

Oregon Water Resources Department
Water Right Services Division

Application for Extension of Time

In the Matter of the Application for an Extension of Time) PROPOSED
for Permit S-55225, Water Right Application S-88232) FINAL
in the name of Farmers Irrigation District) ORDER

Permit Information

Application:	S-88232
Permit:	S-55225
Basin:	Hood / Watermaster District 3
Date of Priority:	May 23, 2016
Source of Water:	Upper Green Point Reservoir, constructed under Permit R-698, enlarged under Permit R-15387, tributary to Hood River
Purpose or Use:	Supplemental irrigation of 548.15 Acres
Maximum Rate/Volume:	605.0 acre-feet (AF)

***Please read this Proposed Final Order in its entirety as it contains
additional conditions not included in the original permit.***

In summary, the Department proposes to:

- Grant an extension of time to apply water to full beneficial use from August 15, 2024, to October 1, 2029.¹

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

¹ Pursuant to ORS 537.230(5), upon the completion of beneficial use of water allowed under the permit, the permit holder shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permit holder shall submit a map of the survey and the claim of beneficial use.

ACRONYM QUICK REFERENCE

Application – Application for Extension of Time
Department – Oregon Water Resources Department
ODFW – Oregon Department of Fish and Wildlife
PFO – Proposed Final Order
FOF – Finding of Fact
AF - acre-feet

AUTHORITY

Generally, see ORS 537.230 and OAR Chapter 690 Division 315.

ORS 537.230(2) provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order an extension of time within which irrigation or other works shall be completed or the right perfected. In determining the extension, the Department shall give due weight to the considerations described under ORS 539.010(5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

ORS 539.010(5) instructs the Director to consider: the cost of the appropriation and application of the water to a beneficial purpose; the good faith of the appropriator; the market for water or power to be supplied; the present demands therefor; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0040 provides that in order to approve an application for an extension of time to complete construction or apply water to full beneficial use, the Department shall make the findings in OAR 690-315-0040(1) including a finding that there is “good cause” to approve the extension. OAR 690-315-0040(2)-(4) contains the factors that the Department must consider to make findings that support a “good cause” determination.

FINDINGS OF FACT

1. On August 15, 2019, Permit S-55225 was issued by the Department. The permit authorizes the use of up to 605.0 AF of water from the Upper Green Point Reservoir, constructed under Permit R-698, enlarged under Permit R-15387, tributary to Hood River, for supplemental irrigation of 548.15 acres. The permit specified construction was to begin by August 15, 2024 and complete application of water was to be made on or before August 15, 2024.
2. On August 14, 2024, Farmers Irrigation District, submitted an “Application for Extension of Time” (Application) to the Department, requesting the time to apply water to full beneficial use under the terms and conditions of Permit S-55225 be extended from August 15, 2024, to October 1, 2029. This is the first permit extension requested for Permit S-55225.

3. On August 20, 2024, notification of the Application for Permit S-55225 was published in the Department's Public Notice. No public comments were received.

Review Criteria [OAR 690-315-0040]

In order to approve an Application for an Extension of Time to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, or to begin construction, pursuant to ORS 537.248, the Department must make the findings in OAR 690-315-0040(1)(a) – (d).

Complete Extension of Time Application [OAR 690-315-0040(1)(a)]

4. On August 14, 2024, the Department received a completed Application and the fee specified in ORS 536.050 from the permit holder.

Start of Construction [OAR 690-315-0040(1)(b) and 690-315-0040(5)]

5. Certificate 48819 was issued December 20, 1979, for the storage of 715.0 AF of water in Upper Green Point Reservoir, which is the authorized source under Permit S-55225.
6. Construction of Upper Green Point Reservoir began prior to August 15, 2024, as specified in the permit as being the date to apply water to full beneficial use.

The Department has determined the permit holder began construction prior to August 15, 2024.

Good Cause [OAR 690-315-0040(1)(d)]

The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

In order to make a finding of "good cause" to approve the extension, the Department shall consider whether the applicant has demonstrated "reasonable diligence" in previous performance under the permit. OAR 690-315-0040(2)(a). In determining "reasonable diligence", the Department shall consider, but is not limited to, the following factors: a) The amount of construction completed within the time allowed in the permit or previous extension; b) The amount of beneficial use made of the water during the permit or previous extension time limits; c) Water right holder conformance with the permit or previous extension conditions; and d) Financial investments made toward developing the beneficial use of water.

continued on following page

Amount of Construction [OAR 690-315-0040(3)(a)]

The amount of construction completed within the time allowed in the permit or previous extension.²

7. Construction of Upper Green Point Reservoir began prior to permit issuance.
8. The Application does not identify any work accomplished towards the use of water for supplemental irrigation, however, work was accomplished towards the development of the enlargement of Upper Green Point Reservoir under Permit R-15387, which is the authorized source. Permit S-55225 requires compliance with permit conditions contained in Permit R-15387 prior to the diversion of any water for supplemental irrigation.

