

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

In the Matter of Aquifer Storage and)
Recovery (ASR) Permit Application #002)
Columbia County

PROPOSED FINAL ORDER

Summary of Recommendation

The Department recommends that the application be approved as conditioned in the attached draft permit.

Authority

Oregon Revised Statutes (ORS) 537 and Oregon Administrative Rules (OAR) 690-350 establish the process by which an application for an ASR permit may be submitted and evaluated by the Department.

In reviewing applications, the Department may consider any relevant sources of information, including the following:

- recommendations by other state agencies
- any applicable comprehensive plan or zoning ordinance
- the results of testing under an ASR limited license
- the rates and volume of the proposed use
- the water rights and water quality of existing users of the aquifer and source water
- provisions of any critical ground water areas
- the water right for injection source water
- applicable statutes, administrative rules, and case law
- the pre-application conference
- any comments received

Findings of Fact

1. On June 5, 2014, McNulty Water People's Utility District submitted an application for an ASR permit:

Maximum Diversion Rate:	0.89 cubic feet per second (400 gpm)
Maximum Injection Rate:	400 gallons per minute
Maximum Storage Volume:	8 million gallons
Maximum Withdrawal Rate:	400 gallons per minute
Maximum Storage Duration:	Ongoing
Injection Source Water:	5 wells identified in Certificates 87258, 58654, 58655, 61176 and Transfer 11498
ASR Injection Well Location:	T9S/R40E, Section 19, NW1/4 SE1/4

2. On June 5, 2014, the McNulty Water People's Utility District submitted an application to the Department for an aquifer storage and recovery (ASR) permit. It was determined incomplete on September 19, 2014, resubmitted on December 19, 2014, and determined incomplete again on January 28, 2015. On March 31, 2015 the McNulty Water People's Utility District resubmitted the application, and the Department determined it was complete on April 2, 2015.
3. On April 7, 2015, the Department provided public notice of the application in the Department's weekly notice, thereby initiating a 60-day comment period. The notice included a request for comments and information about obtaining future notices or a copy of the Proposed Final Order.
4. The ASR permit application referenced Certificates 87258, 58654, 58655, 61176 and Transfer 11498 as injection source water for the proposed ASR permit.

5. McNulty Water People's Utility District conducted ASR testing under ASR Limited License #015 during water years 2010 through 2013.
6. McNulty Water People's Utility District has submitted results of ASR testing in annual reports and a summary of testing in the ASR permit application.
7. The application seeks year-round access to injection source water on the basis of the year-round diversion period allowed by the source base water rights.
8. The Department requested comments on the application from the Oregon Departments of Environmental Quality and Oregon Health Authority (Drinking Water Program). The attached draft permit is conditioned to address concerns raised in those comments.

Conclusions of Law

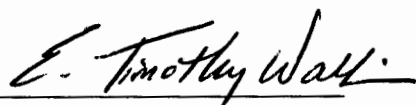
Under the provisions of ORS 537.534 and OAR 690-350-0030, the Director may issue an ASR permit with proper conditions, if the proposed use will not impair or be detrimental to the public interest and there is a water right for injection source water.

1. The ASR permit application is supported by test results under ASR Limited License #015.
2. Permit conditioning can reasonably address requirements in rule, the concerns of commenters, and, otherwise protect the public welfare, safety, and health.
3. The proposed use complies with requirements of the State Agency Coordination Program regarding land use.
4. The proposed use complies with rules of the Water Resources Commission not otherwise described above.
5. Certificates 87258, 58654, 58655, 61176 and Transfer 11498 are the source water rights for the proposed ASR project.

Recommendation

The Department recommends that ASR Permit Application #002 be approved, and the attached draft permit be issued as limited by the conditions contained therein.

