

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

In the Matter of Stage Gulch)
2008 Annual Allocation of Ground Water,)
Under Water Right Certificate 80923 and)
Orders Approving Transfers T-9518 and)
T-9519, Umatilla County, Oregon)

PROPOSED ORDER APPROVING
ALLOCATION OF GROUND WATER
AND OPPORTUNITY FOR HEARING

JB LAND, LLC
C/O TROY BETZ
P. O. BOX 130
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) G-2 Farming, LLC is a senior water right holder in Subarea A.
- 2) Water Right Certificate 80923 and Orders Approving Transfers T-9518 and T-9519 are perfected under Permit G-4027, having a priority date of March 14, 1968, and authorize industrial use up to 98.4 acre-feet per year.
- 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) G-2 Farming, LLC filed a request for water use in 2008, Stage Gulch Critical Ground Water Area, Subarea A, authorized under Water Right Certificate 80923 and Orders Approving Transfers T-9518 and T-9519.
- 9) G-2 Farming, LLC requested 72 acre-feet for 2008, under Water Right Certificate 80923 and Order Approving Transfer T-9518.
- 10) Flow meter and power meter records indicate that annual pumpage from the permitted well has varied. Therefore, the 2008 allocation is for 72 acre-feet.

11) The use of water is limited to the place of use described in attached Water Right Certificate 80923 and Orders Approving Transfers T-9518 and T-9519.

DISCUSSION

G-2 Farming, LLC 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 G-2 Farming, LLC does not exceed the limits of the water right or the sustainable annual yield for Subarea A. Therefore, the 2008 allocation is for 72 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 72 acre-feet of water is allocated to G-2 Farming, LLC for the year 2008 under Certificate 80923 and Orders Approving Transfers T-9518 and T-9519 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

G-2 FARMING LLC
c/o GREG JUUL
P.O. BOX 130
HERMISTON, OREGON 97838

confirms the right to use the waters of WELL #5, within the UMATILLA RIVER BASIN, for INDUSTRIAL USE.

This right was perfected under Permit G-4027. The date of priority is MARCH 14, 1968. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.276 CUBIC FOOT PER SECOND and shall not exceed 66.24 ACRE-FEET PER YEAR (IF AVAILABLE AT THE ORIGINAL POINT OF APPROPRIATION DESCRIBED AS WELL NO. 3 LOCATED WITHIN THE NW $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 22, TOWNSHIP 4 NORTH, RANGE 28 EAST, W.M.; 2480 FEET NORTH AND 2680 FEET EAST FROM THE SW CORNER, SECTION 22), or its equivalent in case of rotation, measured at the well.

The well is located as follows:

WELL #5 - NW $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 27, T 4 N, R 28 E, W.M.; 730 FEET SOUTH AND 150 FEET EAST FROM THE N $\frac{1}{4}$ CORNER, SECTION 27.

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:

NW $\frac{1}{4}$ NE $\frac{1}{4}$
SECTION 27
TOWNSHIP 4 NORTH, RANGE 28 EAST, W.M.

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 plans 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.

This certificate describes that portion of the water right confirmed by Certificate 80611, State Record of Water Right

Certificates, NOT modified by the provisions of an order of the Water Resources Director, entered DEC 13 2004, approving Transfer Application 9518.

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.

The well shall be maintained in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon.

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.

WITNESS the signature of the Water Resources Director, affixed DECEMBER 13, 2004.



Phillip C. Ward, Director

Recorded in State Record of Water Right Certificates numbered 80923

T-9518.KDD

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

In the Matter of Transfer Application) FINAL ORDER APPROVING CHANGE
T-9518, Umatilla County, Oregon) IN PLACE OF USE

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

J.B. Land, LLC
c/o Troy Betz
P.O. Box 130
Hermiston, OR 97838

Findings of Fact

1. Troy Betz of J.B. Land, LLC, filed an application to transfer the place of use under Certificate 80611. The Department assigned the application number T-9518.
2. The portion of the right to be transferred is as follows:
 - Certificate:** 80611 in the name of G-2 Farming, LLC
 - Use:** Industrial
 - Priority Date:** March 14, 1968
 - Quantity:** 0.134 cfs, not to exceed 32.16 acre-feet
 - Source:** Well #5, within the Umatilla River Basin (if available at the original point of appropriation described as Well No. 3 located within the NW¼ SE¼, Section 22, Township 4 North, Range 28 East, W.M.; 2480 Feet North and 2680 Feet East from the SW Corner, Section 22)

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.

