Oregon Department of Fish & Wildlife], NMFS [National Marine Fisheries Service] and/or the USFW  
12 [U.S. Fish & Wildlife] as appropriate, and approved by DSL when applicable.”

13 33. Respondent left materials in place below OHW after 5:00pm on September 6, 2023.

14 34. Pursuant to Condition 16 of the 401 WQC, “[a]ny activity that may disrupt the  
15 movement of aquatic life living in the water body, including those species that normally migrate  
16 through the area, is prohibited. The [Respondent] must provide unobstructed fish passage at all times  
17 during any authorized activity, unless otherwise approved in the approved application.”

18 35. Respondent did not restore fish passage until September 5, 2023.

19 36. Between September 1, 2023, and when fish passage was restored on September 5, 2023,  
20 ODFW observed numerous unsuccessful fish passage attempts. The lack of fish passage posed a  
21 significant delay to the migration of multiple native fish species including spring Chinook salmon,  
22 summer steelhead trout, and ESA-listed coho salmon. Additionally, the delayed passage and repeated  
23 burst swimming events associated with multiple thwarted passage attempts are known to increase stress  
24 and energy expenditure for the fish, both of which are known to impact spawning success.

### 25 III. CONCLUSIONS

26 1. Respondent violated Condition 2 of the 401 WQC by performing work that was inconsistent  
27 with the project description contained in the permit application materials. Specifically, as described in



1 Section II, Paragraphs 14, 15, and 16 above, Respondent conducted removal/fill activities along the north  
2 bank of the North Umpqua River both upstream and downstream of the dam outside the work areas  
3 described in the JPA or indicated on Figure 6E. This is a Class I violation pursuant to OAR 340-012-  
4 0053(1)(a). DEQ hereby assesses a \$8,800 civil penalty for this violation.

5 2. Respondent violated Condition 2 of the 401 WQC by performing work that was inconsistent  
6 with the project description contained in the permit application materials. Specifically, as described in  
7 Section II, Paragraphs 14 and 17 above, downstream of the dam, Respondent constructed temporary access  
8 roads to the work area and a temporary work platform using mats constructed of tires, rather than  
9 aggregate and geotextile fabric as described in the JPA. This is a Class I violation pursuant to OAR 340-  
10 012-0053(1)(a). DEQ hereby assesses a \$10,400 civil penalty for this violation.

11 3. Respondent violated Condition 8 of the 401 WQC by failing to install erosion and sediment  
12 control measures to prevent or control the movement of soil into waters of the state, as described in  
13 Section II, Paragraphs 13 and 15 above. This is a Class I violation pursuant to OAR 340-012-  
14 0053(1)(a). DEQ hereby assesses a \$9,767 civil penalty for this violation.

15 4. Respondent violated Condition 9 of the 401 WQC by placing biologically harmful materials  
16 and construction debris where they could enter waters of the state. Specifically, as described in Section  
17 II, Paragraphs 23 and 25 above, Respondent discharged concrete contaminated water into the river and  
18 allowed concrete that had cured for less than 24 hours to come into contact with flowing waters. This is  
19 a Class I violation pursuant to OAR 340-012-0053(1)(a). DEQ hereby assesses a \$8,000 civil penalty  
20 for this violation.

21 5. Respondent violated Condition 9 of the 401 WQC by placing biologically harmful materials  
22 and construction debris where they could enter waters of the state. Specifically, as described in  
23 Paragraphs 17, 18, and 19 above, Respondent used mats made of tires to create temporary access roads  
24 and a work platform downstream of the dam. This is a Class I violation pursuant to OAR 340-012-  
25 0053(1)(a). DEQ hereby assesses a \$10,400 civil penalty for this violation.

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1 6. Respondent violated Conditions 10 and 19 of the 401 WQC by operating equipment in the  
2 flowing channel of the river, as described in Section II, Paragraphs 27, 28, and 29. This is a Class I  
3 violation pursuant to OAR 340-012-0053(1)(a). DEQ hereby assesses a \$7,200 civil penalty for this  
4 violation.

5 7. Respondent violated Conditions 2 and 19 of the 401 WQC by failing to install a membrane  
6 liner upstream of the spill gates to minimize turbidity when the dam gates were opened, pursuant to  
7 Attachment 8 of the JPA, as described in Section II, Paragraphs 28, 30 and 31. This is a Class I  
8 violation pursuant to OAR 340-012-0053(1)(a). DEQ hereby assesses a \$11,411 civil penalty for this  
9 violation.

