

**WATER RESOURCES DEPARTMENT
STATE OF OREGON**

<p>In the Matter of:</p> <p>WINCHESTER WATER CONTROL DISTRICT</p> <p>Respondent: WINCHESTER WATER CONTROL DISTRICT C/O RYAN BECKLEY PO BOX 661 WINCHESTER, OR 97495</p>	<p>Case No. 2415001DS</p> <p>PROPOSED FINAL ORDER AND OPPORTUNITY FOR A HEARING.</p>
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FACTS

Winchester Dam is a 17-foot-high timber crib dam located on the North Umpqua River in Section 24, Township 26 South, Range 24 West, WM. The Winchester Dam is rated as a high hazard dam due to the potential for loss of life and property damage if the dam were to fail.

The Winchester Dam is owned by the Winchester Water Control District (WWCD).

On or about March 14, 2022, DOWL, LLC (DOWL), Engineer of Record for Winchester Dam, submitted to the Oregon Water Resources Department (OWRD) on behalf of the WWCD a design to modify Winchester Dam. On April 19, 2022, the OWRD approved the design to modify Winchester Dam.

On or about August 31, 2023, structural modifications to the Winchester Dam were completed. The work consisted of installation of a structural steel frame on the downstream face of the dam. The structural steel frame is anchored to bedrock through tieback anchors which were grouted in place. The structural steel is also attached to the concrete sill at the toe of the dam as well as to the concrete wall on the left abutment.

On November 20, 2023, DOWL submitted the project completion report (report) for the structural modification that occurred in August of 2023.

The report indicates that the tieback anchors were not tested to meet the proof-testing acceptance criteria established by Strata-Design, the engineering firm that designed the tieback anchors. Strata-Design indicated proof testing about 20 percent of the anchors would provide a satisfactory representation of reliability. The report indicated that two of 110 tieback anchors (less than 2 percent) were proof tested.

The report indicated that the horizontal whaler support on the left abutment was not installed according to the approved design and that, as installed, the whaler support does not resist the whaler force in the horizontal direction.

The Engineer of Record (DOWL) indicated in the report that they could not state that the work was completed as designed due to the insufficient proof testing of tieback anchors. As a result, the work was not completed according to the OWRD approved design.

On December 12, 2023, the Oregon Water Resources Department issued a Notification of Potentially Unsafe Dam (Notification) to the WWCD. The Notification indicates that the insufficient proof testing of the tieback

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anchors and the incorrect installation of the whaler support result in Potentially Unsafe Conditions with the Winchester Dam.

The Notification indicates the corrective actions necessary to address the Potentially Unsafe Conditions. The Notification also indicates that the actions must be completed by the end of the in-water work period of 2024 and that a plan and time frame to complete the actions must be submitted by January 31, 2024.

On February 1, 2024, Tony Janicek, Dam Safety Program Manager at OWRD, sent an email to Ryan Beckley, the point of contact for WWCD, stating that the plan and time frame was past due and that if it was not submitted by February 9, 2024, a Proposed Final Order would be issued.

On February 1, 2024, Ryan Beckley (WWCD) indicated via email that the plan was being finalized and he would have more information on February 5, 2024.

On February 5, 2024, Ryan Beckley (WWCD) sent a draft proposal from Strata-Design to develop a plan and indicated that DOWL was reviewing the proposal and would respond with comments by February 9, 2024. The draft proposal was incomplete and did not contain adequate information on how the corrective actions would be addressed or a time frame for completion of the corrective actions.

On February 5, 2024, Tony Janicek (OWRD) sent an email to Ryan Beckley indicating that the draft proposal needed clarification and a time frame to complete the corrective actions. A list of items that needed clarification was provided.

On February 6, 2024, Tony Janicek (OWRD) sent an email to Ryan Beckley (WWCD) indicating that the proposal did not contain information on how the corrective action related to the incorrect installation of the whaler support would be addressed and that this information should be included in the plan.

On February 9, 2024, Dan Holborow of TerraFirma, the contractor for the project, sent an email to Tony Janicek (OWRD) responding to the list of items that needed clarification.

On February 9, 2024, Tony Janicek (OWRD) responded to the email from Dan Holborow indicating that the final version of the report was expected to be submitted by the end of the day (Friday, February 9) and must be stamped and signed by the Engineer of Record.

On February 9, 2024, James Stupfel (DOWL) responded to the email from Tony Janicek (OWRD) indicating issues with the proposal developed by Strata-Design and stated that DOWL would not stamp and sign the proposal.

