



Oregon

Tina Kotek, Governor

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RE: 401 Water Quality Certification Approval for Project 2025-102, Highland Ditch Dam Removal and Irrigation Efficiency Project

The U.S. Army Corps of Engineers (USACE) has determined that your project will be authorized under Nationwide Permit (NWP) category #33 and #53. As described in the application package received and reviewed by the Oregon Department of Environmental Quality (DEQ), the project qualifies for the expedited 401 Water Quality Certification (WQC), subject to the conditions outlined below. If you cannot meet all conditions of this 401 WQC, you may apply for a standard 401 WQC. A standard 401 WQC will require additional information, a public notice that includes a comment period, and a higher review fee.

Certification Decision: Based on information provided by the USACE and the Applicant, DEQ has determined that implementation of eligible activities under the proposed NWP will be consistent with water quality requirements, including 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 (OAR) Chapter 340 Division 41, and other appropriate requirements of state law, provided the following conditions are incorporated into the federal permit and strictly adhered to by the Applicant.

Duration of Certification: This 401 WQC for impacts to waters, including dredge and fill activities, is valid for the duration of the USACE permit.

In addition to all USACE national and regional permit conditions, the following 401 WQC conditions apply to all NWP categories that qualify for the expedited 401 WQC.

401 General Certification 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 401 WQC.

Authority: OAR 340-048-0015

Justification: DEQ must be aware of responsible parties to ensure compliance.

- 2) **Work Authorized:** Work authorized by this 401 WQC is limited to the work described in the federal permit application and additional application materials (hereafter "the permit application materials"), unless otherwise authorized by DEQ. If the project is operated in a manner that is

not consistent with the project description contained in the permit application materials, the Applicant is not in compliance with this 401 WQC and may be subject to enforcement.

Authority: OAR 340-048-0015

Justification: To ensure the project will comply with water quality standards, DEQ must understand all work involved in the construction and operation of the project.

- 3) **401 WQC On-Site:** A copy of this 401 WQC 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, USACE, National Marine Fisheries Service (NMFS), Oregon Department of Fish and Wildlife (ODFW), and other state and local government inspectors.

Authority: OAR 340-012

Justification: All parties must be aware of and comply with the 401 WQC, including on-site contractors.

- 4) **Revocation:** DEQ may modify or revoke this 401 WQC, in accordance with OAR 340-048-0050, if the project changes, if the project changes or project activities are having an adverse impact state water quality or beneficial uses, or if the Applicant is otherwise in violation of the conditions of this certification. This condition also fully applies to applicable on-site/off-site mitigation plans.

Authority: OAR 340-048-0050

Justification: To ensure the project will comply with water quality standards, DEQ must understand all work involved in the construction and operation of the project.

- 5) **Land Use Compatibility Statement:** In accordance with OAR 340-048-0020(2) (i), each Applicant must submit findings prepared by the local land use jurisdiction that demonstrates the activity's compliance with the local comprehensive plan. Such findings can be submitted using Section 11 of the Joint Permit Application and must be signed by the appropriate local planning official indicating:

- a. "This project is consistent with the comprehensive plan and land use regulations;" or,
- b. "This project will be consistent with the comprehensive plan and land use regulations when the following ... local approvals are obtained," accompanied by the obtained local approvals.
- c. Rarely, "This project is not regulated by the comprehensive plan and land use regulations" will be acceptable.

In lieu of submitting Section 11 of the Joint Permit Application, the Applicant may use DEQ's Land Use Compatibility Statement form found at: [DEQ Land Use Compatibility Form](#)

Authority: OAR 340-048-0020(2) (i), OAR 340-018

Justification: DEQ must ensure compliance with water quality land use laws at the local level.

- 6) **Access:** The Applicant and its contractors must allow DEQ access, with or without prior notice, to the project site, including staging areas and mitigation sites, to monitor compliance with these 401 WQC conditions, including:
- a. Access to any records, logs, and reports that must be kept under the conditions of this 401 WQC;
 - b. To inspect best management practices (BMPs), monitoring, equipment, or methods; and
 - c. To collect samples or monitor any discharge of pollutants.

Authority: OAR 340-048

Justification: DEQ must inspect facilities for compliance with all state rules and laws.

