

## **REGULATORY FRAMEWORK – DRAFT 1/13/2009**

**SYSTEM**

**COMPONENT**

**ISSUE**

**RELATED REGULATION/POLICY**

**REQUIRED PERMIT/ACTION**

**SSRD 1 – “COUNTY LINE SYSTEM” SERVING ORDNANCE GRAVEL AND BUTTER CREEK CGAS**

### **Supply**

#### **Columbia River Winter Water Availability**

Water is available during September through March excluding November (OWRD September 2005).

Discuss with OWRD whether withdrawals may be allowed in November, or in December at greater rates than allowed, to be credited toward non-consumptive, fisheries flow augmentation in Umatilla River.

OWRD Comment: A water availability analysis was completed by OWRD in 2005. The analysis calculated existing flow in the Columbia on a 50% exceedance rate, based on existing gage information. Target biological flows were subtracted from the existing flow rates. The result showed 50% exceedance flow rates exceeded the target biological flow rates during the months of September, October, December, January, February and March. ODF&W met with OWRD and endorsed the analysis results as compliant with their assessment of Columbia River flow needs. Division 33 rules prohibit diversion of water during the month of September unless certain mitigation requirements can be met.

A water availability determination is part of the application for permit review. Many factors are considered in the application process, and the application process includes an opportunity for participation by all interest groups/individuals. New information can be provided and considered by OWRD. OWRD cannot assure the success of an application before it is submitted and subjected to the review process. This includes the water availability

determination. Proposals can be made for higher rates and alternative months. OWRD will consider the proposals based on all available information, including comments by other parties, and render a decision accordingly. Mitigation proposals are always welcomed as part of the application packet, and will be weighed according to what statutes and rules allow.

OAR 690-033-0000(c) – Allows appropriation of water for groundwater recharge.

None

OWRD Comment: Division 33, “Additional Public Interest Standards for New Appropriations” applies to appropriations for water for groundwater recharge. These rules pertain to appropriations of water from the Columbia River above Bonneville Dam.

OAR 690-033-0120(2)(a) does not allow withdrawal between April 15<sup>th</sup> and September 30<sup>th</sup> – however may be exempted by OWRD if there is a net benefit for fish recovery 0140(2) or for multipurpose storage projects with net public benefit 0140(5).

Discuss whether withdrawal during September (when water is available per OWRD) can be credited toward fisheries recovery.

OWRD Comment: As noted, the rules allow withdrawals if sufficient case can be made there is a “net benefit for fish recovery....” Consideration will be given during the application for permit review process. OWRD will defer to ODF&W as the expert in these matters, and weigh their expert advice in making the final decision. It is recommended that an applicant work closely with ODF&W in development of the application and the mitigation proposal, prior to submittal to OWRD.

## Storage

### **Recharge Ordnance Gravel Aquifer**

OAR 690-350-0110(1) allows use of diverted Columbia River water for aquifer recharge.

Apply for Limited License for recharge under ORS 537.143.

OWRD Comment: A limited license is not required as part of the AR process. However, OWRD has found that AR testing under a 537.143 limited license is preferred because it allows the applicant and OWRD to understand the benefits and limits of a potential project, and thereby develop a well defined application. The permit obligates the recharged water to the applicant as the water right holder.

Discuss with OWRD the timeline for the license and requirements for fulfillment of its goals.

Concurrently apply for Recharge Permit under 0120

OWRD Comment: Timeline and requirements will depend on the complexity of the application and the degree of potential for harm to other water rights. OWRD is obligated by statute and administrative rule to follow a prescribed procedure that is subject to a public interest review and public involvement.

There is nothing that prohibits applying for a Recharge Permit at the same time as making application for a limited license. However, the purpose of the limited license is to compile information that will assist in the permit application process. Without that information, the application review process may be much more complicated.

Use of AR water under a Limited License is subordinate to any other water rights irrespective of their priority date, except other recharge permits, per ORS 537.143.

Discuss with OWRD to retain ownership of AR water.

OWRD Comment: Normally, when a limited license is issued for AR testing, there is no authority for recovery or use of the stored water. It becomes part of the natural ground water regime. Possibility, a limited license could include provisions for a storage account, however a limited license for recovery of AR stored water cannot be issued for irrigation (537.143(1)). A limited license for ASR may include irrigation where the overlying permit or certificate is for irrigation.

