

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

In the Matter of Aquifer Storage and Recovery)
(ASR) Limited License Application #005, City of)
Tigard, 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 Columbia River Basalt aquifer. That license was renewed on February 20, 2007, December 14, 2011, and again on November 8, 2016. Condition 1 of ASR Limited License #005 provides for renewal pursuant to OAR 690-350-0020(5)(c), and describes 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 license.

FINDINGS OF FACT

1. On April 26, 2021, the City of Tigard submitted a request for a five-year time extension (renewal) for ASR Limited License #005.
2. The Department provided public notice of the application and modifications in the Department's weekly public notice on May 11, 2021. A 30-day comment period followed.
3. The Department received no adverse comments related to the possible renewal of an ASR limited license.
4. The Department sought comments and recommendations from the Oregon Department of Environmental Quality and Oregon Health Authority's Drinking Water Program related to the possible renewal. Comments received from both agencies supported renewal of ASR LL #005.
5. The letter requesting renewal presented reasons for the extension (renewal) and also provided specific details that addressed compliance with the ASR limited license. The Department evaluated the renewal request and comments and determined the proposed renewal is consistent with Condition 1 of the ASR Limited License 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.

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 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.

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.

ORDER

Now, THEREFORE, it is ORDERED, the renewal of ASR Limited License #005 shall be valid through the fifth anniversary of its issuance, pursuant to ORS 537.534, OAR 690-350-0020(5)(c), and Condition 1 of the original ASR limited license.

Except as modified by other provisions of this limited license, the licensee is authorized to pursue the project schedule, monitoring, and other features noted in the ASR pilot test work plans. Those plans 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 documents entitled:

Pilot Test Work Plan for City of Tigard ASR 1
City of Tigard Aquifer Storage and Recovery Project, ASR Limited License #005
Prepared by GSI Water Solutions, Inc.
August 19, 2013

and

Pilot Test Work Plan for the City of Tigard ASR 2 and ASR 3 Wellfield
City of Tigard Aquifer Storage and Recovery Project, ASR Limited License #005
Prepared by GSI Water Solutions, Inc.
November 14, 2012

The features of ASR testing must provide data that address the following: the appropriate target storage volume; loss of stored ASR water and natural water by virtue of ASR activities; water quality changes due to ASR activities; well construction sufficiency for ASR purposes; water level response in the ASR well, aquifer, springs and nearby wells; accounting of ASR inputs, withdrawals, and storage; water quality testing needs; and well hydraulics at the ASR well.

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; and the Clackamas River, a tributary of the Willamette River, using authorization of Certificate 78332, Permit S-32410, and Permit S-37839.

The point of diversion on the Bull Run River is located at T1S/R5E, Section 25, SW $\frac{1}{4}$ SW $\frac{1}{4}$. The point of diversion on the Tualatin River is located at T1S/R3W, Section 8, SW $\frac{1}{4}$ SW $\frac{1}{4}$. The point of diversion for the Clackamas River is located at T2S/R2E, Section 20, SE $\frac{1}{4}$ SW $\frac{1}{4}$.

The licensee may store up to 500 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 allowed at a combined injection rate up to 9 CFS (4,040 GPM) and a combined recovery rate up to 8,750 GPM (1,750 GPM per well).

These wells consist of the following:

Well Name	Well Location
ASR 1 (WASH 58003)	T2S/R1W Section 10, SE NE 1,550 feet South and 50 feet West from NW corner, Section 11
ASR 2 (WASH 61622)	T2S/R1W Section 10, SW NW 1,725 feet South and 25 feet East from NW corner, Section 10
ASR 3 (WASH 66115)	T2S/R1W Section 9, SW NE 1,770 feet South and 1,500 feet West from NE corner, Section 9
ASR 4 (proposed)	T2S/R1W Section 10, NW SW 25 feet South and 500 feet East from NW corner of SW quarter, Section 10
ASR 5 (proposed)	T2S/R1W Section 5, SW SE 770 feet North and 1,870 feet West from SE corner, Section 5

The ASR testing project shall be operated according to the following conditions, pursuant to OAR 690-350-0020(5). Failure to comply with any of the provisions of this license may result in action including, but not limited to, revocation of the license.

Other 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 licensee 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.
- 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 Authority Drinking Water Program (OHA) and Oregon Department of Environmental Quality (DEQ) water quality or treatment standards;

(ii) to address needed technological changes as requested by DEQ or OHA to minimize constituents regulated under OAR 333-61-0030 (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.