Dated at Salem, Oregon on August 18, 2015.



for Thomas M. Byler, Director
Water Resources Department

Protests

Under the provisions of ORS 537.621(8), you can protest this Proposed Final Order. Protests must be received in the Water Resources Department no later than October 6, 2015, be in writing, and include the following:

1. Your name, address, and telephone number;
2. A description of your interest in the Proposed Final Order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
3. A detailed description of how the action proposed in this Proposed Final Order would impair or be detrimental to your interest;
4. A detailed description of how the Proposed Final Order is in error or deficient, and how to correct the alleged error or deficiency;
5. Any citation of legal authority to support your protest, if known.
6. If you are not the applicant, the protest fee of \$350 required by ORS 536.050, and proof of service of the protest upon the applicant.
7. If you are the applicant, a statement of whether or not you are requesting a contested case hearing. If you do not request a hearing, the Department will presume that you do not wish to contest the findings of the Proposed Final Order.
8. If you do not protest this Proposed Final Order, and if no substantive changes are made in the Final Order, you will not have an opportunity for judicial review, protest or appeal of the Final Order when it is issued.

Requests for Standing

Under the provisions of ORS 537.621(8), persons other than the applicant who support a Proposed Final Order can request standing for purposes of participating in any contested case proceeding on the Proposed Final Order, or for judicial review of a Final Order.

Requests for standing must be received in the Water Resources Department no later than October 6, 2015, be in writing, and include the following:

1. The requester's name, mailing address and telephone number;
2. If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
3. A statement that the requester supports the Proposed Final Order as issued;
4. A detailed statement of how the requester would be harmed if the Proposed Final Order is modified.
5. A standing fee of \$100.00. If a hearing is scheduled, an additional fee of \$250.00 must be submitted, along with a request for intervention.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. A contested case hearing will be scheduled only if a protest has been submitted and either:

1. upon review of the issues, the Director finds that there are significant disputes related to the proposed use of water, or
2. the applicant requests a contested case hearing within 30 days after the close of the protest period.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Director may issue a final order by default. If the Director issues a final order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

If you have questions about how to file a protest or a request for standing, please refer to the respective sections in this Proposed Final Order entitled "Protests" and "Requests for Standing". If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE, Suite A, Salem OR 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF COLUMBIA

DRAFT PERMIT FOR AQUIFER STORAGE AND RECOVERY (ASR)

THIS ASR PERMIT IS HEREBY ISSUED TO:

McNulty Water People's Utility District
c/o Jeff Anderson
P.O. Box 260
St. Helens, OR 97051

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: ASR PERMIT #002

PREVIOUS ASR TESTING AUTHORIZATION: ASR LIMITED LICENSE #015

SOURCE OF WATER: 4 WELLS AUTHORIZED UNDER CERTIFICATES 87258, 58654, 58655, 61176, AND TRANSFER 11498

POINTS OF DIVERSION:

STONE ROAD WELL 2 - (COLU 821): SE ¼ NW ¼, SECTION 13, T4N, R2W, W.M.; 359 FEET NORTH & 751 FEET WEST FROM CENTER 1/4 CORNER, SECTION 13

STONE ROAD WELL 1 - SHALLOW (COLU 3486/COLU 811): SE ¼ NW ¼, SECTION 13, T4N, R2W, W.M.; 2277 FEET SOUTH & 1881 FEET EAST FROM NW CORNER, SECTION 13

MILLARD WELL (COLU 3274): SW ¼ SW ¼, SECTION 7, T4N, R1W, W.M.; 1255 FEET NORTH & 1210 FEET EAST FROM SW CORNER, SECTION 7

BLAHA WELL 1- (COLU 3480): SW ¼ SE ¼, SECTION 12, T4N, R2W, W.M.; N 79 DEGREES WEST 2610 FEET FROM SE CORNER, SECTION 12

BLAHA WELL 2 - (COLU 53430): SW ¼ SE ¼, SECTION 12, T4N, R2W, W.M.; 616.14 FEET NORTH & 158.96 FEET EAST FROM THE S ¼ CORNER OF SECTION 12

ASR WELL LOCATION:

ROBINETTE (ASR) WELL (COLU 51275): SE ¼ SE ¼, SECTION 25, T5N, R2W, W.M.; 523 FEET NORTH & 54 FEET WEST FROM SE CORNER SECTION 25

MAXIMUM DIVERSION RATE: 0.89 CUBIC FEET PER SECOND (400 GPM)

MAXIMUM INJECTION RATE: 0.89 CUBIC FEET PER SECOND (400 GPM) AT THE ROBINETTE (ASR) WELL

MAXIMUM VOLUME OF STORAGE: 8 MILLION GALLONS

MAXIMUM WITHDRAWAL RATE: 0.89 CUBIC FEET PER SECOND (400 GPM) OF STORED WATER THROUGH THE ROBINETTE (ASR) WELL

MAXIMUM STORAGE DURATION: ONGOING

This ASR permit is issued with the following conditions:

1) **Record of Use.** The permittee shall maintain a record of injection and recovery, including the total number of hours of injection and recovery and the total metered quantity injected and recovered. The record of use may be reviewed by Department staff upon request.

