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May 26, 2010

DAVID E. FILIPPI
Direct (503) 294-9529
defilippi@stoel.com

Ms. Juno Pandian
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

**Re: Settlement Agreement for matter captioned: In the Matter of Stage Gulch 2010
Annual Allocations of Ground Water Under Water Right Certificates 76118, 76130,
80850, and 76367, and Order approving Transfer T-10517, Umatilla County,
Oregon**

Dear Juno:

Per my discussion with Jesse Ratcliffe today, please find enclosed a copy of the Settlement Agreement as between Hale Farms, Ditchen, and OWRD, with the original signatures of Hale Farms and Ditchen. I understand that once OWRD has signed the agreement, you will provide us with a copy of the fully executed agreement. Please let me know if you need anything further.

Sincerely,

David E. Filippi

Enclosure

cc (w/o enc.): Jesse Ratcliffe
Craig Reeder

RECEIVED

MAY 27 2010

WATER RESOURCES DEPT
SALEM, OREGON

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Stage Gulch 2010 Annual
Allocations of Ground Water Under Water
Right Certificates 76118, 76130, 80850, and
76367, and Order approving Transfer T-10517,
Umatilla County, Oregon

**SETTLEMENT
AGREEMENT**

The Oregon Water Resources Department (“**OWRD**”), Hale Farms LLC, an Oregon limited liability company (“**Hale**”), and David Ditchen c/o Golden Valley East LLC, an Oregon limited liability company (“**Ditchen**”), do hereby stipulate and agree in this “**Settlement Agreement**” as follows:

Background

A. On July 22, 2009, OWRD issued to Ditchen a Proposed Order Not Allocating Ground Water and Opportunity for Hearing In the Matter of Stage Gulch 2010 Annual Allocation of Ground Water, Under Water Right Certificate 76118, Umatilla County, Oregon (“**PFO 76118**”).

B. On July 22, 2009, OWRD issued to Ditchen a Proposed Order Not Allocating Ground Water and Opportunity for Hearing In the Matter of Stage Gulch 2010 Annual Allocation of Ground Water, Under Water Right Certificate 76130, Umatilla County, Oregon (“**PFO 76130**”).

C. On July 22, 2009, OWRD issued to Hale a Proposed Order Approving Allocation of Ground Water and Opportunity for Hearing In the Matter of Stage Gulch 2010 Annual Allocation of Ground Water, Under Water Right Certificate 80850, Umatilla County, Oregon (“**PFO 80850**”).

D. On July 22, 2009, OWRD issued to Ditchen a Proposed Order Approving Allocation of Ground Water and Opportunity for Hearing In the Matter of Stage Gulch 2009 Annual Allocation of Ground Water, Under Water Right Certificate 76367 and Order Approving Transfer T-10517, Umatilla County, Oregon (“**PFO 76367**”).

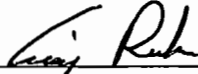
E. On August 21, 2009, Hale submitted timely Protests and Requests for Contested Case Hearing (the “**Protests**”) of PFO 76118, PFO 76130, PFO 80850, and PFO 76367 (together, the “**PFOs**”). No other timely protests of the PFOs were received by OWRD.

F. OWRD, Hale, and Ditchen agree that the issues raised in Hale’s Protests are resolved solely on the following terms.

Terms of the Agreement

1. Ditchen and Hale waive all right and opportunity to request reconsideration, file exceptions, and seek judicial review of this Settlement Agreement and the Final Orders incorporating this Settlement Agreement.
2. In signing this Settlement Agreement, Hale withdraws its Protests to the PFOs issued for: Water Right Certificate 76367, Water Right Certificate 76130, Water Right Certificate 76118 in the name of Ditchen, and Water Right Certificate 80850 in the name of 4-H Farms.
3. OWRD agrees to issue the Final Orders attached hereto as Exhibits A through D.
4. Each Party to this Settlement Agreement represents, warrants, and agrees that the person who executed this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that Party and bind that Party to the terms of this Settlement Agreement.
5. Each Party to this Settlement Agreement certifies that it has had a reasonable opportunity to review and request changes to the Settlement Agreement, and that it has signed this Settlement Agreement of its own free will and accord.
6. Each Party to this Settlement Agreement certifies that it has read the entire Settlement Agreement, and understands and agrees with the contents thereof.
7. This Settlement Agreement may be signed in counterparts.