10 8. Respondent violated Condition 11 of the 401 WQC by failing to report discharges of  
11 deleterious materials into waters of the state to OERS. Specifically, Respondent failed to report to  
12 OERS the concrete discharge described in Section II, Paragraph 25 above. This is a Class I violation  
13 pursuant to OAR 340-012-0053(1)(a). DEQ hereby assesses a \$5,600 civil penalty for this violation.

14 9. Respondent violated Condition 17 of the 401 WQC by failing to fully isolate the in-water  
15 work areas from the active flowing stream, as described in Section II, Paragraphs 20, 21, and 22 above.  
16 This is a Class I violation pursuant to OAR 340-012-0053(1)(a). DEQ hereby assesses a \$8,800 civil  
17 penalty for this violation.

18 10. Respondent violated Condition 15 of the 401 WQC by failing to remove all construction  
19 materials and temporary fill from below OHW before the expiration of the in-water work window  
20 preferred by ODFW and approved by USACE, as described in Section II, Paragraphs 7, 32, and 33. This is  
21 a Class I violation pursuant to OAR 340-012-0053(1)(a). DEQ hereby assesses a \$8,800 civil penalty for  
22 this violation.

23 11. Respondent violated Condition 16 of the 401 WQC by failing to provide unobstructed fish  
24 passage from September 1, 2023, through September 5, 2023, as described in Section II, Paragraphs 34,  
25 35, and 36. This is a Class I violation pursuant to OAR 340-012-0053(1)(a). DEQ hereby assesses a  
26 \$17,600 civil penalty for this violation.

27 ///

1 IV. ORDER TO PAY CIVIL PENALTY

2 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
3 hereby ORDERED TO:

- 4 1. Pay a civil penalty of \$106,778. The determination of the civil penalty is attached as Exhibits No.  
5 1-11 and is incorporated as part of this Notice.

6 If you do not file a request for hearing as set forth in Section V below, please pay the penalty as follows:

7 Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here:  
8 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account  
9 dashboard. Enter the reference number and Account ID included on the attached payment slip. Note: US  
10 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional  
11 charges.

12 Pay by check or money order: Make checks payable to "Department of Environmental Quality"  
13 and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with  
14 your check or money order and note the case number on your check.

15 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

16 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
17 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
18 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
19 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
20 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
21 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
22 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
23 it to **503-229-5100** or email it to [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge  
24 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
25 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
26 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
27 you may represent yourself. If you are a corporation, partnership, limited liability company,


1 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
2 authorized representative, as set forth in OAR 137-003-0555.

3 Active duty Service members have a right to stay proceedings under the federal Service  
4 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
5 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
6 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
7 Department does not have a toll free telephone number.

8 If you fail to file a timely request for hearing, the Notice will become a final order by default  
9 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later  
10 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the  
11 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates  
12 the relevant portions of its files, including information submitted by you, as the record for purposes of  
13 proving a prima facie case.

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10/26/2023  
Date

  
Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

## EXHIBIT 1

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION: Respondent violated Condition 2 of its 401 WQC by performing work outside the scope of the project area described in the permit application materials.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(a).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(H) because the Project was authorized under a Nationwide Permit, which is considered a Tier I dredge and fill project under OAR 340-048-0055(3)(a). However, pursuant to OAR 340-012-0160, to deter likely future violations DEQ has chosen to increase the base penalty to that derived using the next highest penalty matrix. Past repair projects at the dam resulted in violations and future violations are likely to occur during future repair work. For this reason, "BP" is \$4,000 pursuant to the matrix found in OAR 340-012-0140(3)(b)(A)(ii).

"P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2) because the Respondent has no PSAs.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. Respondent performed work outside the scope of the project area from at least August 8, 2023, through September 3, 2023—a total of 29 days.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. By failing to complete the Project

in accordance with its permit application materials, Respondent consciously disregarded a substantial and unjustifiable risk that a violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 4 + 8 + 0)] + \$0  
= \$4,000 + (\$400 x 12) + \$0  
= \$4,000 + \$4,800 + \$0  
= \$8,800

EXHIBIT 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY  
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION: Respondent violated Condition 2 of its 401 WQC by constructing temporary access roads and a work platform downstream of the dam using tire mats instead of geotextile fabric and aggregate.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(a).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(H) because the Project was authorized under a Nationwide Permit, which is considered a Tier I dredge and fill project under OAR 340-048-0055(3)(a). However, pursuant to OAR 340-012-0160, to deter likely future violations DEQ has chosen to increase the base penalty to that derived using the next highest penalty matrix. Past repair projects at the dam resulted in violations and future violations are likely to occur during future repair work. For this reason, "BP" is \$4,000 pursuant to the matrix found in OAR 340-012-0140(3)(b)(A)(ii).

