



## **NORTHWEST ENVIRONMENTAL DEFENSE CENTER**

**10015 SW Terwilliger Blvd, Portland, Oregon 97219**

**Phone: (503) 768-6673 / Fax: (503) 768-6671**

**www.nedc.org**

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**Via Electronic Mail: 401publiccomments@deq.state.or.us**

401 Public Comments  
Steve Mrazik  
DEQ Northwest Region Office  
2020 SW 4<sup>th</sup> Ave., Suite 400  
Portland, OR 97201

**Re: Comments on the Department of Environmental Quality's Notice of the Columbia River Crossing Clean Water Act Section 401 Draft Water Quality Certification Decision**

Dear Mr. Mrazik:

The Northwest Environmental Defense Center ("NEDC") respectfully submits the following comments on the Oregon Department of Environmental Quality's ("DEQ") Clean Water Act ("CWA") Section 401 draft water quality certification for the Columbia River Cross project ("CRC" or "Project"), proposed by the Oregon and Washington Departments of Transportation ("Applicant"). *See* DEQ, [Draft] 401 Water Quality Certification Decision for U.S. Army Corps of Engineers Permit Application #2008-00414 (Department of State Lands # APP0052419) for the Columbia River Crossing (hereafter "DEQ Draft Cert"). NEDC has and continues to seek to ensure all federal and state environmental laws and regulations are complied with throughout the development and planning of this Project. Given NEDC's mission to protect and conserve the environment and natural resources of the Pacific Northwest, we are particularly concerned about the adverse environmental impacts that are likely to result from the construction of the Project.

### **DISCUSSION**

Under Section 401(a) of the CWA, any applicant for a Federal license or permit to conduct any activity that may result in a discharge to navigable waters in Oregon must obtain a certification from DEQ stating that the discharge from the proposed action will comply with several requirements of the CWA, most notably the water quality standards requirement under Section 303. *See* 33 U.S.C. § 1341. *See also* OAR 340-048-0015 (noting that certification is required for activities "including but not limited to the construction, operation, or decommissioning of facilities").

First and foremost, NEDC is surprised that the Applicant instructed DEQ to continue processing the certification in the face of express orders from the Governors of Oregon and Washington to close down the Project, and despite statements by the Applicant itself that the Project is closing. Second, the Applicant failed to provide essential information to DEQ, and in turn DEQ's public notice omits information critical

to allow for meaningful public comment on the DEQ Draft Cert. Because the public was not informed of critical information, DEQ should reopen the public comment period. In addition, DEQ itself lacked sufficient information to assess the impacts on Oregon's waters. For that reason alone DEQ may not certify that the Project will comply with water quality standards.

Setting aside the glaring concerns of whether the Project actually exists or whether the public received sufficient information to provide meaningful comment, and instead focusing on the substance of the Applicant's request for certification, the CRC will have significant short-term and long-term negative effects on the water quality of the Columbia River and Columbia Slough and will likely result in violations of Oregon's water quality standards. The restrictions identified in the Draft DEQ Cert are insufficient to reduce the impact of the development to ensure protection of water quality. Consequently, DEQ must deny the requested certification pursuant to Section 401 of the CWA.

**I. This certification is unnecessary and a waste of limited agency resources.**

Based on recently retracted requests for approvals, the Project may not legally proceed. Under 33 U.S.C. § 408, it is unlawful to take possession of, use or injure any river improvement unless the Secretary of the Army "grant[s] permission." 33 U.S.C. § 408. Approval from the Secretary of the Army under 33 U.S.C. § 408 is a necessary prerequisite to a Section 404 permit. *See* Department of the Army, Clarification Guidance on the Policy and Procedural Guidelines for the Approval of Modifications and Alterations of Corps of Engineers Projects, Nov. 17, 2008 (attached hereto as "Attachment 1"), page 3 (noting that "[r]egulatory approval under Section 404 . . . for a structure within the waters of the United States does not, by itself, constitute approval for a project alteration/modification."). *See also id.*, Section 408 Submittal Package Guide, page 5 (explaining that "[t]he District Engineer will make the final Section 404/10 permit decisions *following* the Chief of Engineers decision under 33 USC 408") (emphasis added).

Here, the Applicant sought permission from the Secretary of the Army for modifications to navigation channels, which would have been necessary for rerouting river traffic during the demolition of the existing bridge and construction of the CRC. The Applicant withdrew its request for approval, however, when Washington's legislature failed to approve funding to continue the Project. Because the Applicant retracted its request for approval under 33 U.S.C. § 408, the Corps may not issue the Section 404 permit and thus this water quality certification is unnecessary.

