BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of Butter Creek 2011 Annual Allocation of Groundwater, Under Water Right Certificate 32592, Umatilla County, Oregon	))))	PROPOSED ORDER NOT ALLOCATING GROUNDWATER AND OPPORTUNITY FOR HEARING

Kent and Shannon Madison
29299 Madison Road
Echo, OR 97826

Oregon Revised Statute (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 Rules (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 describes the exterior boundaries and divides the area into six subareas for the purpose of managing the groundwater resource. Two additional subareas were created through rule adoption (OAR 690-57-0647). 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. No new applications for appropriation of water from the basalt groundwater reservoir within the Butter Creek Critical Area shall be accepted.

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:

     - Request 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) Certificate 32592 is for well UMAT 1166 that develops water from the Columbia River Basalts. The permitted diversion is 0.96 cfs for 2.00 acres of primary irrigation and 199.30 acres of supplemental irrigation with a priority date of September 21, 1960.

2) Kent and Shannon Madison are water right holders in the Echo Junction Subarea.

3) On May 8, 2007, Hale Brothers, Inc., McCarty and the Department entered into a Water Allocation Agreement wherein the parties stipulated and agreed to specific allocation requests for Hale Brothers, Inc. and McCarty.

4) A Water User Agreement between all of the water users in the Echo Junction Subarea became effective on May 4, 2007. Hale Brothers Inc. and McCarty have agreed that their water use will not exceed the allocations ordered by the Department and have agreed that regardless of the seniority of their respective water rights, exceeding the allocation is subject to regulation pursuant to the Water User Agreement for the Echo Junction Subarea, dated May 4, 2007.

5) On June 3, 2010 the Department sent letters asking water users within the Butter Creek Critical Groundwater Area to request the amount of water that they would need for the 2011 irrigation season.

6) A request from Kent Madison was not received by the Department for 2011.

7) The sustainable annual yield for the Echo Junction Subarea is 1260 acre feet.

8) The sustainable annual yield for the Echo Junction Subarea has been fully allocated.

9) The allocation for the 2011 irrigation season for Water Rights Certificate 32592 is 0.0 acre-feet because the sustainable annual yield for the Echo Junction Subarea was fully allocated and no water was requested.

10) The allocation to Mr. Madison does not exceed the limits of the water right.

DISCUSSION

The Department considered the requests received as reflected in the Water Allocation Agreement, the sustainable annual yield for the subarea, the limits of the water right, the priority date, historical usage, reconstruction of the well, the pump, the distribution system, and the Water Allocation Agreement.

CONCLUSIONS OF LAW

The allocation of groundwater for the Butter Creek Critical Groundwater Area for the year 2011 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580, and Oregon Administrative Rules Chapter 690, Division 507.

The Water User Agreement for the Echo Junction Subarea, unless terminated, shall control distribution of water in lieu of any order the Department may issue pursuant to ORS 540.045(1)(a).

PROPOSED ORDER

Now, THEREFORE, it is ORDERED that no water be allocated to Mr. Madison under Certificate 32592 for the year 2011 from the Echo Junction Subarea of the Butter Creek Critical Groundwater Area.

Distribution of water shall be consistent with the terms of this Order and consistent with the terms of the Water User Agreement for the Echo Junction Subarea.

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, OR 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 August 25, 2010 (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.

You may be represented by legal counsel. Legal aid organizations may be able to assist you if you have limited financial resources. If you make a timely request for a hearing, you will be notified of the time and date of such hearing. The rights and procedures in a contested case will be provided to you upon receipt of a request for a formal contested case hearing.

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 26th day of July, 2010

Barry F. Norris, Administrator
Technical Services Division

RIGHT TO JUDICIAL REVIEW OF FINAL ORDER

You have the right to appeal a Final Order to the Oregon Court of Appeals to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day this Order becomes final.

CERTIFICATE OF SERVICE

I certify that on August 26, 2010, I mailed the attached PROPOSED ORDER NOT ALLOCATING GROUNDWATER by certified mail to:

Kent and Shannon Madison
29299 Madison Road
Echo, OR 97826

Arla Heare
Oregon Water Resources Department