

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

In the Matter of the 2019 Annual	)	SUPERSEDING PROPOSED ORDER
Allocation of Groundwater in the Stage	)	ALLOCATING GROUNDWATER AND
Gulch Critical Groundwater Area,	)	OPPORTUNITY FOR HEARING.
Subarea F,	)	SUPERSEDES PREVIOUS PROPOSED
Under Water Right	)	ORDER DATED SEPTEMBER 18, 2018
Certificate 76307,	)	
Umatilla County, Oregon	)	

BRIAN MONTECUCCO  
MONTECUCCO FARMS LLC  
4015 N. LOCUST  
CANBY, OR 97013

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) Oregon Administrative Rule (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.
- 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:
  - 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 690-507-0780(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 690-507-0780(2)(b)).
  - c) 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 (OAR 690-507-0780(2)(c)).
  - d) If a flow meter is required, 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 1<sup>st</sup> of the same year. The Department may accept other power-use information from a water user in lieu of weekly power meter readings. Acceptable power-use information may include, but is not limited to, copies of monthly statements provided by the water user or directly by the utility (OAR 690-507-0780(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 60 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 readings 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 690-507-0780(4)).
  - f) A water user shall notify the Department in Salem or the watermaster in Pendleton prior to commencing any repairs or modification work on a pump or well. If emergency repairs are required at times that preclude prior Department notification, a water user shall notify the Department by 5 p.m. on the first business day following commencement of the repair work. 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 690-507-0780(5)).
- 4) OAR 690-507-0790 states in pertinent part that each of the subareas in the Stage Gulch 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 seven managed subareas in the Stage Gulch Critical Groundwater Area was determined using data from the 1980 through 1989 irrigation seasons and is listed below:
- |   |        |           |
|---|--------|-----------|
| A | 11,450 | Acre Feet |
| B | 200    | Acre Feet |
| C | 400    | Acre Feet |
| D | 3,250  | Acre Feet |
| F | 200    | Acre Feet |
| G | 2,750  | Acre Feet |

H        8,850    Acre Feet

- 5) 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) 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 1<sup>st</sup> of the preceding year on forms provided by the Department (OAR 690-507-0810(1)(a)).
  - b) 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 1<sup>st</sup> (OAR 690-507-0810(1)(b)).
  - c) 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 (OAR 690-507-0810(1)(c)).
  - d) 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. Requests for allocations received;
    - ii. The sustainable annual yield;
    - iii. The limits of the groundwater rights;
    - iv. The relative dates of priority, with preference given without regard to priority date for municipal use;
    - 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 690-507-0810(1)(d)).
  - e) 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 690-507-0810(2)).
  - f) 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 690-507-0810(3)).
  - g) 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 690-507-0810 (4)).
  - h) 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 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 690-507-0810(5)).

- i) 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, purpose 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 690-507-0810(6)).

### **FINDINGS OF FACT**

1. MONTECUCCO FARMS is a water user in Subarea F of the Stage Gulch CGWA.
2. Certificate 76307 is a valid water right in Subarea F with a priority date of April 27, 1978.
3. For 2019, the sustainable annual yield in Subarea F is 200.00 acre-feet of water.
4. In 2017, 200.00 acre-feet of water was allocated in Subarea F.
5. In 2017, 228.71 acre-feet of water was pumped in Subarea F.
6. For 2019, 171.29 acre-feet of water is allocated for Subarea F. This is a reduction of 28.71 acre-feet from the sustainable annual yield based on the pumpage that exceeded the sustainable annual yield in 2017.
7. On May 24, 2018, the Department sent letters reminding groundwater certificate holders within the Stage Gulch Critical Groundwater Area to submit their 2019 requests for allocation of groundwater no later than July 1, 2018, per OAR 690-507-0810(1)(a).
8. For 2019, the Department received allocation requests totaling 200.00 acre-feet of water for Subarea F.
9. The 2019 annual allocation request under Water Right Certificate 76307 is 171.29 acre-feet.

### **DISCUSSION**

The Department considered all of the factors described in OAR 690-507-0810 (Distribution of Sustainable Annual Yield) to distribute the total allocation of water for the Subarea F in 2019. The attached table describes the past water use and the 2019 allocations of water for the Subarea F.

## **CONCLUSIONS OF LAW**

The allocation of groundwater for the Stage Gulch Critical Groundwater Area for the year 2019 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 171.29 acre-feet of water is allocated to MONTECUCCO FARMS for the year 2019 from Subarea F of the Stage Gulch Critical Groundwater Area to be used under the terms of Certificate 76307.