- 7) **Enforcement:** Failure to comply with this order may result in enforcement, including the issuance of civil penalties or other actions. The Applicant is liable for any violations of this Order caused by the work of its contractors and subcontractors, as well as any other entity that performs work related to this 401 WQC.

Authority: OAR 340-012, OAR 340-048

Justification: If the project is not being constructed or operated as proposed, it may not be consistent with water quality requirements.

For Projects That Propose Construction, The Following General Conditions Apply

- 8) **Erosion and Sediment Control:** During construction, erosion control measures must be implemented to prevent soil from entering 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 Erosion Control Manual, February 2021 at:
<https://www.oregon.gov/deq/wq/Documents/wqpBMPManual.pdf>
- a. A project that disturbs more than one acre may be required to obtain a National Pollutant Discharge Elimination System (NPDES) 1200-C construction stormwater general permit. Contact the DEQ Stormwater Program for more information at:
<https://www.oregon.gov/deq/wq/wqpermits/Pages/Stormwater-Construction.aspx>
 - b. Unless otherwise authorized by DEQ in writing, the Applicant must:
 - i. Maintain an adequate supply of materials necessary to control erosion at the construction site.
 - ii. Prohibit erosion of stockpiles. Deploy compost berms, impervious materials, or other effective methods during rain events or when stockpiles are not moved or reshaped for more than 48 hours.
 - iii. Inspect erosion control measures daily and maintain erosion control measures as often necessary to ensure the continued effectiveness of measures. Erosion control measures must remain in place until all exposed soil is stabilized.
 - 1. 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.
 - 2. If sediment has reached one-third of the exposed height of a sediment or erosion control, the Applicant must remove the sediment to its original contour.
 - iv. 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. Tire mats, creosote-treated wood, and other deleterious waste materials are prohibited.

- v. Flag or fence off wetlands not specifically authorized to be impacted to protect them from disturbance and/or erosion.
- vi. Place dredged or other excavated material on upland areas (outside of the ordinary high-water mark or wetland boundary) with stable slopes to prevent materials from eroding back into waterways or wetlands.
- vii. Place clean aggregate at all construction entrances and utilize other BMPs, 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.
- viii. Upon completion of construction activities, stormwater facilities must be inspected and adequately prepared for post-construction stormwater treatment.
- ix. Upon completion of construction activities, stormwater facilities must be tested to ensure they are working and adequately prepared for post-construction stormwater treatment.

Authority: OAR 340-041-0007(8), ORS 468B.025, ORS 468B.050, OAR 340-045

Justification: DEQ must ensure that pollution does not enter waterways.

- 9) **Deleterious Waste Materials:** The Applicant is prohibited from placing biologically deleterious materials and construction debris where it could enter waters of the state, including wetlands (wetlands are waters of the state). This includes but is 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, asphalt, and waste concrete.

The Applicant must:

- a. Cure concrete, cement, or grout for at least 24 hours before any contact with waters of the state;
- b. Use only clean fill, free of waste and polluted substances;
- c. Employ all practicable controls to prevent discharges of spills of deleterious 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; and
- f. Employ general good housekeeping practices at all times.

Authority: OAR 340-041-0007(8), ORS 468B 0.25, ORS 468B.050

Justification: DEQ must ensure that pollution does not enter waterways.

- 10) **Spill Prevention:** The Applicant must have a spill prevention and control plan. The Applicant must fuel, operate, maintain, and store vehicles, equipment, and construction materials in

areas that will not disturb habitat directly or have the potential to result in 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 due to 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, including wetlands (wetlands are 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; or
 - iii. Equal or greater spill containment and effect avoidance is provided even if the staging area is less than 150 feet away from waters of the state, including wetlands (wetlands are waters of the state).
- b. If the 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.

Authority: ORS 466.645(1); ORS 468B.025, OAR 340-142-0030(1)(b)(B), OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways and must be protective of beneficial uses, including fish.

11) Spill and Incident Reporting:

- a. In the event that petroleum products, chemicals, or any other deleterious materials are discharged into state waters or onto land with a potential to enter state waters, the Applicant must report the discharge to the Oregon Emergency Response Service (OERS, 1-800-452-0311) within 24 hours. The Applicant must immediately begin containment and complete cleanup as soon as possible.
- b. If the project operations cause a water quality problem that results in distressed or dying fish, the operator must immediately cease operations, take appropriate corrective measures to prevent further environmental damage, collect fish specimens and water samples, and notify DEQ, ODFW, and other appropriate regulatory agencies.

