

**Oregon Water Resources Department  
Water Right Services Division**

**Application for Extension of Time**

In the Matter of the Application for an Extension of Time ) FINAL ORDER  
for Permit S-53003, Water Right Application S-73290 in ) INCORPORATING  
the name of David and Virginia Hughes ) SETTLEMENT  
 ) AGREEMENT

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**Permit Information**

Application: S-73290  
Permit: S-53003  
Basin: South Coast / Watermaster District 15  
Date of Priority: March 17, 1993  
Source of Water: Abe's Creek and Reservoirs 1 and 2, constructed under Application R-73289, Permit R-12108, tributaries of Croft Lake  
Purpose or Use: Cranberry Operations on 22.65 Acres  
Maximum Rate and Volume: 3.01 cubic feet per second (cfs) and 4.1 Acre-Feet (AF) per year, from stored water only, being 2.3 AF from Reservoir 1 and 1.8 AF from Reservoir 2

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**This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.230 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315.**

**Application History**

Permit S-53003 was issued by the Department on January 31, 1997. The permit specified completion of construction by October 1, 1999, and complete application of water to beneficial use by October 1, 2000. On May 25, 2018, Marc Van Camp, agent for David and Virginia Hughes submitted an Application for Extension of Time for Permit S-53003. In accordance with OAR 690-315-0050(2), on July 10, 2018, the Department issued a Proposed Final Order proposing to extend the time to complete construction from October 1, 2000, to October 1, 2002, and the time to apply water to full beneficial use from October 1, 2000, to October 1, 2002. The protest period closed August 24, 2018, in accordance with OAR 690-315-0060(1). On August 22, 2018, Croft Lake Association filed a protest to the Proposed Final Order. On August 25, 2022, the Department referred the proposed order and protest to the Office of Administrative Hearings for a contested case hearing. The matter was assigned case number 2022-OWRD-00119.

## **FINDINGS OF FACT**

On July 28, 2023, the parties entered into a Settlement Agreement incorporated herein as if set forth fully into this extension final order.

Except as expressly stated herein, the Department adopts and incorporates by reference the findings in the Proposed Final Order dated July 10, 2018.

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended.

The Limitations set forth in the Settlement Agreement, which will be reflected in any certificate issued resulting from the permit, are incorporated into this extension final order.

The conditions set forth in the Settlement Agreement, which will be included in any certificate issued resulting from the permit, are incorporated into this extension final order.

## **LIMITATIONS**

The authorized use of live flow from Abe's Creek, tributary of Croft Lake, being 3.01 cubic feet per second for Cranberry Operations, shall not be included in any certificate resulting from the permit. The permit owner will be limited to use of stored water from the two reservoirs listed on the permit, being Reservoir 1 and Reservoir 2, constructed under Application R-73289, Permit R-12108, Certificate 96651.

## **CONDITIONS**

1. Diversion of stored water from Reservoir 2 shall only be allowed when the water level in Reservoir 1 drops to 5 feet, as measured by a staff gage or other suitable measuring device. If the measuring device is disturbed, a suitable replacement may be authorized, in writing, by the Water Resources Department, Watermaster.
2. The water user shall also document the water level in Reservoir 1 prior to each withdrawal of water from Reservoir 2 and include these measurements in the required reports.

## **CONCLUSION OF LAW**

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 539.010(5) and OAR 690-315-0040(2).

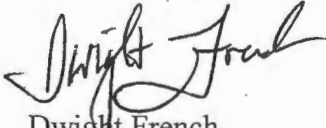
## ORDER

The extension of time for Application S-73290, Permit S-53003, therefore, is approved, subject to the terms and conditions of the Settlement Agreement and Limitations and Conditions set out in this order.

The use of live flow water, being 3.01 cubic feet per second from Abe's Creek, tributary of Croft Lake, during the period of November 1 through May 31 of each year, for Cranberry Operations on 22.65 acres under Permit S-53003, is CANCELED.

The deadline for completing construction is extended from October 1, 1999, to October 1, 2002. The deadline for applying water to full beneficial use within the terms and conditions of the permit is extended from October 1, 2000, to October 1, 2002.

DATED: August 4, 2023



Dwight French  
Water Right Services Division Administrator, for  
Douglas E. Woodcock, Acting Director  
Oregon Water Resources Department

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- If you have any questions about statements contained in this document, please contact Permit Extension Specialist at (503) 979-3213.
  - If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at (503) 986-0900
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### Appeal Rights

ORS 183.417(3)(b): "An order that incorporates [an] informal disposition is a final order in a contested case, but is not subject to judicial review. A party may petition the agency to set aside a final order that incorporates the informal disposition on the ground that the informal disposition was obtained by fraud or duress."

