



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
FAX (503) 229-5100
TTY 711

January 27, 2020

CERTIFIED MAIL: 7016 2140 0000 2409 7100

Basco Logging, Inc.
Attn: Juan Yraguen, Registered Agent
1039 Park Hill Lane
Sutherlin OR 97479

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/NP-WR-2019-231

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$58,378 for violating state water quality standards and causing pollution, killing fish and other aquatic species, in connection with repairs to the Winchester Dam on the North Umpqua River in fall 2018.

DEQ issued this penalty because the North Umpqua River is important habitat for threatened Oregon Coast coho salmon and several other sensitive species, and your activities resulted in the discharge of sediment and wet (or “green”) concrete to the river, degrading aquatic habitat and killing numerous fish. These incidents also negatively affected the quality of the primary drinking water source for two community water systems – City of Roseburg and Umpqua Basin Water Association, serving approximately 37,700 people (28,800 and 8,900, respectively).

Your dam repair activities were conducted without following all established in-water work best management practices, despite receiving information in advance from state and federal agencies on how to protect water quality and resident aquatic species.

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

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. Alternatively, you can pay the penalty by sending a check or money order to the above address.

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.

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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 Anzie St. Clair 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: David Waltz, DEQ, Western Region
Zach Loboy, DEQ, Western Region
Accounting, DEQ
John Koestler, WQ, DEQ

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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)
BASCO LOGGING, INC., an Oregon)
corporation,)
Respondent.)
NOTICE OF CIVIL PENALTY
ASSESSMENT AND ORDER
CASE NO. WQ/NP-WR-2019-231

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS Chapters 183 and 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 041, and 045.

II. FINDINGS OF FACT

1. The Winchester Dam is a run-of-the-river dam located in the North Umpqua River in Winchester, Douglas County, Oregon, owned, operated, and maintained by the Winchester Water Control District to provide recreational benefit to private landowners surrounding the reservoir pool just upstream from the dam.

2. The City of Roseburg draws its public drinking water and collects turbidity data from an intake approximately 100 feet downstream from the dam. The Umpqua Basin Water Association also has an intake approximately five miles downstream of the dam.

3. The dam is located on a stretch of the North Umpqua River that is designated as essential salmonid habitat, is listed as critical habitat for threatened Oregon Coast Coho Salmon by the National Marine Fisheries Service (NMFS), and is listed by the Oregon Department of Fish and Wildlife (ODFW) as habitat for sensitive species such as Chinook Salmon, steelhead, Umpqua Chub, Pacific Lamprey, and Western Brook Lamprey.

4. Turbidity in the North Umpqua River near the dam measured at or around 2 nephelometric turbidity units (NTU) during low flow periods, including the period of October through early November 2018. Ten percent of 2 NTU is 0.2 NTU.

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1 5. By letter dated November 16, 2017, the Oregon Water Resources Department (OWRD)
2 notified the Winchester Water Control District of several leaks and unusual hydraulics at the southern
3 end of the dam, requiring further investigation and repair.

4 6. On or about October 9, 2018, the Winchester Water Control District hired Respondent to
5 perform in-water repairs to the dam. Respondent began work on or before October 11, 2018 and
6 completed work on or after November 6, 2018.

7 7. In connection with the dam repair activities, including construction and removal of a coffer
8 dam, Respondent discharged sediment to the North Umpqua River which caused instream turbidity to
9 exceed 10 NTU on October 12, 15, 16, 18, 19, 22, 29, 30, 31, and November 1, 2, 5, and 6 of 2018.

10 8. On at least October 15, 2018, Respondent's dam repair activities caused visible turbidity in
11 the North Umpqua River below the dam, extending approximately 600 feet downstream. Turbidity in
12 this stretch of the North Umpqua River on October 15, 2018 measured 155 NTU, representing an
13 approximate 7,650% increase over background conditions.

14 9. On at least October 23, 2019, during Respondent's dam repair activities, Respondent
15 discharged wet ("green" or uncured) concrete to the North Umpqua River, causing a visible plume
16 extending approximately one-third of a mile downstream.

17 10. On or about October 23, 24, and 25, 2018, Respondent's activities and concrete discharges
18 resulted in the death of juvenile chinook salmon, juvenile steelhead, lamprey larvae, and mussels.

19 11. Respondent did not have a valid state or federal permit or authorization to discharge wastes
20 to the North Umpqua River.

21 12. Respondent did not coordinate its activities with DEQ before beginning work.

22 13. Respondent inquired with the U.S. Army Corps of Engineers and the Oregon Department of
23 State Lands about permitting, but did not ultimately obtain from either agency a valid permit or
24 certification with limitations or conditions governing the dam repair activities.

25 14. Respondent did not implement adequate water pollution control measures during the dam
26 repair activities. Respondent did not stop work when its work area visibly discharged sediment or wet
27 concrete to the river.

1 III. CONCLUSIONS

2 1. Respondent violated ORS 468B.025(1)(b) by discharging wastes into waters of the state and
3 the discharge caused a reduction in the quality of the waters below water quality standards established by
4 the Environmental Quality Commission. Specifically, as described in Section II, paragraphs 7 and 8,
5 Respondent’s dam repair activities resulted in the discharge of wastes where the discharge caused greater
6 than a 10% cumulative increase in the background level of turbidity in North Umpqua River in violation of
7 water quality standards pursuant to OAR 340-041-0036. North Umpqua River is “waters of the state”
8 pursuant to ORS 468B.005(10). Sediment discharge from the dam repair area is a “waste” pursuant to
9 ORS 468B.005(2) and (9). These are a Class I violations according to OAR 340-012-0055(1)(b). DEQ
10 hereby assesses Respondent a \$31,661 civil penalty for these violations.

