

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

In the Matter of Butter Creek)	SUPERSEDING PROPOSED ORDER
Under Water Right Certificate 89382)	APPROVING ALLOCATION OF
2017 Annual Allocation of Groundwater,)	GROUNDWATER AND
Umatilla County, Oregon)	OPPORTUNITY FOR HEARING AND
)	CORRECTING ERROR IN PREVIOUS
)	PROPOSED ORDER DATED JULY 28,
)	2016

BUD RICH POTATO
ATTN: TROY BETZ
P.O. BOX 224
HERMISTON, OR 97838

Oregon Revised Statutes (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 groundwater area. Oregon Administrative Rule (OAR) Chapter 690, Division 507 implements the statutes and provides the Department procedures and criteria for the purpose of managing the groundwater resource and evaluating requests for allocation of groundwater.

AUTHORITY

- 1) Oregon Administrative Rule (OAR) 690-507-0610 states in pertinent part that the Director issued an order on August 18, 1986 declaring the Butter Creek Critical Groundwater Area. The order described the exterior boundaries and divided the area into six subareas for the purpose of managing the groundwater resource. Two additional subareas were created through rule adoption (OAR 690-507-0647). The response of groundwater levels to pumpage from each subarea is largely independent of pumpage within other subareas.
- 2) OAR 690-507-0630 states in pertinent part that the use of water from the basalt groundwater reservoir within the Butter Creek Critical Groundwater Area shall be limited to the sustainable annual yield, except as specified in OAR 690-507-0635 and 690-507-0670. Water from the basalt groundwater reservoir in the Butter Creek Critical Groundwater Area shall be used for irrigation only during the irrigation season. The irrigation season begins on the 15th of March and ends on the 1st of November. The Department shall not accept any new applications for appropriation of water from the basalt groundwater reservoir within the Butter Creek Critical Groundwater Area.
- 3) OAR 690-507-0640 states in pertinent part that appropriation of groundwater from the Butter Creek Critical Groundwater Area is prohibited unless the water user meets certain requirements. A water user authorized by OAR 690-507-0670 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 gauge in addition to the access port.
 - A Water user shall install and maintain a totalizing flow meter on each well authorized by OAR 690-507-0670. The meter shall meet the requirements of OAR 690-507-0645.
 - A water user shall record flow meter and power meter readings on a weekly basis at times when water is being used. The water user shall use forms provided by the Department and shall mail the readings to the Department in Salem by December 1st of the same year.
- 4) OAR 690-507-0650 states in pertinent part that each of the eight subareas in the Butter Creek Critical Groundwater Area shall be managed according to the sustainable annual yield within that subarea. The Department shall refine the sustainable annual yield value over time through the use of pumpage data and the response of groundwater levels. The initial sustainable annual yield for each of the eight subareas was calculated using data from the 1983 through the 1989 irrigation seasons and is listed below by subarea followed by the sustainable annual yield in Acre Feet:
- North, 250 Acre Feet;
 - Section 21, 28 Acre Feet;
 - Echo Junction, 1,260 Acre Feet;
 - Fourmile Canyon, 1,300 Acre Feet;
 - West, 5,670 Acre Feet;
 - East, 720 Acre Feet;
 - Pine City, 4,150 Acre Feet;
 - South, 1,000 Acre Feet.
- 5) OAR 690-507-0670 states in pertinent part that the method for distributing the sustainable annual yield from the basalt groundwater reservoir within each subarea in the Butter Creek Critical Groundwater Area is as follows:
- A water user who intends to pump water 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 distribution of groundwater 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;
 - 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. Bud Rich Potato is a water right holder in The North Subarea.
2. Certificate 89382 is for wells UMAT 2569 and UMAT 2594 that develop water from the Columbia River Basalts. The permitted diversion for UMAT 2569 is 0.171 cfs and for UMAT 2594 is 0.143 cfs for industrial and manufacturing use with a priority date of November 13, 1967.
3. The sustainable annual yield for The North Subarea is 250 acre-feet.
4. In 2015, 250 acre-feet of water was allocated in The North Subarea.
5. Flow meter and power meter data collected by Department staff indicate that 161.6 acre-feet of water was pumped from permitted wells in The North Subarea in 2015.
6. The North Subarea allocation for 2017 is 250 acre-feet.
7. On May 25, 2016, the Department sent letters asking water users within the Butter Creek Critical Ground Water Area to request the amount of water that they would need for the 2017 irrigation season.
8. Bud Rich Potato filed a request for water use in 2017, Butter Creek Critical Ground Water Area, North Subarea, authorized under Water Right Certificate 89382.
9. Bud Rich Potato requested 40 acre-feet for 2017 under Water Right Certificate 89382.
10. The 2017 allocation is for 40 acre-feet.
11. The use of water is limited to the place of use described in Water Right Certificate 89382.

DISCUSSION

Bud Rich Potato is a water user in The North Subarea. The sustainable annual yield for The North Subarea is 250 acre-feet. Flow meter and power meter records indicate that the permitted wells pumped 161.6 acre-feet of water in 2015. The North Subarea allocation for 2017 is 250 acre-feet. The allocation for Bud Rich Potato does not exceed the limits of the water right or the quantity allocated for The North Subarea. Therefore, the 2017 allocation is for 40 acre-feet. This is consistent with OAR 690-507-0670.

CONCLUSIONS OF LAW

The allocation of groundwater for the Butter Creek Critical Groundwater Area for the year 2017 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580, and Oregon Administrative Rules Chapter 690, Division 507.

PROPOSED ORDER

Now, THEREFORE, it is ORDERED that 40 acre-feet is allocated to Bud Rich Potato for the year 2017 under Water Right Certificate 89382 for The North Subarea of the Butter Creek Critical Ground Water Area.

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 Mr. Kristopher Byrd, 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 May 16, 2017 (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 May 16, 2017, 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.

FINAL ORDER

If you fail to request a hearing within 30 days of receipt of this notice, withdraw a hearing request, notify the Department or the Administrative Law Judge that you will not appear, or fail to appear at a scheduled hearing, this order shall become final. If this order becomes a Final Order by default, the Department designates its file on this matter as the record.

Dated at Salem, Oregon this day, April 17, 2017.

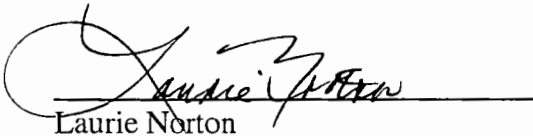


Brenda G. Bateman, Ph.D.
Administrator
Technical Services Division

CERTIFICATE OF SERVICE

I certify that on April 17, 2017, I mailed the attached SUPERSEDING PROPOSED ORDER APPROVING ALLOCATION OF GROUNDWATER AND OPPORTUNITY FOR HEARING AND CORRECTING ERROR IN PREVIOUS PROPOSED ORDER DATED JULY 28, 2016 by certified mail to:

Bud Rich Potato
Attn: Troy Betz
P.O. Box 224
Hermiston, OR 97838


Laurie Norton

Oregon Water Resources Department