

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

In the Matter of Stage Gulch	)	PROPOSED ORDER APPROVING
2008 Annual Allocation of Ground Water,	)	ALLOCATION OF GROUND WATER
Under Water Right Certificate 74667,	)	AND OPPORTUNITY FOR HEARING
Umatilla County, Oregon	)	

STEVE MUELLER  
HERMISTON FOODS, INC.  
2250 S. HIGHWAY 395  
HERMISTON, OR 97838

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.

**OPPORTUNITY FOR HEARING**

You are entitled to a hearing on this matter as provided by the Administrative Procedures Act (Chapter 183, Oregon Revised Statutes). If you want a hearing, you must file a written request for hearing directed to Ms. Juno Pandian, Manager, Well Construction and Compliance Section, Water Resources Department, 725 Summer Street NE, Suite A, Salem, Oregon 97301-1271. The request for hearing must state your grounds for disagreement with proposed action and must be received by the Department by 5:00 P.M. on September \_\_\_, 2007 (within 30 days of the date of service of this notice). You will be notified of the date set for hearing if a hearing is requested.

Failure to request a hearing by September \_\_\_, 2007, shall waive the right to hearing under ORS Chapter 183. You may choose not to request a hearing. If no request for hearing is received within the time set out above, or upon failure to appear at a hearing where one has been set, the existing agency file will be designated as the record in this case and the Department will issue a Final Order.

**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.
- 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) Hermiston Foods, Inc. is a senior water right holder in Subarea A.
- 2) Water Right Certificate 74667 is authorized under Permit G-5148, having a priority date of December 28, 1970, and authorizes irrigation of 215.3 acres.
- 3) The sustainable annual yield for Subarea A is 11,450 acre-feet.
- 4) In 2006, 11,450 acre-feet of water was allocated in Subarea A.
- 5) Flow meter and power meter data collected by Department staff indicate that 9,433 acre-feet of water was pumped from permitted wells in Subarea A in 2006.
- 6) The Subarea A allocation for 2008 is 11,450 acre-feet, the sustainable annual yield.
- 7) On May 31, 2007, the Department sent letters requesting water users within the Stage Gulch Critical Ground Water Area to submit their 2008 requests for the volume of water needed.
- 8) Hermiston Foods, Inc. filed a request for water use in 2008, Stage Gulch Critical Ground Water Area, Subarea A, authorized under Water Right Certificate 74667.
- 9) Hermiston Foods, Inc. requested 100 acre-feet for 2008, under Water Right Certificate 74667.
- 10) Flow meter and power meter records indicate that annual pumpage from the permitted well has varied. Less water was pumped in 2006 than in prior years. Therefore, the 2008 allocation is for 75 acre-feet.

11) The use of water is limited to the place of use described in attached Water Right Certificate 74667.

### DISCUSSION

Hermiston Foods, Inc. is a senior water right holder in Subarea A. The sustainable annual yield for Subarea A is 11,450 acre-feet. Flow meter and power meter records indicate that the permitted wells pumped 9,433 acre-feet of water in 2006. The allocation for Hermiston Foods, Inc. does not exceed the limits of the water right or the sustainable annual yield for Subarea A. Therefore, the 2008 allocation is for 75 acre-feet. This is consistent with OAR 690-507-0810.

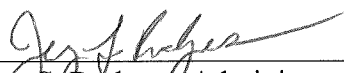
### CONCLUSIONS OF LAW

The allocation of ground water for the State Gulch Critical Ground Water Area for the year 2008 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 75 acre-feet of water is allocated to Hermiston Foods, Inc. for the year 2008 under Certificate 74667 for Subarea A of the Stage Gulch Critical Ground Water Area.

Dated at Salem, Oregon this 10<sup>TH</sup> day of August, 2007.

  
\_\_\_\_\_  
Jerry S. Rodgers, Administrator  
Technical Services Division

STATE OF OREGON  
COUNTY OF UMATILLA  
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

GLENN S. CHOWNING  
RT.1, BOX 1109  
HERMISTON, OR. 97838

confirms the right to use the waters of WELL NO. 2, a tributary of UMATILLA RIVER for SUPPLEMENTAL IRRIGATION of 215.3 acres.

This right was perfected under Permit G-5148. The date of priority is DECEMBER 28, 1970. The amount of water to which this right is entitled is limited to an amount of water actually beneficially used and shall not exceed 2.41 CUBIC FEET PER SECOND or its equivalent in case of rotation, measured at the point of diversion from the well.

The point of diversion is from a well located in the SW1/4 SE1/4, Section 18, T4N, R29E, W.M., 1730 feet South and 20 feet East from the Center, Section 18.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use to which this right is appurtenant is as follows:

20.7 acres SE1/4 SW1/4  
40.0 acres NE1/4 SE1/4  
38.4 acres NW1/4 SE1/4  
40.0 acres SW1/4 SE1/4  
39.0 acres SE1/4 SE1/4  
Section 18  
37.2 acres NE1/4 NW1/4  
Section 19  
Township 4 North, Range 29 East, W.M.

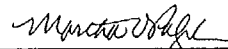
This certificate describes that portion of the water right confirmed by certificate 47197 State Record of Water Right Certificates, NOT modified by the provisions of an order of the Water Resources Director entered on 4-7, 1998, and recorded in Special Order Volume 52, page 348, approving a petition by Stanfield Irrigation District under ORS 541.329.

The issuance of this superseding certificate does not confirm the status of the water right in reference to ORS 540.610 pertaining to forfeiture or abandonment.

The right to the use of the water for the above purposes is restricted to beneficial use on the lands or place of use described and is subject to all other conditions and limitations contained in said permit.

affixed 4/7/98

Witness the signature of the Water Resources Director,



Martha O. Pagel, Director

Recorded in State Record of Water Right Certificates numbered 74667.  
HB3111.SC