DEQ's approval of recharge water quality is required per 690-350-0120(3)(b).

Discuss DEQ approval process and requirements as part of both Limited License and Permit applications.

OWRD Comment: Unlike ASR, the AR process requires separate approvals and permits from DEQ. Additionally, a certification related to instream water rights is required from ODF&W unless ODF&W provides a waiver (OAR 690-350-120).

Additional permit information required per OAR 690-310-0040.

Include in Permit submittal package.

OWRD Comment: None

Recharge Permit can become a "Recharge Certificate" per 0120(6) – a water right.

Requires annual reports. Discuss reporting requirements and goals to obtain the water right.

Certificate won't likely be issued until a complete monitoring plan is approved.

OWRD Comment: The permit will contain a number of conditions for operation. The purpose of the permit is to "prove up" on the water right, including adherence to all conditions. Likely the permit will include a condition that

requires development of a final monitoring plan that continues to assure against injury to other users and the resource, and the certificate will continue that requirement for the life of the water right.

Recharge operations continue during Permit review times.

Discuss with OWRD to allow.

OWRD Comment: Continue under a valid limited license or after a permit has been issued.

#### Recovery

Recovery of AR Water

A secondary groundwater permit is needed for recovery of AR water per 690-350-0130.

Apply to OWRD to obtain Limited License for AR testing per ORS 537.143.

OWRD Comment: A limited license is not required under the rules for AR (unlike ASR). However, a limited license testing period is recommended as a means to get the information that is needed for an application for permit.

The permit issued to the applicant obligates the water to the applicant as the water right holder.

Apply to OWRD concurrently for Secondary Permit per OAR 690-350-0130.

OWRD Comment: Could not consider a secondary permit to a limited license. A secondary permit must be issued in conjunction with a valid recharge certificate or permit (OAR 690-350-130 (2)(d)). Possibly the AR limited license could include requirements for accounting, and use for other than irrigation. Also, a second limited license could be considered for use other than irrigation.

Recovery limited to 85% of recharged water for the first 5 years per 350-0130(3).

Discuss with OWRD the use of this water for river flow augmentation, water quality benefits constituting as much, if not greater than, 15% of AR water.

OWRD Comment: The 15% recharged water not available for recovery is considered “lost” to the system and not under the control of the project. This amount (15%) can vary depending on the results of an analysis completed that demonstrates more is lost, or less is lost to the aquifer system and not available for recovery (OAR 690-350-120(5)(f)). In the absence of better information, 15% loss is set by rule. If an applicant for permit intends to include return flow as part of a project, it will be necessary to give clear definition to timing, quantity, and location. This would be one way to account for 100% of the recharge water, but the standard for definition would be high.

Disposition of current CLWID recharge water right after SSRD 1 AR begins.

Unknown.

OWRD Comment: This would be part of an agreement among the project participants, brokered by an overlying project manager (irrigation district or other) yet to be organized. There are a number of options for putting together an agreement including a transfer of the water right to another location. An application may be filed.

Must show that the system recovers AR groundwater per 350-0130(4)(h).

Develop monitoring and reporting plan as part of Limited License application.

OWRD Comment: None

Water conservation measures will likely need to be proposed for the use of AR water per OAR 690-507-0020(4)

Propose measures as part of Permit application.

OWRD Comment: None

Permit can become a “Secondary Groundwater Certificate” per 350-0130(5) – a water right.

Requires annual reports. Discuss reporting requirements and goals to obtain the water right.

Likely requires an approved monitoring plan.

OWRD Comment: None

### **Distribution**

#### **ASR Water Injection and Recovery**

Injection/recovery to be accomplished under ASR Rules OAR 690-350. Rule 0010(1)(a) contemplates secondary use of the injected water for beneficial uses.

The AR Secondary Groundwater Permit or Certificate acts as the water right for ASR source water - right to ASR inherent in “every” water right per 0010(3), 0020(3)(a)(F).

Apply for ASR Limited License for ASR aquifer testing per 0010(2) and 0020. The License can be issued for up to 5 years 0020(3).

OWRD Comment: After the initial license expires, another license can be issued if more testing is necessary.

Apply for ASR test concurrently with AR testing.

OWRD Comment: This will work if there is an overlying permit or certificate. A limited license is needed for ASR testing.