(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 stream flows 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 690-350-0020 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 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 testing plan for each injection well as the project develops. The plan shall include precise well location and construction data, in addition to other testing features. 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 333-61-0030 (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 stop injection activities immediately 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 currently approved pilot test plans.
- (B) **Receiving Aquifer Water.** 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 currently approved pilot test plans.
- (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 currently approved pilot test work plans and OAR 690-350-0020(3)(b)(F)(iv).

10) **Water Level Monitoring.** The licensee shall monitor water levels in wells in the manner described in the currently approved pilot test work plans. The licensee shall submit a detailed water level monitoring plan for testing at each subsequent injection well. The licensee shall obtain Departmental approval of a detailed plan before injection testing at a well may begin. The Department may approve, condition, or reject a detailed plan.

11) **Well Construction.** Injection and recovery wells shall be open to a single aquifer in the Columbia River Basalt Group and shall meet applicable well construction standards (e.g., OAR 690-200 and OAR 690-210). Following well completion, wells drilled after the issuance of this renewed limited license shall be thoroughly developed to remove cuttings and drilling fluids. A video log of the wells shall be collected to demonstrate to the satisfaction of the Department that each well is open only to a single aquifer. Additional data that help characterize the water bearing zone characteristics, including water quality and temperature, may also be provided to the Department. The wells shall be designed to limit the irretrievable loss of injected water to unsaturated zones.

12) **Cuttings.** During drilling of new project wells, the licensee shall collect cuttings at a minimum of 10- foot intervals and at major formation changes. The licensee shall describe and analyze

them to the degree necessary to determine the formation, member and flow unit within the Columbia River Basalt of the water bearing zone, and provide a split of the washed cuttings to the Department.

13) 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 100% of the quantity injected under this limited license for testing cycles 1, 2, and 3. Thereafter, 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 2021 lasts from October 1, 2020 through September 30, 2021. 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 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.

14) Annual Reporting.

- (A) 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 report shall detail the several kinds of data collected during the water year (including the water quality results in condition 9, in a DEQ-specified format), analyze those data to show the ASR project impacts on the aquifer, analyze for loss, 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. Annual reports 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 15 below.

15) 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 (actual locations of built wells and proposed locations for proposed locations) 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 limited license 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.
- 16) **Well Tag Condition for Licensee Wells.** The licensee shall ensure that their wells have been assigned a Department Well Identification Number (Well ID Number). A tag showing the Well ID Number shall be permanently attached to the well. If a well does not have a Well ID Number, the licensee shall apply for one from the Department and attach it to the well. The Well ID Number shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.
- 17) **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.
- 18) **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 the appropriate diversion authorization.
- 19) **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.
- 20) **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 Department within five days of receipt.
- 21) **Other Measures.** The licensee shall take any additional measures, as appropriate, to address ASR-related issues such as landslide activation, seepage, streamflow increases, interference

with nearby wells, aquifer storage limitations, and water quality protection. The licensee shall resolve these issues prior to submittal of an ASR permit application.

22) **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.

23) **Expiration Date.** This modified license expires five years from the date of issuance of this Final Order.

Dated at Salem, Oregon on NOV 19 2021



Dwight French
Water Rights Services Division Administrator
for Thomas M. Byler, Director

This order was prepared by Jen Woody and Phil Marcy. If you have any questions about any of the statements contained in the document, Phil can be reached at Phillip.i.marcy@oregon.gov or 971-301-1033.

If you have other questions about the Department or any of its programs, please contact our Customer Service Group at 503-986-0900.

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.

Mailing List for FO

Scheduled Mailing Date:

Application:

ASR Limited License #005 - RENEWAL

Original mailed to Applicant:

City of Tigard
c/o Rob Murchison
13125 SW Hall Blvd.
Tigard, OR

Copies Mailed	
by: <u>TM</u>	
(STAFF)	
on: <u>11/19/2021</u>	
(DATE)	

Copies of FO sent to WRD:

1. Jake Constans, Watermaster District 18
1. Mike McCord, Region Manager
2. File

Copies of FO sent to other interested persons (CWRE, Agent, Commenter, etc.):

1. Tom Pattee, Oregon Health Authority Drinking Water Program
2. Seth Sadofsky, Oregon Department of Environmental Quality
3. Ted Ressler, GSI Water Solutions, Inc.
4. Rob Murchison, City of Tigard