"P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2) because the Respondent has no PSAs.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. The tire mats were present in the river from at least August 8, 2023, through September 3, 2023—a total of 29 days.

"M" is the mental state of the Respondent and receives a value of 10 according to OAR 340-012-0145(5)(e) because Respondent's conduct was flagrant. DEQ informed Respondent via email on August 15, 2023, that use of the tire mats was not described in the JPA and that the

mats needed to be removed from areas where they either already were or could enter waters of the state. By using the tire mats rather than aggregate and then leaving the tire mats in place after being explicitly told use of the mats was not approved, Respondent had actual knowledge that the conduct was unlawful.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not remove the tire mats when specifically instructed to do so.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 10 + 2)] + \$0 \\ &= \$4,000 + (\$400 \times 16) + \$0 \\ &= \$4,000 + \$6,400 + \$0 \\ &= \$10,400 \end{aligned}$$



### EXHIBIT 3

#### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION: Respondent violated Condition 8 of its 401 WQC by failing to implement erosion control measures to prevent or control the movement of soil into waters of the state.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(a).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(H) because the Project was authorized under a Nationwide Permit, which is considered a Tier I dredge and fill project under OAR 340-048-0055(3)(a). However, pursuant to OAR 340-012-0160, to deter likely future violations DEQ has chosen to increase the base penalty to that derived using the next highest penalty matrix. Past repair projects at the dam resulted in violations and future violations are likely to occur during future repair work. For this reason, "BP" is \$4,000 pursuant to the matrix found in OAR 340-012-0140(3)(b)(A)(ii).
- "P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2) because the Respondent has no PSAs.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.
- "O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day Respondent conducted work without erosion and sediment controls in place is a separate violation. Respondent conducted work from August 7, 2023, through at least September 6, 2023—a total of 30 days—without erosion and sediment controls in place.
- "M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. The 401 WQC clearly requires the

implementation of erosion and sediment controls. By failing to install any erosion and sediment controls, Respondent consciously disregarded a substantial and unjustifiable risk that a violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$167. By failing to install erosion and sediment controls, Respondent avoided spending approximately \$166 to install sediment fencing and straw waddles. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 4 + 8 + 2)] + \$167  
= \$4,000 + (\$400 x 14) + \$167  
= \$4,000 + \$5,600 + \$167  
= \$9,767

## EXHIBIT 4

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION: Respondent violated Condition 9 of its 401 WQC by placing biologically harmful materials—specifically uncured concrete—in the North Umpqua River, a water of the state.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(a).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(H) because the Project was authorized under a Nationwide Permit, which is considered a Tier I dredge and fill project under OAR 340-048-0055(3)(a). However, pursuant to OAR 340-012-0160, to deter likely future violations DEQ has chosen to increase the base penalty to that derived using the next highest penalty matrix. Past repair projects at the dam resulted in violations and future violations are likely to occur during future repair work. For this reason, "BP" is \$4,000 pursuant to the matrix found in OAR 340-012-0140(3)(b)(A)(ii).
- "P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2) because the Respondent has no PSAs.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.
- "O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Concrete was discharged to the river on at least three days: August 13, 21, and 22, 2023.
- "M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. By failing to fully isolate the work area before pouring concrete and by allowing concrete contaminated water to discharge

from the makeshift settling ponds, Respondent consciously disregarded a substantial and unjustifiable risk that a violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because the effects of the violation could not be corrected.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 2 + 8 + 0)] + \$0 \\ &= \$4,000 + (\$400 \times 10) + \$0 \\ &= \$4,000 + \$4,000 + \$0 \\ &= \$8,000 \end{aligned}$$

## EXHIBIT 5

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION: Respondent violated Condition 9 of its 401 WQC by placing biologically harmful materials—specifically tire mats—in the North Umpqua River, a water of the state.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(a).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(H) because the Project was authorized under a Nationwide Permit, which is considered a Tier I dredge and fill project under OAR 340-048-0055(3)(a). However, pursuant to OAR 340-012-0160, to deter likely future violations DEQ has chosen to increase the base penalty to that derived using the next highest penalty matrix. Past repair projects at the dam resulted in violations and future violations are likely to occur during future repair work. For this reason, "BP" is \$4,000 pursuant to the matrix found in OAR 340-012-0140(3)(b)(A)(ii).

