



City of Stayton

Department of Administration
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February 19, 2025

RE: House Bill 3364 – The City of Stayton requests that Section 12 of the bill be amended to clarify that in the case of an Aquifer Storage and Recovery (ASR) projects, the required Seasonally Varying Flow Condition will only apply to the ASR Limited License and subsequent ASR permit, not the underlying water right.

House Bill (HB) 3364 proposes a variety of changes to the Oregon Water Resources Department's (OWRD) Water Project Grants and Loans (WPGL) program. The City of Stayton (City) was awarded WPGL grant funding for the Mill Creek Park Aquifer Storage and Recovery Project in 2023. This grant program requires seasonally varying flows (SVF) to be established when funding certain types of above-ground and below-ground water storage projects. The City is providing these comments related to one aspect of HB 3364.

Among other circumstances, SVFs are required when the project being funded by a grant or loan will divert water from a stream that supports threatened, endangered, or sensitive fish species. The City's proposed project would divert water for its aquifer storage and recovery (ASR) project from the North Santiam River, so this requirement applies.

Storage of water in an ASR project requires two water use authorizations. Water is diverted using an underlying (existing) water right certificate or permit, and then stored and recovered for use under an ASR limited license during testing (and under an ASR permit after completion of testing). ASR is a beneficial use inherent in all water rights for other beneficial uses (See ORS 537.531). For the project funded by the WPGL, the City would divert water from the North Santiam River under its existing municipal water right certificates and store and use the water in the aquifer under an ASR limited license.

The summary of the legislative concept provided in advance of HB 3364 indicated that SVF conditions would be applied to the underlying water right rather than the ASR Limited License and subsequent ASR permit. Section 12 of HB 3364 requires OWRD to make the SVF a condition of "the new or existing water right certificate or permit or aquifer recharge permit or limited license for the storage of water" Thus, the bill is ambiguous about how the SVF condition would be applied in the case of ASR. **The HB 3364 language should be amended to clarify that in the case of ASR, the SVF condition would apply to the ASR Limited License and subsequent ASR permit, not the underlying right being used for ASR.**

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If the SVF conditions were placed on the underlying water rights, it would mean that the SVFs could become a condition of the City's use of its existing municipal water rights, and the City could be required to limit its diversion of water in order to comply with the SVF condition, even if it is not diverting additional water for storage in the ASR project. Importantly, the issuance of a limited license for ASR does not mean that a permanent water right for ASR (ASR permit) will ever be issued; extensive testing is needed before an entity can even apply for an ASR permit. However, if an SVF condition is applied to the underlying municipal water right, it appears that it would become a permanent condition of that water right and could negatively affect the City's ability to use its existing municipal water rights.

Section 12 of HB 3364 should be amended to clarify that SVF conditions will be applied only to the ASR limited license or permit, not the underlying water right.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Quigley". The signature is fluid and cursive, with a large initial "B" and a long, sweeping tail.

Brian Quigley
Mayor

CC: State Representative Ed Diehl
State Senator Fred Girod