Authority: ORS 466.645(1), ORS 468B.025, OAR 340-142-0030(1)(b)(B), OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways and must be protective of beneficial uses, including fish.

12) Vegetation Protection and Site Restoration:

- a. The Applicant must protect riparian, wetland, and shoreline vegetation not proposed for impact 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 demarking construction areas; and
 - 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 to 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; and
 - iv. The use of invasive species to reestablish vegetation is prohibited.
- c. Pesticides (including herbicides) and fertilizers must be applied per manufacturer's instructions by a professionally licensed applicator. If chemical treatment is necessary,

the Applicant is responsible for ensuring that pesticide application laws, including with the NPDES System 2300-A general permit, are met. Please review the information on the following website for more information: [Pesticide Applications into Surface Waters](#)

- i. For pesticide application within stormwater treatment facilities or within 150 feet of waters of the state, the Applicant must adopt an Integrated Pest Management (IPM) plan that describes pest prevention, monitoring, and control techniques with a focus on prevention of inputs to waters of the state, or coverage under an NPDES permit, if required.
 - ii. Pesticides must only be applied during the dry season and direct water application must be avoided.
 - iii. Unless otherwise approved in writing by DEQ, applying surface fertilizer within stormwater treatment facilities or within 50 feet of any stream channel is prohibited.
 - iv. Install wildlife-friendly fencing as necessary to prevent access to revegetated sites by livestock or unauthorized persons.
- d. Minimize soil compaction, especially in areas that are designated for replanting. If soils are compacted, decompact 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.

Authority: OAR 340-041, OAR 340-048, ORS 468B.025

Justification: Riparian, wetland, and shoreline vegetation help ensure excess sediment does not enter a waterway and help offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.

- 13) **Post-Construction Buffers:** The Applicant must provide an undisturbed buffer to all remaining waters of the state on site that averages 50-feet from the delineated boundary, unless a smaller buffer is proposed, necessary, and approved as part of the project. If a local jurisdiction has a more stringent buffer requirement, that requirement will take the place of this certification requirement.

Authority: OAR 340-041, ORS 468B.025

Justification: Riparian, wetland, and shoreline buffers help ensure excess sediment does not enter a waterway and help offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.

- 14) **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 1-800-452-4011.

Authority: OAR 340-041, ORS 468B.025, OAR 340-122, OAR 340-040

Justification: DEQ must ensure that pollution does not enter waterways. As sediments are disturbed, pollutants could become redistributed.

FOR PROJECTS THAT PROPOSE IN-WATER WORK

- 15) **Fish Protection and ODFW Timing:** The Applicant must perform in-water work only within the ODFW preferred time window as specified in the *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources* ([ODFW In-Water Work Timing Guidance](#)) or as authorized otherwise under a Department of State Lands (DSL) removal/fill permit. Exceptions

to the timing window must be recommended by ODFW or the NMFS as appropriate and approved by DSL when applicable.

Authority: OAR 340-041-0011

Justification: DEQ must be protective of all water quality standards, including beneficial uses such as fish.

- 16) **Aquatic Life Movements:** Any activity that may disrupt the life cycle movements of aquatic life in the waterbody, 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, unless otherwise approved authorized as part of the approved application or authorized by DEQ.

Authority: OAR 340-041-0016; OAR 340-041-0028

Justification: DEQ must be protective of all water quality standards, including beneficial uses such as fish.

- 17) **Isolation of In-Water Work Areas:** The Applicant must isolate in-water work areas from the active flowing stream before in-water work begins, unless otherwise authorized as part of the approved application or authorized by DEQ.

Authority: OAR 340-041, OAR 340-045

Justification: DEQ must ensure that pollution does not enter waterways.

- 18) **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.

Authority: OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways.