"P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2) because the Respondent has no PSAs.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. The tire mats were present in the river from at least August 8, 2023, through September 3, 2023—a total of 29 days.

"M" is the mental state of the Respondent and receives a value of 10 according to OAR 340-012-0145(5)(e) because Respondent's conduct was flagrant. DEQ informed Respondent via email on August 15, 2023, that tires were considered a deleterious waste material per

Condition 9 of the WQC and must be removed from areas where they either were in or could enter waters of the state. By leaving the tire mats in place after being explicitly told use of the mats was not approved, Respondent had actual knowledge that the conduct was unlawful.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation even after being explicitly told to do so.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 4 + 10 + 2)] + \$0  
= \$4,000 + (\$400 x 16) + \$0  
= \$4,000 + \$6,400 + \$0  
= \$10,400

## EXHIBIT 6

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION: Respondent violated Conditions 10 and 19 of its 401 WQC by operating equipment in the flowing channel of the river.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(a).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(H) because the Project was authorized under a Nationwide Permit, which is considered a Tier I dredge and fill project under OAR 340-048-0055(3)(a). However, pursuant to OAR 340-012-0160, to deter likely future violations DEQ has chosen to increase the base penalty to that derived using the next highest penalty matrix. Past repair projects at the dam resulted in violations and future violations are likely to occur during future repair work. For this reason, "BP" is \$4,000 pursuant to the matrix found in OAR 340-012-0140(3)(b)(A)(ii).
- "P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2) because the Respondent has no PSAs.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.
- "O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because there is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d).
- "M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. The 401 WQC clearly prohibits Respondent from driving machinery in the flowing channel of the river; by doing so Respondent consciously disregarded a substantial and unjustifiable risk that a violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 0 + 8 + 0)] + \$0  
= \$4,000 + (\$400 x 8) + \$0  
= \$4,000 + \$3,200 + \$0  
= \$7,200



EXHIBIT 7

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY  
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION: Respondent violated Conditions 2 and 19 of its 401 WQC by failing to install a membrane liner upstream of the spill gates to minimize turbidity.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(a).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(H) because the Project was authorized under a Nationwide Permit, which is considered a Tier I dredge and fill project under OAR 340-048-0055(3)(a). However, pursuant to OAR 340-012-0160, to deter likely future violations DEQ has chosen to increase the base penalty to that derived using the next highest penalty matrix. Past repair projects at the dam resulted in violations and future violations are likely to occur during future repair work. For this reason, "BP" is \$4,000 pursuant to the matrix found in OAR 340-012-0140(3)(b)(A)(ii).

"P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2) because the Respondent has no PSAs.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.

"O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Each day of violation is a separate occurrence. The membrane should have been in place from at least August 7, 2023, through August 9, 2023, while the spill gates were open.

"M" is the mental state of the Respondent and receives a value of 10 according to OAR 340-012-0145(5)(e) because Respondent's conduct was flagrant. Respondent proposed installation of

the membrane liner in the revised JPA it submitted to DEQ on July 7, 2023, in response to DEQ's concerns about potential turbidity that may occur when the spill gates were opened. Installation of the liner was an explicit term of USACE's July 26, 2023, project approval. Thus, Respondent had actual knowledge of the requirement when it failed to install the membrane liner before work started on August 7, 2023.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$1,811. By failing to install the membrane liner, Respondent avoided spending approximately \$1,800. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 2 + 10 + 2)] + \$1,811 \\ &= \$4,000 + (\$400 \times 14) + \$1,811 \\ &= \$4,000 + \$5,600 + \$1,811 \\ &= \$11,411 \end{aligned}$$

