

**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 Water Right Certificates 75555 and)	AND OPPORTUNITY FOR HEARING
79991, Umatilla County, Oregon)	

ROBERT LEVY
L & L FARMS
822 HWY. 395 S., #423
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) L & L Farms is a senior water right holder in Subarea A.
- 2) Water Right Certificates 75555 and 79991 are perfected under Permit G-7036, having a priority date of December 2, 1976, and authorize irrigation of 309.3 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) L & L Farms filed a request for water use in 2008, Stage Gulch Critical Ground Water Area, Subarea A, authorized under Water Right Certificates 75555 and 79991.
- 9) L & L Farms requested 700 acre-feet for 2008, under Water Right Certificates 75555 and 79991.
- 10) Flow meter and power meter records indicate that annual pumpage from the permitted well has varied. More water was pumped in 2006 than in prior years. Therefore, the 2008 allocation is for 350 acre-feet.

11) The use of water is limited to the place of use described in attached Water Right Certificates 75555 and 79991.

DISCUSSION

L & L 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 L & L Farms does not exceed the limits of the water right or the sustainable annual yield for Subarea A. Therefore, the 2008 allocation is for 350 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 350 acre-feet of water is allocated to L & L Farms for the year 2008 under Water Right Certificates 75555 and 79991 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

STATE OF OREGON
 COUNTY OF UMATILLA
 CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

L & L FARMS
 P.O. BOX 63
 STANFIELD, OREGON 97876

confirms the right to use the waters of WELL 3, in the SPIKES GULCH RIVER BASIN, for PRIMARY IRRIGATION OF 1.2 ACRES AND SUPPLEMENTAL IRRIGATION OF 151.6 ACRES.

This right was perfected under Permit G-7036. The date of priority is DECEMBER 2, 1976. This right is limited to not more than 1.63 CUBIC FEET PER SECOND, or its equivalent in case of rotation, measured at the well.

The well is located as follows:
 WELL 3 - NW 1/4 NW 1/4, SECTION 23, T 3 N, R 28 E, W.M.;
 60 FEET SOUTH AND 820 FEET EAST FROM NW CORNER, SECTION 23.

The amount of water used for irrigation together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 3 acre-feet for each acre irrigated during the irrigation season of each year, provided further that the right allowed herein for supplemental irrigation shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use to which this right is appurtenant is as follows:

	SUPPLEMENTAL Acres	PRIMARY Acres
SW 1/4 SW 1/4	1.0	
SW 1/4 SE 1/4	4.7	0.7
SECTION 28		
NE 1/4 SW 1/4	31.3	
NW 1/4 SW 1/4	31.3	
SW 1/4 SW 1/4	31.3	
SE 1/4 SW 1/4	36.8	
SECTION 29		
NE 1/4 NW 1/4	4.8	
SECTION 32		
NW 1/4 NE 1/4	5.2	0.3
NE 1/4 NW 1/4	5.2	0.2
SECTION 33		
TOWNSHIP 3 NORTH, RANGE 28 EAST, W.M.		

11-1-76
 Dist. Temp.
 T-8394 T-8393 T-8142

STATE OF OREGON
COUNTY OF UMATILLA
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

L & L FARMS
P.O. BOX 63
STANFIELD, OREGON 97876

confirms the right to use the waters of WELL 3, in the SPIKES GULCH RIVER BASIN, for SUPPLEMENTAL IRRIGATION OF 156.5 ACRES.

This right was perfected under Permit G-7036. The date of priority is DECEMBER 2, 1976. This right is limited to not more than 1.67 CUBIC FEET PER SECOND, or its equivalent in case of rotation, measured at the well.

The well is located as follows:

WELL 3 - NW $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 23, T 3 N, R 28 E, W.M.; 60 FEET SOUTH AND 820 FEET EAST FROM NW CORNER, SECTION 23.

The amount of water used for irrigation together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 3 acre-feet for each acre irrigated during the irrigation season of each year, provided further that the right allowed herein for supplemental irrigation shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use to which this right is appurtenant is as follows:

NE 1/4 SW 1/4	29.2 ACRES
NE 1/4 SE 1/4	31.1 ACRES
NW 1/4 SE 1/4	31.2 ACRES
SW 1/4 SE 1/4	32.7 ACRES
SE 1/4 SE 1/4	32.3 ACRES

SECTION 33
TOWNSHIP 3 NORTH, RANGE 28 EAST, W.M.

T-6970B.SB

Certificate Number 79991

The water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water used from each well. The type and plans for the measuring device must be approved by the Department prior to using the water at the new place of use. Installation and maintenance shall be under the general supervision of the Department.

The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described.

This certificate is issued to confirm a change in PLACE OF USE approved by an order of the Water Resources Director entered MARCH 25, 1998, and together with Certificate 75555, supersedes Certificate 75423, State Record of Water Right Certificates.

The issuance of this superseding certificate does not confirm the status of the water right in regard to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.

WITNESS the signature of the Water Resources Director, affixed April 14, 2003.


PAUL R. CLEARY

Recorded in State Record of Water Right Certificates Number 79991.

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