

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

In the Matter of Renewal of Aquifer Storage)
and Recovery (ASR) Limited License #005,)
Washington County

FINAL ORDER
APPROVING RENEWED ASR TESTING

AUTHORITY

Oregon Revised Statute (ORS) 537.534 and Oregon Administrative Rule (OAR) 690-350-0020 establish the process by which an application for ASR testing under an ASR limited license may be submitted and approved. Oregon Administrative Rule (OAR) 690-350-0010 describes general provisions for ASR under Oregon law.

BACKGROUND

On December 14, 2001, the Department issued ASR Limited License #005 to the City of Tigard. That license authorized ASR testing for five years at three wells in a basalt aquifer. Condition 1 of ASR Limited License #005 provides for renewal pursuant to OAR 690-350-0020(5)(c). Condition 1 of ASR Limited License #005 sets out the following terms for renewal: The limited license may be renewed if the licensee demonstrates to the Director's satisfaction that further testing is necessary and that the licensee complied with the terms of the limited license.

FINDINGS OF FACT

1. On NOVEMBER 22, 2006, GROUNDWATER SOLUTIONS INC., agent for the CITY OF TIGARD, submitted a request for a five-year time extension for ASR Limited License #005.
2. The Department published notice of the extension request in the Department's weekly public notice.
3. The Department received no adverse comments related to the possible renewal of the ASR limited license.
4. The Department sought comments and recommendations from Oregon Department of Environmental Quality and Oregon Department of Human Services related to the possible renewal of the ASR limited license.
5. Upon review, the Department has concluded that ASR Limited License #005, as modified in 2006, allowed a combined injection rate (8750 gpm) that exceeded the rate that was requested for diversion of injection source water (9 cfs or 4040 gpm) under an existing water right.
6. Finding 5 conflicts with OAR 690-350-0010(2) which limits injection to that of the underlying water right and the public interest concern of authorizing an ASR limited license that does not exceed the applicant's proposal. Renewal of ASR Limited License #005 to reflect the limitation of injection to the diversion rate may occur under the renewal conditioning authority of OAR 690-350-0020(5)(c).

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

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 137-004-0080, 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.

DISCUSSION

The Department has evaluated the renewal request and associated comments and recommendations and finds that the proposed renewal satisfies the requirement of Condition 1 and OAR 690-350-0020(5)(c). The licensee has demonstrated to the Director's satisfaction that further testing is necessary and that the licensee complied with the terms of the limited license. The renewal request letter from Groundwater Solutions Inc. presented the reasons for the extension (renewal) and provided specific details that addressed compliance with the ASR limited license.

The Department examined the existing ASR Limited License and concluded that there were certain errors in it pursuant to prior modification. Those errors are corrected by clearly matching the diversion rate for ASR source water with the total injection rate.

CONCLUSIONS OF LAW

The request to renew ASR Limited License #005 for five years is consistent with the requirements of OAR 690-350-0020(5)(c) and Condition 1 of ASR Limited License #005. The Department may further condition the renewed ASR limited license consistent with the requirements of OAR 690-350-0020.

ORDER

Now, THEREFORE, IT is ordered, ASR Limited License #005 is renewed pursuant to ORS 537.534, OAR 690-350-0020(5)(c), and Condition 1 of the ASR limited license.

Dated at Salem, Oregon on February 20th 2007.



for
Phillip C. Ward, Director
Water Resources Department

This order was produced by Donn Miller. If you have any questions about any of the statements contained in this document, I am probably the best person to answer your question. You may reach me at 503-986-0845 or Donn.W.Miller@wrp.state.or.us

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: Ground Water Section, Oregon Water Resources Department, 725 Summer St NE, Suite A, Salem OR 97301-1266, Fax: 503-986-0902.

AQUIFER STORAGE and RECOVERY (ASR) LIMITED LICENSE #005
(This instrument supersedes prior authorizations)

Pursuant to a renewal request by the City of Tigard, the Oregon Water Resources Commission issues this renewed limited license for ASR TESTING to:

Dennis Koellermeier Telephone: 503.639.4171
City of Tigard
13125 SW Hall Blvd.
Tigard, OR 97223

This authorization allows continued ASR testing that was originally authorized for five years on December 14, 2001. Storage carry-over from that testing is also part of this authorization.

The licensee may divert up to 9 cfs from a combination of the Bull Run River, a tributary of the Sandy River, using authorization of ORS 538.420 and the Tualatin River, a tributary of the Willamette River, using authorization of water right Permit S-46423.

The point of diversion on the Bull Run River under ORS 538.420 is located at T1S/R5E, Section 25, SW1/4 SW1/4. The point of diversion on the Tualatin River for Permit S-46423 is located at T1S/R3W, Section 8, SW1/4 SW1/4.

The licensee may store up to 400 million gallons in a basalt aquifer using five injection wells. The licensee may inject up to 1,750 gpm per well and recover up to 1,750 gpm of stored water per well through the same five wells. The maximum storage duration is the five-year duration of this limited license.