As of the date of this Proposed Final Order, a plan and time frame to complete the corrective actions has not been submitted by WWCD to OWRD.

CORRECTIVE ACTIONS

The tieback anchors must be proof tested to ensure they were installed according to the approved design. The tieback anchor proof testing must be completed by September 1, 2024. The plan must be developed by a Professional Engineer (PE) registered to practice in Oregon and must include the number of tieback anchors required to be proof tested to ensure compliance with the approved design. If only a portion of the tieback

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anchors require testing, tieback anchors 16B, 43A, and 44A must be included in the testing plan. An alternative plan to verify the tieback anchors were installed according to the approved design is also acceptable provided that it is developed by a PE registered to practice in Oregon. A plan and timeframe for the work to be completed must be submitted to OWRD by March 14, 2024. The plan must be approved by the State Engineer for Water Resources.

The whaler support must be modified to reflect the approved design condition. This modification must be completed by the end of the in-water work period of 2024. If the whaler support is not a critical structural component and in its current configuration does not affect the stability of the dam, evidence as such must be submitted. Any evidence provided to OWRD must come stamped and signed from the Engineer of Record. The State Engineer for Water Resources will make the final determination of the sufficiency of the evidence provided.

PROPOSED ACTION

Pursuant to ORS 540.443 through 540.491 and OAR 690-020-0340, if the corrective actions are not addressed, the OWRD proposes to issue a Final Order taking disciplinary action against Winchester Water Control District (Respondent) by seeking injunctive relief in the circuit court and requesting the Attorney General or the district attorney of any county where all or part of the Dam is located to bring an action declaring the Dam a public nuisance and ordering its Removal at the owner's expense.

APPLICABLE LAWS

As used in ORS 540.443 (Definitions for ORS 540.443 to 540.491) to 540.491 (Dam owner or operator liability): (1) "Construct" means: (a) To build a new dam; (b) To modify dam height; or (c) To make modifications to a dam that: (A) Do not include modifying dam height, performing maintenance actions or removing a dam; (B) Have a potential impact on the safe functioning of the dam; and (C) Are to an extent that the modified dam structures no longer conform to the original design. (2) "Dam" means: (a) A hydraulic structure built above the natural ground grade line that is used to impound water or wastewater; and (b) Appurtenant structures on or adjacent to hydraulic structures described in paragraph (a) Of this subsection that affect the stability of, or the control of water through or away from, the hydraulic structure. (3) "Dam failure" means a rapid, sudden and uncontrolled release of water or wastewater due to loss of dam integrity. (4) "Emergency action plan" means a plan that assists a dam owner or operator, and local emergency management personnel, to perform actions to ensure human safety in the event of a potential or actual dam failure. (5) "High hazard rating" means that the department expects loss of human life to occur if a dam fails. (6) "Maintenance action" means measures that are necessary to address a condition that, if left unaddressed, may cause a dam to become unsafe or potentially unsafe. (7) "Potentially unsafe" means that, based on an inspection or analysis: (a) It is probable that a dam cannot withstand an extreme flood or earthquake; or (b) The dam has a high risk of internal erosion. (8) "Significant hazard rating" means the department does not expect loss of life to occur if a dam fails, but does expect extensive damage to property or public infrastructure. (9) "Unsafe" means that, based on an inspection or analysis: (a) It is probable that a dam cannot be depended upon to retain or pass water or wastewater as designed or operated; and (b) Inability of the dam to retain or pass water or wastewater as designed or operated could result in dam failure. [2019 c.390 §2]

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ORS 540.443 (Definitions for ORS 540.443 to 540.491) to 540.491 (Dam owner or operator liability) do not apply to: (a) A dam that is less than 10 feet in height; or (b) A dam that impounds less than 3 million gallons of water or wastewater. (2) Except as provided in this subsection, ORS 540.443 (Definitions for ORS 540.443 to 540.491) to 540.491 (Dam owner or operator liability) do not apply to dams regulated under a federal dam safety program. If there is a potential or actual risk of dam failure at a dam regulated under a federal dam safety program, the Water Resources Department may aid in the inspection of the dam and may provide advice and assistance to prevent, mitigate or respond to a potential or actual dam failure. [2019 c.390 §3]