2) **Modification/Revocation.** The Department shall notify the permittee in writing and allow the permittee to respond when considering the following actions:

(A) The Department may modify the ASR permit for any of the following reasons:

(i) to reflect changes in Oregon Health Authority (OHA, formerly DHS) and Oregon Department of Environmental Quality (DEQ) water quality or treatment standards;

(ii) to address needed technological changes as requested by OHA or DEQ to minimize constituents regulated under OAR 333-061-0030 (ORS 448.131 and 448.273) or OAR 340-40 (ORS 468B.165);

(iii) upon written request from the permittee for minor adjustments to the authorization in the permit.

(iv) upon written request from the permittee for changes to the limits for the recovery of stored water. Any person operating an ASR project under a permit, upon approval by the Director, may recover up to 100 percent of the water stored in the aquifer storage facility if valid scientific data gathered during operations under the limited license or permit demonstrate that the injected source water is not lost through migration or other means and that ground water otherwise present in the aquifer has not been lost irretrievably as a result of aquifer storage or recovery.

(B) The Director may revoke or modify the ASR permit for any of the following reasons:

(i) to prevent or mitigate substantial interference with other water rights, minimum perennial streamflows established prior to the granting of the ASR permit, or aquifer water quality; or

(ii) to address any other unintended, injurious effects of the ASR activity.

(C) The Department shall offer an additional public comment opportunity consistent with the notice and comment provisions of OAR 690-350-020 prior to modifying the permit.

3) **Compliance with Other Laws.** The injection of acceptable water into the aquifer, as well as its storage and recovery under this permit, shall comply with all applicable local, state or federal laws. This shall include but not be limited to compliance with the DEQ Underground Injection Control registration program as authorized under the Safe Drinking Water Act (40 CFR 144.26). Also, discharges to waterways must be in compliance with all DEQ requirements.

4) Water Quality Conditions and Limits:

(A) The permittee shall minimize, to the extent technically feasible, practical and cost-effective, the concentration of constituents in the injection source water that are not naturally present in the aquifer;

(B) Except as otherwise provided in (C) of this condition, if the injection source water contains constituents regulated under OAR 333-61-030 (ORS 448.131 and .273) or OAR 340-40 (ORS 468B.165) that are detected at greater than 50 percent of the established levels (MCLs or MMLs in the cited rules), the permittee shall employ technically feasible, practical and cost-effective methods to minimize concentrations of such constituents in the injection source water;

(C) Constituents that have a secondary contaminant level or constituents that are associated with disinfection of the injection source water may be injected into the aquifer up to the standards established under OAR 333-061-030 (ORS 448.131 and .273);

(D) The Department may, based upon valid scientific data, further limit certain constituents in the injection source water if the Department finds that those constituents will interfere with or pose a threat to the maintenance of the water resources of the state for present or future beneficial uses;

(E) The permittee shall be in compliance with treatment requirements and performance standards for source water that fall in categories identified in OAR 333-061-0032;

(F) If during the course of ASR operations, a constituent which is regulated under OAR 333-61-030 (ORS 448.131 and .273) or OAR 340-40 (ORS 468B.165) is detected above the 50 percent level prescribed in condition (4)(B) or the 100 percent level prescribed in condition (4)(C), the permittee shall immediately stop injection activities upon receipt of lab data and notify the Department within five days.

5) Water Quality Sampling.

(A) Injection Water. The permittee shall sample and analyze injection source water for the constituents and frequency required by Oregon Health Authority Drinking Water Program (OHA) for community drinking water systems. The permittee shall follow the source water quality testing plan, and sample and analyze for landfill-related constituents as described in the Quality Assurance & Quality Control Plan of the ASR permit application (dated March 30, 2015). Modifications to this plan may be proposed to the Department in writing for review, approval or denial.

