

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

In the Matter of the 2023 Annual)	PROPOSED ORDER
Allocation of Groundwater in the)	NOT ALLOCATING GROUNDWATER
Butter Creek Critical Groundwater Area,)	AND OPPORTUNITY FOR HEARING
Pine City Subarea,)	
Under Water Right)	
Certificate 91185,)	
Umatilla County, Oregon)	

ARCUS, LLC
PO BOX 250
ECHO OR 97826

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

AUTHORITY

- 1) 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 690-507-0647). 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 690-507-0650(3) and 690-507-0670(7). 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:
 - a) 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 (OAR 690-507-0640(2)(a)).

- b) A water user may install a functioning airline with a pressure gauge in addition to the access port. The airline shall be calibrated and yield accurate data. The airline shall not enter the well through the access port. The airline shall be adequate to determine the water level at any time (OAR 690-507-0640(2)(b)).
 - c) 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 (OAR 690-507-0640(2)(c)).
 - d) 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 (OAR 690-507-0640(3)).
 - e) A water user shall report broken flow meters to the watermaster in Pendleton within 48 hours after determining that the flow meter is broken. A water user shall not appropriate for more than 30 days without an operating flow meter. While the flow meter is broken, the water user shall record daily the hours the pump operates, the power meter reading and the time the power meter was read. The water user shall mail the data to the Department in Salem within one week of the installation of the repaired or replacement flow meter. The data shall include a statement of the initial reading on the newly installed flow meter and the current power meter reading. The water user shall notify the watermaster within 48 hours of installing the repaired or replacement flow meter (OAR 690-507-0640(4)).
 - f) A water user shall notify the Department prior to commencing any repair or modification work on a pump or well. A water user shall mail a description of the repair or modification work to the Department within ten days of the completion of the repair or modification (OAR 690-507-0640(5)).
- 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) 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 (OAR 690-507-0670(1)(a)).
- b) The distribution of groundwater shall be based on the priority dates of the water rights within the individual subarea (OAR 690-507-0670(1)(b)).
- c) 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:
 - i. Request for allocations received;
 - ii. The sustainable annual yield;
 - iii. The limits of the groundwater rights;
 - iv. The relative dates of priority;
 - v. Historical usage;
 - vi. Whether or not a water user is physically capable of pumping and putting to a beneficial use the quantity requested; and
 - vii. Any other factors deemed appropriate by the Department (OAR 690-507-0670(1)(c)).
- d) 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 (OAR 690-507-0670(2)).
- e) 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 (OAR 690-507-0670(3)).
- f) 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 (OAR 690-507-0670(4)).
- g) The method of requesting and distributing water may not apply if a voluntary agreement among groundwater users in any subarea is reached. The Director may approve the agreement if it is consistent with ORS 537.730 to 537.740 and the requirements of these rules (Division 507). The Department shall be a party to any agreement reached (OAR 690-507-0670(5)).
- h) Any agreement approved by the Director may be terminated by the lapse of time as provided in the agreement, by consent of the parties to the agreement or by the Director, if the Director finds, after investigation and a public hearing upon adequate notice, that:
 - i. The agreement is not being substantially complied with by the parties thereto;
 - ii. Changed conditions have made the continuance of the agreement a detriment to the public welfare, safety and health or contrary in any particular to the intent, purposes and requirements of ORS 537.505 to 537.795 or OAR Division 690, Chapter 507; or
 - iii. That the agreement is ineffective in achieving reasonably stable water levels (OAR 690-507-0670(6)).

FINDINGS OF FACTS

1. ARCUS, LLC is a water user in the Pine City Subarea of the Butter Creek CGWA.
2. Certificate 91185 is a valid water right in the Pine City Subarea with a priority date of October 14, 1957.
3. For 2023, the sustainable annual yield in the Pine City Subarea is 4150.00 acre-feet.
4. In 2021, 4150.00 acre-feet of water was allocated for the Pine City Subarea.
5. In 2021, 3941.62 acre-feet of water was pumped in the Pine City Subarea.
6. For 2023, 4150.00 acre-feet is allocated for the Pine City Subarea. This is a reduction of 0 acre-feet from the sustainable annual yield based on the pumpage that exceeded the sustainable annual yield in 2021.
7. In June, 2022, the Department sent letters asking water users to request the amount of water they would need for the 2023 irrigation season, per OAR 690-507-670(1)(a).
8. For 2023, the Department received allocation requests totaling 932.4 acre-feet for the Pine City Subarea subarea.
9. The 2023 annual allocation request under Water Right Certificate 91185 is acre-feet.