Moreover, the CRC has been terminated. Various statements by those overseeing the Applicant's work support that the CRC is currently being shut down. Washington's Governor Inslee and Oregon's Governor Kitzhaber each issued statements that Washington's legislature failed to approve the state funding necessary to continue the CRC. *See* Statement by Gov. Jay Inslee on the Senate Majority's failure to act on a transportation plan for Washington, June 30, 2013 (attached hereto as "Attachment 2"); Governor Kitzhaber Statement on Failure of Transportation Package in Washington Legislature, June 29, 2013 (attached hereto as "Attachment 3"). The Washington State Department of Transportation ("WSDOT") pledged to Washington State Representatives that it would shut down operations by September 1, 2013. *See* Email from Lynn Peterson, Secretary of Transportation, WSDOT, to Washington State Representatives, July 12, 2013 (attached hereto as "Attachment 4"). Even the Applicant's own website states on the homepage: "Columbia River Crossing project closure." *See* Columbia River Crossing, *available at* [www.columbiarivercrossing.org](http://www.columbiarivercrossing.org) (last visited July 26, 2013). Given the statements by Oregon's and Washington's governors, WSDOT's closures, and the lack of approval under 33 U.S.C. § 408, the CRC has been terminated and this Section 401 certification is unnecessary.

Given the recent changes to the status of the CRC, continuing to evaluate the Project under Section 401 is unnecessary and a waste of DEQ's limited agency resources. *See* OAR 340-048-0045(1)(d) (noting that a certification may be revoked if (“[c]hanges in conditions regarding the activity or affected waterways since the certification was issued affect or might affect compliance with water quality standards and requirements”). Failure to secure financing from the State of Washington is precisely the type of change in conditions regarding the activity that will affect compliance with water quality standards. Without funding to support the implementation of required conditions under the DEQ Draft Cert, DEQ has no reasonable assurances that the activity will not violate water quality standards.

Lastly, the requested permits and associated certification under Section 401 cannot be applied to other future projects in Oregon. Rather, these permits are specific to the project as defined.<sup>1</sup> An application for certification must describe a particular activity. *See* 340-048-0020(2)(c) (requiring “[a] description of the activity’s location sufficient to locate and distinguish existing and proposed facilities and other features relevant to the water quality effects of *the activity*) (emphasis added). *See also id.* 340-048-0020(2)(e) (requiring, in addition, “[a] complete written description of *the activity*, including maps, diagrams, and other necessary information”) (emphasis added). Thus DEQ’s certification applies to “the activity,” which in this case is the entirety of the Project as proposed in the application.

Any attempt by the Applicant to implement subparts of the Project in an “a la carte” fashion would be contrary to DEQ’s regulations. *See* OAR 340-048-0050 (stating that a certification may be modified or revoked if “[c]hanges in conditions regarding the activity or affected waterways since the certification was issued affect or might affect compliance with water quality standards and requirements”). *See also* OAR 340-048-0042(6) (explaining that “certification granted pursuant to this division is valid for the applicant only”). This is especially true given that any smaller projects specific to Oregon would involve, *inter alia*, different locations, different amounts of surface area (and thus different volumes of water to be discharged), and different operating bodies (only Oregon’s Department of Transportation and not WSDOT).

Because the Project as proposed in the request for certification has been cancelled and DEQ’s water quality certification would be specific to that Project, this certification is unnecessary. Processing a permit for a Project that cannot legally move forward and has been announced as cancelled is a waste of DEQ’s resources.

## **II. The Applicant’s failure to provide sufficient information prevents a proper analysis by DEQ and meaningful comment from the public.**

Pursuant to DEQ’s regulations, at a minimum, the applicant must provide the “information and evaluations as necessary to demonstrate that the activity will comply with” Oregon’s water quality standards. OAR 340-048-0020(2)(g). In addition, the regulations specifically expect that DEQ will “request any additional information necessary to complete an application or to assist the department in evaluating an activity’s impacts on water quality” and state “[a]n applicant’s failure to complete an application or provide requested additional information within the time specified by the department is grounds for denial of certification.” OAR 340-048-0020(3).