The Application provides evidence that progress of physical work, enough to qualify as the minimum necessary, has been made towards completion of the water system for the Department to find good cause and reasonable diligence towards complete application of water to a beneficial use.

Compliance with Conditions [OAR 690-315-0040(3)(c)]

The water right permit holder's conformance with the permit conditions.

9. The Department has considered the permit holder's compliance with conditions for use of stored water under Permit S-55225 and did not identify any concerns because no water has been diverted under the permit.
10. The Application provides evidence of compliance with many of the conditions contained in Permit R-15387, however, not all permit conditions included in Permit R-15387 have been met.

The Department has determined that the permit holder has demonstrated compliance with permit conditions as required by Permit S-55225.

Beneficial Use of Water [OAR 690-315-0040(3)(b)]

The amount of beneficial use made of the water during the permit time limits or previous extension time limits.

11. No water has been diverted from the Upper Green Point Reservoir, constructed under Permit R-698, enlarged under Permit R-15387, tributary to Hood River for supplemental irrigation.
12. A delay of beneficial use of water under Permit S-55225 was due, in part to the need to demonstrate compliance with conditions contained in Permit R-15387 prior to the use of water under Permit S-55225.

² "Actual Construction" is defined in OAR 690-315-0020(3)(d)(A) and (B) as physical work performed toward completion of the water system which demonstrates the water right permit holder's good faith and intention to complete the project with reasonable diligence. Actual construction does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, surveying, clearing land or planting crops.

The Department has determined that beneficial use of water has not yet been demonstrated under this permit because no water has been diverted for supplemental irrigation by August 15, 2024.

Financial Investments to appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0040(2)(b),(3)(d),(4)(d)]

13. The permit holder has invested approximately \$5,341,358, which is about 91 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$550,000 investment is needed for the completion of this project. The investment made has been primarily in the development of storage authorized under Permit R-15387, which is the authorized source under Permit S-55225, therefore investment in the development of the reservoir is also considered an investment under Permit S-55225.

Based on FOF 13, the Department has determined that the permit holder has made an investment, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

The Application provides evidence of progress towards completion of the water system; a financial investment has been made; the permit holder has demonstrated compliance with all permit conditions, and; beneficial use has not been demonstrated. The Department has determined the applicant has demonstrated the minimum necessary for the Department to find reasonable diligence towards complete application of water to a beneficial use.

The Market and Present Demands for Water [OAR 690-315-0040(4)(a-f)]

The Department's determinations of market and present demand for water or power to be supplied shall consider the requirements set forth under OAR 690-315-0040(4)(a-f). In accordance with OAR 690-315-0040(4), the Department shall consider, but is not limited to, the following factors when determining the market and the present demand for water or power to be supplied:

- *(a) The amount of water available to satisfy other affected water rights and scenic waterway flows;*
- *(b) Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d);*
- *(c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;*
- *(d) Economic investment in the project to date;*
- *(e) Other economic interests dependent on completion of the project; and*
- *(f) Other factors relevant to the determination of the market and present demands for water and power.*

OAR 690-315-0040(4)(a)

The amount of water available to satisfy other affected water rights and scenic waterway flows.

14. A review of the amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit S-55225; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined when an application for a new water right is submitted.
15. Current Water Availability Analysis has determined that 605.0 AF of water is available from Upper Green Point Reservoir, constructed under R-698, and enlarged under Permit R-15387.

OAR 690-315-0040(4)(b)

Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d).

16. The point of diversion is located on Upper Green Point Reservoir, tributary to Hood River, and is not located within a Withdrawn Area.
17. Hood River is not located within or above a state or federal scenic waterway.
18. The point of diversion is not in a location listed by the Department of Environmental Quality as a water quality limited stream.

OAR 690-315-0040(4)(c)

The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife.

19. Hood River is located within an area ranked “low” for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife.

OAR 690-315-0040(4)(d)

Economic interests dependent on completion of the project.

20. An approximate total of \$5,341,358 has been invested in the project.

OAR 690-315-0040(4)(e)

Other economic interests dependent on completion of the project.

21. Commercial growers served under Permit S-55225 have an economic interest in the completion of the project.

OAR 690-315-0040(4)(f)

Other factors relevant to the determination of the market and present demand for water and power.

