

In the Matter of Violation
of Forest Practices Act,
OAR 629-24-113(5) and
OAR 629-57-2310(1)
by **STEVE L. SCHALLER**
Case Nos. 95-KL061 and 95-KL062
NOTICE OF CIVIL PENALTY;
FINDINGS OF FACT; PROPOSED
AND FINAL ORDER

AFFIDAVIT OF JUDGMENT

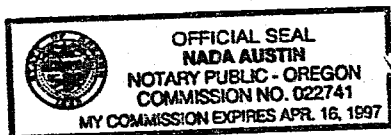
State of Oregon
County of Marion

SS.

Robert T. Lundblad, after first being by me duly sworn, declares that:

I, Robert T. Lundblad, am Civil Penalty Administrator for the Oregon Department of Forestry's Forest Practices Program, and in that capacity have responsibility for and control over the records regarding civil penalties assessed for violations of the Forest Practices Act. My review of the records shows that the above-referenced Notice of Civil Penalty, a true and exact copy of which, consisting of four pages, is attached hereto as Exhibit A, was served personally and in person to Steve Schaller on December 22, 1995. No request for hearing was received within 20 days of service, so the order became final on January 11, 1996. The order is final in accordance with the provisions of ORS 183.090(6). No request to set aside the final order has been received to date. No portion of the penalty has been paid, leaving a balance of \$1,605.80. This includes interest at the rate of 9% starting 10 days after the final order (January 22, 1996 through September 20, 1996; total \$205.80) and Klamath County Clerk recording fees at \$5.00 per page (total \$25.00).

RETURN TO
Doris VanDeKoppel
Oregon Dept of Forestry
2600 State Street
Salem, Oregon 97310



L.S.

Robert T. Lundblad
Subscribed and sworn/affirmed before
me by Robert T. Lundblad,
this 16 th day of September, 1996.

Nada Austin
Notary's Signature

My commission Expires: 4-16-97

Before the Board of Forestry
of the State of Oregon

In the matter of Violation)	NOTICE OF CIVIL PENALTY;
of Forest Practices Act,)	FINDINGS OF FACT; PROPOSED
OAR 629-24-113(5) and)	AND FINAL ORDER
OAR 629-57-2310(1))	
by Steve L. Schaller)	

TO: STEVE L. SCHALLER
95-KL061 and 95-KL062

Anyone conducting forest operations is required by ORS 527.630 et seq. to conform to Forest Practice Rules. A person who fails to conform to these rules is subject to a civil penalty as provided by ORS 527.683 through .687 and 527.992.

I. APPLICABLE LAW

OAR 629-24-113 WRITTEN PLANS.

(5) Operators shall comply with all provisions of an approved written plan.

OAR 629-57-2310 LIVE TREE RETENTION FOR SIGNIFICANT WETLANDS

(1) In significant wetlands and their riparian management areas, operators shall retain approximately 50 percent of the original live trees, by species, in each of the following classes (DBH):

- (a) 6 to 10 inches;
- (b) 11 to 20 inches;
- (c) 21 to 30 inches; and
- (d) larger than 30 inches.

II. FINDINGS OF FACT

On or about August 15, 1994, Steve L. Schaller or his agents failed to comply with all provisions of an approved written plan in an operation on forest land within 300 feet of a significant wetland, specified as a resource site, in violation of OAR 629-24-113(5). The operator or his agents harvested trees within the forested wetland and riparian management area (RMA). The operation was located in Section 27 of Township 33 S., Range 13 E., W.M., in Klamath County.

On or about August 15, 1994, Steve L. Schaller or his agents failed to retain 50 percent of the original stems by species in all diameter classes while harvesting within the riparian

management area adjacent to an unnamed significant wetland. This violation of OAR 629-57-2310(1) occurred when all of the lodgepole pine greater than 13 inches diameter were harvested from within the RMA and the forested wetland. The harvesting operation was located in Section 27, Township 33 S., Range 13 E., W.M., in Klamath County.

The operation was complete when the violation was discovered. Because of existing small pine trees, no repairs were required.

Mr. Schaller had prior knowledge of the Forest Practices Act as well as correspondence with Department of Forestry personnel regarding OAR 629-24-113(5) and wetland protection prior to the violation. The written plan was submitted July 5, 1994, and amended to show that no more than 50 percent of the stems per species and diameter class would be cut.

The State Forester has determined that Mr. Schaller's failure to comply with all the provisions of an approved written plan and subsequent failure to retain 50 percent of the original stems by species in all diameter classes within the RMA has resulted in major damage to protected resources, i.e., damage to wildlife habitat. While the damage would take more than ten years to naturally self-restore, it was not extensive in scope. The State Forester has further determined that 30 percent of the actual and potential damage has been repaired, avoided, or mitigated through natural regeneration.

