



CAROLLO LAW GROUP LLC

LAND • WATER • WILDLIFE | NATURAL RESOURCE LAW

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FAX

To: Oregon Water Resources Department From: Carollo Law Group

Fax: 503-214-8508

Fax: 541-957-5923

Phone:

Phone: 541-957-5900

Date: 4.1.2024

Pages: 10 (Including Cover Sheet)

Notes: ATTN: Enforcement Section

DO NOT READ, COPY OR DISSEMINATE THIS COMMUNICATION UNLESS YOU ARE THE INTENDED ADDRESSEE. THIS FAX COMMUNICATION CONTAINS CONFIDENTIAL AND/OR PRIVILEGED INFORMATION INTENDED ONLY FOR THE ADDRESSEE. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE CALL ME IMMEDIATELY AT 541-957-5900.

THANK YOU.



CAROLLO LAW GROUP

Dominic Carollo
Managing Attorney

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PO Box 2456, Roseburg, OR 97470
2315 Old Hwy 99 S., Roseburg, OR 97471

April 4, 2024

Via Certified Mail

Oregon Water Resources Department
Enforcement Section
725 Summer Street NE, Suite A
Salem, OR 97301

**RE: RESPONDENT'S REQUEST FOR HEARING IN THE MATTER OF:
WINCHESTER WATER CONTROL DISTRICT (CASE NO. 2415001DS)**

To whom it may concern:

Our office represents Winchester Water Control District with regards to the PROPOSED FINAL ORDER AND OPPORTUNITY FOR A HEARING issued in Case No. 2415001DS. Pursuant to OAR 690-020-0460(2), please find attached a Request for Hearing, submitted today, April 4, 2024, to the Oregon Water Resources Department Enforcement Section.

Sincerely,

DOMINIC M. CAROLLO
DMC/

BEFORE THE WATER RESOURCES DEPARTMENT

OF THE STATE OF OREGON

In the Matter of:)
) CASE NO. 2415001DS
 WINCHESTER WATER CONTROL)
 DISTRICT) RESPONDENT'S REQUEST FOR
) HEARING
 Respondent:)
)
 WINCHESTER WATER CONTROL)
 DISTRICT)
 C/O RYAN BECKLEY)
 PO BOX 661)
 WINCHESTER, OR 97495)

Pursuant to OAR 690-020-0460(2), Respondent Winchester Water Control District ("WWCD") submits to the Oregon Water Resources Department ("OWRD") the following Request for Hearing in response to OWRD's Proposed Final Order and Opportunity for a Hearing. Paragraph numbers below correspond to the paragraphs of the "FACTS" stated in the Proposed Final Order. Any allegations not expressly admitted are denied. Respondents request a hearing on OWRD's Proposed Final Order to evaluate, contest, and correct any or all of the factual allegations contained within the Proposed Order, to contest OWRD's proposed Corrective Actions and Proposed Actions, and to demonstrate that the Proposed Order is unlawful and/or exceeds OWRD's authority as further described in this Request.

Responses to Facts:

1. WWCD admits that 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. WWCD lacks sufficient knowledge or information as to the truth of the allegations in the second sentence, and therefore denies the same.

2. WWCD admits that it owns Winchester Dam.

1 3. The allegations in the third paragraph purport to characterize various documents,
2 which speak for themselves and are the best evidence of their contents. To the extent a response is
3 required, Respondent denies the allegations to the extent they are inconsistent with the plain text
4 and meaning of the referenced sources.

5 4. WWCD admits that structural modifications were made to Winchester Dam in or
6 around August 31, 2023. WWCD admits that a steel frame, anchored to bedrock and concrete, was
7 installed along the face of Winchester Dam.

8 5. WWCD lacks sufficient knowledge or information as to the truth of the allegations
9 in the fifth paragraph, and therefore denies the same.

10 6. The allegations in the sixth paragraph purport to characterize various documents,
11 which speak for themselves and are the best evidence of their contents. To the extent a response is
12 required, Respondent denies the allegations to the extent they are inconsistent with the plain text
13 and meaning of the referenced sources.

14 7. The allegations in the seventh paragraph purport to characterize various documents,
15 which speak for themselves and are the best evidence of their contents. To the extent a response is
16 required, Respondent denies the allegations to the extent they are inconsistent with the plain text
17 and meaning of the referenced sources.

18 8. The allegations in the eighth paragraph purport to characterize various documents,
19 which speak for themselves and are the best evidence of their contents. To the extent a response is
20 required, Respondent denies the allegations to the extent they are inconsistent with the plain text
21 and meaning of the referenced sources. WWCD further denies the allegations in the second
22 sentence.

23 9. The allegations in the ninth paragraph purport to characterize various documents,
24 which speak for themselves and are the best evidence of their contents. To the extent a response is

1 required, Respondent denies the allegations to the extent they are inconsistent with the plain text
2 and meaning of the referenced sources.

3 10. The allegations in the tenth paragraph purport to characterize various documents,
4 which speak for themselves and are the best evidence of their contents. To the extent a response is
5 required, Respondent denies the allegations to the extent they are inconsistent with the plain text
6 and meaning of the referenced sources.

7 11. The allegations in the eleventh paragraph purport to characterize the contents of an
8 email, which speaks for itself and is the best evidence of their contents. To the extent a response
9 is required, Respondent denies the allegations to the extent they are inconsistent with the plain text
10 and meaning of the referenced sources.