With the authorization of individual ASR well test plans, up to FIVE ASR wells for injection and recovery are potentially allowed at a combined injection rate up to 9 cfs (4040 gpm) and a combined recovery rate up to 8750 gpm (1,750 gpm per well). These wells consist of the following:

<u>Well Name</u>	<u>Well Location within T2S/R1W WM.</u>
ASR 1	Section 11, SW1/4 NW1/4
ASR 2	Section 10, SW1/4 NW1/4
ASR 3	Section 10, NW1/4 NW1/4
ASR 4	Section 9, SW1/4 NE1/4
ASR 5	Section 4, NW/14 SE1/4

The duration of this renewed limited license is five years from the time of previous expiration on December 14, 2006.

This is a final order in other than contested case. Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005 you may either petition the Director for reconsideration of this order or petition for judicial review of this order. As provided in ORS 536.075, this order is subject to judicial review under ORS 183.484. Any petition for judicial review of the order must be filed within the 60 day time period specified by ORS 183.484(2).

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Although now mostly outdated, except as it conflicts with other provisions of this limited license, the licensee is authorized to pursue the project schedule, monitoring, and other features noted in the ASR test plan for ASR 1 (COT-1R formerly). That plan may be amended and approved pursuant to condition (4)(A)(iii). The project schedule in the ASR test plan may be reasonably adjusted by the licensee to reflect the license issuance date or other delays. Features of that ASR testing plan are provided in the application documents entitled:

City of Tigard
Aquifer Storage and Recovery (ASR)
Pilot Test Plan
Prepared for The City of Tigard, Oregon
Submitted by Montgomery Watson Harza & Golder Associates Inc.
September 11, 2001

This limited license is issued with the following conditions:

- 1) License Renewal. The limited license may be renewed if the licensee demonstrates to the Director's satisfaction that further testing is necessary and that the licensee complied with the terms of the limited license.
- 2) Notice Prior to Injection and Recovery. The licensee shall give notice, in writing, to the watermaster not less than 15 days in advance of either initiating any injection under the limited license or recovering stored water. (For initial startup in 2001, the licensee shall not have a notice requirement.) The injection notice shall include the limited license number, the location of the injection source water diversion, the quantity of water to be diverted from that source, the time of injection, and the place of injection. The recovery notice shall include the limited license number, the location of the recovery well(s), the time of recovery, and the quantity of water to be recovered.
- 3) 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.

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

(A) The Director may modify the ASR limited license for any of the following reasons:

- (i) to reflect changes in Oregon Health Division (HD) and Oregon Department of Environmental Quality (DEQ) water quality or treatment standards;
- (ii) to address needed technological changes as requested by DEQ or HD to minimize constituents regulated under OAR 333-61-030 (ORS 448.131 and .273) or OAR 340-40 (ORS 468B.165);
- (iii) upon written request from the applicant for minor adjustments to the authorization in the limited license. (For purposes of this license, a well location change to an adjacent 1/4 1/4 section is a minor adjustment.)

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

- (i) to prevent or mitigate injury to other water rights, minimum perennial streamflows or aquifer water quality;
- (ii) to address any other unintended, injurious effects of the ASR activity; or
- (iii) failure to maintain compliance with all conditions of this limited license.

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

5) Priority/Protection. This limited license does not receive a priority date and is not protected under ORS 540.045. The diversion of water for this ASR testing under the authority of Permit S-46423 and ORS 538.420 retains the priority date and protection of those water rights.

6) Compliance with Other Laws. The injection of acceptable water into the aquifer as well as its storage and recovery under this limited license shall comply with all applicable local, state or federal laws. This shall include but not be limited to compliance with the Oregon Department of Environmental Quality's (DEQ's) Underground Injection Control registration program as authorized under the Safe Drinking Water Act (40 CFR 144.26). Also, all pilot test discharges to waterways must be covered by a DEQ National Pollution Discharge Elimination System (NPDES) permit.

7) Detailed Testing Plans. The licensee shall submit a detailed plan of testing for each injection well as the project develops. The licensee shall obtain Department approval of a detailed plan before injection testing at a well may begin. The Department may approve, condition, or reject a detailed plan.

8) Water Quality Conditions and Limits:

(A) The licensee 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 licensee 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 333-61-030 (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) If during the course of ASR testing, 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% level prescribed in condition (8)(B) or the 100% level prescribed in condition (8)(C), the licensee shall immediately stop injection activities upon receipt of lab data and notify the Department within five days;

9) Water Quality Sampling.

(A) Injection Water. The licensee shall sample and analyze injection water for the constituents regulated under OAR 333-61-030 (ORS 448.131 and .273) or OAR 340-40 (ORS 468B.165) as well as other constituents as described in the pilot test plan dated September 11, 2001.