DISCUSSION

The Department considered all of the factors described in OAR 690-507-0670 (Distribution of Sustainable Annual Yield) to distribute the total allowable allocation of water for the Pine City Subarea in 2023. The attached table describes the past water use and the 2023 allocation of water for the Pine City Subarea.

CONCLUSIONS OF LAW

The allocation of groundwater for the Butter Creek Critical Groundwater Area for the year 2023 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 under Certificate 91185 for the year 2023 from the Pine City Subarea of the Butter Creek Critical Groundwater Area to be used under the terms of Certificate 91185.

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, 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 the proposed action and must be received by the Department by 5:00 P.M. on August 28, 2022 (within 30 days of the date of service of this notice). Failure to request a hearing by August 28, 2022 shall waive the right to hearing under ORS Chapter 183. If you request a hearing, you will be notified of the date set for hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing. Any hearing will be held by an administrative law judge from the Office of Administrative Hearings, as required by ORS 183.635. You have a right to be represented by an attorney. Legal aid organizations may be able to assist a party with limited financial resources.

This Proposed Order will become a Final Order on Default on August 28, 2022 (30 days after the date of service of this notice) if:

1. You do not request a hearing by the date and time set out above; or
2. You request a hearing and then withdraw your request for hearing; or
3. You notify the agency or the administrative law judge that you will not appear at a scheduled hearing; or
4. You fail to appear at a hearing at the date and time scheduled for a hearing.

In the event of a Final Order on Default, the existing agency file, including materials you submit, will be designated as the record for the purpose of proving a prima facie case.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS

Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

Dated at Salem, Oregon this July 29, 2022



Justin Iverson
Groundwater Section Manager
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 pursuant 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. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

CERTIFICATE OF SERVICE

I certify that on July 29, 2022, I mailed the attached PROPOSED ORDER NOT ALLOCATING GROUNDWATER by certified mail to:

ARCUS, LLC
PO BOX 250
ECHO OR 97826



Kristi Seyfried
Oregon Water Resources Department

Butter Creek Critical Groundwater Area, Pine City Subarea
Proposed Allocations by Well and Water Right for 2023
Sustainable Annual Yield: 4150.00 acre-feet
Total Allocation: 4150.00 acre-feet

