

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

In the Matter of Aquifer Storage and Recovery)
(ASR) Limited License Application #012,)
Clackamas County

FINAL ORDER
APPROVING 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.

FINDINGS OF FACT

1. On JULY 31, 2006, SUNRISE WATER AUTHORITY submitted an application for an ASR Limited License for ASR testing pursuant to ORS 537.534 and OAR 690-350-0020.
2. The Department provided public notice of the application in the Department's weekly public notice on SEPTEMBER 19, 2006. A 30-day comment period followed.
3. ASR Limited License Application #012 referenced the following water rights as source water for the proposed ASR testing: Permits S-34426, S-43170 as amended by Special Order, S-46120 as amended by Special Order, S-35297 and Certificates 37794, and 79899.
4. The Department received adverse comments related to the possible issuance of an ASR limited license from WaterWatch of Oregon.
5. WaterWatch raised several issues that consider the proposed use of water under an ASR limited license as a new appropriation activity.
6. WaterWatch noted that the application seeks to access water for ASR testing under several rights with one needing an extension of time.
7. WaterWatch raised the concern that the ASR testing may cause adverse impacts to water quality in the aquifer, seeps, springs, creeks, river and biota.
8. WaterWatch contended that the proposed use appears to expand the underlying water rights because the water proposed for storage is water that is not now being used at those times proposed for ASR storage.
9. WaterWatch believes that the state should require the applicant to pay for an independent scientific review of the pilot period if granted the limited license and during any permitted implementation as well.
10. The Department received comments and recommendations from Oregon Department of Environmental Quality and Oregon Department of Human Services on the application.

APPEAL RIGHTS

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

There are several water right issues that need to be addressed. The appropriation of Clackamas River water has occurred previously and is not an issue with this application per rules in OAR 690-350-0010, -0020, and -0030. The proposed use is not an expansion since the declaration in ORS 537.531 makes ASR inherent in all water rights. Finally, the Department has conditioned the ASR limited license to ensure that the annual ASR report includes the amount of water diverted under each of the water rights available for ASR and how those diversions have occurred within the limits of the authorized rights.

Adverse water quality impacts from the injected water are extremely remote based on available information and the assessment from the Oregon Department of Environmental Quality. The proposed testing will address the water quality concern from losses to surface water due to head buildup. Condition 4 in the attached ASR limited license provides for revocation if problems are found and, as such, speaks to the Department's authority to terminate the limited license as WaterWatch proposed.

The Department has the statutory oversight authority for ASR and is capable of providing the needed review. Review of ASR projects will continue to be made in coordination with the Oregon Department of Environmental Quality and Oregon Department of Human Services (Drinking Water Program).

The Department has evaluated the application and associated comments and recommendations and finds that, as conditioned, the proposed ASR testing satisfies the rule requirements of OAR 690-350-0020(4)(d): it will not impair or be detrimental to the public interest, it 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 due to ASR activities, and it will not expand the use under existing water rights.

CONCLUSIONS OF LAW

The application for and language in ASR Limited License #012 are consistent with the requirements of ORS 537.534 and OAR 690-350-0020.

ORDER

Now, THEREFORE, IT is Ordered, ASR Limited License Application #012 is approved pursuant to ORS 537.534 and OAR 690-350-0020, and ASR Limited License #012 is issued as limited by the conditions contained therein.

Dated at Salem, Oregon on February 20 2007.



for
Phillip C. Ward, Director
Water Resources Department

This order was produced by Donn Miller.

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 #012

The Oregon Water Resources Commission issues this limited license for ASR TESTING to:

Sunrise Water Authority
c/o Tim Janssen
10602 SE 129th Avenue
Portland, OR 97236

Telephone: 503.761.0220

The licensee may divert up to 3750 gpm from Clackamas River, tributary of the Willamette River, using authorizations of Permits S-34426, S-43170 as amended by Special Order, S-46120 as amended by Special Order, S-35297 as amended by Special Order and Certificates 37794 and 79899.

The points of diversion on the Clackamas River are T2S, R2E, SE ¼ NE ¼ Section 16 and NE ¼ NE ¼ Section 30.

The licensee may store up 600 million gallons in a deep alluvial aquifer within the Troutdale Formation using five injection wells. The maximum injection rate at each well is 750 gpm. The licensee may recover up to 1,100 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 are potentially allowed at a combined rate up to 3750 gpm (750 gpm per well) for injection and up to 5500 gpm (1100 gpm per well) for recovery. These wells consist of the following:

| <i>Well Name</i> | <i>Well Location</i> |
|------------------|----------------------------------|
| SWA Well 2W | T2S/R2E - Section 1, SW ¼ SW ¼ |
| SWA ASR 2 | T2S/R2E - Section 10, E ¼ Corner |
| SWA ASR 3 | T2S/R2E - Section 12, NW Corner |
| SWA ASR 4 | T2S/R2E - Section 12, NE Corner |
| SWA ASR 5 | T2S/R3E - Section 6, N ¼ Corner |

The duration of this limited license is five years. This time was the requested limited license duration. This limited license expires on the fifth anniversary of issuance.

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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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 SWA Well 2W. 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:

Aquifer Storage and Recovery
Deep Alluvial Aquifer

Limited License Application and
Pilot Test Work Plan

Prepared for
Oregon Department of Water Resources

Prepared By
Groundwater Solutions, Inc.

On Behalf of
Sunrise Water Authority
July, 2006

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. 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 Department of Human Services (ODHS) and Oregon Department of Environmental Quality (DEQ) water quality or treatment standards;
 - (ii) to address needed technological changes as requested by DEQ or ODHS 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

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) before any injection activity begins. 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 July 2006.

(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 July 2006.

(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 July 2006 and OAR 690-350-020(3)(b)(F)(iv).

10) Water Level Monitoring. The licensee shall monitor water levels in wells in the manner described in the pilot test plan dated July 2006 and subsequent documents. 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 2006 lasts from October 1, 2005 through September 30, 2006.) (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. The report shall include the amount of water diverted under each of the water rights available for ASR and how those diversions have occurred within the limits of the authorized rights. 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 purposes described in the base water rights that authorize diversion.

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.

This license is issued with proper conditions upon finding that:

- i) The proposed ASR testing will not impair or be detrimental to the public interest;
- ii) 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
- iii) 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 February 20, 2012.

WITNESS my hand this 20th day of February, 2007.


for Phillip C. Ward, Director
Water Resources Department

CERTIFICATE OF SERVICE

I certify that on February 20, 2007, I mailed the attached final order approving ASR testing and ASR Limited License #012 by certified mail and first class postage prepaid to:

Sunrise Water Authority
c/o Tim Jannsen
10602 SE 129th Avenue
Portland, OR 97236

Lisa Brown
WaterWatch of Oregon
213 SW Ash Street, Suite 208
Portland, OR 97204

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



Donn Miller
Oregon Water Resources Department