

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Stage Gulch	)	FINAL ORDER NOT ALLOCATING
2006 Annual Allocation of Ground Water,	)	GROUND WATER
Under Water Right Certificate 76120,	)	
Umatilla County, Oregon	)	

MS. TERRI NICKOLOFF
C/O LOYALTA, INC.
5120 NE ALAMEDA
PORTLAND, OR 97213

ORS 537.730 and 537.735 establish the process by which the Water Resources Commission may designate an area of the state as a critical ground water area. OAR Chapter 690, Division 507 implements the statutes and provides the Department procedures and criteria for the purpose of managing the ground water resource and evaluating requests for allocation of ground water.

AUTHORITY

- 1) Oregon Administrative Rules (OAR) 690-507-0750 states in pertinent part that the Director issued an order on May 15, 1991 declaring the Stage Gulch Critical Groundwater Area. The order described the exterior boundaries and divided the area with eight subareas for the purposes of managing the groundwater resource. The response of ground-water levels to pumpage in each subarea is largely independent of pumpage within other subareas.
- 2) OAR 690-507-0770 states in pertinent part that the use of water from the basalt groundwater reservoir within the Stage Gulch Critical Groundwater Area shall be limited to the sustainable annual yield. Water from the basalt groundwater reservoir in the Stage Gulch Critical Groundwater Area shall be used for irrigation only during the irrigation season. The irrigation season shall begin on the 1st of March and end on the 30th of November. The Department shall not accept any new applications for appropriation of water from the basalt groundwater reservoir within the Stage Gulch Critical Groundwater Area.

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

- 3) OAR 690-507-0780 states in pertinent part that appropriation of groundwater from the Stage Gulch Critical Groundwater Area is prohibited unless the water user meets certain requirements. A water user authorized by OAR 690-507-0810 to pump water from the basalt groundwater reservoir shall satisfy the following conditions:
- Wells shall have an access port with a minimum diameter of 3/4 inch. The access shall be adequate to determine the water level at any time;
 - A water user may install a functioning airline with a pressure gage in addition to the access port.
 - A water user shall install and maintain a totalizing flow meter on each well authorized by OAR 690-507-0810 except wells authorized for irrigation of ten acres or less. The meter shall meet the requirements of OAR 690-507-0785.
- 4) OAR 690-507-0810 states in pertinent part that the method for distributing the sustainable annual yield from the basalt groundwater reservoir within each managed subarea in the Stage Gulch Critical Groundwater Area is as follows:
- A water user who intends to pump water for any authorized use except municipal use during any year shall make a request to the Department in Salem by July 1st of the preceding year on forms provided by the Department;
 - The Department shall assume that municipal water users intend to pump a quantity of water equivalent to the average pumped for the previous three (3) years, unless the municipal water user informs the Department otherwise by July 1st;
 - The distribution of groundwater for any authorized use except municipal use shall be based on the priority dates of the water rights within the individual subarea;
 - In determining the amount of groundwater each water user is allocated to pump during the next calendar year or irrigation season, the Department may consider:
 - ♦ Requests for allocations received;
 - ♦ The sustainable annual yield;
 - ♦ The limits of the groundwater rights;
 - ♦ The relative dates of priority, with preference given without regard to priority date for municipal use;
 - ♦ Historical usage;
 - ♦ Whether or not a water user is physically capable of pumping and putting to a beneficial use the quantity requested; and
 - ♦ Any other factors deemed appropriate by the Department.

- If pumpage for a particular year exceeds the sustainable annual yield for a subarea, the total subarea allocation for the second year after that occurrence shall be reduced by that volume.
- If any water user requests more water than has been historically used, the Department may allocate less water than requested if, upon investigation, it appears unlikely the user will pump the volume requested.
- If any water user requests less water than has been historically used, the Department may allocate more water than requested if, upon investigation, it appears likely that the user will pump more than the volume requested.

FINDINGS OF FACT

- 1) Allocations are made to the municipal water users in Subarea A first. Then allocations are made to the senior water rights. Loyalta, Inc. is a senior water right holder in Subarea A.
- 2) The quantity allocated is based primarily on the pumpage in recent years and shall not exceed the limits of the water rights. Once the sustainable annual yield or reduced volume is allocated for a subarea, no more water shall be allocated.
- 3) The sustainable annual yield for Subarea A is 11,450 acre-feet. For the year 2005, 11,450 acre-feet of water was allocated to municipal and senior water right holders in Subarea A.
- 4) Flow meter and power meter data collected by Department staff indicate that 12,093 acre-feet of water was pumped from permitted wells in Subarea A in 2005. Pumpage for 2005 exceeds the sustainable annual yield by 643 acre-feet.
- 5) The Subarea A allocation for 2007 is reduced by 643 acre-feet to a total of 10,807 acre-feet.
- 6) On May 31, 2006, the Department sent letters requesting water users within the Stage Gulch Critical Ground Water Area to submit their 2007 requests for the volume of water needed.
- 7) Loyalta, Inc. did not file a request for water use in 2007, Stage Gulch Critical Ground Water Area, Subarea A, authorized under Application G-6654, Water Right Certificate 76120.
- 8) Flow meter and power meter records indicate that annual pumpage from the permitted well has varied. More water was pumped in 2005 than in prior years. An allocation for 2007 is being made to the permitted well under a senior Water Right Certificate. Therefore, the 2007 allocation is for 0 acre-feet. This is consistent with OAR 690-507-0810.

DISCUSSION

The sustainable annual yield for Subarea A is 11,450 acre-feet. The quantity of water allocated for 2007 for Subarea A is reduced to 10,807 acre-feet because more water was pumped in 2005 than was allocated. Loyalta, Inc. is a senior water right holder in Subarea A. The allocation for

Loyalta, Inc. does not exceed the limits of the water rights or the quantity allocated for Subarea A. Therefore, the 2007 allocation is for 0 acre-feet.

CONCLUSIONS OF LAW

The allocation of ground water for the State Gulch Critical Ground Water Area for the year 2007 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580, and Oregon Administrative Rules Chapter 690, Division 507.

ORDER

Now, THEREFORE, it is ORDERED that 0 acre-feet of water is allocated for the year 2007 under Certificate 76120 for Subarea A of the Stage Gulch Critical Ground Water Area.

Dated at Salem, Oregon this 28 day of August, 2006.

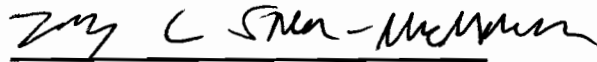
A handwritten signature in black ink, appearing to read "Barry F. Norris", is written over a horizontal line.

Barry F. Norris, Administrator
Technical Services Division

CERTIFICATE OF SERVICE

I certify that on August 30, 2006, I mailed the attached FINAL ORDER APPROVING ALLOCATION OF GROUND WATER and two (2) FINAL ORDERS NOT ALLOCATING GROUND WATER by certified mail to:

MS TERRI NICKOLOFF
C/O LOYALTA, INC.
5120 NE ALAMEDA
PORTLAND, OR 97213



Zachary L. Stark-MacMillan
Oregon Water Resources Department