(B) Withdrawal of Stored Water. The permittee shall sample and analyze water withdrawn from storage for the constituents and frequency required by OHA for community drinking water systems.

6) Water Level Monitoring.

(A) The licensee shall monitor water levels in wells in the manner described in the approved ASR water level monitoring plan.

(B) Transducer and airline data shall be verified and corrected with quarterly manual measurements if an e-tape can be lowered past obstructions to the water level. In the event a

pump is pulled, wells shall be equipped with an unobstructed, dedicated measuring tube pursuant to figure 200-5 in OAR 690-200.

7) Recovery. The availability of stored water for recovery is based on the following factors:

(A) Available stored water is determined on a well-by-well basis in a storage account. The permittee may recover up to 95 percent of the quantity injected under this permit during the water year that the water was injected. After that water year, the availability of stored water shall be further diminished each water year such that the permittee may only recover up to 95 percent of any water year-to-water year storage carryover. (For example, water year 2015 lasts from October 1, 2014 through September 30, 2015.)

(B) Any water withdrawn from the ASR well identified in this permit shall be debited against the quantity available in the aquifer by virtue of ASR storage or considered a draft on natural groundwater under existing groundwater rights. Simultaneous withdrawals of natural groundwater and stored water may occur, but at no time shall the total withdrawal rate exceed that which is authorized in this limited license. The licensee shall report monthly amounts debited against the ASR storage account and the amount of natural groundwater withdrawn. This limited license does not authorize withdrawal of more water than was available from injection. In the event that static water levels at project wells drop below pre-ASR groundwater elevations or other unforeseen issues occur, the Department may review, modify or revoke this condition and re-evaluate the storage account balance.

(C) The availability of stored water is a running account that is subject to determination at any time.

8) Annual Reporting.

(A) Except as otherwise noted, the permittee shall provide the Department a written report of the results of ASR operations for each water year by February 15th of the following water year. The first report shall be due in 2016 and include results from water year 2015. The report shall detail the several kinds of data collected during the water year (including water quality results), account for the injection of stored water, withdrawals of stored and natural water, and the new-year carryover storage at each well. The first report shall include any partial-year results under ASR Limited License #015 and the testing and monitoring described in the ASR permit application. In addition to any graphical or tabular reporting, the City shall report past and future water level data digitally in a format specified by the Department. Annual reports shall include water quality data analysis and interpretation that shall be sealed and signed by a professional(s) registered or allowed, under Oregon law, to practice geology.

(B) As pertinent, annual reporting shall include the formatting and additional information cited in Condition 9 below.

9) Special Reporting Condition. The licensee shall provide the following information to the Department:

A) Submission of any and all hydrogeologic data collected and reports developed for the project, including but not limited to cuttings analysis, video logs, geophysical logs, aquifer tests and step tests.

(B) Submission of digital water level data for all ASR wells and any other wells measured in conjunction with the project (in a Department specified format), including annual report data.

(C) Submission of annual reports with locations and elevations for all project wells and locations and elevations for all non-project wells that have been used for collecting water levels or other data pertinent to the project (in a Department specified format).

(D) Notification in the annual report of any changes in well construction to the ASR permit file.

(E) Associating all project well data with the Department Well Identification Number (Well ID Number), the Department Well Log ID, if available, and the project Well Name.

10) **Protection for Existing Water Users.** In the event of conflicts with existing appropriators, the licensee shall conduct all testing so as to mitigate the injurious effects. In addition, the licensee shall cooperate with the efforts of the Department to protect existing water rights and the water quality of existing users that rely upon the receiving aquifer and the injection source water.

11) **Use of Recovered Water.** The licensee shall use any recovered water for the purposes described in the base water rights that authorize diversion.

12) **Additional Conditions on an Informal Basis.** The Department may suggest additional conditions to the permittee. Provided that those conditions are agreed to and undertaken by the permittee, the Department may forego formal changes to this permit. This informal process does not extend to obligation reductions.

13) **Other Measures.** The permittee shall take any additional measures appropriate to address ASR-related issues of landslide activation, seepage, streamflow increases, aquifer boundary determination, aquifer storage efficiency, and water quality protection.

Issued ____, 2015

DRAFT NOT A PERMIT

for Thomas M. Byler, Director
Water Resources Department