

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

|   |   |                             |
|---|---|-----------------------------|
| In the Matter of the 2021 Annual        | ) | PROPOSED ORDER              |
| Allocation of Groundwater in the        | ) | NOT ALLOCATING GROUNDWATER  |
| Butter Creek Critical Groundwater Area, | ) | AND OPPORTUNITY FOR HEARING |
| Echo Junction Subarea,                  | ) |                             |
| Under Water Right                       | ) |                             |
| Certificate 75130,                      | ) |                             |
| Umatilla County, Oregon                 | ) |                             |

BOB LEVY  
WINDY RIVER LLC  
1000 HWY 395 SOUTH #423  
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 (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. WINDY RIVER LLC is a water user in the Echo Junction Subarea of the Butter Creek CGWA.
2. Certificate 75130 is a valid water right in the Echo Junction Subarea with a priority date of December 18, 1967.
3. For 2021, the sustainable annual yield in the Echo Junction Subarea is 1260.00 acre-feet.
4. In 2019, 1260.00 acre-feet of water was allocated for the Echo Junction Subarea.
5. In 2019, 1313.75 acre-feet of water was pumped in the Echo Junction Subarea.
6. For 2021, 1206.25 acre-feet is allocated for the Echo Junction Subarea. This is a reduction of 53.75 acre-feet from the sustainable annual yield based on the pumpage that exceeded the sustainable annual yield in 2019.
7. On May 8, 2007, Hale Brothers, Inc., Michael and Jane McCarty, and the Oregon Water Resources Department entered into a Water Allocation Agreement wherein the parties stipulated and agreed to specific allocation requests for Hale Brothers, Inc. and Michael and Jane McCarty.
8. 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 Michael and Jane McCarty, being the two most senior water rights holders in the subarea, 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.
9. In June, 2020, the Department sent letters asking water users to request the amount of water they would need for the 2021 irrigation season, per OAR 690-507-670(1)(a).
10. For 2021, the Department received allocation requests totaling 1760 acre-feet for the Echo Junction Subarea subarea.
11. The 2021 annual allocation request under Water Right Certificate 75130 is 250 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 Echo Junction Subarea in 2021. The attached table describes the past water use and the 2021 allocation of water for the Echo Junction Subarea.

## **CONCLUSIONS OF LAW**

The allocation of groundwater for the Butter Creek Critical Groundwater Area for the year 2021 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).

## **ORDER**

Now, THEREFORE, it is ORDERED that 0 acre-feet of water is allocated under Certificate 75130 for the year 2021 from the Echo Junction Subarea of the Butter Creek Critical Groundwater Area to be used under the terms of Certificate 75130.

### **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 27, 2020 (within 30 days of the date of service of this notice). Failure to request a hearing by August 27, 2020 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 27, 2020 (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 28, 2020



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

**CERTIFICATE OF SERVICE**

I certify that on July 28, 2020, I mailed the attached PROPOSED ORDER NOT ALLOCATING GROUNDWATER by certified mail to:

BOB LEVY  
WINDY RIVER LLC  
1000 HWY 395 SOUTH #423  
HERMISTON OR 97838



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Buffy M. Gillis  
Oregon Water Resources Department

**Butter Creek Critical Groundwater Area, Echo Junction Subarea  
Proposed Allocations by Well and Water Right for 2021  
Sustainable Annual Yield: 1260.00 acre-feet  
Total Allocation: 1206.25 acre-feet**