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<sup>1</sup> Further confusing the matter is the fact that the Record of Decision was issued for a bridge 95 feet above Columbia River Datum (“CRD”), while the Applicant’s applications for the Section 404 permit and general bridge permit contemplate a bridge 116 feet above CRD.

DEQ has made clear in its regulations and guidance documents that the applicant must carry the burden of persuasion and the burden of proof in this review. As a result, the applicant must not only demonstrate that the activity will comply with water quality standards, but it must also provide DEQ with adequate information supporting that position. Stated another way, DEQ must work from the presumption that the activity will violate water quality standards and must require the applicant to prove otherwise and support its conclusion.

An application for certification must contain “environmental information submitted to the federal licensing or permitting agency . . . and evaluations as necessary to demonstrate that the activity will comply with applicable provisions of” the CWA. OAR 340-048-0020(2)(g). DEQ may consider the potential water quality impacts of the proposed Project as a whole in its 401 certification analysis, not just the significant effects of the discharge itself. *PUD No. 1 of Jefferson County v. Washington Department of Ecology*, 511 U.S. 700, 712 (1994); 40 C.F.R. § 121.2(a)(3) (requiring the state to find “a reasonable assurance that the *activity* will be conducted in a manner which will not violate applicable water quality standards”) (emphasis added). Here, the Applicant failed to inform DEQ about the approval it had been seeking for activities subject to 33 U.S.C. § 408. Because those activities would likely impact water quality, the Applicant prevented DEQ from conducting the necessary analysis for certification.

Specifically, the authorization sought under 33 U.S.C. § 408 would have allowed the Applicant to dredge new navigation channels to realign the three existing Congressionally-approved channels in the Columbia River. The JPA fails to mention the dredging required to realign the channels, even though this is an indispensable component of the Project. The dredging is likely to result in adverse impacts to water quality that were not been disclosed to DEQ. Re-suspension of sediment during dredging dramatically affects turbidity levels in the water. EPA’s regulations state that elevated levels of suspended particulates in the water column “may reduce light penetration and lower the rate of photosynthesis and the primary productivity of an aquatic area.” 40 C.F.R. § 230.21(b). Increased turbidity can also reduce the feeding ability of some sight-dependent fish species, as well as being aesthetically unpleasant for human use. *Id.* The dredging may also adversely impact sediment transport and increase stream bank erosion in the Columbia River and Columbia Slough.

The JPA acknowledges that dredging conducted to maintain the Rose City Yacht Club marina “may temporarily degrade on-site habitat for migrating salmonids,” and that dredging conducted within the navigation channel within the action area “is likely to temporarily and locally elevate turbidity and suspended sediment.” See JPA, page 48. An attachment to the JPA does analyze the suitability of project sediments for unconfined, aquatic disturbance or placement. See JPA, Attachment K. This document fails to discuss, however, the increased turbidity and re-suspension of sediment as a result of dredging. By ignoring, *inter alia*, the increased turbidity and direct adverse impacts to fish habitat likely to result from the channel realignment contemplated under the 33 U.S.C. § 408 approval and the general bridge permit, the Applicant discounted major adverse impacts to water quality. As a result, the Applicant failed to make a showing that the Project will not violate water quality standards and DEQ should deny the water quality certification.

Not only did the Applicant fail to provide DEQ with sufficient information to support DEQ’s analysis, but the lack of essential information in DEQ’s public notice violates the agency’s own regulations by precluding meaningful public comment. OAR 340-048-0027(1) (requiring a notice to identify “any related documents as available for public inspection and copying”). First, the Applicant has consistently misinformed and deceived the public by making contradictory statements about the status of the CRC. As noted above, the homepage of the Applicant’s own website reads “Columbia River Crossing project

closure,” yet the Applicant has instructed DEQ and the Corps to continue processing the permit applications as if the Project were ongoing.

Second, the public has not been provided with the full scope of materials relevant to the 401 certification. Like DEQ, NEDC has not reviewed the substance of the Applicant’s request for approval under 33 U.S.C. § 408 because it was not made publicly available on the Applicant’s website or pursuant to the public notice for the 404 permit. Plus, NEDC specifically requested certain information (including the details of a stormwater management plan) during the public comment period on the Environmental Impact Statement under the National Environmental Policy Act. NEDC never received notice of the stormwater design plan, which was not attached to the initial JPA posted on DSL’s and the Corps’ websites. Rather, the Applicant posted the stormwater design plan on its website on February 20, 2013, after the JPA had been submitted.

