

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

In the Matter of Stage Gulch)	PROPOSED ORDER APPROVING
2011 Annual Allocation of Groundwater,)	ALLOCATION OF GROUNDWATER
Under Water Right Certificate 74667,)	AND OPPORTUNITY FOR HEARING
Umatilla County, Oregon)	

STEVE MUELLER c/o HERMISTON FOODS, INC.
2250 S. HIGHWAY 395
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 groundwater area. OAR Chapter 690, Division 507 implements the statutes 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 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 groundwater 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) Hermiston Foods, Inc. is a water right holder in Subarea A.
- 2) Water Right Certificate 74667 is authorized under Permit G-5148, having a priority date of December 28, 1970, and authorizes irrigation of 215.3 acres.
- 3) The sustainable annual yield for Subarea A is 11,450 acre-feet.
- 4) In 2009, 10,475.3 acre-feet of water was allocated in Subarea A.
- 5) Flow meter and power meter data collected by Department staff indicate that 9743 acre-feet of water was pumped from permitted wells in Subarea A in 2009.
- 6) The Subarea A allocation for 2011 is 11,450 acre-feet.
- 7) On May 5, 2010, the Department sent letters requesting water users within the Stage Gulch Critical Ground Water Area to submit their 2011 requests for the volume of water needed.
- 8) Hermiston Foods, Inc. filed a request for water use in 2011, Stage Gulch Critical Ground Water Area, Subarea A, authorized under Water Right Certificate 74667.
- 9) Hermiston Foods, Inc. requested 100 acre-feet for 2010, under Water Right Certificates 74667.
- 10) Flow meter and power meter records indicate that annual pumpage from the permitted well has varied. Therefore, the 2011 allocation is for 10 acre-feet.
- 11) The use of water is limited to the place of use described in Certificate 74667.

DISCUSSION

Hermiston Foods, Inc. is a 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 water right holders. Flow meter and power meter records indicate that the permitted wells pumped 9743 acre-feet of water in 2009. The Subarea A allocation for 2011 is 11,450 acre-feet. The allocation for Hermiston Foods, Inc. does not exceed the limits of the water right or the sustainable annual yield for Subarea A. Therefore, the 2011 allocation is for 10 acre-feet. This is consistent with OAR 690-507-0810.

CONCLUSIONS OF LAW

The allocation of groundwater for the State Gulch Critical Groundwater Area for the year 2011 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 10 acre-feet of water is allocated to Hermiston Foods, Inc. for the year 2011 under Certificate 74667 for Subarea A of the Stage Gulch Critical Ground Water Area.

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 August 25, 2010 (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 August 25, 2010, 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.

FINAL ORDER

If you fail to request a hearing within 30 days of receipt of this notice, withdraw a hearing request, notify the Department or the Administrative Law Judge that you will not appear, or fail to appear at a scheduled hearing, this order shall become final. If this order becomes a Final Order by default, the Department designates its file on this matter as the record.

Dated at Salem, Oregon this 26th day of July, 2010.



Barry F. Norris, Administrator
Technical Services Division

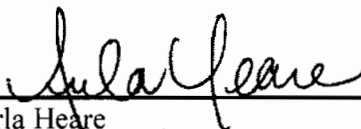
RIGHT TO JUDICIAL REVIEW OF FINAL ORDER

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.

CERTIFICATE OF SERVICE

I certify that on July 26, 2010, I mailed the attached PROPOSED ORDER APPROVING ALLOCATION OF GROUNDWATER by certified mail to:

STEVE MUELLER c/o HERMISTON FOODS, INC.
2250 S. HIGHWAY 395
HERMISTON, OR 97838



Arla Heare
Oregon Water Resources Department