HALE FARMS LLC
an Oregon limited liability company

By: 
Craig Reeder, Manager

Date: 05-15-10

GOLDEN VALLEY EAST LLC
an Oregon limited liability company

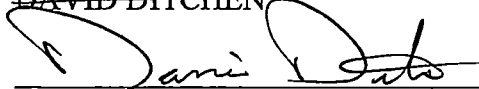
By: 

Date: 5/19/10

Name: Darrin Ditchen

Its: Member

DAVID DITCHEN

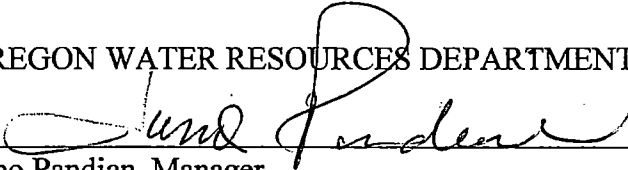


Date: 5/19/10

David Ditchen (individually)

Darrin Ditchen

OREGON WATER RESOURCES DEPARTMENT



Date: 6-7-10

Juno Pandian, Manager

Well Compliance and Construction Section

For Phillip C. Ward, Director

**EXHIBIT A
TO
SETTLEMENT AGREEMENT**

Final Order 76118

[attached hereto]

BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of Stage Gulch)	FINAL ORDER NOT
2010 Annual Allocation of Ground Water,)	ALLOCATING GROUND WATER
Under Water Right Certificate 76118,)	
Umatilla County, Oregon)	

David Ditchen, c/o Golden Valley East, LLC
34655 Roper Lane
Stanfield, OR 97875

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 ground water area. OAR Chapter 690, Division 507 implements the statutes and provides the Department procedures and criteria for the purpose of managing the ground water resource and evaluating requests for allocation of ground water.

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 ground-water 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) Water Right Certificate 76118 in the name of David Ditchen is perfected under Permit G-8209, having a priority date of February 27, 1978, and authorizes irrigation of 925.7 acres. Within Subarea D, Certificate 76118 has a priority date that is junior to all other water rights of record for which a distribution has been made pursuant to OAR 690-507-0810 for the year 2010.
- 2) The sustainable annual yield for Subarea D is 3250 acre-feet.
- 3) In 2008, 3250 acre-feet of water was allocated in Subarea D.
- 4) Flow meter and power meter data collected by Department staff indicate that 2628 acre-feet of water was pumped from permitted wells in Subarea D in 2008.
- 5) The Subarea D allocation for 2010 is 3250 acre-feet, the sustainable annual yield.
- 6) In 2008 no water was pumped from the Zabransky well no. 3 which is located in Subarea D and is described in Certificate 76118. Water is allocated to other permitted wells under Certificate 76118 but these wells are located in Subarea B.
- 7) Ditchen did not request an allocation of water for 2010 for Water Right Certificate 76118.
- 8) The 2010 allocation for the Zabransky well no. 3 as described in Certificate 76118 is for 0 acre-feet.

DISCUSSION

Water Right Certificate 76118 in the name of David Ditchen is a junior water right in Subarea D. The sustainable annual yield for Subarea D is 3250 acre-feet. Flow meter and power meter records indicate that the permitted wells in Subarea D pumped 2628 acre-feet of water in 2008. The allocation for the Zabransky well no. 3 as described in Water Right Certificate 76118 does not exceed the limits of the water right or the sustainable annual yield for Subarea D. Therefore, the 2010 allocation is for 0 acre-feet. This is consistent with OAR 690-507-0810.

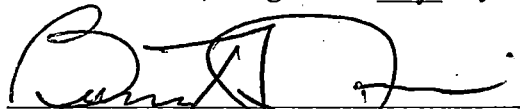
CONCLUSIONS OF LAW

The allocation of ground water for the State Gulch Critical Ground Water Area for the year 2010 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 is allocated to David Ditchen for the year 2010 under Water Right Certificate 76118 for Subarea D of the Stage Gulch Critical Ground Water Area.

Dated at Salem, Oregon this 8 day of June, 2010.



Barry F. Norris, Administrator
Technical Services Division

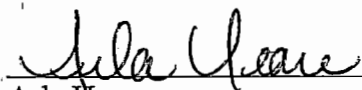
RIGHT TO JUDICIAL REVIEW OF FINAL ORDER

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 June 10, 2010, I mailed the attached FINAL ORDER NOT ALLOCATING GROUND WATER by certified mail to:

David Ditchen, c/o Golden Valley East, LLC
34655 Roper Lane
Stanfield, OR 97875



Arla Heare
Oregon Water Resources Department

**EXHIBIT B
TO
SETTLEMENT AGREEMENT**

Final Order 76130

[attached hereto]

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

In the Matter of Stage Gulch)	FINAL ORDER NOT
2010 Annual Allocation for Ground Water,)	ALLOCATING GROUND WATER
Under Water Right Certificate 76130)	
Umatilla County, Oregon)	

David Ditchen, c/o Golden Valley East, LLC
34655 Roper Lane
Stanfield, OR 97875

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 ground water area. OAR Chapter 690, Division 507 implements the statutes and provides the Department procedures and criteria for the purpose of managing the ground water resource and evaluating requests for allocation of ground water.