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, 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.

59-1\00042903.002

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

In the Matter of the Application for an Extension of	)	SETTLEMENT AGREEMENT
Time for Permit S-53003, Application S-73290, in	)	
the name of David and Virginia Hughes	)	OAH Case Number: 2022-OWRD-
<i>Applicants</i>	)	00119
	)	
Croft Lake Association	)	
<i>Protestant</i>	)	

The Oregon Water Resources Department (“Department”), David and Virginia Hughes (“Hughes”) and Croft Lake Association (“Croft Lake”) (collectively “the Parties”) do hereby stipulate and agree in this Settlement Agreement as follows:

**A. Background**

1. On May 25, 2018, Hughes filed an Application for an Extension of Time for Permit S-53003 requesting that the time to complete construction of the water system be extended from October 1, 1999, to October 1, 2002, and the time to apply water to full beneficial use under the terms and conditions of Permit S-53003 be extended from October 1, 2000, to October 1, 2002.
2. On July 10, 2018, the Department issued a Proposed Final Order approving the extension of time.
3. On August 22, 2018, Croft Lake filed a protest to the Proposed Final Order.
4. On August 25, 2022, the Department referred the proposed order and protest to the Office of Administrative Hearings for a contested case hearing. The matter was assigned case number 2022-OWRD-00119.
5. The Parties agree that the protest is resolved solely on the terms set forth in this Agreement. Croft Lake and Hughes have entered into an additional, separate agreement to address broader water rights and water quality issues and the Department is not a party to this additional agreement.

**B. Consent**

6. Each Party to this Agreement certifies that it has read the entire Settlement Agreement, including the draft Final Order Incorporating Settlement Agreement, and understands and agrees with the contents thereof.
7. Each Party to this Agreement understands and agrees that this Agreement and all documents incorporated by reference set forth the entire agreement entered into among the three Parties.

8. Each Party to this Agreement understands and agrees that this Agreement and the Final Order Incorporating Settlement Agreement issued pursuant to this Agreement constitute the complete and final resolution of the protest.
9. Effective upon the signing of this Agreement by the Parties, all parties waive any and all right to petition for judicial review of this Agreement, and waive any and all right to request reconsideration, petition for judicial review, or appeal the Final Order Incorporating Settlement Agreement.

**C. Terms of Protest Resolution**

1. Effective upon the signing of this Agreement by the Parties, the protest by Croft Lake Association to the proposed order on the Hughes extension application is withdrawn.
2. As soon as practicable after the signing of this Agreement the department will withdraw the case from the Office of Administrative Hearings (2022-OWRD-00119).
3. The permit owners (being Hughes at the time of the signing of this Agreement) voluntarily relinquish the live flow component of the permit, meaning that the permit owner will only withdraw water from the two reservoir points of appropriation in the permit.
4. The parties agree to the inclusion in the certificate of the following limitation on use of stored water in Reservoir 2:

“WITHDRAWAL FROM RESERVOIR 2 MAY OCCUR ONLY WHEN WATER LEVEL IN RESERVOIR 1 DROPS BELOW 5 FEET”

Also expressed as a condition in the final order as follows:

“Diversion of stored water from Reservoir 2 shall only be allowed when the water level in Reservoir 1 drops to 5 feet, as measured by a staff gage or other suitable measuring device. If the measuring device is disturbed, a suitable replacement may be authorized, in writing, by the Water Resources Department, Watermaster.

5. The parties further agree to the inclusion in the certificate of the following addition to the measurement and recording condition:

“The water user shall also document the water level in Reservoir 1 prior to each withdrawal of water from Reservoir 2 and include these measurements in the required reports.”
6. Once each Party has signed this Agreement, the Department will issue a Final Order Incorporating Settlement Agreement consistent with the attached draft Final Order Incorporating Settlement Agreement. The Department will also issue a certificate for the water right associated with S-53003 consistent with the attached draft certificate.