Finally, as a result of the Applicant’s misinformation submitted to DEQ, DEQ’s public notice contains erroneous information. For example, the draft certification states that construction of the CRC bridges “is currently estimated to occur between 2015 and 2020.” *See* DEQ Draft Cert, page 3. Yet the Applicant has stated in related federal court litigation that construction, including in-water work, will begin as early as September, 2014. Of course neither of these dates is possible when the Project is not funded. The current situation is that the Project will not go forward. Either way, DEQ’s public notice contains erroneous information that misleads the public.

Due to the dearth of critical information that should have been disclosed to both DEQ and the public, NEDC requests that DEQ re-open the public comment period for the water quality certification. DEQ has the authority—and duty—to ensure that it has the information it needs to make a well-informed decision when reviewing the impacts of projects such as the CRC. OAR 340-048-0020(3). *See also* OAR 340-048-0045(1)(c) (noting that a certification may be revoked if the “application contained false or inaccurate information regarding the activity that affects or might affect compliance with water quality standards and requirements”). The important role DEQ plays in protecting Oregon’s waters under Section 401 of the CWA through its oversight of federally licensed projects cannot be understated. This is especially true in this particular scenario, given the questionable status of the CRC and its ever-changing design.

### **III. DEQ’s antidegradation analysis in the Draft DEQ Cert and Draft Evaluation Report and Findings is flawed.**

This 401 Certification must confirm that the proposed project will comply with Oregon’s antidegradation policy, which ensures the full protection of all existing and beneficial uses by preventing unnecessary degradation from new sources of pollution and protecting, maintaining and enhancing existing surface water quality. Water quality standards include three elements: (1) one or more designated “uses” of a waterway; (2) numeric and narrative “criteria” specifying the water quality conditions, such as maximum amounts of toxic pollutants, maximum temperature levels, and the like, that are necessary to protect the designated uses; and (3) an antidegradation policy that ensures that uses dating to 1975 are protected and high quality waters will be maintained and protected. 33 U.S.C. §§ 1313(c)(2), 1313(d)(4)(B); 40 C.F.R. Part 131, Subpart B. Compliance with water quality standards requires protection of all three of these components. For all waters, the “[e]xisting in stream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.” 40 C.F.R. § 131.12(a)(1); 40 C.F.R. § 131.3(e) (“*Existing uses* are those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.”). This level of protection is the absolute floor of water quality. Questions and Answers on: Antidegradation, EPA Office of Water Regulations and Standards,

August 1985, at 4. Oregon’s antidegradation policy mirrors the federal language, requiring the protection of “all existing beneficial uses” from “point and nonpoint sources of pollution.” OAR 340-041-0004(1).<sup>3</sup>

The Project will result in a combination of point and nonpoint source pollution under state law. As discussed below, the Project will likely result in a measurable change in water quality *as compared to water not impacted by anthropogenic sources*. See DEQ, Antidegradation Policy Implementation Internal Management Directive for NPDES Permits and Section 401 Water Quality Certifications, 16 (March 2001) (emphasis added) (“Antidegradation Policy IMD”). Indeed, the information available regarding the short-term and long-term impacts of the Project on parameters such as turbidity, temperature, and habitat conditions for salmonids leads to the singular conclusion that the Project will negatively affect water quality.

Given these impacts, DEQ must carefully analyze the Project and how it will affect Oregon’s water quality. DEQ’s analysis, however, fails to follow its own regulations. At the heart of any antidegradation analysis will be a determination of whether the receiving water is an Outstanding Resource Water, a High Quality Water or a Water Quality Limited Water. Such a determination is made based, in part, on whether the water body is “water quality limited,” as defined under OAR 340-041-0002(71). Here, DEQ has determined that the receiving waters are water quality limited. This, however, appears to be a blanket determination for each of the waterbodies, not a parameter by parameter evaluation. For example, the Columbia River is not water quality limited for turbidity or sedimentation. Of course this is only one example of the lack of specificity in DEQ’s analysis. To properly set the stage for an antidegradation analysis, DEQ must identify each parameter that may be impacted by the action, for each receiving water, and assign the correct category.

