

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

**NOTICE OF PENALTIES INCURRED AND DUE FOR VIOLATIONS
OF COMMISSION ORDER**

VIRGIL R. FOX,)	PENALTY ASSESSMENT:
President, American Water)	DOCKET NO. UW-031596
Resources, Inc.)	
)	ORDER NO. 01
)	
)	PENALTY AMOUNT: \$3,700.00
.....)	

1 The Washington Utilities and Transportation Commission (Commission) has information on which it believes that you have committed one or more violations of Washington State law or Commission order. Based on this information, the Commission hereby notifies you that it has assessed penalties upon you in the amount shown above under the provisions of Title 80, RCW, specifically RCW 80.04.405, and the rules and regulations of the Commission. The violations that are the basis for this penalty assessment are described as follows:

2 On December 18, 2001, the Commission entered an Order Accepting Settlement Agreement (Order).¹ The Order increased American Water Resource's (AWR) annual revenue requirement by \$89,250 (11.27%) above its previous revenue requirement. The Order required AWR to deposit \$4.40 per month from each customer payment received into an account titled "Docket 010961 Account" and to spend money from that account for limited purposes.

3 On December 4, 2002, the Company sent a letter to Mr. Jim Ward of Commission Staff informing him that AWR was "still behind on the Docket UW-010961 account." The letter states that on October 23, 2002, the Company deposited the

¹ *WUTC v. American Water Resources, Inc.*, Docket No. UW-010961, Order Approving Settlement Agreement (Dec. 18, 2001).

amounts for the months of June and July into the account. Thus, between the months of July and October 2002, the company did not fund the Docket 010961 Account as required by the Order.

- 4 On February 6, 2003, the Commission received the quarterly report from AWR for the period October through December 2002, submitted as required by the Order. The report shows that AWR transferred no funds to this account for the months of August, September, October, and November 2002. The report shows that the Company made a "catch up" deposit of \$10,000.00 to this account in December 2002, but the funding of the account still remained below the level required by the Order in the amount of \$16,290.00.
- 5 On July 24, 2003, the Commission received the quarterly report from AWR for the period April through June 2003. The report shows that AWR made additional "catch up" deposits in March 2003, totaling \$4,000.00. AWR made a "catch up" deposit in April 2003, in the amount of \$1,000.00, and another in June 2003, in the amount of \$2,000.00. Despite the additional deposits, the Docket 010961 Account remains in arrears. As of June 2003, the account balance is at least \$9,290.00 below the level required by the Order.
- 6 AWR withdrew \$66,258.00 on June 17, 2003, for "other" expenses. Commission Staff has been informed that most, if not all, of the money was used to pay taxes on the gain resulting from the sale of a water system. The \$66,258.00 withdrawal was not authorized under the Order.
- 7 RCW 80.04.405 provides for a penalty of up to \$100 per violation to be assessed against every officer of any public service company who procures, aids, or abets in the violation of any order of the Commission for each and every violation of a Commission order. Each and every violation, whether by act of commission or omission, is a distinct and separate offense. In the event of a continuing violation, each day that the violation continues shall be deemed a separate and

distinct offense. Because the Commission's order directed AWR to deposit \$4.40 from each payment it received, each day that AWR failed to deposit the \$4.40 for each payment is a separate violation. AWR failed to deposit approximately 1,500 payments each month for several months. Rather than assessing a penalty for each payment and each day, the Commission accepts Staff's recommendation to calculate the penalty for each month that AWR failed to make deposits, regardless of the number of customer payments received.

8 As President of the Company, Mr. Fox is responsible to insure the proper deposits are made and monies spent in compliance with the commission's Order. Thus, Mr. Fox is subject to penalties pursuant to RCW 80.04.405. Mr. Fox personally caused or allowed the following violations to occur and continue:

1. Failure to deposit amounts required for June 2002. This violation continued for the period of July, August, September, and October 2002. This violation ended on October 23, 2002. The amount of the penalty for this violation is \$400.00.
2. Failure to deposit amounts required for July 2002. This violation continued for the period of August, September, and October 2002. This violation ended on October 23, 2002. The amount of the penalty for this violation is \$300.00.
3. Failure to deposit amounts required for August 2002. This violation continued for a period of September, October, November, and December. This violation ended on December 13, 2002, when AWR deposited monies sufficient to cover the August 2002 amount. The amount of the penalty for this violation is \$400.00.
4. Failure to deposit amounts required for September 2002. This violation continued for a period of October, November, and December 2002,

January, February, and March 2003. The violation ended on March 27, 2003, when AWR deposited monies sufficient to cover the September 2002 amount. The amount of the penalty for this violation is \$600.00.

5. Failure to deposit amounts required for October 2002. Because AWR has failed to deposit sufficient funds, this violation is continuing. The amount of the penalty for this violation is \$1,000.00, calculated through August 2003.
6. Failure to deposit amounts required for November 2002. Because AWR has failed to deposit sufficient funds, this violation is continuing. The amount of the penalty for this violation is \$900.00, calculated through August 2003.
7. Unauthorized use of funds in June 2003 in the amount of \$66,258.00. The amount of the penalty for this violation is \$100.00.

9 Mr. Fox is assessed a penalty in the amount of \$3,700.00.

10 Penalties are due and payable upon receipt of this penalty notice. If for any reason you believe the violations described did not occur, you may request a hearing to contest the occurrence of the violations. If you have an explanation as to why the violations occurred, or have other facts you believe the Commission should have considered, RCW 80.04.405 provides that you may make application for mitigation of this penalty. To do so, complete the enclosed mitigation form and return it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, within FIFTEEN (15) days of your receipt of this penalty notice. You may, although you are not required to, present your request for mitigation at a hearing. The Commission will consider your plea and notify you of its determination.

- 11 If you would like a hearing to contest either the occurrence of the violations or the amount of the penalty, you may request one in your request for hearing or mitigation. If you request a hearing for either reason, please state why you believe a hearing is called for in your circumstances.
- 12 Failure to request a hearing to contest the occurrence of the violations or the amount of the penalty, return the mitigation plea, or pay the amount due within 15 days will cause the Commission to refer this matter to the Office of the Attorney General for collection. Suit may then be brought against you and after trial, judgment may be entered against you.

DATED at Olympia, Washington and effective this 22nd day of October, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner