

**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 Certificates 76263 and	)	AND OPPORTUNITY FOR HEARING
79993, Umatilla County, Oregon	)	

ROB COX  
C/O J. R. SIMPLOT CO.  
HINKLE JUNCTION, P. O. BOX 850  
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) J. R. Simplot Co. is a senior water right holder in Subarea A.
- 2) Certificates 76263 and 79993 were perfected under Permit G-5812, having a priority date of June 12, 1972, and authorize use of Sparks well, well 4 and well 6 for industrial use and irrigation of 241.6 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) J. R. Simplot Co. filed a request for water use in 2008, Stage Gulch Critical Ground Water Area, Subarea A, authorized under Water Right Certificates 76263 and 79993.
- 9) J. R. Simplot Co. requested 562.5 acre-feet from Sparks well, 209.05 acre-feet from well 4 and 399.05 acre-feet from well 6 for 2008, under Water Right Certificates 76263 and 79993.
- 10) Flow meter and power meter records indicate that annual pumpage from the permitted wells has varied. More water was pumped from the Sparks well in prior years than has been

allocated. Therefore, the 2007 allocation is for 667.5 acre-feet, being 562.5 acre-feet from Sparks well, 55.0 acre-feet from well 4 and 50.0 acre-feet from well 6.

- 11) The use of water is limited to the place of use described in attached Certificates 76263 and 79993.

### **DISCUSSION**

J. R. Simplot Co. is a senior water right holder in Subarea A. The sustainable annual yield for Subarea A is 11,450 acre-feet. Allocations are made to the municipal water users in Subarea A first. Then allocations are made to the senior water rights. Flow meter and power meter records indicate that the permitted wells pumped 9,433 acre-feet of water in 2006. The allocation for J. R. Simplot Co. does not exceed the limits of the water right or the sustainable annual yield for Subarea A. Therefore, the 2008 allocation is for 667.5 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 667.5 acre-feet of water is allocated to J. R. Simplot Co. for the year 2008 under Certificates 76263 and 79993 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

J.R. SIMPLOT COMPANY  
P.O. BOX 27  
BOISE, IDAHO 83707

confirms the right to use the waters of ONE WELL in the UMATILLA RIVER BASIN for IRRIGATION OF 226.1 ACRES.

This right was perfected under Permit G-5812. The date of priority is JUNE 12, 1972. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 2.83 CUBIC FEET PER SECOND or its equivalent in case of rotation, measured at the well.

The well is located as follows:

NW¼ SE¼, SECTION 34, T 3 N, R 28 E, WM; 1300 FEET NORTH AND 60 FEET WEST FROM THE SE CORNER, NW¼ SE¼, SECTION 34.

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 for each acre irrigated and shall be further limited to a diversion of not to exceed 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:

SW¼ NE¼	30.0 ACRES	NE¼ SW¼	8.0 ACRES
SE¼ NE¼	24.4 ACRES	NW¼ SW¼	30.1 ACRES
NW¼ NW¼	11.3 ACRES	SW¼ SW¼	2.4 ACRES
SW¼ NW¼	31.5 ACRES	NE¼ SE¼	33.6 ACRES
SE¼ NW¼	10.0 ACRES	NW¼ SE¼	38.0 ACRES
		SW¼ SE¼	4.2 ACRES
		SE¼ SE¼	2.6 ACRES

SECTION 34  
TOWNSHIP 3 NORTH, RANGE 28 EAST, W.M.

This certificate describes that portion of the water right confirmed by Certificate 51295, State Record of Water Right Certificates, NOT modified by the ~~provisions~~ <sup>AUG - 2 1999</sup> of an order of the Water Resources Director entered \_\_\_\_\_, approving Transfer Application 7197

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

The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described.

WITNESS the signature of the Water Resources Director,  
affixed                     AUG - 2 1999                    .

                    M. O. Pagel (for)                      
Martha O. Pagel, Director

Recorded in State Record of Water Right Certificates numbered 76263.

T-7197.LHN

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STATE OF OREGON

COUNTY OF UMATILLA

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

J. R. SIMPLOT COMPANY  
P.O. BOX 27  
BOISE, IDAHO 83707

confirms the right to use the waters of WELL NO.'S 4, 6 AND SPARKS WELL in the UMATILLA RIVER BASIN for INDUSTRIAL USE AND IRRIGATION OF 15.5 ACRES.

This right was perfected under Permit G-5812. The date of priority is JUNE 12, 1972. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 2.05 CUBIC FEET PER SECOND (CFS); BEING 1.86 CFS FROM WELLS NO.'S 4 AND 6 NOT TO EXCEED 445.8 ACRE-FEET PER YEAR FOR INDUSTRIAL USE AND 0.19 CFS FROM SPARKS WELL FOR IRRIGATION (IF AVAILABLE AT THE ORIGINAL POINT OF APPROPRIATION - SPARKS WELL) or its equivalent in case of rotation, measured at the wells.

The wells are located as follows:

SPARKS WELL - NW 1/4 SE 1/4, SECTION 34, TOWNSHIP 3 NORTH, RANGE 28 EAST, W.M.; 1300 FEET NORTH AND 60 FEET WEST FROM THE SE CORNER, NW 1/4 SE 1/4, SECTION 34;

WELL NO. 4 - SW 1/4 SE 1/4, SECTION 26, TOWNSHIP 4 NORTH, RANGE 28 EAST, W.M.; 600 FEET NORTH AND 220 FEET EAST FROM THE SOUTH 1/4 CORNER OF SECTION 26; AND

WELL NO. 6 - SW 1/4 SE 1/4, SECTION 26, TOWNSHIP 4 NORTH, RANGE 28 EAST, W.M.; 400 FEET NORTH AND 200 FEET EAST FROM THE SOUTH 1/4 CORNER OF SECTION 26.

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 for each acre irrigated and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year. The use of water for industrial use may be made at any time of the year.

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 of the order must be filed within the 60 days of the date of service.

T-7197.SB

Certificate Number 79993

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:

NW 1/4 NW 1/4	0.1 ACRE
SW 1/4 NW 1/4	7.9 ACRES
SE 1/4 NW 1/4	0.2 ACRE
NW 1/4 SW 1/4	7.3 ACRES

SECTION 34  
TOWNSHIP 3 NORTH, RANGE 28 EAST, W.M.

SW 1/4 SW 1/4 INDUSTRIAL USE  
SECTION 27  
TOWNSHIP 4 NORTH, RANGE 28 EAST, W.M.

The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described.

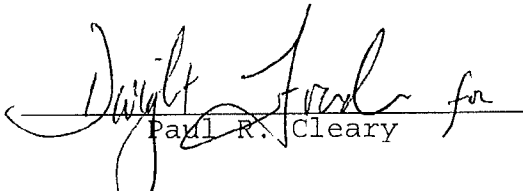
The water user shall install in-line flow meters or other suitable devices for measuring and recording the quantity of water used. The type and plans of the measuring devices must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

In the event of a request for a change in point of appropriation, an additional point of appropriation or repair of these wells, the quantity of water allowed herein together with any other right from these points of appropriation shall not exceed the capacity of the wells at the time of perfection of this right.

This certificate is issued to confirm a change in USE, PLACE OF USE AND POINT OF APPROPRIATION approved by an order of the Water Resources Director entered AUGUST 2, 1999, and together with Certificate 76263, supersedes Certificate 51295, State Record of Water Right Certificates.

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

WITNESS the signature of the Water Resources Director, affixed April 14, 2003.

  
Paul R. Cleary

Recorded in State Record of Water Right Certificate Number 79993.

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