Authorized Point of Appropriation:

Township		Range		Meridian	Sec	¼	¼	Lot	Location
4	N	28	E	W.M.	27	NW	NE		Well #5 - 730 Feet South and 150 Feet East from the N¼ Corner, Section 27

Authorized Place of Use:

Township		Range		Meridian	Sec	¼	¼	Tax Lot	Location
4	N	28	E	W.M.	27	NW	NE	1504	Industrial

3. Application T-9518 proposes to change the place of use for a portion of the right to:

Township		Range		Meridian	Sec	¼	¼	Tax Lot	Location
4	N	28	E	W.M.	28	NW	NE	4404	Industrial
4	N	28	E	W.M.	28	NW	NE	4401	Industrial
4	N	28	E	W.M.	28	SW	NE	4401	Industrial
4	N	28	E	W.M.	28	SW	NE	4402	Industrial

4. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notices.
5. Water has been used within the last five years according to the terms and conditions of the right and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
6. The well, pump, and pipe line system sufficient to use the full amount of water allowed under the existing right are present.
7. The proposed change would not result in enlargement of the right.
8. The proposed change would not result in injury to other water rights.

Conclusions of Law

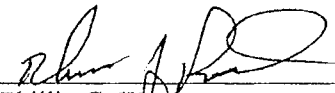
The change in place of use proposed in application T-9518 is consistent with the requirements of OAR Chapter 540 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in application T-9518 is approved.
2. Water right certificate 80611 is cancelled. A new certificate will be issued describing that portion of the right not involved in this transfer.
3. The proposed change shall be completed on or before October 1, 2006.

4. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2007.
5. The water user shall install and maintain an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans 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.
6. The industrial use at the new place of use shall be limited to 0.134 cfs and not to exceed 32.16 acre-feet per year.
7. 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 80611.
8. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 13th day of December, 2004.


Phillip C. Ward
Director

Mailing date: DEC 22 2004

STATE OF OREGON

COUNTY OF UMATILLA

ORDER APPROVING A TEMPORARY CHANGE IN PLACE OF USE

Pursuant to ORS 540.523, after notice was given and no objections were filed, and finding that no injury to existing water rights would result, this order approves, as conditioned or limited herein, TEMPORARY TRANSFER 9519 submitted by

JB LAND, LLC
C/O TROY BETZ
P.O. BOX 130
HERMISTON, OREGON 97838.

The right to be modified, as evidenced by a PORTION of Certificate 80611, was perfected under Permit G-4027 with a date of priority of March 14, 1968. The right allows the use of Well No. 5, in the Umatilla River Basin, for Industrial Use. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.134 cubic foot per second (60.0 gallons per minute) not to exceed 32.16 acre-feet per year if available at the original point of appropriation described as Well No. 3 located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 22, T 4 N, R 28 E, W.M.; 2480 FEET NORTH AND 2680 FEET EAST FROM THE SW CORNER, SECTION 22, or its equivalent in case of rotation, measured at the well.

This is an order in other than a 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.

The authorized well is located as follows:

WELL NO. 5 - NW¼ NE¼, SECTION 27, T 4 N, R 28 E, W.M.;
730 FEET SOUTH AND 150 FEET EAST FROM THE N¼ CORNER, SECTION 27.

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:

NW¼ NE¼
SECTION 27
TOWNSHIP 4 NORTH, RANGE 28 EAST, W.M.

The well shall be maintained in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon.

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

The applicant proposes to **temporarily** change the place of use to:

NW¼ NE¼ (TAX LOT 4400)
NW¼ NE¼ (TAX LOT 4400)
SW¼ NE¼ (TAX LOT 4400)
SW¼ NE¼ (TAX LOT 4400)
SECTION 28
TOWNSHIP 4 NORTH, RANGE 28 EAST, W.M.

THIS CHANGE TO AN EXISTING WATER RIGHT MAY BE MADE PROVIDED THE FOLLOWING CONDITIONS ARE MET BY THE WATER USER:

1. The change is temporary. The change shall be effective upon issuance of this order.

2. Water shall not be used on the former place of use as part of this water right during 2004, 2005, 2006, 2007 and 2008.
3. The use shall revert to the authorized place of use at the end of 2008.
4. The approval of this temporary transfer may be revoked or modified if the Department finds the change causes injury to any existing water right.
5. The use of the remaining water right described by Certificate 80611 shall continue to be used in accordance with the terms and conditions of Certificate 80611.
6. **Prior** to diverting water for the new place of use, 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 plans 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.

WITNESS the signature of the Water Resources

Director, affixed MAR 22 2004.


For Paul R. Cleary, Director