22. No other factors relevant to the determination of the market and present demand for water and power have been identified.

Fair Return Upon Investment [OAR 690-315-0040(2)(f)]

23. The use and income from the permitted water development will likely result in reasonable returns upon the investment made to date. In addition, the natural environment will derive a benefit from the reservoir expansion by providing for flow augmentation for Ditch Creek and allows for the allocation of conserved water to provide flows in Upper Green Point Creek.

Other Governmental Requirements [OAR 690-315-0042(2)(g)]

24. Delay in the development of this project was caused in part by the need to secure a permit for the installation of monitoring stations and to update fish passage and screening requirements on Gate Creek and Cabin Creek. Both of these are located within Mt. Hood National Forest, and require NEPA approval prior to work to be completed.

Unforeseen Events [OAR 690-315-0040(2)(h)]

25. Unforeseen events extended the length of time needed to fully develop and perfect Permit S-55225, in that the COVID-19 Pandemic resulted in work stoppages. Additionally, wildfire risk, smoke and unseasonable rain events further delayed development under the permit.

Denial of an Extension Would Result in Undue Hardship [OAR 690-315-0040(2)(i)]

26. A denial of the extension would result in undue hardship, and there are no other reasonable alternatives that exist for meeting water use needs.

Good Faith of the Appropriator [OAR 690-315-0040(2)(c)]

27. The Application provides evidence of good faith of the appropriator under Permit S-55225.

Based on FOF 5, 6, 7, 8, 9, 13, and 20, the Department has determined that the applicant has shown good faith and reasonable diligence.

Duration of Extension [OAR 690-315-0040(1)(c)]

Under OAR 690-315-0040(1)(c), in order to approve an extension of time for water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.

28. As of August 14, 2024, the permit holder states the remaining work to be completed consists of completing construction of the water system and applying water to full beneficial use.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2029, to accomplish the application of water to beneficial use under the terms and conditions of Permit S-55225 is both reasonable and necessary.

Good Cause [OAR 690-315-0040(1)(d)]

The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).

The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and fair and reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the permit holder had no control, whether denial of the extension will result in undue hardship to the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant has shown that good cause exists for an extension of time to complete construction and apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

CONCLUSIONS OF LAW

1. The Applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
2. The Applicant complied with construction timeline requirements to begin construction as required by ORS 537.230, OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
3. Based on Finding of Facts 5, through 27, application of water to beneficial use can be accomplished by October 1, 2029³, as required by OAR 690-315-0040(1)(c).
4. The Applicant can complete the project within the time period requested for the extension on the project.
5. The Applicant has demonstrated good cause for the extension.

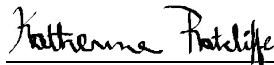
³Pursuant to ORS 537.230(5), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and a new or revised claim of beneficial use as deemed appropriate by the Department.

PROPOSED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

Extend the time to apply water to beneficial use under Permit S-55225 from August 15, 2024, to October 1, 2029.

DATED: April 15, 2025



Katherine Ratcliffe
Water Right Services Division Administrator, for
Ivan Gall, Director
Oregon Water Resources Department

*If you have any questions,
please check the information
box on the last page for the
appropriate names and
phone numbers.*

Protests

Pursuant to OAR 690-315-0060(1), the applicant or any other person adversely affected or aggrieved by the proposed final order may submit a written protest to the proposed final order. Protests must be received by the Water Resources Department no later than **May 30, 2025**, at this address: Oregon Water Resources Department, Water Right Services Division, 725 Summer St NE, Suite A, Salem, OR 97301-1266. Protests may not be submitted by electronic mail. OAR 690-002-0025(3).

Protests must be in writing and include all of the following:

- The name, address, and telephone number of the protestant
- A detailed description of the protestant's interest in the proposed final order, and, if the protestant claims to represent the public interest, a precise statement of the public interest represented
- A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency
- If the applicant protests, a statement of whether a hearing is requested
- Citation of legal authority supporting the protestant, if known
- Proof of service of the protest on the water right permit holder, if protestant is other than the water right permit holder, and
- If you are the applicant, the protest fee of \$480 required by ORS 536.050; and

Mailing List for Extension PFO Copies

PFO Date: April 15, 2025

Copies Mailed

Application: S-88232

By: _____

Permit: S-55225

On: _____

Original mailed to Applicant:

Farmers Irrigation District
1985 Country Club Rd
Hood River, OR 97031

Copies sent to:

1. WRD - App. File S-88232/ Permit S-55225
2. Agents or CWRE's representing the Permit Holder
3. Other permit holders of record besides applicant

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 3, Robert Wood

CASEWORKER: JDP