ORS 540.449 A person may not construct a dam unless the Water Resources Department has examined the site, plans and specifications, features and other supporting information regarding the construction and operation of the dam and has approved them in writing. (2) Except as provided in this subsection, a dam may not be used to impound water or wastewater until final documentation for the site, plans and specifications, features and other supporting information of the dam has been submitted to and accepted by the department after completion of construction. The Water Resources Commission may adopt rules to allow all or a portion of a previously authorized impoundment during construction work on a dam that is undergoing modification. (3) The department may charge a fee for an examination under subsection (1) of this section of information regarding construction of a new dam or construction to modify dam height. The fee may not exceed the lesser of the costs of providing the examination or: (a) \$1,750 for a dam that has a low hazard rating; (b) \$3,500 for a dam that has a significant hazard rating; or (c) \$8,500 for a dam that has a high hazard rating. (4) The department may waive the requirements in subsections (1) and (2) of this section as necessary to address an actual or potential dam failure that poses an imminent risk to life, property or public infrastructure, including but not limited to waiving the requirements for actions identified in an emergency action plan. [2019 c.390 §4]

ORS 540.452 (1) An owner seeking to remove a dam that has a significant hazard rating or high hazard rating must notify the Water Resources Department. The owner shall provide the department with a removal plan sufficiently in advance of the removal to allow the department reasonable time for evaluating the plan. The department may evaluate the removal plan to ensure that the plan includes appropriate safety precautions to protect life, property and public infrastructure from temporary inundation in the area below the dam during dam removal. The department may require modification of the removal plan or require that the work performed under the plan be supervised by an engineer to the extent the department concludes is necessary to protect life, property or public infrastructure from temporary inundation during dam removal. If the department requires modification of a dam removal plan or requires that the work be supervised by an engineer, the department shall provide the owner with an opportunity to meet with the department. (2) A person may not perform removal work on a dam that has a significant hazard rating or high hazard rating except as provided in subsection (1) of this section. [2019 c.390 §5]

ORS 540.455 (1) The Water Resources Department, or agents or representatives of the department, may inspect a dam and the site, plans and specifications, features and other supporting information regarding the construction, maintenance and operation of a dam. If a dam has a high hazard rating, the department shall ensure that the dam is inspected annually unless the department determines that a different inspection schedule is appropriate. (2) The department shall provide the dam owner with an inspection document describing the condition of the dam and specific maintenance actions recommended by the department. [2019 c.390 §6]

ORS 540.458 If, as the result of an inspection or analysis of a dam that has a high hazard rating or significant hazard rating, the Water Resources Department concludes that corrective action is necessary to address a condition allegedly rendering the dam unsafe or potentially unsafe, the department shall notify the dam owner regarding: (a) Why the inspection or analysis of information and conditions causes the department to conclude that the dam is unsafe or potentially unsafe; (b) The action the department concludes is necessary to address

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the alleged unsafe or potentially unsafe condition; (c) The opportunity for the dam owner to meet with the department; and (d) The opportunity for the dam owner to provide information to challenge the department's conclusion alleging that the dam is unsafe or potentially unsafe. (2) The department shall notify a dam owner under subsection (1) of this section by: (a) Registered mail; or (b) Certified mail with return receipt requested. [2019 c.390 §7]

