

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

In the Matter of Stage Gulch)	PROPOSED ORDER APPROVING
2008 Annual Allocation of Ground Water,)	ALLOCATION OF GROUND WATER
Under Orders Approving Transfer T-9853,)	AND OPPORTUNITY FOR HEARING
Umatilla County, Oregon)	

Hale Farms
P. O. Box 110
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 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.

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 September __, 2007 (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 September __, 2007, 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.

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) Hale Farms is a senior water right holder in Subarea A.
- 2) Orders approving Transfer T-9853 are authorized under Permit G-7183, having a priority date of February 25, 1977, and authorize irrigation of 237.8 acres.
- 3) The sustainable annual yield for Subarea A is 11,450 acre-feet.
- 4) In 2006, 11,450 acre-feet of water was allocated in Subarea A.
- 5) Flow meter and power meter data collected by Department staff indicate that 9,433 acre-feet of water was pumped from permitted wells in Subarea A in 2006.
- 6) The Subarea A allocation for 2008 is 11,450 acre-feet, the sustainable annual yield.
- 7) On May 31, 2007, the Department sent letters requesting water users within the Stage Gulch Critical Ground Water Area to submit their 2008 requests for the volume of water needed.
- 8) Hale Farms filed a request for water use in 2008, Stage Gulch Critical Ground Water Area, Subarea A, authorized under Orders approving Transfer T-9853.
- 9) Hale Farms requested 1090.8 acre-feet for 2008, under Orders approving Transfer T-9853.
- 10) Flow meter and power meter records indicate that annual pumpage from the permitted well has varied in recent years. Therefore, the 2008 allocation is for 700 acre-feet.
- 11) The use of water is limited to the place of use described in attached Orders approving Transfer T-9853.

DISCUSSION

Hale Farms is a senior water right holder in Subarea A. The sustainable annual yield for Subarea A is 11,450 acre-feet. Flow meter and power meter records indicate that the permitted wells pumped 9,433 acre-feet of water in 2006. The allocation for Hale Farms does not exceed the limits of the water right or the sustainable annual yield for Subarea A. Therefore, the 2008 allocation is for 700 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 2008 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 700 acre-feet of water is allocated to Hale Farms for the year 2008 under Orders approving Transfer T-9853 for Subarea A of the Stage Gulch Critical Ground Water Area.

Dated at Salem, Oregon this 10TH day of August, 2007.



Jerry S. Rodgers, Administrator
Technical Services Division

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

In the Matter of Special Order Volume 70) CORRECTING ORDER
Page 387 – 390, Umatilla County)

Applicant

Echo Irrigation District
PO Box 110
Hermiston, OR 97838

Findings of Fact

1. The Department issued an order approving Transfer Application T-9853 on October 23, 2006. The order was recorded at Special Order Volume 70, Pages 387 - 390.
2. Special Order Volume 70, Page 388 contains a scrivener's error. This order incorrectly identifies the authorized place of use as (error denoted with asterisks):

Authorized Place of Use:

Twp	Rng	Mer	Sec	¼ ¼	Acres
4N	28E	WM	23	NE SE	5.8
4N	28E	WM	23	SE SE	***5.0
4N	28E	WM	24	NE SW	26.0
4N	28E	WM	24	NW SW	37.4
4N	28E	WM	24	SW SW	37.6
4N	28E	WM	24	SE SW	28.0
4N	28E	WM	24	NE SE	11.2
4N	28E	WM	24	NW SE	34.0
4N	28E	WM	24	SW SE	38.4
4N	28E	WM	24	SE SE	13.6
TOTAL:					237.8

3. The correct description of the authorized place of use to which that portion of Certificate 79890 is authorized for transfer is (correction in bold):

Authorized Place of Use:

Twp	Rng	Mer	Sec	¼ ¼	Acres
4N	28E	WM	23	NE SE	5.8
4N	28E	WM	23	SE SE	5.8
4N	28E	WM	24	NE SW	26.0
4N	28E	WM	24	NW SW	37.4
4N	28E	WM	24	SW SW	37.6
4N	28E	WM	24	SE SW	28.0

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Twp	Rng	Mer	Sec	¼ ¼	Acres
4N	28E	WM	24	NE SE	11.2
4N	28E	WM	24	NW SE	34.0
4N	28E	WM	24	SW SE	38.4
4N	28E	WM	24	SE SE	13.6
TOTAL:					237.8

4. Special Order Volume 70, Page 388 also incorrectly identifies the portion of the right to be diminished from primary irrigation to supplemental irrigation on lands to which a primary irrigation right evidenced by Certificate 80850 is also appurtenant. The order incorrectly lists the lands as follows:

Twp	Rng	Mer	Sec	¼ ¼	Acres
3N	29E	WM	13	NW NW	36.1
3N	29E	WM	13	SW NW	7.6
TOTAL:					43.7


5. The correct description of the place of use on which the portion of the right evidenced by Certificate 79890 is being diminished from primary irrigation to supplemental irrigation is (correction in bold):

Twp	Rng	Mer	Sec	¼ ¼	Acres
3N	29E	WM	13	NW NW	31.6
3N	29E	WM	13	SW NW	12.1
TOTAL:					43.7

Now, therefore, it is ORDERED:

1. The order approving Transfer Application T-9853 as recorded at Special Order Volume 70, Pages 387-390 is corrected to identify the place of use from which Certificate 79890 is being transferred, and to correctly identify the place of use to which the portion of the right being diminished to supplemental irrigation is being transferred.
2. All other provisions of the order are unchanged.