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 ground-water 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) Water Right Certificate 76130 in the name of David Ditchen is perfected under Permit G-10452, having a priority date of June 13, 1983, and authorizes irrigation of 78.5 acres. Within Subarea D, Certificate 76130 has a priority date that is junior to all other water rights of record for which a distribution has been made pursuant to OAR 690-507-0810 for the year 2010.
- 2) The sustainable annual yield for Subarea D is 3250 acre-feet.
- 3) In 2008, 3250 acre-feet of water was allocated in Subarea D.
- 4) Flow meter and power meter data collected by Department staff indicate that 2628 acre-feet of water was pumped from permitted wells in Subarea D in 2008.
- 5) The Subarea D allocation for 2010 is 3250 acre-feet, the sustainable annual yield.
- 6) No water was pumped from the wells within Subarea D under Certificate 76130 in 2008. Water is allocated to other permitted wells under Certificate 76130. Therefore, the 2010 allocation in Subarea D is for 0 acre-feet.

DISCUSSION

Water Right Certificate 76130 in the name of David Ditchen is a junior water right in Subarea D. The sustainable annual yield for Subarea D is 3250 acre-feet. Flow meter and power meter records indicate that the permitted wells pumped 2628 acre-feet of water in 2008. The allocation for wells described in Certificate 76130 within Subarea D does not exceed the limits of the water right or the sustainable annual yield for Subarea D. Therefore, the 2010 allocation is for 0 acre-feet. This is consistent with OAR 690-507-0810.

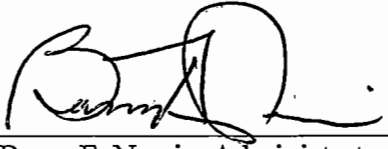
CONCLUSIONS OF LAW

The allocation of ground water for the State Gulch Critical Ground Water Area for the year 2010, 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 is allocated to David Ditchen for the year 2010 under Water Right Certificate 76130 for Subarea D of the Stage Gulch Critical Ground Water Area.

Dated at Salem, Oregon this 8 day of June, 2010.



Barry F. Norris, Administrator
Technical Services Division

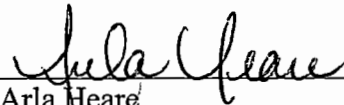
RIGHT TO JUDICIAL REVIEW OF FINAL ORDER

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 June 10, 2010, I mailed the attached FINAL ORDER NOT ALLOCATING GROUND WATER by certified mail to:

David Ditchen, c/o Golden Valley East, LLC
34655 Roper Lane
Stanfield, OR 97875



Arla Heare
Oregon Water Resources Department

**EXHIBIT C
TO
SETTLEMENT AGREEMENT**

Final Order 80850

[attached hereto]

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

In the Matter of Stage Gulch) FINAL ORDER APPROVING
2010 Annual Allocation of Ground Water,) ALLOCATION OF GROUND WATER
Under Water Right Certificate 80850,)
Umatilla County, Oregon)

Hale Farms
P. O. Box 110
Hermiston, OR 97838

ORS 537.730 and 537.335 establish the process by which the Water Resources Commission may designate an area of the state as a critical ground water area. OAR Chapter 690, Division 507 implements the statutes and provides the Department procedures and criteria for the purpose of managing the ground water resource and evaluating requests for allocation of ground water.

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 ground-water 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) Water Right Certificate 80850 is perfected under Permit G-5215, having a priority date of February 16, 1973, and authorizes irrigation of 786.8 acres. Within Subarea H, among all other water rights of record, Certificate 80850 is sufficiently senior such that water may be allocated to Hale Farms.

- 2) The sustainable annual yield for Subarea H is 8850 acre-feet.
- 3) In 2008, 8625 acre-feet of water was allocated in Subarea H.
- 4) Flow meter and power meter data collected by Department staff indicate that 9686.3 acre-feet of water was pumped from permitted wells in Subarea H in 2008.
- 5) The Subarea H allocation for 2010 is reduced by 836.3 acre-feet to a total of 8013.7 acre-feet.
- 6) On May 28, 2009, the Department sent letters requesting water users within the Stage Gulch Critical Ground Water Area to submit their 2010 requests for the volume of water needed.
- 7) Hale Farms filed a request for water use from well 8 in 2010, Stage Gulch Critical Ground Water Area, Subarea H, authorized under Water Right Certificate 80850.
- 8) Hale Farms requested 1351.5 acre-feet for 2010 under Water Right Certificate 80850.
- 9) Flow meter and power meter records indicate that annual pumpage from the permitted well has varied. Therefore, the 2010 allocation is for 678.3 acre-feet.
- 10) The use of water is limited to the place of use described in Water Right Certificate 80850.