ORS 540.461 If the Water Resources Department provides notification to a dam owner under ORS 540.458 (Notice for owner corrective action to address safety issues) stating that the department has concluded that a dam having a significant hazard rating or high hazard rating is unsafe or potentially unsafe, the department may cooperate with dam owner efforts to develop a plan and time frame for corrective action that is agreeable to the department. When determining whether a plan and time frame for corrective action developed by a dam owner is agreeable to the department, the department may consider any relevant information, including, but not limited to, information regarding: (a) The specific dam; (b) The efforts and resources of the dam owner; and (c) The impacts associated with dam failure. (2) In addition to any other available remedies, the Water Resources Director may issue a proposed final order containing one or more of the provisions described in subsection (3) of this section if: (a) The department and the dam owner do not agree on a plan and time frame under subsection (1) of this section for corrective action to resolve a condition identified in a notification that was sent by mail under ORS 540.458 (Notice for owner corrective action to address safety issues); (b) The dam owner has failed to comply with a plan or time frame agreed to under subsection (1) of this section; or (c) The department concludes, based on inspection or analysis, that the dam is unsafe. (3) If the director issues a proposed final order under subsection (2) of this section, the director shall provide the dam owner with notice and opportunity for hearing under ORS 183.413 (Notice to parties before hearing of rights and procedure) to 183.470 (Orders in contested cases). If the notice is provided by mail, the director shall use a form of mail described in ORS 540.458 (Notice for owner corrective action to address safety issues). The proposed final order shall include the specific information and conditions that have caused the department to conclude that the dam is unsafe or potentially unsafe. The proposed final order may also include, but need not be limited to, provisions: (a) Notifying the dam owner as described in ORS 540.458 (Notice for owner corrective action to address safety issues), if that notification has not been provided. (b) Requiring that the dam owner consult with an engineer to assess the nature and extent of the conditions specified by the department allegedly indicating that the dam is unsafe or potentially unsafe and, as necessary, to identify specific corrective action. (c) Specifying commencement and completion dates for any corrective action the department deems necessary to remedy the unsafe or potentially unsafe condition. (d) Restricting the maximum reservoir level until corrective action has been completed to the satisfaction of the department. (e) Directing that the dam may not be used for the storage, restraint or conveyance of water until corrective action has been completed to the satisfaction of the department. (f) If the department concludes that monitoring is necessary to protect life, property or public infrastructure, requiring the installation and use of monitoring equipment at a dam to monitor unsafe or potentially unsafe conditions. If the department requires monitoring, the department shall allow the use of the most economical monitoring equipment sufficient to protect life, property and public infrastructure. (4) After issuing a proposed final order and allowing an opportunity for hearing, the director may issue a final order as provided under ORS chapter 183. (5) The department and a dam owner may at any time use informal or alternative means, including but not limited to stipulation, agreed settlement or consent orders, to resolve a matter for which the department has notified the dam owner as described in ORS 540.458 (Notice for owner corrective action to address safety issues). [2019 c.390 §8]

ORS 540.464 The Water Resources Department may accept the reports of consulting engineers, geologists or other specialists employed by the dam owner. If the department concludes that the reports are insufficient, the department may employ consulting engineers, geologists or other specialists as agents or representatives of the department to make special examinations and inspections and to prepare reports for the department. The cost of such special examinations, inspections and reports shall be paid by the department or upon mutual agreement, may be divided between the department and the dam owner. [2019 c.390 §9]

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ORS 540.467 (1) If, as the result of an inspection under ORS 540.455 (Dam inspections and analysis) of a dam that has a significant hazard rating or high hazard rating, the Water Resources Department concludes that maintenance actions are needed, the department shall inform the dam owner of the need for maintenance actions. The department shall provide the information by inclusion in the inspection document and provide the dam owner with the opportunity to meet with the department concerning the information. (2) If the department or its agent or representative conducts an inspection and the department determines that the dam owner has failed to take needed maintenance actions identified in a prior inspection document, in addition to any other available remedies, the Water Resources Director may issue a proposed final order under subsection (3) of this section. A proposed final order under subsection (3) of this section shall include notice and opportunity for hearing under ORS 183.413 (Notice to parties before hearing of rights and procedure) to 183.470 (Orders in contested cases). (3) Subject to subsection (2) of this section, the director may issue a proposed final order that includes, but need not be limited to, provisions: (a) Requiring the dam owner to perform the needed maintenance actions by a specified date; and (b) Imposing a civil penalty under ORS 540.995 (Civil penalties), not to exceed an amount established by the Water Resources Commission by rule, for failing to address the needed maintenance actions identified in the proposed final order or failing to comply with a resolution reached through informal or alternative means. (4) If the dam owner performs needed maintenance actions required by a proposed final order issued under subsection (3) of this section to the satisfaction of the department by the date specified in the proposed final order, the director may not impose any civil penalty that was described in the proposed final order. (5) After issuing a proposed final order and allowing an opportunity for hearing, the director may issue a final order as provided under ORS chapter 183. (6) The department and a dam owner may at any time use informal or alternative means, including but not limited to stipulation, agreed settlement or consent orders, to resolve a matter for which the department has notified the dam owner as described in this section. [2019 c.390 §10]

ORS 540.470 If the Water Resources Director issues a proposed final order under ORS 540.461 (Plan and time frame for corrective action), regarding a dam that the Water Resources Department has concluded is unsafe, and the director requests that the scheduling of any contested case hearing on the proposed final order be expedited, the Office of Administrative Hearings shall expedite the date of the contested case hearing to the extent that the office considers is practicable and will give the dam owner reasonable time to prepare. [2019 c.390 §11]