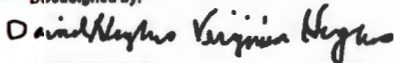
- 7. Each Party to this Agreement represents, warrants, and agrees that the person who executes this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that Party and bind that Party to the terms of this Agreement.
- 8. Croft Lake represents that it is a trust under Oregon law. Croft Lake represents further that it filed the protest of the Proposed Final Order and has otherwise participated in the proceedings related to Permit S-53003 on behalf of the beneficiaries of the trust, and in order to ensure that the trust and its beneficiaries are not adversely affected or aggrieved by the Department's decisions concerning the extension and perfection of the water right associated with S-53003.
- 9. Each Party to this Agreement certifies that it has had a reasonable opportunity to review and request changes to the Agreement, and that it has signed this Agreement of its own free will and accord.
- 10. The Parties agree that nothing in this Agreement or the Final Order Incorporating Settlement Agreement establishes factual, legal, or policy precedent, beyond the effect of these documents on case 2022-OWRD-00119 and permit S-53003.
- 11. This Agreement may be signed in counterparts.



\_\_\_\_\_  
 Dwight French, Administrator,  
 Water Right Services Division  
 for Douglas E. Woodcock, Acting Director  
 Oregon Water Resources Department

JUL 28 2023

\_\_\_\_\_  
 Date

DocuSigned by:  
  
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\_\_\_\_\_  
 David and Virginia Hughes

7/28/2023  
 \_\_\_\_\_  
 Date

DocuSigned by:  
  
 Linda Cashman Trustee  
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\_\_\_\_\_  
 Croft Lake Association

7/28/2023  
 \_\_\_\_\_  
 Date

SETTLEMENT AGREEMENT EXHIBIT A: DRAFT FINAL ORDER

Oregon Water Resources Department  
Water Right Services Division

Application for Extension of Time

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Permit Information

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Maximum Rate and Volume: 3.01 cubic feet per second (cfs) and 4.1 Acre-Feet (AF) per year, from stored water only, being 2.3 AF from Reservoir 1 and 1.8 AF from Reservoir 2

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.230 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315.

Application History

Permit S-53003 was issued by the Department on January 31, 1997. The permit specified completion of construction by October 1, 1999, and complete application of water to beneficial use by October 1, 2000. On May 25, 2018, Marc Van Camp, agent for David and Virginia Hughes submitted an Application for Extension of Time for Permit S-53003. In accordance with OAR 690-315-0050(2), on July 10, 2018, the Department issued a Proposed Final Order proposing to extend the time to complete construction from October 1, 2000, to October 1, 2002, and the time to apply water to full beneficial use from October 1, 2000, to October 1, 2002. The protest period closed August 24, 2018, in accordance with OAR 690-315-0060(1). On August 22, 2018, Croft Lake Association filed a protest to the Proposed Final Order. On August 25, 2022, the Department referred the proposed order and protest to the Office of Administrative Hearings for a contested case hearing. The matter was assigned case number 2022-OWRD-00119.

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## FINDINGS OF FACT

On **<DATE>**, the parties entered into a Settlement Agreement incorporated herein as if set forth fully into this extension final order.

Except as expressly stated herein, the Department adopts and incorporates by reference the findings in the Proposed Final Order dated July 10, 2018.

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended.

The Limitations set forth in the Settlement Agreement, which will be reflected in any certificate issued resulting from the permit, are incorporated into this extension final order.

The conditions set forth in the Settlement Agreement, which will be included in any certificate issued resulting from the permit, are incorporated into this extension final order.

## LIMITATIONS

The authorized use of live flow from Abe's Creek, tributary of Croft Lake, being 3.01 cubic feet per second for Cranberry Operations, shall not be included in any certificate resulting from the permit. The permit owner will be limited to use of stored water from the two reservoirs listed on the permit, being Reservoir 1 and Reservoir 2, constructed under Application R-73289, Permit R-12108, Certificate 96651.

## CONDITIONS

1. Diversion of stored water from Reservoir 2 shall only be allowed when the water level in Reservoir 1 drops to 5 feet, as measured by a staff gage or other suitable measuring device. If the measuring device is disturbed, a suitable replacement may be authorized, in writing, by the Water Resources Department, Watermaster.
2. The water user shall also document the water level in Reservoir 1 prior to each withdrawal of water from Reservoir 2 and include these measurements in the required reports.

## CONCLUSION OF LAW

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 539.010(5) and OAR 690-315-0040(2).

59-1\00042903.002



## ORDER

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The use of live flow water, being 3.01 cubic feet per second from Abe's Creek, tributary of Croft Lake, during the period of November 1 through May 31 of each year, for Cranberry Operations on 22.65 acres under Permit S-53003, is CANCELED.