## EXHIBIT 8

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION: Respondent violated Condition 11 of its 401 WQC by failing to report the August 22, 2023, concrete discharges to OERS.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(a).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(H) because the Project was authorized under a Nationwide Permit, which is considered a Tier I dredge and fill project under OAR 340-048-0055(3)(a). However, pursuant to OAR 340-012-0160, to deter likely future violations DEQ has chosen to increase the base penalty to that derived using the next highest penalty matrix. Past repair projects at the dam resulted in violations and future violations are likely to occur during future repair work. For this reason, "BP" is \$4,000 pursuant to the matrix found in OAR 340-012-0140(3)(b)(A)(ii).
- "P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2) because the Respondent has no PSAs.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.
- "O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation on August 22, 2023.
- "M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Condition 11 of the 401 WQC clearly requires submission of an OERS report whenever there is a discharge of deleterious materials. Although Respondent notified DEQ of the concrete discharge via email, by failing to submit an OERS report that would have alerted other interested agencies of the

discharge Respondent failed to take reasonable care to avoid the foreseeable risk that a violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 0 + 4 + 0)] + \$0$   
 $= \$4,000 + (\$400 \times 4) + \$0$   
 $= \$4,000 + \$1,600 + \$0$   
 $= \$5,600$

EXHIBIT 9

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY  
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION: Respondent violated Condition 17 of its 401 WQC by failing to isolate the in-water work areas from the active flowing stream.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(a).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(H) because the Project was authorized under a Nationwide Permit, which is considered a Tier I dredge and fill project under OAR 340-048-0055(3)(a). However, pursuant to OAR 340-012-0160, to deter likely future violations DEQ has chosen to increase the base penalty to that derived using the next highest penalty matrix. Past repair projects at the dam resulted in violations and future violations are likely to occur during future repair work. For this reason, "BP" is \$4,000 pursuant to the matrix found in OAR 340-012-0140(3)(b)(A)(ii).
- "P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2) because the Respondent has no PSAs.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.
- "O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day Respondent conducted work without isolating the work area is a separate violation. Respondent conducted work from August 7, 2023, through at least September 6, 2023—a total of 30 days—without completely isolating the work area from the active flowing stream.
- "M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. The 401 WQC clearly requires the

in-water work area to be isolated from the active flowing stream, by failing to do so Respondent consciously disregarded a substantial and unjustifiable risk that a violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 8 + 0)] + \$0$   
 $= \$4,000 + (\$400 \times 12) + \$0$   
 $= \$4,000 + \$4,800 + \$0$   
 $= \$8,800$

EXHIBIT 10

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY  
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION: Respondent violated Condition 15 of its 401 WQC by failing to remove all construction materials and temporary fill from below OHW before the expiration of the in-water work window approved by ODFW and USACE.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(a).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(H) because the Project was authorized under a Nationwide Permit, which is considered a Tier I dredge and fill project under OAR 340-048-0055(3)(a). However, pursuant to OAR 340-012-0160, to deter likely future violations DEQ has chosen to increase the base penalty to that derived using the next highest penalty matrix. Past repair projects at the dam resulted in violations and future violations are likely to occur during future repair work. For this reason, "BP" is \$4,000 pursuant to the matrix found in OAR 340-012-0140(3)(b)(A)(ii).
- "P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2) because the Respondent has no PSAs.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.
- "O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because there is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d). Materials remained in place below OHW at least until September 7, 2023.
- "M" is the mental state of the Respondent and receives a value of 10 according to OAR 340-012-0145(5)(e) because Respondent's conduct was flagrant. After repeated extension requests

and extensive correspondence with USACE and ODFW regarding the approved in-water work window, Respondent had actual of the requirement to remove all materials below OHW by 5pm on September 6, 2023.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation could not be corrected.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 2 + 10 + 0)] + \$0  
= \$4,000 + (\$400 x 12) + \$0  
= \$4,000 + \$4,800 + \$0  
= \$8,800



## EXHIBIT 11

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION: Respondent violated Condition 16 of its 401 WQC by failing to provide unobstructed fish passage between September 1, 2023, and September 5, 2023.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(a).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0130(3) because ODFW documented numerous attempts by migrating salmonids to access the non-functioning fish ladder. The lack of passage posed a significant delay to the migration of multiple fish species, including spring Chinook salmon, summer steelhead trout, and Endangered Species Act (ESA) listed coho salmon. Additionally, the delayed passage and repeated burst swimming events associated with multiple thwarted passage attempts are known to increase stress and energy expenditure for the fish, both of which are known to impact spawning success.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$3,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(4)(a)(H) because the Project was authorized under a Nationwide Permit, which is considered a Tier I dredge and fill project under OAR 340-048-0055(3)(a). However, pursuant to OAR 340-012-0160, to deter likely future violations DEQ has chosen to increase the base penalty to that derived using the next highest penalty matrix. Past repair projects at the dam resulted in violations and future violations are likely to occur during future repair work. For this reason, "BP" is \$8,000 pursuant to the matrix found in OAR 340-012-0140(3)(b)(A)(i).
- "P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2) because the Respondent has no PSAs.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.
- "O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences

of the violation. Each day of violation is a separate occurrence. Respondent was required to restore fish passage by August 31, 2023, but failed to do so until September 5, 2023, for a total of six occurrences.