Owner Name	Water Right	Priority Date	Logid	Water	Water	Water	Requested Allocation (af)	Proposed Allocation (af)
				Use (af) 2019	Use (af) 2020	Use (af) 2021		
			UMAT 467	0.00	0.00	0.00		0.00
BUTTER CREEK RANCHES LLC	Claim:GR 4142 *	12/31/1925		Water Right Total:				0.00
			MORR 466	0.00	0.00	0.00		0.00
BUTTER CREEK RANCHES LLC	Cert:26072 OR *	11/14/1952		Water Right Total:				0.00
			MORR 50409	0.00	0.00	0.00	1.00	1.00
ROBERT J KILKENNY TRUST	Cert:56513 (T 5904 RR) *	12/17/1952		Water Right Total:			1.00	1.00
			MORR 426	0.00	0.00	0.00		1.00
FOURMILE LAND COMPANY	Cert:82664 CF *	12/17/1952		Water Right Total:				1.00
			MORR 566	0.00	0.00	0.00		1.00
STARVATION FARMS	Cert:57734 CF *	06/24/1954		Water Right Total:				1.00
			MORR 476	111.13	113.17	35.26	368.40	368.40
VEY RANCH	Cert:80766 (RR) *	10/14/1957		Water Right Total:			368.40	368.40
			MORR 50481	165.25	169.60	281.90		0.00
ARCUS, LLC	Cert:91185 CF *	10/14/1957		Water Right Total:				0.00
			MORR 465	0.00	0.00	0.00		0.00
BUTTER CREEK RANCHES LLC	Cert:34283 OR *	02/05/1962		Water Right Total:				0.00
			MORR 432	296.92	377.47	528.63		0.00
TURNER RANCH INC	Cert:51157 (T 5016 RR) *	04/24/1963		Water Right Total:				0.00
			MORR 432	296.92	377.47	528.63		230.00
TURNER RANCH INC	Cert:75648 CF *	04/24/1963		Water Right Total:				230.00
			MORR 454	121.41	128.32	153.75		132.00
BUTTER CREEK RANCHES LLC	Cert:34284 OR *	11/08/1963		Water Right Total:				132.00
			MORR 50481	165.25	169.60	281.90	300.00	300.00
ARCUS, LLC	Cert:80767 (RR) *	12/17/1964		Water Right Total:			300.00	300.00
			MORR 51070	40.02	39.36	47.71	63.00	63.00
JEFF COELHO	Cert:88457 CF *	12/17/1964		Water Right Total:			63.00	63.00
			MORR 50481	165.25	169.60	281.90		0.00
ARCUS, LLC	Cert:91182 CF *	12/17/1964		Water Right Total:				0.00
			MORR 454	121.41	128.32	153.75		73.00
BUTTER CREEK RANCHES LLC	Cert:38714 OR *	04/01/1966		Water Right Total:				73.00
			MORR 463	57.32	133.88	112.53		100.00
MITCH ASHBECK	Cert:42527 OR *	05/27/1966		Water Right Total:				100.00
			MORR 419	0.00	0.00	0.00		0.00
WJ DOHERTY	Cert:38473 OR *	03/13/1967		Water Right Total:				0.00
			MORR 471	29.28	101.67	130.56		110.00

**Butter Creek Critical Groundwater Area, Pine City Subarea
Proposed Allocations by Well and Water Right for 2023
Sustainable Annual Yield: 4150.00 acre-feet
Total Allocation: 4150.00 acre-feet**

Owner Name	Water Right	Priority Date	Logid	Water Use (af) 2019	Water Use (af) 2020	Water Use (af) 2021	Requested Allocation (af)	Proposed Allocation (af)
HEALY RANCH LLC	Cert:42428 OR *	04/23/1968		Water Right Total:				110.00
			MORR 482	56.21	90.57	126.03		200.00
KATHRYN HEALY THORNE	Cert:42670 OR *	07/10/1968		Water Right Total:				200.00
			MORR 473	71.19	176.40	158.95	200.00	200.00
GENERATION FARM	Cert:42431 OR *	07/24/1968		Water Right Total:			200.00	200.00
			MORR 432	296.92	377.47	528.63		0.00
			MORR 434	574.27	538.04	708.50		350.00
TURNER RANCH INC	Cert:51158 (T 5017 RR) *	07/25/1968		Water Right Total:				350.00
			MORR 432	296.92	377.47	528.63		0.00
			MORR 434	574.27	538.04	708.50		450.00
TURNER RANCH INC	Cert:75649 CF *	07/25/1968		Water Right Total:				450.00
			MORR 485	0.00	0.00	0.00		0.00
KATHRYN HEALY THORNE	Cert:42671 OR *	07/29/1968		Water Right Total:				0.00
			MORR 565	910.80	661.80	1,088.30		571.60
			MORR 51534	487.80	1,064.20	569.50		1,000.00
CURT PERKINS	Cert:42330 OR *	10/07/1968		Water Right Total:				1,571.60
			MORR 481	0.00	0.00	0.00		0.00
LAZY K LAND LLC	Cert:42672 OR *	09/16/1969		Water Right Total:				0.00
			MORR 416	0.00	0.00	0.00		0.00
WJ DOHERTY	Cert:62326 OR *	06/24/1970		Water Right Total:				0.00
Pine City Subarea Total:				2,921.61	3,594.47	3,941.62	932.40	4,151.00