Based on this information DEQ can then determine how to apply Oregon’s antidegradation rule. For example, when a waterbody is considered to be a High Quality Water, because it is not in violation of water quality criteria, “that water quality must be maintained and protected.” OAR 340-041-0004(6). Therefore, absent grounds for allowing an exception to the rule, DEQ must ensure that the action will not lower the existing water quality. As DEQ has stated, “[a] reviewer from DEQ may conclude that if a pollutant is in the pollutant stream, then the discharger/applicant/source has the burden of proof to show that there is no consequent lowering of water quality.” Antidegradation Policy, at 16. For Water Quality Limited Waters, in turn, no additional pollutant loading can be allowed, except in very limited circumstances. OAR 340-041-0004(7) (“Water quality limited waters may not be further degraded except” in limited circumstances). Thus, the antidegradation policy in this context should more appropriately be called a “non-degradation” policy, as it prohibits degradation.

Here, DEQ has not implemented these standards. Instead, DEQ appears to conflate compliance with water quality criteria with compliance with the Antidegradation policy. For example, with regard to turbidity, DEQ concludes that the discharges from the action “are not expected to exceed the applicable water quality standards.” This, of course, is not the standard. Rather, DEQ must determine if the discharges will lower water quality. If that is found, it must then determine whether the lowering of water quality is permissible pursuant to one of the enumerated exceptions to the Antidegradation policy. OAR

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<sup>3</sup> Pollution is broadly defined as “contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature . . . or such radioactive or other substance into any waters of the state which either by itself or in connection with any other substance present, will or can reasonably be expected to . . . render such waters harmful, detrimental, or injurious to . . . wildlife, fish or other aquatic life, or the habitat thereof.” OAR 340-041-0002(45).

340-041-0004. There, because the Columbia River is a High Quality Water, an exception is only available when the Environmental Quality Commission (“EQC”) finds that “[n]o other reasonable alternatives exist except to lower water quality; [t]he action is necessary and benefits of the lowered water quality outweigh the environmental costs of the reduced water quality . . . ; [a]ll water quality standards will be met and beneficial uses protected; and [f]ederal threatened and endangered aquatic species will not be adversely affected.” OAR 340-041-0004(6)(a)-(d).

Neither DEQ nor the EQC has made such a finding. Nor could they, given the facts in this instance. First, the alternatives analyses conducted to date fail to address the full range of alternative designs and operational measures that may result in a bridge that will not lower water quality standards. Therefore, DEQ may not reasonably rely on these analyses to support a conclusion on this point. Second, the proposed activity is not “necessary.” Under this standard, the *applicant* must demonstrate that the “same social and economic benefits cannot be achieved with some other approach.” Antidegradation Policy IMD, at 23. From the record available for review by the public, the applicant has failed to provide DEQ with the information necessary to assess this question properly. As a result, DEQ must insist that the Corps or the applicant provide this information (or it must deny the certification).

Third, the proposed project will affect existing and beneficial uses and will degrade water quality. Certainly, the Project, as current conceived, will have significant short-term and long-term impacts on the water quality in the Columbia River and Columbia Slough, which are already water quality limited for several parameters. Finally, the proposed action will adversely affect critically imperiled salmon. The Corps itself has made this threshold determination, pursuant to its obligations under the Endangered Species Act. The certain, direct and indirect impacts of the proposed project will adversely affect many salmon species. DEQ must pay particular attention to applying its antidegradation policy to beneficial uses that are threatened and endangered species, particularly of those stocks where there are very few individuals remaining. Adding risk to the survival of a stock that is extremely close to extinction is tantamount to making an existing use into one that no longer exists.

Again, this is only one example of how DEQ has failed to follow its own Antidegradation Policy. In fact, DEQ’s analysis fails to explain the steps it has taken to analyze the Project in accordance with the policy and demonstrate that the regulations were faithfully followed. DEQ’s analysis must track the agency’s regulations and address all of the criteria established therein. Anything less deprives the public of the ability to evaluate how DEQ has reached its conclusion that the existing water quality will not be degraded.

#### **IV. The proposed Project will violate Oregon’s numeric and narrative water quality criteria.**

It is the public policy of the state of Oregon to protect, maintain and improve the quality of the waters of the state for public water supplies, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, municipal, recreational and other legitimate beneficial uses. ORS 468B.015(2). Without question, the proposed project will have negative impacts on the water quality of the Columbia River and Columbia Slough. The question is, in addition to the antidegradation analysis discussed above, whether or not the activity will result in the violation of water quality criteria. This includes both numeric and narrative criteria. In conducting the analysis for these and other narrative criteria, DEQ must quantify the pollutant loads allowable in order to ensure that narrative and numeric criteria are not violated and that designated beneficial and existing uses are protected. Otherwise, DEQ cannot make a

determination that the proposed activity will constitute an allowable load. Such a quantitative analysis is missing from DEQ's evaluation.<sup>4</sup>

More specifically, DEQ has failed to analyze properly whether or not the project will comply with Oregon's narrative water quality criteria. After restating the various criteria, DEQ states that "[t]his standard is self-explanatory in its purpose of prohibiting degradation of water quality, particularly with respect to aesthetic offenses." Draft Evaluation Report and Findings on the Application for Certification Pursuant to Section 401 of the Federal Clean Water Act, at 24. What is odd, however, is that DEQ fails to address over half of the narrative criteria, particularly those that appear to be most applicable to the Project.