11 12. The allegations in the twelfth paragraph purport to characterize the contents of an
12 email, which speaks for itself and is the best evidence of their contents. To the extent a response
13 is required, Respondent denies the allegations to the extent they are inconsistent with the plain text
14 and meaning of the referenced sources.

15 13. The allegations in the thirteenth paragraph purport to characterize the contents of
16 an email, which speaks for itself and is the best evidence of their contents. To the extent a response
17 is required, Respondent denies the allegations to the extent they are inconsistent with the plain text
18 and meaning of the referenced sources. Respondent further denies the allegations in the second
19 sentence.

20 14. The allegations in the fourteenth paragraph purport to characterize the contents of
21 an email, which speaks for itself and is the best evidence of their contents. To the extent a response
22 is required, Respondent denies the allegations to the extent they are inconsistent with the plain text
23 and meaning of the referenced sources.

24

1 15. The allegations in the fifteenth paragraph purport to characterize the contents of an
2 email, which speaks for itself and is the best evidence of their contents. To the extent a response
3 is required, Respondent denies the allegations to the extent they are inconsistent with the plain text
4 and meaning of the referenced sources.

5 16. The allegations in the sixteenth paragraph purport to characterize the contents of an
6 email, which speaks for itself and is the best evidence of their contents. To the extent a response
7 is required, Respondent denies the allegations to the extent they are inconsistent with the plain text
8 and meaning of the referenced sources.

9 17. The allegations in the seventeenth paragraph purport to characterize the contents of
10 an email, which speaks for itself and is the best evidence of their contents. To the extent a response
11 is required, Respondent denies the allegations to the extent they are inconsistent with the plain text
12 and meaning of the referenced sources.

13 18. The allegations in the eighteenth paragraph purport to characterize the contents of
14 an email, which speaks for itself and is the best evidence of their contents. To the extent a response
15 is required, Respondent denies the allegations to the extent they are inconsistent with the plain text
16 and meaning of the referenced sources.

17 19. Respondent denies the allegations in the nineteenth paragraph.

18 **Responses to Corrective Actions:**

19 1. The paragraphs in OWRD's Proposed Order's "Corrective Actions" constitute
20 OWRD's request for relief, for which no response is required. To the extent a response is required,
21 Respondent denies the same.

22 2. The paragraphs in OWRD's Proposed Order's "Corrective Actions" constitute
23 OWRD's request for relief, for which no response is required. To the extent a response is required,
24 Respondent denies the same.

1 **Responses to Proposed Action:**

2 1. The paragraph in OWRD's Proposed Order's "Proposed Action" constitute
3 OWRD's additional request for relief, for which no response is require. To the extent a response
4 is required, Respondent denies the same.

5 **AFFIRMATIVE DEFENSES**

- 6 A. The corrective actions, proposed action, alleged violations and facts at issue exceed
7 OWRD's statutory and regulatory authority under the "Applicable Laws" described in
8 the Proposed Order.
- 9 B. The corrective actions, proposed action, alleged violations and facts at issue are
10 inconsistent with agency rule, an officially stated agency position, or a prior agency
11 practice, which is unexplained by the agency.
- 12 C. The Proposed Order and OWRD's alleged violations violate WWCD's constitutional
13 due process and equal protection rights, and constitute a taking without just
14 compensation.
- 15 D. The Proposed Order is outside the range of discretion delegated to OWRD by law.
- 16 E. OWRD lacks substantial evidence for some or all of the allegations and requests for
17 relief in the Proposed Order.
- 18 F. OWRD does not have jurisdiction to enforce some or all of the alleged violation(s).
- 19 G. WWCD has complied with all of OWRD's permitting and Dam safety requirements.
- 20 H. Some or all of OWRD's alleged violations are preempted by federal law and/or
21 permits.
- 22 I. WWCD exercised good faith compliance with the design criteria for its 2023
23 maintenance.
- 24

- 1 J. OWRD's Corrective Actions and Proposed Action is excessive, inappropriate,
- 2 inequitable or otherwise inconsistent with governing statutes and rules.
- 3 K. OWRD waived and/or is estopped from bringing any or all of the alleged violations.
- 4 L. OWRD's actions were authorized by their Water Quality Certification and
- 5 Nationwide Permit No. 3, maintenance.
- 6 M. OWRD's actions were necessary to protect water quality and Dam safety, and
- 7 OWRD's Proposed Order frustrates the purpose of WWCD's 2023 maintenance.

8 DATED this 4th day of April, 2024.

9 /s/ Dominic M. Carollo
 10 DOMINIC M. CAROLLO, OSB No. 093057
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 15 Roseburg, OR 97471
 Phone: (541) 957-5900
 16 Fax: (541) 957-5923

17 *Attorneys for Respondent*

CERTIFICATE OF SERVICE

I certify that on April 4, 2024, I filed and served **RESPONDENT'S REQUEST FOR HEARING** by mailing and faxing a copy to the following recipients:

Mail:

Oregon Water Resources Department
Enforcement Section
725 Summer Street NE, Suite A
Salem, OR 97301

Fax:

Oregon Water Resources Department
503-214-8508
ATTN: Enforcement Section

DATED this 4th day of April, 2024.

CAROLLO LAW GROUP

/s/ Dominic M. Carollo

DOMINIC M. CAROLLO, OSB No. 093057

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Roseburg, OR 97471

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Regarding Case#

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)
 Respondent's reason(s) for requesting a hearing are described in Respondent's Request for Hearing submitted with this form.

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

April 4, 2024

Date

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