ORS 540.473 In addition to any other available remedies, if the Water Resources Department has information that a person is violating or intends to violate a final order issued under ORS 540.461 (Plan and time frame for corrective action), or concludes that a dam poses an imminent risk to life, property or public infrastructure, the department may apply to the circuit court for Marion County or to the circuit court for any county where all or part of the dam is located for a temporary or permanent injunction requiring the person to: (1) Refrain from violation of the order; or (2) Take any actions necessary to remedy an imminent risk to life, property or public infrastructure. [2019 c.390 §12]

ORS 540.476 In addition to any other available remedies, if an order issued under ORS 540.461 (Plan and time frame for corrective action) (4) becomes final by operation of law or on appeal, and the dam owner fails to comply with the order, the Water Resources Department may request that the Attorney General or the district attorney of any county where all or part of the dam is located bring an action to have the dam declared a public nuisance that must be removed at the dam owner's expense. [2019 c.390 §13]

ORS 540.479 (1)The owner of record of a dam shall: (a) Provide the Water Resources Department with contact information in an emergency action plan, or in writing if no emergency action plan exists, for: (A) The dam owner; (B) The operator of the dam, if other than the owner; and (C) The individual in immediate charge of the dam; (b) Notify the department of any changes in the contact information provided under this subsection; and

(c) Provide the department with notice after completing a transfer of title for the dam. (2) The dam owner shall review and evaluate the conditions at the dam as necessary to: (a) Keep the dam in good repair and properly maintained; and (b) Address any detected conditions that may pose a risk of dam failure. [2019 c.390 §14]

ORS 540.482 (1) The Water Resources Department shall require the owner of a dam that has a high hazard rating to develop an emergency action plan for the dam. (2) An emergency action plan required under this section must include, but need not be limited to: (a) Means for emergency condition detection; (b) Means for emergency level determination; (c) Identification of, and information necessary for, notifications and communications to be made at each level of emergency condition; (d) A description of actions expected to be undertaken to prevent dam failure or reduce the effects of dam failure; (e) A map of dam failure inundation zones for varying conditions, including, but not limited to, dry weather conditions and high flood conditions; and (f) Procedures to be followed at the termination of an emergency. (3) A dam owner that develops an emergency action plan required under this section shall file copies of the plan with the Water Resources Department, the Oregon Department of Emergency Management and the local emergency services agency for the county where the dam is located. The Water Resources Department, in consultation with the Oregon Department of Emergency Management and local emergency services agency, shall periodically review the emergency action plan and may require updates to the plan. (4) The Water Resources Department, in consultation with the Oregon Department of Emergency Management and local emergency services agency, shall determine the appropriate frequency for conducting emergency response exercises at a dam that has a high hazard rating. [2019 c.390 §15; 2021 c.539 §42] Note: The amendments to 540.482 (Emergency action plan for dam with high hazard rating) by section 42, chapter 539, Oregon Laws 2021, become operative July 1, 2022. See section 155, chapter 539, Oregon Laws 2021. The text that is operative until July 1, 2022, is set forth for the user's convenience. 540.482 (Emergency action plan for dam with high hazard rating). (1) The Water Resources Department shall require the owner of a dam that has a high hazard rating to develop an emergency action plan for the dam. (2) An emergency action plan required under this section must include, but need not be limited to: (a) Means for emergency condition detection; (b) Means for emergency level determination; (c) Identification of, and information necessary for, notifications and communications to be made at each level of emergency condition; (d) A description of actions expected to be undertaken to prevent dam failure or reduce the effects of dam failure; (e) A map of dam failure inundation zones for varying conditions, including, but not limited to, dry weather conditions and high flood conditions; and (f) Procedures to be followed at the termination of an emergency. (3) A dam owner that develops an emergency action plan required under this section shall file copies of the plan with the department, the Office of Emergency Management and the local emergency services agency for the county where the dam is located. The department, in consultation with the office and local emergency services agency, shall periodically review the emergency action plan and may require updates to the plan. (4) The department, in consultation with the office and local emergency services agency, shall determine the appropriate frequency for conducting emergency response exercises at a dam that has a high hazard rating.