DISCUSSION

Hale Farms is a senior water right holder in Subarea H. The sustainable annual yield for Subarea H is 8850 acre-feet. Flow meter and power meter records indicate that the permitted wells pumped 9686.3 acre-feet of water in 2008. The Subarea H allocation for 2010 is reduced by 836.3 acre-feet to a total of 8013.7 acre-feet. The allocation for Hale Farms does not exceed the limits of the water right or the quantity allocated for Subarea H. Therefore, the 2010 allocation is for 678.3 acre-feet. This is consistent with OAR 690-507-0810.

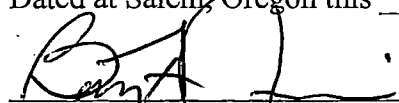
CONCLUSIONS OF LAW

The allocation of ground water for the State Gulch Critical Ground Water Area for the year 2010 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 678.3 acre-feet is allocated to Hale Farms for the year 2010 under Water Right Certificate 80850 for Subarea H of the Stage Gulch Critical Ground Water Area.

Dated at Salem, Oregon this 8 day of June, 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 June 10, 2010, I mailed the attached FINAL ORDER ALLOCATING
GROUND WATER by certified mail to:

Hale Farms
P. O. Box 110
Hermiston, OR 97838

A handwritten signature in cursive script, appearing to read "Arla Neare", is written over a horizontal line.

Arla Neare
Water Resources Department

**EXHIBIT D
TO
SETTLEMENT AGREEMENT**

Final Order 76367

[attached hereto]

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

In the Matter of Stage Gulch 2009 Annual) FINAL ORDER APPROVING
Allocation of Ground Water, Under Water) ALLOCATION OF GROUND WATER
Right Certificate 76367 and Order Approving)
Transfer T-10517, Umatilla County, Oregon)

Dave Ditchen, c/o Golden Valley East, LLC
34655 Roper Lane
Stanfield, OR 97875

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 ground water area. OAR Chapter 690, Division 507 implements the statutes and provides the Department procedures and criteria for the purpose of managing the ground water resource and evaluating requests for allocation of ground water.

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 ground-water 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) Water Right Certificate 76367 and Order Approving Transfer T-10517 have a priority date of November 12, 1975, and authorize irrigation of 400.0 acres. Within Subarea H, among all other water rights of record for which a distribution request has been made pursuant to OAR 690-507-0810 for the year 2010, Certificate 76367 and Order Approving Transfer T-10517 have a sufficiently senior water right to obtain an allocation of the sustainable annual yield.
- 2) The sustainable annual yield for Subarea H is 8850 acre-feet.
- 3) In 2008, 8625 acre-feet of water was allocated in Subarea H.
- 4) Flow meter and power meter data collected by Department staff indicate that 9686.4 acre-feet of water was pumped from permitted wells in Subarea H in 2008.
- 5) The Subarea H allocation for 2010 is reduced by 836.3 acre-feet to a total of 8013.7 acre-feet.
- 6) Flow meter and power meter records indicate that annual pumpage from the permitted wells under Certificate 76367 and T-10517 have increased. Therefore, the 2010 allocation is for 756.7 acre-feet.
- 7) The use of water is limited to the place of use described in Water Right Certificate 76367 and Order Approving Transfer T-10517.

DISCUSSION

David Ditchen is a senior water right holder in Subarea H. The sustainable annual yield for Subarea H is 8850 acre-feet. Flow meter and power meter records indicate that the permitted wells pumped 9686.4 acre-feet of water in 2008. The Subarea H allocation for 2010 is reduced by 836.3 acre-feet to a total of 8013.7 acre-feet. The allocation for David Ditchen does not exceed the limits of the water right or the quantity allocated for Subarea H. Therefore, the 2010 allocation is for 756.7 acre-feet. This is consistent with OAR 690-507-0810.

CONCLUSIONS OF LAW

The allocation of ground water for the Stage Gulch Critical Ground Water Area for the year 2010 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 756.7 acre-feet is allocated to David Ditchen for the year 2010 under Water Right Certificate 76367 and Order Approving Transfer T-10517 for Subarea H of the Stage Gulch Critical Ground Water Area.

Dated at Salem, Oregon this 8 day of June, 2010.



Barry F. Norris, Administrator
Technical Services Division

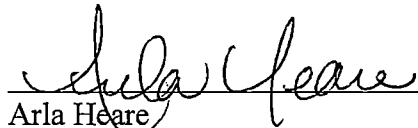
RIGHT TO JUDICIAL REVIEW OF FINAL ORDER

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 June 10, 2010, I mailed the attached FINAL ORDER ALLOCATING GROUND WATER by certified mail to:

Dave Ditchen, c/o Golden Valley East, LLC
34655 Roper Lane
Stanfield, OR 97875



Arla Heare
Oregon Water Resources Department