Status of the original groundwater rights needs to be determined.

OWRD Comment: Assistance from the local watermaster and/or Salem staff is recommended.

The AR Secondary Groundwater Permit or Certificate acts as the water right for ASR source water – right to ASR inherent in “every” water right per 0010(3), 0020(3)(a)(F).

OWRD Comment: The AR secondary groundwater permit or certificate is the water right granting use of the stored water. It designates type of use, rate, duty, and place of use as a secondary right does for use of surface water storage. The above statement mixes AR with ASR. An applicant needs to keep in mind they are two separate administrative processes that are used to achieve similar results.

“Only after completion of an ASR testing program under a limited license may an applicant apply for a permanent ASR permit.” 0030(1)

Apply for permit following completion of ASR testing.

OWRD Comment: No comment

Injection source water quality criteria – Under OAR 690-350-0010(6)(a) the ASR injection water must meet drinking water standards in OAR 333-061-0030.

Data has been collected from alluvial wells for drinking water quality analysis. Discuss with OWRD & DEQ regarding any additional sampling and analysis.

OWRD Comment: ASR permitting is the responsibility of OWRD. However, both DEQ and DHR’s Drinking Water Program are primary consultants for water quality standards and water quality monitoring requirements.

Minimize presence of constituents not naturally present per OAR 690-350-0010(6)(b).

Discuss with OWRD & DEQ as to relevance.

OWRD Comment: See above.

Presence of nitrate in alluvial groundwater at levels greater than 50% of its established level of 10 mg/L 690-350-0010(6)(d).

Discuss with OWRD and DEQ to design the AR system to dilute nitrate concentrations to less than 5 mg/L in ASR source water and develop appropriate monitoring points.

OWRD Comment: See above.

Injection source water quality criteria – Under OAR 690-350-0010(6)(a) the ASR injection water must meet treatment requirements in OAR 333-061-0032.

No treatment necessary. If points of AR water withdrawals (wells) are designed to be more than 200 feet away from injection locations, the provisions of OAR 333-061-0032(7)(a) apply which classify AR groundwater as “groundwater” and not influenced by surface water quality.

OWRD Comment: Division 333 relates to drinking water standards for DHR’s Drinking Water Program. Water withdrawn from well locations described above may not require treatment for potable purposes. Under both AR and ASR OWRD rules, recharge water quality standard are explicit and always apply, regardless of the location of extraction wells. There are no OWRD treatment or water quality requirements for water that is recovered from an AR or ASR project.

Recovered ASR testing water to be tested for disposal options per 0010(7)(c).

Discuss with OWRD and DEQ on requirements.

OWRD Comment: No comment

Injection locations are ?? miles outside the ?? year time of travel zones for public water systems.

Discuss with OWRD & xx to design the system accordingly.

OWRD Comment: No comment

Following successful ASR testing, an ASR Permit will be issued by OWRD per OAR 690-350-0030. Develop permit application package for submittal to OWRD.

OWRD Comment: No Comment

**ASR Water Recovery**

ASR water recovery is potentially subject to the 5-mile radius restriction around cities 690-507-0070(3)(d)(D).

Discuss with OWRD and design the system to comply.

OWRD Comment: Only wells producing native ground water from a basalt aquifer apply. Would not effect ASR water recovery.

Groundwater from Butter Creek CGA shall be pumped March 15<sup>th</sup> to November 1<sup>st</sup> - 231 days - per OAR 690-507-0630(3) – and March 1<sup>st</sup> to November 30<sup>th</sup> - 275 days - in Stage Gulch CGA per 690-507-0770(3).

Include in system design.

OWRD Comment: Pertains to native ground water, although any permit will include “season of use” restrictions consistent with other agricultural uses in the basin.

Metering and reporting duties for injection and recovery systems for Butter Creek CGA are defined in OAR 690-507-0640 and for Stage Gulch CGA in OAR 690-507-0780 and sections referenced therein.

Include in system design.

OWRD Comment: The rules apply to native ground water, but similar conditions are appropriate.

Distribution of SAY for Butter Creek CGA may be relaxed due to sub-area user agreement per OAR 690-507-0670(5) – and in Stage Gulch CGA per OAR 690-507-0810(5).

Clarify requirements, if any, with OWRD.