- 19) **Turbidity:** The Applicant must implement BMPs to minimize turbidity during in-water work. Any activity that causes turbidity to exceed 10 percent above natural stream turbidities is prohibited, except as specifically provided 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, including while dewatering or work area isolation measures are in place. Monitoring shall begin at the start of all in-water work activities and continue at two-hour intervals thereafter. A properly calibrated turbidimeter is required **unless another monitoring method is proposed and authorized by DEQ in writing.**
 - i. **Representative Background Point:** The Applicant must take and record a turbidity measurement every two hours during in-water work at an undisturbed area approximately 100 feet up-current from the in-water disturbance unless otherwise authorized by DEQ. 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 approximately 100 feet directly down-current 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 OAR 340-041-0036, short term exceedances are allowed as follows:

MONITORING WITH A TURBIDIMETER EVERY 2 HOURS	
<i>TURBIDITY LEVEL</i>	<i>RESTRICTIONS TO DURATION OF ACTIVITY</i>
0 to 4.99 NTU above background	No restrictions
5 to 29.99 NTU above background	Work may continue maximum of 4 hours. If turbidity remains 5-29.99 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-4.99 above background.
30 to 49.99 NTU above background	Work may continue maximum of 2 hours. If turbidity remains 30-49.99 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-4.99 above background.
50 NTU or more above background	Stop work immediately and inform DEQ

The activity must stop immediately and remain stopped for the remainder of that 24-hour work period if an exceedance reaches 50 NTU or more above background, 30 NTU above background for two hours, or 5NTU above background for four hours.

c. **Reporting:**

- i. Record all turbidity monitoring required by subsections (a) and (b) above in daily logs, which must include calibration documentation; background NTUs; compliance point NTUs; comparison of the background and compliance points in NTUs; and the location, date, time, and tidal stage (if applicable) for each reading.
- ii. Keep records on file for the duration of the permit cycle.
- iii. Prepare a narrative discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions. The Applicant must make available copies of daily logs for turbidity monitoring to regulatory agencies including DEQ, USACE, NMFS, USFWS, and ODFW 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. **BMPs to Minimize In-stream Turbidity:** The Applicant must implement the following BMPs, unless authorized in writing by DEQ:
- i. Sequence and 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 conducted in a manner that will minimize turbidity. All practicable 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. The Applicant must establish temporary crossing sites as necessary in the least sensitive areas and amend these crossing sites with clean gravel or other temporary methods as appropriate to prevent the discharge of sediments in 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 edge or wetlands. Excavated materials may not be placed where it could re-enter waters of the state in an uncontrolled manner.
- vi. 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.

Authority: OAR 340-041-0036, OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways.

Specific Conditions for Post-Construction Stormwater Management

- 20) **Post-Construction Stormwater Management:** For projects that propose new impervious surfaces or the redevelopment of existing surfaces, the Applicant must submit a post-construction stormwater management plan to DEQ. The plan must be reviewed and approved prior to construction to ensure compliance with water quality standards. The Applicant must implement BMPs as proposed in the stormwater management plan, including construction, operation, and maintenance. If proposed stormwater facilities change due to site conditions, the Applicant must notify DEQ in writing.

In lieu of a complete stormwater management plan, the Applicant may submit documentation of acceptance of the stormwater into a DEQ-permitted NPDES Phase I Municipal Separate Storm Sewer System (MS4).

Authority: ORS 468B.025, ORS 468B.050, OAR 340-045, OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways.

- 21) **Stormwater Management and System Maintenance:** The Applicant is required to implement effective operation and maintenance practices for the lifetime of the proposed facility. These include but are not limited to:
- a. Protecting stormwater treatment facilities from degradation during construction.

- b. Monitoring facilities for signs of groundwater interception and reconstructing the facilities as needed to prevent interception of sub-surface flow.
- c. Maintenance techniques and frequency for each system component must follow appropriate recommendations in accepted manuals.
- d. Long-term operation and maintenance of stormwater treatment facilities will be the responsibility of entity listed in the post-construction stormwater management plan unless and until an agreement transferring that responsibility to another entity is submitted to DEQ.

Maintenance of stormwater treatment facilities subject to an MS4 permit is regulated by the permit.

Authority: ORS 468B.025, ORS 468B.050, OAR 340-045, OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways.

- 22) **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.

Authority: ORS 468B.025, OAR 340-041, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways.

Category-Specific Conditions

In addition to all national and regional conditions of the USACE permit and the 401 WQC general conditions above, the following conditions apply to the noted specific categories of authorized activities.

