

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

In the Matter of Stage Gulch	)	PROPOSED ORDER APPROVING
2010 Annual Allocation of Ground Water,	)	ALLOCATION OF GROUND WATER
Under Water Right Certificate 53482,	)	AND OPPORTUNITY FOR HEARING
Umatilla County, Oregon	)	

Don Mills, c/o Mills Mint Farm, Inc.
77356 N. Loop Road
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) Don Mills is a senior water right holder in Subarea C.
- 2) Water Right Certificate 53482 is perfected under Permit G-7095, having a priority date of January 10, 1977, and authorizes irrigation of 75.0 acres.
- 3) The sustainable annual yield for Subarea C is 400 acre-feet.
- 4) In 2008, 400 acre-feet of water was allocated in Subarea C.
- 5) Flow meter and power meter data collected by Department staff indicate that 172 acre-feet of water was pumped from permitted wells in Subarea C in 2008.
- 6) The Subarea C allocation for 2010 is 400 acre-feet, the sustainable annual yield.
- 7) Flow meter and power meter records indicate that annual pumpage from the permitted well has varied. Therefore, the 2010 allocation is for 6 acre-feet.
- 8) The use of water is limited to the place of use described in Water Right Certificate 53482.

DISCUSSION

Don Mills is a senior water right holder in Subarea C. The sustainable annual yield for Subarea C is 400 acre-feet. Flow meter and power meter records indicate that the permitted wells pumped 172 acre-feet of water in 2008. The allocation for Don Mills does not exceed the limits of the water right or the sustainable annual yield for Subarea C. Therefore, the 2010 allocation is for 6 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.

PROPOSED ORDER

Now, THEREFORE, it is ORDERED that 6 acre-feet is allocated to Don Mills for the year 2010 under Water Right Certificate 53482 for Subarea C 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 21, 2009 (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 21, 2009, 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 22nd day of July, 2009.


Jerry S. Rodgers, Administrator
Technical Services Division

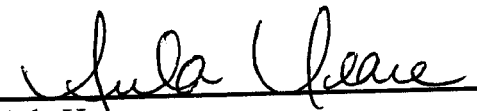
RIGHT TO JUDICIAL REVIEW OF FINAL ORDER

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 22, 2009, I mailed the attached PROPOSED ORDER ALLOCATING
GROUND WATER by certified mail to:

Don Mills, c/o Mills Mint Farm, Inc.
77356 N. Loop Road
Stanfield, OR 97875


Arla Heare
Oregon Water Resources Department