OWRD Comment: The rule language relates to requesting and distributing native water. In other words, it relates to date of priority. This would be an agreement among all of the users. The language does not relate to the total pumping level established by the SAY, and is not related to ASR recovery.

**SSRD 2 – “ECHO MEADOWS SYSTEM” SERVING STAGE GULCH SUB-AREA G AND SUB-AREA A SOUTH OF THE UMATILLA RIVER**

**Groundwater Recovery For ASR Injection**

**Water Right Availability**

Use of groundwater from Echo Meadows area for ASR use requires a water right. Regulations unclear as to the exact mechanism.

Discuss with OWRD the steps to possibly use CLWID’s recharge water right.

OWRD Comment: The mechanism for use of recharge in Echo Meadows would be to obtain a permit, either a new permit or a transfer of an existing right, and use it for recharge. Use of CLWID’s right would require a transfer of the right to Echo Meadows. Alternatively, a new permit application may be made. A new permit would have a junior priority date.

Formal agreement with CLWID under ASR rules 690-350-0020(3)(a)(G) is required for ASR testing.

OWRD Comment: No comment

The use of Echo Meadows groundwater as ASR source water is potentially subject to OAR 690-507-0070(3)(e) and OAR 690-033-0000(b), 0120(2)(a)&(b)&(4) requirements.

Discuss with OWRD the nature and extent of any mitigation that may be necessary.

OWRD Comment: Any proposed permit for use of native ground water will be subject to review for hydraulic connection with a surface water source, and for water availability. If the proposed permit is for ASR recharge using source water that has been stored under an AR project it is not subject to review under the rules identified above. The water stored by an AR project must be available for use, and native ground water cannot be affected.

Groundwater withdrawals are subject to the 1-mile rule per OAR 690-009-0040, and controlled on a CGA basis per 009-0050(b).

Discuss with OWRD and include in system design.

OWRD Comment: True for native ground water. Withdrawals of stored water under AR or ASR are not. Typically, 100% of the water that has been stored is not available for recovery.

OAR 690-507-0070(2)(d)(A) requires that diverted water is applied only to lands with existing water rights and sub-section (B) requires only 2.25 acre feet per acre of duty.

Clarify with OWRD whether this applies to new applications or use of CLWID water right in Echo Meadows is exempt from sub-section (B).

OWRD Comment: The duty for any new right will be determined at the time an application is reviewed and the permit is written. It is normally consistent with other uses in the basin, however special circumstances will be considered if a higher duty, or lower, is necessary. The requirement of sub-section (B) would not apply to CLWD's water right. Umatilla Basin rules do not apply to water that is diverted directly from the Columbia River. The Columbia Basin rules apply.

### **ASR Injection and Recovery**

Entries listed for SSRD 1 are applicable.

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OWRD Comment: No comment

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OWRD General Comments:

Under ORS 537.143 a limited license can be issued for AR testing but not AR pursuant to the declaration in ORS 537.135 and associated rules. AR testing has been for the purpose of acquiring test information that would be relevant in an AR permit application. This is a help since it is difficult to support an AR permit application without test data. Any water recharged during AR testing remains in the aquifer system as natural ground water. The lack of a storage account in AR testing has been a distinguishing feature from AR.

Conceivably, a limited license for AR testing could be written to include a "short-term" storage account of water under an ORS 537.143 limited license. The notion would still be data collection on an AR permitting track and recovery could be part of the testing. However, a 537.143 limited license to recover the stored water cannot be issued for irrigation, but could be used for AR testing for injection into basalt wells. In order to issue a secondary permit, a storage permit or certificate must be in place. OWRD cannot issue a secondary gw permit to recover water that has been stored pursuant to a limited license for AR testing.

OAR 690-507-0070 considers both the County Line area and the Echo Meadows area. These rules apply for water appropriated within the basin from tributaries to the Columbia River. Water appropriated directly from the Columbia River is not subject to the Umatilla Basin rules.

As more definition is developed for a specific project, including the proposed beneficial uses, places of use, sources of water, etc., OWRD will be better able to work with applicants in developing a clear permit/licensing sequence that will facilitate that project?

In all cases for AR and ASR it is advisable to have a pre-application conference with OWRD staff. This is a requirement with ASR.

Use of water stored under an ASR permit must be used at the “place of use” identified in the overlying permit or certificate.