Dated at Salem, Oregon this 15th day of December, 2006.


 Phillip C. Ward
 Director

Mailing date: DEC 19 2006

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

In the Matter of Transfer Application)
T-9853, Umatilla County)
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FINAL ORDER APPROVING CHANGES
IN PLACE OF USE, POINT OF
APPROPRIATION AND PARTIAL
DIMINUTION FROM PRIMARY TO
SUPPLEMENTAL IRRIGATION

Authority

ORS 537.705 and 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

Applicant

ECHO IRRIGATION DISTRICT
P.O. BOX 110
HERMISTON, OREGON 97838

Findings of Fact

1. On January 28, 2005, Echo Irrigation District filed a transfer application to change the place of use and point of appropriation under Certificate 79890. The Department assigned the application number T-9853.
2. The entirety of the right to be transferred is as follows:
Certificate: 79890, in the name of Rick L. Hale (perfected under Permit G-7183)
Use: Irrigation of 237.8 acres
Priority Date: February 25, 1977
Rate: 2.97 cubic feet per second (cfs)
Rate & Duty: One-eightieth of one cfs per acre limited to 3.0 acre-feet per acre
Source: Well 2, within the Umatilla River Basin

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW
This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	¼	¼	Survey Coordinates
4 N	28 E	W.M.	24	SW	SE	Well 2 – 1230 feet North and 1910 feet West from the SE corner of Section 24

Authorized Place of Use:

Twp	Rng	Mer	Sec	¼	¼	Acres
4N	28E	WM	23	NE	SE	5.8
4N	28E	WM	23	SE	SE	5.0
4N	28E	WM	24	NE	SW	26.0
4N	28E	WM	24	NW	SW	37.4
4N	28E	WM	24	SW	SW	37.6
4N	28E	WM	24	SE	SW	28.0
4N	28E	WM	24	NE	SE	11.2
4N	28E	WM	24	NW	SE	34.0
4N	28E	WM	24	SW	SE	38.4
4N	28E	WM	24	SE	SE	13.6
TOTAL:						237.8

3. Transfer Application T-9853 proposes to change the place of use of 194.1 acres to the following locations:

Twp	Rng	Mer	Sec	¼	¼	Acres
3N	29E	WM	9	NW	NE	3.6
3N	29E	WM	9	SW	NE	37.5
3N	29E	WM	9	SE	NE	0.6
3N	29E	WM	9	NW	SE	26.2
3N	29E	WM	14	SW	NW	6.5
3N	29E	WM	14	NW	SW	6.4
3N	29E	WM	15	SE	NE	14.7
3N	29E	WM	15	NE	SE	30.6
3N	29E	WM	15	NW	SE	13.0
3N	29E	WM	15	SW	SE	24.9
3N	29E	WM	15	SE	SE	30.1
TOTAL:						194.1

4. Transfer Application T-9853 also proposes to change the place of use and to diminish 43.7 acres from primary irrigation to supplemental irrigation on the following lands to which a primary irrigation right under Certificate 80850 is appurtenant:

Twp	Rng	Mer	Sec	¼	¼	Acres
3N	29E	WM	13	NW	NW	36.1
3N	29E	WM	13	SW	NW	7.6
TOTAL:						43.7

- Transfer Application T-9853 proposes to change the point of appropriation for the proposed places of use described in Findings of Fact #3 and #4, approximately 5 miles in a southeasterly direction from the authorized point of appropriation (Cook well) to a well located at:

Twp	Rng	Mer	Sec	¼	¼	Survey Coordinates
3 N	29 E	W.M.	9	SE	SW	Seibel Well – 380 feet North and 3120 feet West from the SE corner of Section 9

- Notice of the application for transfer was published on February 8, 2005, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
- On September 8, 2006, the Department issued a Preliminary Determination proposing approving of Transfer Application T-9853 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on September 12, 2006 and in the The Hermiston Herald on August 29, September 5 and September 12, 2006.
- Water has been used within five years according to the terms and conditions of the right, as modified by Special Order Volume 57, page 382, approving Temporary Transfer T-9364, and Special Order Volume 62, page 123, approving Temporary Transfer T-9677. No evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- A pump, pipeline and sprinkler system sufficient to use the full amount of water allowed under the existing right are present and have been used within the last five years at the place of use authorized under T-9364 and T-9677.
- The proposed change would not result in enlargement of the right.
- The proposed change would not result in injury to other water rights.

Conclusions of Law


The changes in place of use, point of appropriation and partial diminution from primary to supplemental irrigation proposed in Transfer Application T-9853 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

- The changes in place of use and point of appropriation proposed in application T-9853 are approved.

2. The right to the use of the water is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in Certificate 79890 and any related decree.
3. Water shall be acquired from the same source as the original point of appropriation, namely the basalt ground water source, and is restricted to the same subarea (A) of the Stage Gulch Critical Ground Water Area.
4. The use of water for supplemental irrigation at the proposed place of use described in Finding of Fact #4 is restricted to the total rate and duty described by Certificate 80850, and may be used only to make up a deficiency of supply.
5. Water right Certificate 79890 is cancelled.
6. The former place of use shall no longer be irrigated as part of this water right.
7. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. A Claim of Beneficial Use report prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the project and beneficial use of the water.
8. The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
9. Prior to diverting water at the new point of appropriation, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water used. The type and plan of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
10. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 23rd day of October, 2006.


PWR Phillip C. Ward, Director

Mailing date: OCT 26 2006