The State Forester has further determined that the two violations shall be combined for the purpose of assessing a penalty because the two citations arose from essentially the same act, resulting in the same damage.

III. NOTICE OF PENALTY; ORDER

Now therefore it is ordered: There is assessed against Steve L. Schaller, a civil penalty in the amount of \$1,375.00. This penalty is assessed using the formula $\$B(C \times P) + [(\$B \times D) - (\$B \times D \times R)]$ (See Attachment 1 for details of formula and determination of values), where:

1. The base fine (\$B) is \$250.00 for violation of OAR 629-57-2310(1) [see OAR 629-55-040(6)].
2. The cooperation factor (C) is 1 because further violation was ceased upon notice of the violation to Mr. Schaller [see OAR 629-55-040(2)(a)].
3. The prior knowledge or prior violation factor (P) is 2 because Mr. Schaller had correspondence or conversation with Department of Forestry personnel, previous to the violation

regarding the required practices or action involved in the violation [see OAR 629-55-040(3)(c)].

4. The damage factor (D) is 5 because the State Forester has determined that damage to affected resources is major and while it would take more than ten years to naturally self-restore, the scope is comparatively minor [see OAR 629-55-040(4)(d)].

5. The repairability factor (R) (extent to which damage can be repaired and/or future damage avoided) is determined to be 0.30 because the State Forester has determined that 30 percent of the actual and potential damage has been repaired, avoided, or mitigated [see OAR 629-55-040(5)].

6. The State Forester has further determined that the two violations shall be combined for the purpose of assessing a penalty because the two citations arose from essentially the same act, resulting in no the same damage. For this reason the penalty for violation of OAR 629-57-2310(1) is dealt with in the computation of the above penalty.

IV. RIGHT TO A HEARING

IF YOU DISAGREE WITH THE ABOVE FINDINGS, ORDER, OR ASSESSMENT YOU MAY REQUEST A HEARING BEFORE THE BOARD OF FORESTRY AS PROVIDED BY ORS CHAPTER 183 AND ORS 527.687 TO CONTEST FINDINGS OR TO SEEK MITIGATION OF A PENALTY. YOU MAY BE REPRESENTED BY COUNSEL AT THE HEARING. IF YOU ARE A CORPORATION AND YOU REQUEST A HEARING, YOU MUST BE REPRESENTED BY AN ATTORNEY. YOUR REQUEST MUST BE IN WRITING, DIRECTED TO THE STATE FORESTER, 2600 STATE STREET, SALEM, OREGON 97310 AND MUST BE RECEIVED WITHIN 20 DAYS OF SERVICE OF THIS NOTICE. (SEE ATTACHMENT 2). FOLLOWING RECEIPT OF YOUR REQUEST, THE STATE FORESTER WILL NOTIFY YOU OF THE TIME AND PLACE OF THE HEARING.

V. REQUESTING A HEARING

If you request a hearing, you will be given information on the procedures, right of representation, and the rights of parties relating to the conduct of the hearing as required under ORS 183.413(2) prior to commencement of the hearing.

If you request a hearing, the record of the proceedings to date, including the Department of Forestry files on the subject of this violation, automatically becomes part of the contested case record upon default for the purpose of providing a prima facie case. IF YOU DO NOT FILE A REQUEST FOR A HEARING WITHIN THE TIME ALLOWED, OR IF YOU FAIL TO APPEAR AT A SCHEDULED HEARING, THIS ORDER AND ASSESSMENT WILL BECOME FINAL. The Order shall be entered upon evidence in the record of the Department of

Forestry according to ORS 527.687(2) and OAR 629-55-030(3)(e) and (f) and thereafter shall not be subject to review by any agency or court.

VI. PAYMENT AND COLLECTION

The penalty is due and payable within 10 days after this order becomes final. Your check or money order in the amount of \$1,375.00 should be made payable to "State Forester" and should be sent to Department of Forestry, Mail Sort 62, P.O. Box 4100, Portland, Oregon 97208-4100.

Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be recorded with the county clerk in any county of this state. The clerk shall record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record. The penalty provided in the order so recorded becomes a lien upon the title to any interest in real property situated in the county and owned by the person against whom the order is entered. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

Robert T. Lundblad

Robert T. Lundblad
Civil Penalty Administrator,
for:

JAMES E. BROWN,
STATE FORESTER

November 29, 1995

Date

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the 25th day
of September A.D., 19 96 at 2:18 o'clock P M., and duly recorded in Vol. M96
of _____ County Lien Docket on Page 30366.

Bernetha G. Letsch County Clerk

By *Kathleen Ross*

FEE \$25.00