11 2. Respondent violated ORS 468B.025(1)(a) by causing pollution to the North Umpqua River,
12 without a permit, as described in Section II, paragraphs 9 through 13. Specifically, Respondent poured wet
13 concrete into an in-water area during dam repairs which entered the North Umpqua River, a water of the
14 state pursuant to ORS 468B.005(10), and killed the aquatic species described in Section II, paragraphs 9
15 and 10, which constitutes “pollution” as defined in ORS 468B.005(5). This is a Class I violation pursuant
16 to OAR 340-012-0055(1)(a). DEQ hereby assesses Respondent a \$26,717 civil penalty for this violation.

17 IV. ORDER TO PAY CIVIL PENALTY

18 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondents are
19 hereby ORDERED TO:

20 1. Pay a total civil penalty of \$58,378. The determination of the civil penalties are attached as
21 Exhibits 1 and 2 and are incorporated as part of this Notice. If you do not file a request for hearing as set
22 forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of**
23 **Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland,**
24 **Oregon 97232.**

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

26 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
27 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If

1 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
2 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
3 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
4 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
5 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
6 it to **503-229-5100** or email it to DEQappeals@deq.state.or.us. An administrative law judge
7 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
8 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
9 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
10 you may represent yourself. If you are a corporation, partnership, limited liability company,
11 unincorporated association, trust or government body, you must be represented by an attorney or a duly
12 authorized representative, as set forth in OAR 137-003-0555.

13 Active duty Service members have a right to stay proceedings under the federal Service
14 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
15 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
16 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
17 Department does not have a toll free telephone number.

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

24
25
26 1/27/2020

27 Date

Kieran O'Donnell

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 1: Violating ORS 468B.025(1)(b) by causing an exceedance of state water quality standards.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(b).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(2)(b)(A)(v), because Respondent increased turbidity by 50 or more NTUs over background, as described in Section II, paragraph 8 of the Notice.
- 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 \$12,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(D) as Respondent violated ORS 468B.025(1)(b), did not have an NPDES permit, and the violation is not otherwise classified.

"P" is whether Respondent has any prior significant actions, 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) (a)(A), because there are no prior significant actions.

"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 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. Respondent caused exceedances of water quality standards on at least October 12, 15, 16, 18, 19, 22, 23, 29, 30, 31, and November 1, 2, 5, and 6 of 2018, resulting in at least 14 occurrences.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. On or about October 5, 2018, before beginning its proposed dam work, Respondent contacted ODFW. ODFW informed Respondent that the North Umpqua River supported numerous threatened and sensitive species, it was important to take measures to minimize impacts to those populations, coffer dam rock material should be clean with limited particles, turbidity should be monitored, work should stop if there were noticeable downstream turbidity effects, green concrete should be entirely cured or dry before coming in contact with river water, and Respondent should coordinate with DEQ for more specifics

on water quality requirements and permits. Despite this information, Respondent proceeded with dam repair activities without contacting DEQ, used coffer dam material containing fine particles, and exposed green concrete to river water, did not stop work when its work caused obvious impacts to water quality.

"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 as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"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 \$4,061. This is the amount Respondent gained by avoiding spending \$3,360 to pay an experienced professional engineer to assess site conditions and to develop and certify a repair plan that includes adequate in-water best management practices and by avoiding spending \$1,760 to monitor the work area for turbidity during construction. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$12,000 + [(0.1 \times \$12,000) \times (0 + 0 + 3 + 8 + 2)] + \$4,061$
 $= \$12,000 + (\$1,200 \times 13) + \$4,061$
 $= \$12,000 + \$15,600 + \$4,061$
 $= \$31,661$

EXHIBIT 2

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

VIOLATION 2: Violating ORS 468B.025(1)(a) by causing pollution to waters of the state.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(a).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0130(3) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and DEQ finds that the violation had a significant adverse impact on human health or the environment. In making this finding, DEQ considered that Respondent's activities caused visible plumes in sensitive habitat and resulted in the death of juvenile chinook salmon, juvenile steelhead, lamprey larvae, and mussels, as described in Section II, paragraphs 9 and 10 of the Notice.

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 \$12,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(D) as Respondent violated ORS 468B.025(1)(b), did not have an NPDES permit, and the violation is not otherwise classified.

"P" is whether Respondent has any prior significant actions, 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) (a) (A), because there are no prior significant actions.

"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 constitutes a separate violation. On at least October 23, 2018, Respondent discharged wet or "green" concrete to the North Umpqua River, causing aquatic species to die on or about October 23, 24 and 25, 2018. This amounts to 3 occurrences.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. On or about October 5, 2018, before beginning its proposed dam work, Respondent contacted ODFW. ODFW informed Respondent that the North Umpqua River

supported numerous threatened and sensitive species, it was important to take measures to minimize impacts to those populations, coffer dam rock material should be clean with limited particles, turbidity should be monitored, work should stop if there were noticeable downstream turbidity effects, green concrete should be entirely cured or dry before coming in contact with river water, and Respondent should coordinate with DEQ for more specifics on water quality requirements and permits. Despite this information, Respondent proceeded with dam repair activities without contacting DEQ, used coffer dam material containing fine particles, exposed green concrete to river water, and did not stop work when its work caused obvious impacts to water quality.

"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 as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"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 \$317. This is the amount Respondent gained by avoiding spending \$400 to provide continuous pH monitoring during at least one day of construction, in addition to the \$3,360 described in Exhibit 1.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$12,000 + [(0.1 x \$6,000) x (0 + 0 + 2 + 8 + 2)] + \$317
= \$12,000 + (\$1,200 x 12) + \$317
= \$12,000 + \$14,400 + \$317
= \$26,717