ORS 540.485 (1) If an actual or potential dam failure creates an imminent risk to life, property or public infrastructure, and an emergency action plan exists for the dam, the dam owner shall immediately implement the actions specified in the plan. (2) If an actual or potential dam failure creates an imminent risk to life, property or public infrastructure, and no emergency action plan exists for the dam, the dam owner shall immediately: (a) Notify by telephone or other method that ensures immediate notification: (A) If the dam has a significant hazard rating, the local emergency services agency for the county where the dam is located; (B) The Water Resources Department; and (C) To the extent practicable, persons in areas where the potential for dam failure creates a risk to life, property or public infrastructure; and (b) Take all practicable actions to prevent dam failure. (3) If the department is aware of conditions that indicate the need for immediate action to prevent dam failure, the department may advise the owner or operator of the dam or the individual in immediate charge of the dam regarding the actions necessary to prevent the dam failure. (4) The department may communicate and coordinate actions necessary to reduce the risk of dam failure. If there is a rapidly increasing leakage or risk of

overtopping at a dam that has a significant hazard rating or high hazard rating, the department may open gates or valves and may siphon or pump water to reduce the water level in the reservoir. Activities under this subsection by the department do not relieve the owner, the operator or an individual in immediate charge of a dam from the responsibility to prevent the dam failure. (5) If a dam that has a significant hazard rating or high hazard rating presents an imminent risk of dam failure, the department or its agent or representative may enter without notice or permission upon any property that affords access to the dam to the extent entry is reasonable or necessary to allow evaluation of the condition or risk or to undertake actions described in subsection (4) of this section. [2019 c.390 §16]

ORS 540.488 The Water Resources Commission may adopt rules the commission deems necessary or convenient for the administration and enforcement of ORS 540.443 (Definitions for ORS 540.443 to 540.491) to 540.491 (Dam owner or operator liability). (2) Notwithstanding subsection (1) of this section, the commission shall adopt rules that, at a minimum, establish: (a) A schedule of civil penalty amounts for purposes of ORS 540.995 (Civil penalties); (b) The conditions under which the Water Resources Department may remit a civil penalty; and (c) Standards for the site, plans, specifications, designs and other engineering requirements for the construction or removal of a dam. (3) In addition to any other powers of the department, in carrying out department duties, functions and powers under ORS 540.443 (Definitions for ORS 540.443 to 540.491) to 540.491 (Dam owner or operator liability), the department may: (a) Enter into contracts, memorandums of understanding and intergovernmental agreements for: (A) The inspection, evaluation or study of dams; or (B) The response to dam failure or potential dam failure; (b) Accept moneys from any public or private source for the administration and enforcement of ORS 540.443 (Definitions for ORS 540.443 to 540.491) to 540.491 (Dam owner or operator liability) or for enhancing the safety of dams or the protection of life, property or public infrastructure in areas below dams; (c) Coordinate with federal, tribal, state, local and private entities to enhance the safety of dams or the protection of life, property or public infrastructure in areas below dams; and (d) Waive or reduce fees for dams inspected by another state agency under a memorandum of understanding with the department. [2019 c.390 §17]

ORS 540.491 (1) Compliance with ORS 540.443 (Definitions for ORS 540.443 to 540.491) to 540.491 (Dam owner or operator liability) does not relieve the owner or operator of a dam or an individual in immediate charge of a dam from any duty, obligation or liability regarding the ownership, maintenance or operation of the dam. (2) Water Resources Department actions and services under ORS 540.443 (Definitions for ORS 540.443 to 540.491) to 540.491 (Dam owner or operator liability) do not relieve the owner or operator of a dam or an individual in immediate charge of a dam from any duty, obligation or liability regarding the ownership, maintenance or operation of the dam. [2019 c.390 §18]

ORS 540.995 (Civil penalties); (b) The conditions under which the Water Resources Department may remit a civil penalty; and (c) Standards for the site, plans, specifications, designs and other engineering requirements for the construction or removal of a dam. (3) In addition to any other powers of the department, in carrying out department duties, functions and powers under ORS 540.443 (Definitions for ORS 540.443 to 540.491) to 540.491 (Dam owner or operator liability), the department may: (a) Enter into contracts, memorandums of understanding and intergovernmental agreements for: (A) The inspection, evaluation or study of dams; or (B) The response to dam failure or potential dam failure; (b) Accept moneys from any public or private source for the administration and enforcement of ORS 540.443 (Definitions for ORS 540.443 to 540.491) to 540.491 (Dam owner or operator liability) or for enhancing the safety of dams or the protection of life, property or public infrastructure in areas below dams; (c) Coordinate with federal, tribal, state, local and private entities to enhance the safety of dams or the protection of life, property or public infrastructure in areas below dams; and (d) Waive or reduce fees for dams inspected by another state agency under a memorandum of understanding with the department. [2019 c.390 § 17]