"M" is the mental state of the Respondent and receives a value of 10 according to OAR 340-012-0145(5)(e) because Respondent's conduct was flagrant. Respondent was expressly told by ODFW that unobstructed fish passage must be maintained, and thus had actual knowledge of the requirement.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation could not be corrected.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION:  $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$   
= \$8,000 + [(0.1 x \$8,000) x (0 + 0 + 2 + 10 + 0)] + \$0  
= \$8,000 + (\$800 x 12) + \$0  
= \$8,000 + \$9,600 + \$0  
= \$17,600

Oregon Department of Environmental Quality  
 700 NE Multnomah Street, Suite 600  
 Portland, OR 97232-4100



State of Oregon  
**Department of Environmental Quality**

Phone: 503-229-5437  
 Fax: 503-229-5850

**CIVIL PENALTY - ORS 468.135(2)**

|                        |                  |
|------------------------|------------------|
| <b>DATE:</b>           | October 26, 2023 |
| <b>RESPONSE DATE :</b> | January 4, 2024  |
| <b>TOTAL PENALTY:</b>  | \$106,778.00     |

|                      |                               |                          |              |
|----------------------|-------------------------------|--------------------------|--------------|
| <b>Account Name:</b> | WINCHESTER DAM REPAIR PROJECT |                          |              |
| <b>Account Type:</b> | Vendor/Organization/Company   | <b>Reference Number:</b> | CPGFD2400016 |
| <b>SubSystem ID:</b> | 205005                        | <b>FIMS Acct. ID:</b>    | 9690         |

**Penalty Summary**

| Penalty Amount | Interest | Adjustment | Amount Paid | Total Penalty |
|----------------|----------|------------|-------------|---------------|
| \$ 106,778.00  | \$ 0.00  | \$ 0.00    | \$ 0.00     | \$ 106,778.00 |

Payment of this penalty is subject to the exercise of your options or right to appeal as described in the enclosed enforcement documents.

To Pay Online with ACH or Credit Card Visit <https://ydo.oregon.gov> and select 'Register Account'



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 PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



|                        |                                       |                           |                 |
|------------------------|---------------------------------------|---------------------------|-----------------|
| <b>REFERENCE NO.:</b>  | CPGFD2400016                          |                           |                 |
| <b>PAYCODE:</b>        | 00401 7400 10040 74001 0500 000000 00 |                           |                 |
| <b>FEE PROGRAM ID:</b> | 950                                   | <b>RESPONSE DATE:</b>     | January 4, 2024 |
| <b>FIMS ACCT. ID:</b>  | 9690                                  | <b>TOTAL PENALTY DUE:</b> | \$106778.00     |

**AMOUNT ENCLOSED:**

MAKE CHECK PAYABLE TO: Department of Environmental Quality

DEQ FINANCIAL SERVICES - LBX4244  
 PO BOX 4244  
 PORTLAND OR 97208-4244

Check this box if updated address information has been provided on the back of the form.

00401 7400 10040 74001 0500 000000 0095000096906CPGFD240001600106778005



State of Oregon  
Department of  
Environmental  
Quality

# State of Oregon Department of Environmental Quality

CIVIL PENALTY - ORS 468.135(2)

700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100  
Phone: 503-229-5437  
Fax: 503-229-5850

## Penalty Detail

| Transaction Date | Description                 | Amount       |
|------------------|-----------------------------|--------------|
| 10/25/2023       | 2023-596 WQ-401-WR-2023-596 | \$106,778.00 |

### SFMS Agencies Use:

| Trans Code | Treasury Fund | SFMS | Index | PCA (5) | Agency Object | Project # | Phase |
|------------|---------------|------|-------|---------|---------------|-----------|-------|
| 723        | 00401         | 7400 | 10040 | 74001   | 0500          | 00000     | 00    |

## Address Changes

Please visit <https://ydo.oregon.gov> to update your mailing address online or provide the following information:

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_