NWP 7 – Outfall Structures and Associated Intake Structures:

- 7.1) The following actions are denied expedited 401 WQC:

- a. Discharge outfalls that are not subject to an NPDES permit; and
- b. Outfalls that do not demonstrate pollutant removal to meet water quality standards prior to discharge to waters of the state.

Authority: OAR 340-041, OAR 340-012, OAR 340-048, OAR 340-045

Justification: DEQ must ensure that pollution does not enter waterways. Untreated stormwater is considered pollution.

- 7.2) If an Applicant cannot obtain an NPDES permit or submit a post-construction stormwater management plan that meets DEQ's Guidelines found at: <http://www.oregon.gov/deq/FilterDocs/401wqcPostCon.pdf>, the Applicant must submit complete project information and a water quality impacts analysis to DEQ in order to undergo a standard 401 WQC evaluation, which includes public participation requirements.

Authority: OAR 340-041, OAR 340-012, OAR 340-048, OAR 340-045

Justification: DEQ must ensure that pollution does not enter waterways. Untreated stormwater is considered pollution.

NWP 13 – Bank Stabilization:

- 13.1) Projects that do not include bioengineering are denied an expedited 401 WQC, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the *only* way to protect an *existing* structure.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.

- 13.2) To apply for certification for a project without bioengineering, the Applicant must submit complete project information and a water quality impacts analysis to DEQ in order to undergo a standard 401 WQC evaluation, which includes public participation requirements.

Authority: OAR 340-041-0059

Justification: DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.

NWP 14 – Linear Transportation Projects:

- 14.1) For projects that include bank stabilization, bioengineering must be a component of the project, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the *only* means of protection.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.

NWP 16 – Return Water from Upland Contained Disposal Areas: Water quality criteria and guidance values for toxics, per OAR 340-041-0033, are available in Tables 30, 31, and 40 at: [OAR 340-041 Water Quality Standards](#).

- 16.1) A Modified Elutriate Test (MET) is required for return water in areas with known sediments with contaminants of concern (CoCs). Discharge of return water from contaminated dredged material that exceeds a chronic or acute toxicity water quality standard is prohibited.

Authority: OAR 340-041-0053(b)(A), OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways.

- 16.2) Water removed with contaminated dredged material that could or does exceed chronic water-quality criteria must be contained and disposed of at an appropriately sized and sealed upland facility by evaporation or infiltration.

Authority: OAR 340-041-0053(b)(A), OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways.

- 16.3) If a MET is performed for the known CoCs and CoC concentrations are below DEQ chronic water-quality criteria, return water discharge is not limited, provided that the following conditions are met:

- a. The MET must be performed before dredging.
- b. DEQ must approve the list of CoCs and analytical method prior to the Applicant performing the MET.

- c. DEQ must review the results and provide approval of discharge from return water in writing prior to dredging.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways.

NWP 20 – Response Operations for Oil or Hazardous Substances:

- 20.1) Coordination with DEQ’s Emergency Response Program is required. See: [DEQ Emergency Response Program](#)

Authority: OAR 340-142-0130(3), OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways.

NWP 22 – Removal of Vessels:

- 22.1) Coordination with DEQ’s Emergency Response Program is required. See: [DEQ Emergency Response Program](#).

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways. Vessels may contain various fuels, lubricants, and other possible sources of pollution.

NWP 31 – Maintenance of Existing Flood Control Facilities:

- 31.1) Projects in streams with Temperature TMDLs which result in a net reduction of riparian shade are prohibited.

Authority: OAR 340-041-0028, OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways.

NWP 38 – Cleanup of Hazardous and Toxic Waste:

- 38.1) For removal of contaminated material from waters, dredging methods are limited to diver-assisted hydraulic suction, hydraulic suction, closed-lipped environmental bucket, or excavation in the dry, unless otherwise authorized by DEQ.

- a. Dredged material disposal must be upland or at a landfill permitted to accept hazardous waste. A DEQ Solid Waste Letter of Authorization or clean fill determination is required, which may include contaminant specific limitations.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways.