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DATED:

Dwight French  
Water Right Services Division Administrator, for  
Douglas E. Woodcock, Acting Director  
Oregon Water Resources Department

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59-1\00042903.002

Mailing List for Extension FO Copies

FO Date:

Copies Mailed

Application: S-73290

By: \_\_\_\_\_

Permit: S-53003

On: \_\_\_\_\_

Original mailed to Applicant:

David and Virginia Hughes  
86639 Croft Lake Lane  
Bandon, OR 97411

Copies sent to:

1. WRD - App. File S-73290/ Permit S-53003
2. Marc Van Camp  
Stuntzner Engineering  
P.O. Box 118  
Coos bay, OR 97420
3. Other permit holders of record besides applicant

Croft Lake Association  
c/o Karl Anuta  
Attorney for Croft Lake Association  
735 SW First Avenue, 2nd Floor  
Portland, OR 97204  
kga@integra.net

Michael J Gelardi  
Attorney for David and Virginia Hughes  
4710 Village Plaza Loop, Suite 165 Eugene, OR 97401  
mike@gelardilaw.com

Fee paid as specified under ORS 536.050 to receive copy:

- 4.. None

Receiving via e-mail (10 AM Tuesday of signature date)

(DONE BY EXTENSION SPECIALIST)

5. WRD - Watermaster District 15

CASEWORKER: JDP

**SETTLEMENT AGREEMENT EXHIBIT B: DRAFT CERTIFICATE**

STATE OF OREGON

COUNTY OF COOS

## STIPULATED CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

DAVID HUGHES  
 VIRGINIA HUGHES  
 86639 CROFT LAKE LANE  
 BANDON OR 97411

confirms the right to the use of water perfected under the terms of Permit S-53003. The amount of water used to which this right is entitled is limited to the amount used beneficially, and shall not exceed the amount specified, or its equivalent in the case of rotation, measured at the point of diversion from the source. The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: S-73290

SOURCE OF WATER: RESERVOIRS 1 AND 2, CONSTRUCTED UNDER APPLICATION R-73289, PERMIT R-12108, TRIBUTARIES OF CROFT LAKE

PURPOSE or USE: CRANBERRY OPERATIONS ON 20.4 ACRES

MAXIMUM RATE: 3.7 ACRE-FEET (AF) PER YEAR, FROM STORED WATER ONLY, BEING 1.0 AF FROM RESERVOIR 1 AND 2.7 AF FROM RESERVOIR 2. WITHDRAWAL FROM RESERVOIR 2 MAY OCCUR ONLY WHEN WATER LEVEL IN RESERVOIR 1 DROPS BELOW 5 FEET.

PERIOD OF USE: YEAR ROUND FOR STORED WATER FROM RESERVOIRS 1 AND 2

DATE OF PRIORITY: MARCH 17, 1993

The points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
30 S	15 W	WM	11	SW NE	POD 1 – 165 FEET NORTH AND 280 FEET EAST FROM C1/4 CORNER, SECTION 11
30 S	15 W	WM	11	NW SE	POD 2 – 350 FEET SOUTH AND 55 FEET EAST FROM C1/4 CORNER, SECTION 11

The amount of water diverted for CRANBERRY OPERATIONS, together with the amount secured under any other rights existing for the same lands, is limited as follows: For temperature control, 0.15 cubic foot per second per acre; For flood harvesting or pest control, 0.05 cubic foot per second per acre; For irrigation of cranberries, ONE-FORTIETH of one cubic foot per second and 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. For the irrigation of any other crop, ONE-EIGHTIETH of one cubic foot per second and 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Authorized Places of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
30 S	15 W	WM	11	SW NE	17.1
30 S	15 W	WM	11	SE NW	3.3

Measurement, recording and reporting conditions:

- A. The water user shall maintain the meter or other suitable measuring device as approved by the Director in good working order, shall keep a complete record of the amount of water used from each reservoir each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. The water user shall also document the water level in Reservoir 1 prior to each withdrawal of water from Reservoir 2 and include these measurements in the required reports. Further, the Director may require the water user to report general water use information, including the place and nature of use of water under the right.
- B. The water user shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

This right is limited to any deficiency in the available supply of any prior right existing for the same lands.

Diversion and use of water under this right must comply with the Clean Water Act and utilize best management practices as identified in the plan developed as specified in the New River Alternative Dispute Resolution Team Agreement on file with the Department.

Failure to comply with any of the provisions of this right may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the right.

This right is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

The right to the use of the water for the above purpose is restricted to beneficial use on the place of use described.

Issued \_\_\_\_\_.

\_\_\_\_\_  
Dwight French  
Water Right Services Division Administrator, for  
Douglas E. Woodcock, Acting Director  
Oregon Water Resources Department