For example, DEQ fails to determine whether the construction of a road over several water bodies will comply with the criteria that "[r]oad building and maintenance activities must be conducted in a manner so as to keep waste materials out of public waters and minimize erosion of cut banks, fills, and road surfaces." OAR 340-041-0007(7). Moreover, DEQ has not determined whether "the highest and best practicable treatment and/or control of wastes, activities, and flows" have been used in this case "so as to maintain dissolved oxygen and overall water quality at the highest possible levels and water temperatures, coliform bacteria concentrations, dissolved chemical substances, toxic materials, radioactivity, turbidities, color, odor, and other deleterious factors at the lowest possible levels." OAR 340-041-0007(1). Similarly, DEQ does not address whether there are any "less stringent natural conditions" that "exceed[] the numeric criteria" for the waterbodies, and thus "supersede[] the numeric criteria and becomes the standard for that water body." OAR 340-041-0007(2). Finally, DEQ has failed to determine whether the noise from the construction will violate the prohibition against the creation of a condition that is deleterious to fish. OAR 340-041-0007(11). Certainly, hydroacoustics due to vibratory installation and removal of sheet piles during in-water work have the potential to disturb, harm or even kill fish and other aquatic life forms.

In addition, as discussed above, DEQ's analysis has failed to consider the water quality impacts from the dredging of new navigation channels to realign the three existing Congressionally-approved channels in the Columbia River. This dredging will likely result in adverse impacts to water quality, including but not necessarily limited to the suspension of sediment, which will increase turbidity and release any contaminants in the sediment.

Finally, DEQ's proposed certification is inconsistent with the agency's own regulations and the CWA. To support the statement "that there is a reasonable assurance that the activity will be conducted in a manner which will not violate water quality standards," as required by 40 C.F.R. § 121.2(a)(3), DEQ must require reporting from the Applicant. *See also* OAR 340-048-0042(5)(g). The DEQ Draft Cert outlines a water monitoring/sampling plan, yet fails to require the Applicant to report the monitoring and sampling results. Without required reporting, DEQ has no way to ensure the Applicant is conducting its activities in accordance with the permit requirements and thereby undermines any reasonable assurances the specific conditions seek to create. The DEQ Draft Cert essentially establishes a self-regulatory permitting scheme. To comply with the CWA and its own regulations, and to provide the necessary assurances under Section 401, DEQ should require regular reporting of the monitoring results.

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<sup>4</sup> In any case, it is the applicant's duty to affirmatively demonstrate that the proposed project will have no additional impairment of beneficial uses that are already substantially impaired and/or on the verge of extinction due to failures to prevent pollution.

## CONCLUSION

DEQ has a responsibility to ensure that any federally permitted action in Oregon complies with Oregon's water quality standards. Assuming the Project still exists, the CRC will result in significant adverse impacts to the Columbia River, Columbia Slough, and the surrounding ecosystem, and for that reason DEQ should deny the certification.

What's more, since the Applicant has been ordered to close its offices and Washington has withdrawn funding, DEQ cannot and should not rely on the "assurances" provided by the Applicant in the JPA and subsequent documents. Each of those statements was predicated on there being an actual Project, with financial support from both states as well as the Federal government. Without such funding, DEQ cannot be "reasonably assured" that the Project as proposed will comply with applicable water quality standards. Unlike the situation where DEQ issues certification for an activity that is later not implemented for subsequent reasons, here DEQ knows now, before issuing certification, that the Project has been shut down and is not funded. Thus DEQ must deny the requested water quality certification.

Sincerely,



Marla Nelson  
Legal Fellow

Cc: Mr. Dominic Yballe  
U.S. Army Corps of Engineers  
P.O. Box 2946  
Portland, OR 97208  
Dominic.P.Yballe@usace.army.mil