## **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 proposed action and must be received by the Department by 5:00 P.M. on October 18, 2018 (within 30 days of the date of service of this notice). Failure to request a hearing by October 18, 2018, 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 October 18, 2018 (30 days after the date of service of this notice) if:

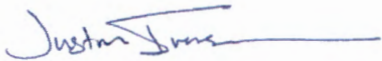
1. You do not request a hearing by the date and time set out above; or
2. You request a hearing and then withdraw your request for hearing; or
3. You notify the agency of the administrative law judge that you will not appear at a scheduled hearing; or
4. You fail to appear at a hearing at the date and 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 providing 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 800-452-7500, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

Dated at Salem, Oregon this SEPTEMBER 18, 2018.



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Justin Iverson  
Groundwater Section Manager  
Technical Services Division

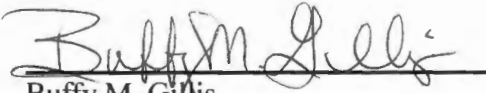
## **RIGHT TO JUDICIAL REVIEW OF FINAL ORDER**

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 SEPTEMBER 18, 2018, I mailed the attached SUPERSEDING PROPOSED ORDER ALLOCATING GROUNDWATER AND OPPORTUNITY FOR HEARING. SUPERSEDES PREVIOUS PROPOSED ORDER DATED SEPTEMBER 18, 2018 by certified mail to:

BRIAN MONTECUCCO  
MONTECUCCO FARMS LLC  
4015 N. LOCUST  
CANBY, OR 97013

  
Buffy M. Gillis  
Oregon Water Resources Department



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

In the Matter of the 2019 Annual	)	WITHDRAWAL OF PROPOSED
Allocation of Groundwater in the Stage	)	ORDER NOT ALLOCATING
Gulch Critical Groundwater Area,	)	GROUNDWATER AND
Subarea F,	)	OPPORTUNITY FOR HEARING
Under Water Right	)	
Certificate 76307,	)	
Umatilla County, Oregon	)	

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**AUTHORITY**

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 Water Resources Department (Department) procedures and criteria for the purpose of managing the groundwater resource and evaluating requests for allocation of groundwater.

**FINDINGS OF FACT**

1. On May 24, 2018, the Department sent letters reminding groundwater certificate holders within the Stage Gulch Critical Groundwater Area to submit their 2019 requests for allocation of groundwater no later than July 1, 2018.
2. As of July 1, 2018, MONTECUCCO FARMS did not file a 2019 request for allocation of groundwater under Certificate 76307 from Subarea F of the Stage Gulch Critical Groundwater Area.
3. On July 19, 2018, the Department issued a Proposed Order allocating 0 acre-feet of groundwater to MONTECUCCO FARMS for the year 2019 under Certificate 76307 from Subarea F of the Stage Gulch Critical Groundwater Area.
4. On August 6, 2018, MONTECUCCO FARMS contacted the Department regarding the Proposed Order. MONTECUCCO FARMS requests that the Department reconsider the Proposed Order, withdraw it, and issue a Superseding Order approving allocation of groundwater for Certificate 76307.
5. Upon review of the July 19, 2018 Proposed Order issued to MONTECUCCO FARMS for the year 2019 under Certificate 76307 from Subarea F of the Stage Gulch Critical Groundwater Area, the Department determined that it would reconsider the July 19, 2018 Proposed Order. In order to resolve the matter, the Department is withdrawing the July

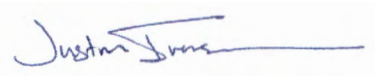


19, 2018 Proposed Order and will issue a Superseding Proposed Order Allocating Groundwater and Opportunity for Hearing.

#### **DEPARTMENT'S ACTIONS**

The Proposed Order Not Allocating Groundwater and Opportunity for Hearing issued on July 19, 2018, to MONTECUCCO FARMS for the year 2019 under Certificate 76307 from Subarea F of the Stage Gulch Critical Groundwater Area is withdrawn and is of no further force or effect. If you have any questions please contact Aurora Bouchier at 503-986-0841.

Dated at Salem, Oregon this September 18, 2018.

A handwritten signature in blue ink, appearing to read "Justin Iverson", is written over a light blue rectangular background.

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Justin Iverson  
Groundwater Section Manager  
Technical Services Division