

- 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 each of the eight subareas in the Butter Creek Critical Ground Water 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 ground water 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 ground water reservoir within each subarea in the Butter Creek Critical Ground Water 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 ground water shall be based on the priority dates of the water rights within the individual subarea.

- In determining the amount of ground water 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 ground water 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 81409 is for well UMAT 450 that develops water from the Columbia River Basalts. The permitted diversion is 2.50 cfs for 54.50 acres of primary irrigation and 274.00 acres of supplemental irrigation with a priority date of January 21, 1959.
- 2) The Hale Brothers are a senior water right holder 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 4, 2008 the Department sent letters asking water users within the Butter Creek Critical Ground Water Area to request the amount of water that they would need for the 2009 irrigation season.
- 6) A request from Hale Brothers, Inc was received by the Department on July 31, 2008.
- 7) Based on the 2009 request, Hale Brothers' water needs for the 2009 irrigation season are 360.0 acre feet under Water Right Certificate 81409.
- 8) The sustainable annual yield (SAY) for the Echo Junction Subarea is 1260 acre feet.
- 9) The annual pumpage for the Echo Junction Subarea for 2007 exceeded the SAY by 11.0 acre feet. The SAY for 2009 is reduced to 1249 acre feet.
- 10) The 360.0 acre feet of water requested for the 2009 irrigation season does not exceed the limits of the Hale Brothers' Water Right Certificate 81409.
- 11) The sustainable annual yield for the Echo Junction Subarea has not been allocated.
- 12) The allocation for the 2009 irrigation season for Water Right Certificate 81409 was 360.0 acre feet as requested by Hale Brothers, Inc.
- 13) The allocation to the Hale Brothers' does not exceed the limits of the water right.
- 14) The use of water is limited to the place of use described in attached Certificate 81409.
- 15) On September 8, 2008, a protest and request for hearing on the Department's Proposed Order Approving Allocation of Ground Water and Opportunity for Hearing under Water Right Certificate 81409 was received at the offices of the Oregon Water Resources Department.
- 16) The amount requested by the Hales under Certificates 81408 and 81409 for 2009 irrigation season was less than the Water User Agreement allowed (819 acre feet as opposed to 882 acre feet).
- 17) A junior water user was allocated 52 acre feet for the 2009 irrigation season under Certificate 32592 as a result of less water being allocated to the Hales under Certificates 81408 and 81409. Certificates 81408 and 81409 are held by the Hales.
- 18) Reallocation of the 52 acre feet to the Hales under Certificates 81408 and 81409 would result in no water being allocated to Certificate 32592 for the 2009 irrigation season.
- 19) A letter was received from Madison Farms on September 29, 2008 indicating that Mr. Madison has no plans to challenge the orders reallocating ground water in the Echo Junction Subarea for the 2009 irrigation season.
- 20) The allocation for the 2009 irrigation season for Water Right Certificate 81409 is 388.0 acre feet reflecting the reallocation of ground water in the Echo Junction Subarea as a result of the protest and request for hearing.

DISCUSSION

The Department considered the request received, the allocation 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, and the Water Allocation Agreement.

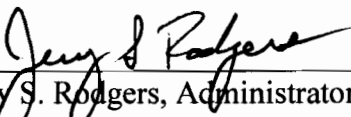
CONCLUSIONS OF LAW

- 1) The allocation of ground water for the Butter Creek Critical Ground Water Area for the year 2009 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580, and Oregon Administrative Rules Chapter 690, Division 507.
- 2) 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 388.0 acre-feet of water be allocated to the Hale Brothers under Certificate 81409 for the year 2009 from the Echo Junction Subarea of the Butter Creek Critical Ground Water Area.

Dated at Salem, Oregon this 28th day of October, 2008.



Jerry S. Rodgers, Administrator
Technical Services Division

Appeal Rights

You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the date of service of this Order. If this Order was personally delivered to you, the date of service is the day you received the Order. If this Order was mailed to you, the date of service is the day it was mailed. Judicial review, pursuant to the provisions of ORS 536.075 and ORS 183.482, is to the Court of Appeals. 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 October 28, 2008, I mailed the attached FINAL ORDER APPROVING ALLOCATION OF GROUND WATER by certified mail to:

Hale Brothers, INC.
P.O. Box 110
Hermiston, OR 97838

Heath Curtiss
Stoel Rives
900 SW Fifth Ave.,
Portland, OR 97204

A handwritten signature in cursive script that reads "Marc A. Norton". The signature is written in black ink and is positioned above a solid horizontal line.

Marc A. Norton
Oregon Water Resources Department