- 38.2) Discharge to waters of the state resulting from dewatering during dredging or release of return water from an upland facility is prohibited except as provided below:
 - a. All water removed with sediment must be contained and disposed of at an appropriately sized and sealed upland facility by evaporation or infiltration; or
 - b. A Modified Elutriate Test (MET) must be performed for the known Contaminants of Concern (CoCs), and if CoC concentrations are below DEQ chronic water-quality criteria, return water discharge is not limited, provided that the following conditions are met:

- i. The MET must be performed before dredging.
- ii. DEQ must approve the list of CoCs and analytical method prior to the Applicant performing the MET.
- iii. DEQ must review the results and provide approval of discharge from dewatering and return water in writing prior to dredging.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways.

- 38.3) Dredged material must be disposed of in compliance with DEQ Rules governing Hazardous Waste (see: [DEQ Hazardous Waste Program](#)) or Solid Waste (see: [DEQ Solid Waste Program](#)).

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways.

- 38.4) The new in-water surface must be managed to prevent exposure or mobilization of contaminants.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways.

NWP 41 – Reshaping Existing Drainage and Irrigation Ditches:

- 41.1) To the extent practicable, the Applicant must work from only one bank in order to minimize disturbance to existing vegetation, preferably the bank with the least existing vegetation.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways.

- 41.2) Following authorized work, the Applicant must establish in-stream and riparian vegetation on reshaped channels and side channels using native plant species. Plantings must be targeted to address water quality improvement (e.g., provide shade to water to reduce temperature or provide bank stability through root systems to limit sediment inputs). Planting options may include clustering or vegetating only one side of a channel, preferably the side which provides maximum shade.

Authority: OAR 340-041-0004(5)(a)

Justification: Riparian, wetland, and shoreline buffers help ensure excess sediment does not enter a waterway and helps offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.

NWP 42 – Recreational Facilities:

- 42.1) For facilities that include turf maintenance actions, the Applicant must develop and implement an Integrated Pest Management Plan (IPM) that describes pest prevention, monitoring, and control techniques with a focus on prevention of chemical and nutrient inputs to waters of the state, including maintenance of adequate buffers for pesticide application near salmonid streams, or coverage under an NPDES permit, if required (information is available at: [Pesticide Applications into Surface Waters](#)).

Authority: OAR 340-041-0033, OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways, including excess pesticides and fertilizers.

NWP 43 – Stormwater Management Facilities:

43.1) Projects that propose the following elements are denied expedited certification:

- a. In-stream or wetland stormwater facilities; or,
- b. Discharge outfalls not subject to an MS4 NPDES permit.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways; stormwater is considered a pollutant.

43.2) To apply for certification for a project with stormwater facilities proposed in wetlands or waters without an NPDES permit or without submittal of an approvable post-construction stormwater management plan per DEQ's Guidelines (at: [DEQ Post-Construction Stormwater Management Guidance](#)), the Applicant must submit complete project information and a water quality impacts analysis to DEQ in order to undergo a standard 401 WQC evaluation, which includes public participation requirements.

Authority: OAR 340-041-0059

Justification: DEQ must ensure that pollution does not enter waterways; stormwater is considered a pollutant.

NWP 44 – Mining Activities:

44.1) Projects that do not obtain an NPDES 700-PM or Individual Permit are denied expedited certification.

Authority: OAR 340-045-0033, OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways. Excess turbidity can be considered pollution.

44.2) To apply for certification for a project without an NPDES 700-PM or Individual Permit, the Applicant must submit complete project information and a water quality impacts analysis to DEQ in order to undergo a standard 401 WQC evaluation, which includes public participation requirements.

Authority: OAR 340-041-0059

Justification: DEQ must ensure that pollution does not enter waterways.

44.3) The State of Oregon requires an In-Water Blasting Permit to be obtained per OAR 635-425-0000. The Applicant is advised to contact the nearest ODFW office for further information at: [ODFW In-water Timing / Blasting](#)

Authority: OAR 340-041-0011

Justification: DEQ must be protective of all water quality standards, including beneficial uses such as fish.

NWP 51 – Land-Based Renewable Energy Generation Facilities:

51.1) For proposals that include directionally-bored stream or wetland crossings:

- a. All drilling equipment, drill recovery and recycling pits, and any waste or spoil produced, must be completely isolated, recovered, and recycled or disposed of to prevent entry into waters of the state. Recycling using a tank instead of drill recovery/recycling pits is preferable.

