

FILE# 5 73857

JACK FUGATE
FUGATE, SHERI; FUGATE BARBARA
~~ET 1 BOX 955~~ PO Box 426
BANDON, OR 97411

Application No. 73857

Permit No. 53694

Certificate No. _____

Stream Index, Page No. 17

VS-Turnpike Cr + Mice.

FEES PAID		
Date	Amount	Receipt No.
1/21/94	350.00	108880 <i>EX 11 REC</i>
5/30/08	350.00	121088
5-13-2021	\$ 670.00	135244

FEES REFUNDED		
Date	Amount	Check No.

Date filed _____

Priority _____

Action suspended until CIS

Return to applicant _____

Date of approval _____

CONSTRUCTION

Date for beginning _____

Date for completion _____

Extended to _____

Date for application of water 10-01-04

Extended to 10-1-2015

PROSECUTION OF WORK

Form "A" filed _____

Form "B" filed _____

Form "C" filed _____

FINAL PROOF

Blank mailed _____

Proof received _____

Date Certificate issued _____

ASSIGNMENTS

Date	To Whom	Address	Volume	Page

REMARKS

*See Files R-73854-6
R-12893, R-12894, R-12895*

**EXT
2031**

1054
/ *few*

Mailing List for Extension FO Copies

FO Date: January 28, 2022

Copies Mailed

Application: S-73857

By: TM

Permit: S-53694

On: 1/28/2022

Original mailed to permit holder

Jack, Sheri, or Barbra Fugate
P.O. Box 426
Bandon, OR 97411

Copies sent to:

1. WRD - App. File S-73857/ Permit S-53694
2. Other permit holders of record besides applicant

CASEWORKER: JDP

Oregon Water Resources Department
Water Right Services Division

Application for Extension of Time

In the Matter of the Application for an Extension of Time)
for Permit S-53694, Water Right Application S-73857) FINAL ORDER
in the name of Jack, Sheri, or Barbra Fugate)

Permit Information

Application:	S-73857
Permit:	S-53694
Basin:	South Coast / Watermaster District 15
Date of Priority:	January 21, 1994
Source of Water:	three unnamed streams and Reservoir R-1, to be constructed under Application R-73854, Permit R-12893, Reservoirs R-2, R-4, R-5, R-6, and R-7, to be constructed under Application R-73855, Permit R-12894, and Reservoir R-1(R-3) ¹ , to be constructed under Application R-73856, Permit R-12895, tributaries of Twomile Creek; and Twomile Creek, a tributary of the Pacific Ocean
Purpose of Use:	cranberry operations
Maximum Rate and Volume:	2.0 cubic feet per second (cfs), being 1.7 cfs from Twomile Creek, 0.1 cfs from each of three unnamed streams (#2, 4 and 5); and 110.0 acre feet (AF) of water stored in 7 reservoirs, being 30.0 AF in Reservoir #1; 5.0 AF in Reservoir #2; 48.0 AF in Reservoir #3; 5.0 AF in Reservoir #4; 4.0 AF in Reservoir #5; 9.0 AF in Reservoir #6; 9.0 AF in Reservoir #7

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.

Appeal Rights

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.

¹ The permit contains a scrivener's error in identifying R-1 as the reservoir authorized under Application R-72896, Permit R-12895.

Application History

Permit S-53694 was issued by the Department on August 15, 2000. The permit specified complete application of water to beneficial use by, October 1, 2004. The most recent extension authorized completion of construction and complete application of water to beneficial use by October 1, 2015. On May 13, 2021, Jack Fugate submitted an Application for Extension of Time for Permit S-53694. In accordance with OAR 690-315-0050(2), on November 30, 2021, the Department issued a Proposed Final Order proposing to extend the time to complete construction from October 1, 2015, to October 1, 2031, and the time to apply water to full beneficial use from October 1, 2015, to October 1, 2031. The protest period closed January 14, 2022, in accordance with OAR 690-315-0060(1). No protest was filed.

FINDINGS OF FACT

The Department adopts and incorporates by reference the findings in the Proposed Final Order dated November 9, 2021.

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 subject to the following conditions:

LIMITATIONS AND CONDITIONS

1. **Permit Amendment Condition**

The permit holder shall submit an Application for Permit Amendment by no later than June 1, 2022, requesting authorization of the point of diversion developed on Twomile Creek. If the Application for Permit Amendment is not submitted by June 1, 2022, the Extension of Time to October 1, 2024, will be terminated.

2. **Development Limitation Condition**

The use of water under Permit S-53694, shall be limited to no more than 37.52 acres of cranberry use developed by October 1, 2015, further limited to no more than 1.7 cfs of water from Twomile Creek; a maximum of 8.42 AF of water stored in Reservoir #1 under Permit R-12893; and a maximum of 5.0 AF of stored water in Reservoir #2, and 9.0 AF of stored water in Reservoir #6, authorized under Permit R-12984.

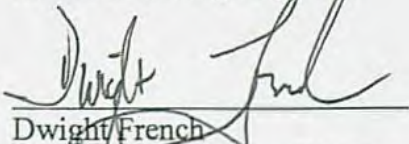
CONCLUSION OF LAW

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-73857, Permit S-53694, therefore, is approved subject to conditions contained herein. The deadline for applying water to full beneficial use within the terms and conditions of the permit is extended from October 1, 2015, to October 1, 2031.

