

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON

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| IN THE MATTER OF THE VIOLATION OF) | |
| ORS 540.710 AND 537.130 BY) | Final Order |
| |) |
| K. THATCHER LOEN,) | Case No. CP 95-1 |
| |) |
| Respondent.) | |
| _____) | |

A contested case hearing in the above-captioned matter was scheduled to commence at 9:30 a.m. on Wednesday, September 6, 1995, before Weisha Mize, Administrative Law Judge.

The Department was represented by Dave Jarrett, Enforcement Section Manager. Jerry Rodgers, Watermaster for District 18, was present as the sole witness to be called by the Department.

At 9:25, Respondent's representative Scott Ashcom informed the ALJ by telephone that Respondent wished to withdraw his request for hearing and would submit the civil penalty assessed, in the amount of \$4,000. Respondent's representative was directed to submit, by facsimile transmission, Respondent's signed withdrawal and statement of intent to pay the civil penalty as represented.

The hearing record was opened and the entirety of the Water Resources Department's Enforcement Section file on this matter was entered into the record as WRD Ex. 1. The Department had previously given notice that on Respondent's failure to appear at the scheduled hearing, the agency's file would be designated as the record in this matter.

Entered into the record as WRD Ex. 2 was Respondent's request for hearing.

At 10:03, a facsimile transmission was received from Mr. Ashcom confirming Respondent's withdrawal of his request for hearing and his intent to submit the civil penalty assessed. Mr. Ashcom represented that he had been unable to contact Respondent directly to have him personally submit his withdrawal, but represented that he was authorized to act as Respondent's representative in this matter and to submit, on Respondent's behalf, the withdrawal of request for hearing and intent to pay any penalty assessed.

NOW, THEREFORE, after consideration of the record, this Final Order is entered.

FINDINGS OF FACT

1. Respondent owns lands to which water right certificates 29209 and 29210 are appurtenant. These rights were determined in the Tualatin River adjudication.
2. The irrigation season authorized in the Tualatin River Decree is May 1 to September 30 of each year.

3. On October 11, 1994, the District 18 watermaster observed Respondent's pump and irrigation sprinkling system. The pump, which was not running, was in Cummings Ditch. The watermaster observed water dripping from the sprinklers served by this pump. The watermaster posted and sealed the pump.

4. On April 24, 1995, 6 days prior to the beginning of the irrigation season, the watermaster observed Respondent diverting water from Cummings Ditch at the point the watermaster had posted and sealed on October 11, 1994. The seal had been broken. The posting was still attached to the diversion point. Respondent was applying water on lands which have no water right.

5. On May 19, 1995, the watermaster observed Respondent using water from Cummings Ditch on lands which lacked a water right. The watermaster turned the pump off and re-posted the diversion.

6. On June 16 and June 26, 1995, the watermaster again observed Respondent using water from Cummings Ditch on lands which lacked a water right.

7. The watermaster informed Respondent on June 26, 1995 that he was in violation of ORS 537.130 by irrigating lands without a permit and that he was causing injury to legal water rights for which the watermaster was regulating, and directed Respondent to cease using water. Respondent declined.

8. On June 28, 1995, the watermaster observed irrigation from Cummings Ditch on Respondent's lands not covered by a water right.

CONCLUSIONS OF LAW

In using water 5 separate observed occasions on lands for which no water right has been issued, Respondent violated ORS 537.130.

Violation of ORS 537.130 is a Class I violation. Where no substantial harm to water rights is imminent but which could occur if the violation is uncorrected, the violation is considered a moderate violation. Where substantial harm to water rights is occurring, the violation is major.

Unlawful use of water which reduces the amount of water available to valid water rights, or which results in taking water away from valid rights, constitutes substantial harm.

By breaking the seal and using water on April 24, 1995, after water had been denied by the watermaster through his posting on October 11, 1995, Respondent violated ORS 540.710.

A civil penalty of \$500 per day may be assessed for each day of a continuing Class I Moderate violation.

A civil penalty of \$1000 per day may be assessed for each day of a continuing Class I Major violation.

FINAL ORDER

Now, therefore, it is ORDERED:

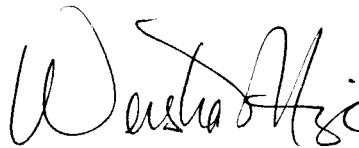
For three days of Class I moderate violations of ORS 537.130 on April 24, May 19 and June 16, 1995, Respondent is assessed civil penalties in the amount of \$1500.

For two days of Class I major violations of ORS 537.130 on June 26 and June 28, 1995, Respondent is assessed civil penalties in the amount of \$2000.

For one Class I violation of ORS 540.710 on April 24, 1995, Respondent is assessed civil penalties in the amount of \$500.

It is FURTHER ORDERED that the civil penalties are due and payable no later than 10 days from the date of this Final Order. Failure to pay the penalty assessed within 10 days of the date of the Final Order may result in the filing of the Order with the Washington County Clerk, or the clerk of any other county in Oregon, to be recorded in the County Clerk Lien Record, with the circuit court for further enforcement and collection, or referred for collection to the Oregon Department of Revenue.

Issued this 19th day of September, 1995.



WEISHA MIZE
Administrative Law Judge

NOTICE: You are entitled to judicial review of this Order. Judicial review may be initiated by filing a petition for review with the Oregon Court of Appeals in Salem within 60 days from the date of service (date of mailing) of this Order. Judicial review is pursuant to the provisions of ORS 537.075.