(B) Wells. The licensee shall sample receiving aquifer water at the well prior to any storage at the well. The licensee shall sample for the constituents regulated under OAR 333-61-030 (ORS 448.131 and .273) or OAR 340-40 (ORS 468B.165) as well as other constituents as described for wells in the pilot test plan dated September 11 2001.

(C) Withdrawal of Stored Water. The licensee shall analyze water withdrawn from storage for the constituents regulated under OAR 333-61-030 (ORS 448.131 and .273) or OAR 340-40 (ORS 468B.165) as well as other constituents as described in the pilot test plan September 11, 2001 and OAR 690-350-020(3)(b)(F)(iv).

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10) Water Level Monitoring. The licensee shall monitor water levels in wells in the manner described in the pilot test plan dated September 11, 2001. The licensee shall submit a detailed water level monitoring plan for testing at each subsequent injection well.

11) 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. The licensee may recover up to 95% of the quantity injected under this limited license 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 licensee may only recover up to 95% of any water year-to-water year storage carryover. (For example, water year 2002 lasts from October 1, 2001 through September 30, 2002.) (Data collected by the licensee may be useful in consideration of modifications to this recovery provision under the limited license.)

(B) Any water withdrawn from an ASR well identified in this limited license shall first be debited against the quantity available in the aquifer by virtue of ASR storage. When the ASR storage is depleted at an ASR well, any water withdrawn from an ASR well shall be considered a draft of natural ground water, requiring separate or additional authorization. This limited license does not authorize withdrawal of more water than was injected.

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

12) Reporting. Except as otherwise noted, the licensee shall provide the Department a written report of the results of ASR testing for each water year by February 15th of the following water year. The first report shall be due in 2008 and include results from water year 2007. The report shall detail the several kinds of data collected during the water year (including the water quality results in condition 9), analyze those data to show the ASR project impacts on the aquifer, indicate the testing/development progress made under the terms of the limited license, and account for the injection of stored water, withdrawals of stored and natural water, and the new-year carryover storage at each well. As may be reasonably requested by the Department, the licensee shall provide electronic submittals of all data, well cuttings, geophysical logs, and other information concerning ASR testing.

13) Protection for Existing 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.

14) Use of Recovered Water. The licensee shall use any recovered water for the use allowed in the diversion authorization. Specifically, the licensee shall use any recovered water for the purposes described in either Permit S-46423 or ORS 538.420.

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15) Periodic Meetings. The licensee shall alert the Ground Water/Hydrology Section of the Department of the meetings of the licensee's technical review group of the ASR project in order that Department staff may attend and track the periodic progress of the testing project.

16) Additional Conditions on an Informal Basis. The Department may suggest additional conditions to the licensee. Provided that those conditions are agreed to and undertaken by the licensee, the Department may forego formal changes to this license. This informal process does not extend to condition reductions. These additional conditions may be part of any license renewal or permit.

17) Publicity. The licensee shall maintain a public information program about the ASR project, which may include press releases, neighborhood meetings, brochures, or other activities. This program shall include information on potential project impacts and how to report possible impacts to the licensee. The licensee shall share such reports with the watermaster within five days of receipt.

18) Other Measures. The licensee shall take any additional measures appropriate to address the ASR-related issues of landslide activation, seepage, streamflow increases, aquifer boundary determination, aquifer storage efficiency, and water quality protection so that these issues can be addressed during review of the ASR permit application.

19) Carryover Storage. At the end of testing under this limited license, the licensee shall provide an accounting to the Department of the residual stored water based on the methods of determination given in this license. The Department shall consider this residual for carryover to a permanent ASR permit based on information, which discloses the aquifer's ability to retain stored water.

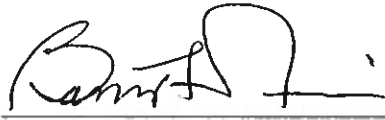
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This license is renewed with proper conditions upon finding that:

- i) Further testing is necessary;
- ii) The licensee complied with the conditions of the ASR limited license;
- iii) The proposed ASR testing will not impair or be detrimental to the public interest;
- iv) The proposed ASR testing will produce information that will adequately describe the water quality and quantity response in the aquifer and at nearby wells and springs due to ASR activities; and
- v) The proposed use will not expand use under an existing water right;

This license shall be in effect beginning February 20, 2007 and shall expire December 14, 2011.

WITNESS my hand this 20th day of February 2007.



Phillip C. Ward, Director
Water Resources Department

for

CERTIFICATE OF SERVICE

I certify that on February 20, 2007, I mailed the attached final order approving renewed ASR testing and ASR Limited License #005 by certified mail and first class postage prepaid to:

Dennis Koellermeier
City of Tigard
13125 SW Hall Blvd.
Tigard, OR 97223

Jeff Barry
Groundwater Solutions Inc
55 SW Yamhill St. Suite 400
Portland, Oregon 97204



Donn Miller
Oregon Water Resources Department