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OAR 690-020-0340 (1) Potentially Unsafe or Unsafe Conditions, (2) The following conditions may result in the Department concluding that a Dam is Unsafe:(a) A reduction in Spillway capacity; (b) Movement of the Dam over a short period of time; (c) Major loss of Freeboard; (d) Wave erosion narrowing the Crest; (e) Internal erosion with limited movement of Embankment material; (f) Seepage level rising on the downstream face of the Dam; (g) Landslide or other deformation on the Dam; (h) Rapid erosion of the Spillway; (i) Significant loss of mass of a concrete Dam; (j) Concrete Spillway with large voids or openings through the slab; (k) Conduit deteriorated to where Conduit collapse is reasonably possible; (l) A Pressurized Conduit with holes in the pipe; (m) Flashboards in place during high runoff season; (n) Animal burrows penetrating deep into the Dam; (o) Large trees growing near the Crest; (p) Building a new Dam or increasing Dam Height without examination and written approval by the State Engineer of site plans, specification, and other supporting information for that Dam; or (q) Any other condition that meets the definition of Unsafe. (3) Notification of Potentially Unsafe or Unsafe Conditions. If, as a result of an inspection or analysis of a Dam that has a High or Significant Hazard Rating the Department concludes that corrective action is necessary to address a condition allegedly rendering the Dam Unsafe or Potentially Unsafe, the Department shall provide written notification to the Dam owner by registered or certified mail with return receipt requested, sent to the address of record on file with the Department, as per OAR 690-020-0180, for the Dam owner. (a) The written notification shall include at least the following: (A) An explanation of why the inspection or analysis of information and conditions causes the Department to conclude that the Dam is Unsafe or Potentially Unsafe; (B) Any action the Department concludes is necessary to address the alleged Unsafe or Potentially Unsafe conditions; (C) Notice to the Dam owner of the opportunity to meet with the Department to discuss the notification; and (D) Notice to the Dam owner of the opportunity to provide information to explain why the Dam owner disagrees with the matters asserted in the notification alleging the Dam is Unsafe or Potentially Unsafe. (b) Following issuance of a notification, the Department may attempt to resolve the Unsafe or Potentially Unsafe conditions in cooperation with the Dam owner. The Dam owner may endeavor to develop a plan and timeframe for corrective action that is agreeable to the Department. If the plan and timeframe are agreeable, the Department and owner may enter into a consent order to address the corrective action for timely resolution of the Unsafe or Potentially Unsafe conditions. In determining whether a plan and timeframe is agreeable and developing a consent order, the Department may consider any relevant information, including, but not limited to: (A) The design and construction of the specific Dam; (B) The efforts and resources of the Dam owner; and (C) The impacts associated with Dam failure. (4) In addition to any other available remedies, the Director may issue a Proposed Final Order in the event the Department and the Dam owner do not agree to a plan and timeframe and enter into a consent order to address corrective actions, if the Dam owner fails to complete actions as provided in the consent order, in the event the Dam owner does not otherwise address the matters identified in the notification to the Department's satisfaction, or if the Department concludes based on inspection or analysis that the Dam is Unsafe. (a) The proposed final order shall include the specific information and conditions that have caused the Department to conclude that a Dam is Unsafe or Potentially Unsafe, shall be consistent with ORS 183.415, and shall provide notice of the opportunity for a contested case hearing pursuant to ORS 183. The proposed final order shall include the notification in subsection (3) of this section, if notification has not already been provided for an Unsafe Dam. (b) The proposed final order may include, but need not be limited to, any or all of the following provisions: (A) A requirement that the Dam owner consult with an Engineer to assess the nature and extent of the Unsafe or Potentially Unsafe conditions identified by the Department and, as necessary, to identify corrective actions to address the Unsafe or Potentially Unsafe conditions; (B) Commencement and completion dates for any corrective action the Department determines is necessary to remedy the Unsafe or Potentially Unsafe conditions; (C) Restrictions on the maximum Water level in the reservoir until corrective action has been completed to the satisfaction of the Department; (D) Provisions directing that the Dam may not be used for the impoundment, restraint, or conveyance of Water until corrective actions have been completed to the satisfaction of the Department; (E) A requirement to install and maintain monitoring equipment if the Department concludes that monitoring is necessary to protect life, property, or public infrastructure. The provisions requiring the installation and use of monitoring equipment at a Dam to monitor the Unsafe or Potentially Unsafe conditions shall include the ability to the use the most

