

Agenda Item No.:	D
Work Plan:	Administrative Work Plan
Topic:	Final Order
Presentation Title:	Final Order – Brad Reeser
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SUMMARY

The purpose of this agenda item is to consider issuance of a Final Order on a Notice of Civil Penalty issued against Brad Reeser for failing to meet the reforestation obligations of the Forest Practices Act. Administrative Law Judge Samantha A. Fair of the Office of Administrative Hearings conducted a contested hearing on this matter. Based on the evidence introduced at the hearing, ALJ Fair issued a proposed order recommending a Civil Penalty of \$1250. The Department recommends the Board issue a Final Order that adopts and incorporates this proposed order.

CONTEXT

The *Forestry Program for Oregon’s Strategy A* recognizes the importance of promoting a sound and effective legal system as well as ensuring that Oregon’s forests continue to provide a diverse suite of social and economic outputs and benefits (Strategy B). Citations and repair orders for violations of forest regulations are part of an effective enforcement program that meets these objectives by changing behaviors to comply with best management practices designed to promote a multitude of forest outputs and benefits.

BACKGROUND

Brad Reeser and Sarah Stark were married and jointly owned forestland at 44100 Highway 226 SE, Stayton, Oregon. From March through December 2013, they hired a contractor to complete a logging operation on the property. The operation was complete by December 31, 2013, resulting in an obligation to reforest by January 1, 2016. In June 2014, the Department mailed a courtesy letter to Mr. Reeser and Ms. Stark reminding them of the reforestation obligation.

Mr. Reeser moved away from the property on January 3, 2015. Ms. Stark filed a restraining order against Mr. Reeser on January 15, 2015, which ultimately prohibited him from returning to the property for one year. In a subsequent divorce proceeding, Ms. Stark was awarded ownership of the forestland in May 2016. However, during the period of time in which the property was to be reforested, both Mr. Reeser and Ms. Stark maintained joint ownership of the property.

In June 2016, the Department visually inspected the property and observed that the land had not been reforested. Over the next few months, the Department attempted to contact Mr. Reeser and Ms. Stark by site visits, by phone, and by letter, but never received a response. In August 2016, the Department issued a Notice of Violation/Citation to Mr. Reeser and Ms. Stark for failing to complete reforestation.

On September 19, 2017, the Department issued a Notice of Civil Penalty to Brad Reeser and Sarah Stark, proposing to assess a civil penalty against them of \$3,250. Ms. Stark had moved since filing of the Notification in 2013 so the Department had to make several attempts at mailing the Notice to her. Ultimately, Ms. Stark was served with a Notice on January 10, 2018. She failed to request a hearing and on February 13, 2018, the Department issued a Final Order by Default against Ms. Stark, assessing her a civil penalty of \$3250.

Mr. Reeser had also moved since filing of the Notification. Mr. Reeser received the Notice on October 13, 2017 and requested a contested hearing on October 19, 2017. From October to February, the Department held Mr. Reeser's hearing request while it attempted to resolve Ms. Stark's Notice. On March 2, 2018, the Department rescinded and reissued the Notice against Mr. Reeser in order to comply with the Board's timelines for holding a hearing.

On May 18, 2018, the Department referred Mr. Reeser's hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Administrative Law Judge (ALJ) Samantha A. Fair to preside at hearing. A hearing was held on July 19, 2018, in Salem, Oregon. Mr. Reeser appeared and testified. The Department appeared and was represented by Mr. Wagenblast, who testified. Also testifying on behalf of the Department were Joe Arbow, a Department grants specialist, and Levi Hopkins, a Department wildland fire supervisor, both of whom were previously employed as Department stewardship foresters assigned to Mr. Reeser's matter. The record closed on July 19, 2018, at the conclusion of the hearing.

On August 22, 2018, ALJ Fair issued a proposed order finding that Mr. Reeser failed to meet the reforestation obligations of the Forest Practices Act and that he should be ordered to pay a civil penalty of \$1,250, with joint and several liability to the penalty assessed against Ms. Stark¹. The proposed order set a deadline for filing exceptions of August 29, 2018, but no party filed exceptions.

The record of the hearing (audio recording of the hearing) is available for Board members to review by contacting Greg Wagenblast at (503)945-7382.

¹ *The Department can recover a maximum of \$1,250 from Mr. Reeser and a maximum of \$3,250 from Ms. Stark (as assessed in the final order against her) but can only recover a maximum amount of \$3,250 jointly from both parties.*

ALTERNATIVES CONSIDERED

Upon review of the ALJ's proposed order and record in this case, the Board can:

1. Entertain written and/or oral argument if the board determines it is necessary or appropriate to assist the board in the proper disposition of the case. If allowed, oral argument will be limited to matters raised in written exceptions and shall be presented under time limits determined by the board chair; or
2. Remand the matter to the ALJ for further hearing on such issues as the Board specifies and to prepare a revised proposed order as appropriate under OAR 137-003-0655(2); or
3. Enter an amended proposed order or final order that modifies or rejects the recommendations of the ALJ. If the board decides to modify or reject the proposed order, the board must comply with OAR 137-003-0655 and 137-003-0665; or
4. Enter a final order adopting the recommendations (proposed order) of the ALJ assessing a penalty of \$1,250 for Brad Reeser's portion of the violation.

The Department supports alternative 4, adopting the ALJ's proposed order (Attachment 1) as the Board's final order. The action complies with OAR 137-003-0655 and 0665 as it does not change the ALJ's proposed order, nor does it change any finding of fact made by the ALJ.

RECOMMENDATION

Adopt the proposed order in Attachment 1 as the Board's final order (alternative 4).

ATTACHMENTS

- (1) ALJ Proposed Order
- (2) Draft Final Order
- (3) Reeser Case 2018-ABC-01648 Department Exhibits Part 1 Redacted
- (4) Reeser Case 2018-ABC-01648 Department Exhibits Part 2 Redacted
- (5) Reeser Case 2018-ABC-01648 Marked Exhibit and Record Revised EX R1 & R2 Redacted