| Owner Name                          | Water Right               | Priority Date | Logid     | UMAT | Water Use (af) 2017       | Water Use (af) 2018 | Water Use (af) 2019 | Requested Allocation (af) | Proposed Allocation (af) |
|-------------------------------------|---------------------------|---------------|-----------|------|---------------------------|---------------------|---------------------|---------------------------|--------------------------|
| MICHAEL MCCARTY                     | Cert:68349 (RR)<br>CR *   | 03/04/1952    | UMAT 456  | 456  | 49.80                     | 178.00              | 378.00              | 272.00                    | 272.00                   |
|                                     |                           |               |           |      | <b>Water Right Total:</b> |                     |                     | <b>272.00</b>             | <b>272.00</b>            |
| MICHAEL MCCARTY                     | Cert:67876 (RR) *         | 04/09/1953    | UMAT 456  | 456  | 49.80                     | 178.00              | 378.00              | 106.00                    | 106.00                   |
|                                     |                           |               |           |      | <b>Water Right Total:</b> |                     |                     | <b>106.00</b>             | <b>106.00</b>            |
|                                     |                           |               | UMAT 440  | 440  | 0.00                      | 0.00                | 0.00                |                           | 0.00                     |
|                                     |                           |               | UMAT 441  | 441  | 425.93                    | 569.66              | 463.30              | 420.00                    | 420.00                   |
|                                     |                           |               | UMAT 450  | 450  | 277.64                    | 263.46              | 209.21              |                           | 0.00                     |
|                                     |                           |               | UMAT 472  | 472  | 74.10                     | 275.88              | 263.24              |                           | 0.00                     |
| HALE BROS INC                       | Cert:81408 CF *           | 01/21/1957    |           |      | <b>Water Right Total:</b> |                     |                     | <b>420.00</b>             | <b>420.00</b>            |
|                                     |                           |               | UMAT 441  | 441  | 425.93                    | 569.66              | 463.30              |                           | 0.00                     |
|                                     |                           |               | UMAT 450  | 450  | 277.64                    | 263.46              | 209.21              | 329.00                    | 329.00                   |
|                                     |                           |               | UMAT 472  | 472  | 74.10                     | 275.88              | 263.24              |                           | 0.00                     |
| HALE BROS INC                       | Cert:81409 CF *           | 01/21/1959    |           |      | <b>Water Right Total:</b> |                     |                     | <b>329.00</b>             | <b>329.00</b>            |
|                                     |                           |               | UMAT 1204 | 1204 | 0.00                      | 0.00                | 0.00                |                           | 0.00                     |
| J R SIMPLOT                         | Cert:32696 OR *           | 09/02/1960    |           |      | <b>Water Right Total:</b> |                     |                     |                           | <b>0.00</b>              |
|                                     |                           |               | UMAT 1166 | 1166 | 0.00                      | 0.00                | 0.00                |                           | 0.00                     |
| KENT MADISON                        | Cert:32592 OR *           | 09/21/1960    |           |      | <b>Water Right Total:</b> |                     |                     |                           | <b>0.00</b>              |
|                                     |                           |               | UMAT 461  | 461  | 0.00                      | 0.00                | 0.00                |                           | 0.00                     |
| MICHAEL MCCARTY                     | Cert:38847 OR *           | 01/13/1967    |           |      | <b>Water Right Total:</b> |                     |                     |                           | <b>0.00</b>              |
|                                     |                           |               | UMAT 1220 | 1220 | 0.00                      | 0.00                | 0.00                | 250.00                    | 0.00                     |
| WINDY RIVER LLC                     | Cert:75131 CF *           | 03/21/1967    |           |      | <b>Water Right Total:</b> |                     |                     | <b>250.00</b>             | <b>0.00</b>              |
|                                     |                           |               | UMAT 1183 | 1183 | 0.00                      | 0.00                | 0.00                |                           | 0.00                     |
|                                     |                           |               | UMAT 1203 | 1203 | 0.00                      | 0.00                | 0.00                |                           | 0.00                     |
| J R SIMPLOT                         | Cert:76726 CF *           | 05/24/1967    |           |      | <b>Water Right Total:</b> |                     |                     |                           | <b>0.00</b>              |
|                                     |                           |               | UMAT 1183 | 1183 | 0.00                      | 0.00                | 0.00                |                           | 0.00                     |
|                                     |                           |               | UMAT 1203 | 1203 | 0.00                      | 0.00                | 0.00                |                           | 0.00                     |
| J R SIMPLOT                         | Cert:93580 (T 12662 RR) * | 05/24/1967    |           |      | <b>Water Right Total:</b> |                     |                     |                           | <b>0.00</b>              |
|                                     |                           |               | UMAT 1183 | 1183 | 0.00                      | 0.00                | 0.00                |                           | 0.00                     |
| J R SIMPLOT                         | Cert:94695 CF *           | 05/24/1967    |           |      | <b>Water Right Total:</b> |                     |                     |                           | <b>0.00</b>              |
|                                     |                           |               | UMAT 1219 | 1219 | 0.00                      | 0.00                | 0.00                | 250.00                    | 0.00                     |
| WINDY RIVER LLC                     | Cert:75130 CF *           | 12/18/1967    |           |      | <b>Water Right Total:</b> |                     |                     | <b>250.00</b>             | <b>0.00</b>              |
|                                     |                           |               | UMAT 472  | 472  | 74.10                     | 275.88              | 263.24              | 133.00                    | 79.25                    |
| FARMLAND RESERVE INC                | Cert:44654 OR *           | 09/03/1968    |           |      | <b>Water Right Total:</b> |                     |                     | <b>133.00</b>             | <b>79.25</b>             |
| <b>Echo Junction Subarea Total:</b> |                           |               |           |      | <b>827.47</b>             | <b>1,287.00</b>     | <b>1,313.75</b>     | <b>1,760.00</b>           | <b>1,206.25</b>          |