- b. In the event that drilling fluids enter a water of the state, the equipment operator must stop work, immediately initiate containment measures, and report the spill to the Oregon Emergency Response System (OERS) at 1-800-452-0311.
- c. An adequate supply of materials needed to control erosion and to contain drilling fluids must be maintained at the project construction site and deployed as necessary.
- d. The Applicant must have a contingency plan in place prior to construction for the inadvertent return of drilling lubricant.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways

NWP 53 – Removal of Low-Head Dams:

- 53.1) Projects that do *not* go through a Portland Sediment Evaluation Team (PSET) review if sediments are being dispersed are denied expedited 401 WQC.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways. Sediments can be a carrier of contaminants.

- 53.2) To apply for certification for a project without a PSET review, the Applicant must submit complete project information and a water quality impacts analysis to DEQ in order to undergo a standard 401 WQC evaluation, which includes public participation requirements.

Authority: OAR 340-041-0059

Justification: DEQ must ensure that pollution does not enter waterways. Sediments can be a carrier of contaminants.

NWP 54 – Living Shorelines:

- 54.1) Projects that do not include bioengineering are denied expedited certification, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the *only* means of protection.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion in the system.

- 54.2) To apply for certification for a project without bioengineering, the Applicant must submit complete project information and a water quality impacts analysis to DEQ in order to undergo a standard 401 WQC evaluation, which includes public participation requirements.

Authority: OAR 340-041-0059

Justification: DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.

NWP 57 – Electric Utility Line and Telecommunications Activities:

- 57.1) For proposals that include directionally-bored stream or wetland crossings:

- a. All drilling equipment, drill recovery and recycling pits, and any waste or spoil produced, must be completely isolated, recovered, and recycled or disposed of to prevent entry

into waters of the state. Recycling using a tank instead of drill recovery/recycling pits is preferable.

- b. In the event that drilling fluids enter a water of the state, the equipment operator must stop work, immediately initiate containment measures, and report the spill to the Oregon Emergency Response System (OERS) at 1-800-452-0311.
- c. An adequate supply of materials needed to control erosion and to contain drilling fluids must be maintained at the project construction site and deployed as necessary.
- d. The Applicant must have a contingency plan in place prior to construction for the inadvertent return of drilling lubricant.

Authority: OAR 340-142-0030, OAR 340-142-0040(1)

Justification: *Drilling equipment and fluids that enter a waterbody would likely cause contamination of that waterbody.*

- 57.2) For proposals that include utility lines through wetlands, include anti-seep collars or equivalent technology to prevent draining the wetlands.

Authority: OAR 340-041, OAR 340-012, OAR 340-048

Justification: *DEQ must ensure that pollution does not enter waterways*

NWP 58 – Utility Line Activities for Water and Other Substances:

- 58.1) For proposals that include directionally-bored stream or wetland crossings:

- a. All drilling equipment, drill recovery and recycling pits, and any waste or spoil produced, must be completely isolated, recovered, and recycled or disposed of to prevent entry into waters of the state. Recycling using a tank instead of drill recovery/recycling pits is preferable.
- b. In the event that drilling fluids enter a water of the state, the equipment operator must stop work, immediately initiate containment measures, and report the spill to the Oregon Emergency Response System (OERS) at 1-800-452-0311.
- c. An adequate supply of materials needed to control erosion and to contain drilling fluids must be maintained at the project construction site and deployed as necessary.
- d. The Applicant must have a contingency plan in place prior to construction for the inadvertent return of drilling lubricant.

Authority: OAR 340-142-0030, OAR 340-142-0040(1)

Justification: *Drilling equipment and fluids that enter a waterbody would likely cause contamination of that waterbody.*

- 58.2) For proposals that include utility lines through wetlands, include anti-seep collars or equivalent technology to prevent draining the wetlands.

- 58.3) For proposals that include new water in-take facilities and withdrawals, a thermal modeling plan must be submitted to DEQ.

Authority: OAR 340-041-0028

Project Name: Highland Ditch Dam Removal and Irrigation Efficiency Project
Project Number: 2025-102

Justification: *DEQ must protect designated temperature-sensitive, beneficial uses, including specific salmonid life cycle stages in waters of the State.*

If the Applicant is dissatisfied with the conditions contained in this certification, a hearing may be requested. Such a request must be made in writing to DEQ's Office of Compliance and Enforcement at 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232 within 20 days of the mailing of this certification.