Oregon Water Resources Department
725 Summer St NE
Suite A
Salem, Oregon 97301
Phone: 503-986-0900 Fax: 503-986-0901

economical monitoring equipment sufficient to protect life, property, and public infrastructure as determined by the Department. (5) Upon issuance of a proposed final order, the Dam owner and Department may enter into a consent order to resolve the matters in the proposed final order as provided in ORS 183.417. Any such document must include conditions to address the matters in the proposed final order as determined by the Department. (6) If, following issuance of a proposed final order regarding a Dam that the Department has concluded is Unsafe, the Department receives a request for hearing from the Dam owner, the Director may request that the scheduling of any contested case hearing be expedited, and the Office of Administrative hearings shall expedite the contested case hearing to the extent that the office considers it practicable and will give the Dam owner reasonable time to prepare. (a) In determining the expedited timeline practicable, the Office of Administrative Hearings shall consider, based on information provided by the Department, any conditions that may affect the urgency of the proceedings or the likelihood that Unsafe conditions may pose near-term threat to life, property, or public infrastructure. (b) The reasonable time to prepare for a contested case hearing shall be based on the likelihood that Unsafe conditions may pose a near-term risk to life, property, or public infrastructure. (7) Issuance of a proposed final order does not preclude the Department from pursuing any and all lawful remedies as the Department may determine are necessary to protect life, property, or public infrastructure including, but not limited to, seeking injunctive relief in the circuit court as provided in ORS 540.473. (8) In addition to any other lawful available remedies, if a proposed final order issued this section becomes final by operation of law or on appeal, and the Dam owner fails to comply with the order as specified in the order, the Director may request the Attorney General or the district attorney of any county where all or part of the Dam is located to bring an action declaring the Dam a public nuisance and ordering its Removal at the owner's expense.

ANSWER REQUIRED

Pursuant to OAR 690-020-0460 (2), the request for hearing must include a written response specifying the reasons for disagreement with the proposed final order.

OPPORTUNITY FOR A HEARING

You are entitled to a hearing as provided by the Administrative Procedures Act (ORS chapter 183). If you want a hearing, you must file a written request for hearing with the Oregon Water Resources Department within 30 calendar days from the date this notice was mailed by certified or registered mail. If a request for hearing is not received within this 30-day period, your right to a hearing shall be considered waived.

If you request a hearing, you will be notified of the time and place of the hearing. Before the commencement of the hearing, you will be given information on the procedures, rights of representation and other rights of parties relating to the conduct of the hearing, as required by ORS 183.413.

If you do not request a hearing within 30 days, or if you withdraw a hearing request, or notify the OWRD or Administrative Law Judge that you will not appear, or if you fail to appear at the scheduled hearing, the OWRD

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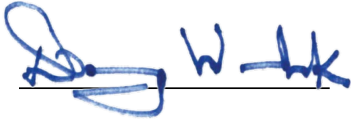
may issue a final order by default imposing the proposed disciplinary sanction. If the OWRD issues a final order by default, it designates its file on this matter as the record.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil> <http://legalassistance.law.af.mil/>

Dated This 7th day of March, 2024

OREGON WATER RESOURCES DEPARTMENT

Douglas E. Woodcock, Acting Director



Note: For information or questions regarding this notice, please contact the compliance section.

Tony Janicek
Dam Safety Program Manager
971-718-7921
Tony.M.Janicek@water.oregon.gov

I certify that on March 7th, 2024 I served this Notice of Intent and the attached Violation Notice Response Form by depositing a true copy in a sealed envelope sent by both first-class and certified mail to the address listed above.

Initialed: TAB

Oregon Water Resources Department
725 Summer St NE
Suite A
Salem, Oregon 97301
Phone: 503-986-0900 Fax: 503-986-0901

Violation Notice Response Form

Read the enclosed "Proposed Final Order" carefully. To request a hearing, you MUST return this form within 30 days of the date the Notice of Assessment was mailed. If you do not respond, a Final Order will be issued for the full penalty amount.

*** The OWRD must receive an answer or request for hearing by 4/6/24 ***

CHECK BOX BELOW:

- 1. I deny the allegations contained in the Notice. I am requesting a hearing. My reason(s) for requesting a hearing are: (MUST BE INCLUDED)

The following information is requested to process your response:

Name: _____ Phone Number: _____

Date of Birth: _____ Driver's License No & State: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Mailing Address, if different than street address:

Signature _____

Date _____

<p>Mail this form to:</p> <p>Oregon Water Resources Department Enforcement Section 725 Summer Street NE, Suite A Salem, OR 97301</p>	<p>Fax this form to:</p> <p>Oregon Water Resources Department 503-214-8508 ATTN: Enforcement Section</p>
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