The DEQ hereby certifies that this project complies with the Clean Water Act and state rules, with the above conditions. If you have any questions, please contact 401certifications@deq.oregon.gov or at the address on this letterhead.

Sincerely,



Theresa Burcsu,
Water Quality Manager
Northwest Region

ec: Alex Holecek, USACE
Bryan Gillooly, DSL
Joey Howard, Cascade Stream Solutions LLC

401 Water Quality Certification Turbidity Monitoring Report

Project Name:	USACE Project #	DSL Project #
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Name of Inspector(s):			
Turbidimeter Model:			
Calibration Standard Type (Circle One)			
Formazin Solution or Gelex			
Calibration Standard Expiration Date:			
Sampling Date:	Calibration Values: _____ NTU (Standard) = _____ NTU (Reading) _____ NTU (Standard) = _____ NTU (Reading) _____ NTU (Standard) = _____ NTU (Reading)	*Upstream (Background) Point Location: Latitude: Longitude:	*Downstream (Compliance) Point Location: Latitude: Longitude:

In-Water Work Start Time:	In-Water Work End Time:	Description of In-Water Work:
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Up-stream Sample		Down-stream Sample		Change in Turbidity (NTU)	Observation of waterbody		NOTES (Describe any modifications made to BMPs)
Time	Turbidity (NTU)	Time	Turbidity (NTU)		Tidal Stage	Note any plume, sheen, floatables, color	

401 Water Quality Certification Turbidity Monitoring Report

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** Include a figure with the turbidity sampling forms showing the sampling locations.*

Turbidity: The Applicant must implement appropriate Best Management Practices (BMPs) to minimize turbidity during in-water work. Any activity that causes turbidity to exceed 10% above natural stream turbidity is prohibited except as specifically provided below:

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, including while dewatering or work area isolation measures are in place. Monitoring shall begin at the start of all in-water work activities and continue at two-hour intervals thereafter. A properly calibrated turbidimeter is required unless another monitoring method is proposed and authorized by DEQ.

Representative Background Point: The Applicant must take and record a turbidity measurement every two hours during in-water work at an undisturbed area. A background location shall be established at a representative location approximately 100 feet up-current of the in water activity unless otherwise authorized by DEQ. 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.

Compliance Point: The Applicant must monitor every two hours. A compliance location shall be established at a representative location approximately 100 feet directly down-current 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.

MONITORING WITH A TURBIDIMETER EVERY 2 HOURS	
TURBIDITY LEVEL	Restrictions to Duration of Activity
0 to 4.99 NTU above background	No Restrictions
5 to 29.99 NTU above background	Work may continue maximum of 4 hours. If turbidity remains 5-29 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-4.99 above background.
30 to 49.99 NTU above background	Work may continue maximum of 2 hours. If turbidity remains 30-49.99 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-4.99 above background.
50 NTU or more above background	Stop work immediately and inform DEQ

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 OAR 340-041-0036, short term exceedances of the turbidity water quality standard are allowed as shown in the monitoring table shown here.

Reporting: The Applicant must record all turbidity monitoring required by Condition #19 in daily logs that are kept on file for the duration of the permit cycle. The daily logs must include calibration documentation, background NTUs, 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. The Applicant must make available copies of daily logs for turbidity monitoring to DEQ, USACE, NMFS, USFWS, and ODFW upon request.

BMPs to Minimize In-stream Turbidity: The Applicant must implement the following BMPs, unless otherwise accepted by DEQ:

- Sequence/Phasing of Work – The Applicant must schedule work activities so as to minimize in-water disturbance and duration of in-water disturbances;
- Bucket control – All in-stream digging passes by excavation machinery and placement of fill in-stream using a bucket must be completed so as to minimize turbidity. All practicable techniques such as employing an experienced equipment operator, not dumping partial or full buckets of material back into the wetted stream, adjusting the volume and/or speed of the load, or using a closed-lipped environmental bucket must be implemented;
- The Applicant must limit the number and location of stream-crossing events. Establish temporary crossing sites as necessary in the least sensitive areas and amend these crossing sites with clean gravel or other temporary methods as appropriate;
- Machinery may not be driven into the flowing channel, unless authorized by DEQ; and
- Excavated material must be placed so that it is isolated from the water edge or wetlands, and not placed where it could re-enter waters of the state uncontrolled.

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