DATED: January 28, 2022



Dwight French
Water Right Services Division Administrator, for
Thomas M. Byler, 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
-

Mailing List for Extension PFO Copies

PFO Date: November 30, 2021

Copies Mailed

Application: S-73857

By: TM

Permit: S-53694

On: 11/30/2021

Original mailed to Applicant:

Jack, Sheri, or Barbra Fugate
P.O. Box 426
Bandon, OR 97411

Copies sent to:

1. WRD - App. File S-73857/ Permit S-53694
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 15, Susan Douthit

CASEWORKER: JDP

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

Application for Extension of Time

In the Matter of the Application for an Extension of Time
for Permit S-53694, Water Right Application S-73857
in the name of Jack, Sheri, or Barbra Fugate

) PROPOSED
) FINAL
) ORDER

Permit Information

Application:	S-73857
Permit:	S-53694
Basin:	South Coast / Watermaster District 15
Date of Priority:	January 21, 1994
Source of Water:	three unnamed streams and Reservoir R-1, to be constructed under Application R-73854, Permit R-12893, Reservoirs R-2, R-4, R-5, R-6, and R-7, to be constructed under Application R-73855, Permit R-12894, and Reservoir R-1(R-3) ¹ , to be constructed under Application R-73856, Permit R-12895, tributaries of Twomile Creek; and Twomile Creek, a tributary of the Pacific Ocean
Purpose of Use:	cranberry operations
Maximum Rate and Volume:	2.0 cubic feet per second (cfs), being 1.7 cfs from Twomile Creek, 0.1 cfs from each of three unnamed streams (#2, 4 and 5); and 110.0 acre feet (AF) of water stored in 7 reservoirs, being 30.0 AF in Reservoir #1; 5.0 AF in Reservoir #2; 48.0 AF in Reservoir #3; 5.0 AF in Reservoir #4; 4.0 AF in Reservoir #5; 9.0 AF in Reservoir #6; 9.0 AF in Reservoir #7

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 October 1, 2004 or 2015, to October 1, 2024.²
- Make the extension subject to certain conditions set forth below.

¹ The permit contains a scrivener's error in identifying R-1 as the reservoir authorized under Application R-72896, Permit R-12895.

² 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.

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

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
cfs - cubic feet per second
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.

OAR 690-315-0050(5) states that extension orders may include, but are not limited to, any condition or provision needed to: ensure future diligence; mitigate the effects of the subsequent development on competing demands on the resource; and periodically document the continued need for the permit.

FINDINGS OF FACT

1. On August 15, 2000, Permit S-53694 was issued by the Department. The permit authorizes the use of up to 2.0 cfs of water, being 1.7 cfs from Twomile Creek, 0.1 cfs from each of three unnamed streams (#2, 4 and 5); and 110.0 acre feet (AF) of water stored in 7 reservoirs, being 30.0 AF in Reservoir #1; 5.0 AF in Reservoir #2; 48.0 AF in

Reservoir #3; 5.0 AF in Reservoir #4; 4.0 AF in Reservoir #5; 9.0 AF in Reservoir #6; 9.0 AF in Reservoir #7, for cranberry operations. The permit specified actual construction was to begin by August 15, 2001, complete application of water was to be made on or before October 1, 2004.

2. One prior permit extension has been granted for Permit S-53694. The extension resulted in the completion dates for full application of water being extended to October 1, 2015.
3. On May 13, 2021, the permit holder, Jack Fugate, submitted an "Application for Extension of Time" to the Department, requesting the time to apply water to full beneficial use under the terms of Permit S-53694 be extended from October 1, 2015, to October 1, 2031.
4. Notification of the Application for Extension of Time for Permit S-53694 was published in the Department's Public Notice dated June 8, 2021. No public comments were received regarding the extension application.
5. On October 15, 2021, Bill Flatz, agent for the permit holder submitted additional information to supplement their Application for Extension of Time. The additional information clarified work accomplished under this permit.

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)]

6. On May 13, 2021, 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)]

7. Actual construction of the water system began prior to the deadline specified in the permit.
8. Construction of the water system began prior to permit issuance. According to the Application, construction of Reservoirs #1, #2, and #6 was completed prior to permit issuance.

Based on FOF 7, and 8, the Department has determined the permit holder has satisfied the condition requiring beginning of construction of the water works.

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.

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

The amount of construction completed within the time allowed in the previous extension.³

9. During the most recent extension period, being from October 1, 2004, to October 1, 2015, new totalizing flow meters and a new pump were installed.
10. During the most recent extension of time period, being from October 1, 2004, to October 1, 2015, no additional land was developed to cranberry or irrigation use.

Based on FOF 9, the Department has determined work was accomplished during the most recent extension period.

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

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

11. The Department has considered the permit holder's compliance with conditions, and did not identify any concerns with the portion of the permit developed to date.

Based on FOF 11, the Department has determined compliance with permit conditions has been demonstrated.

continued on following page

³ "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.

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

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

12. A maximum rate of 2.0 cfs of water has been diverted Twomile Creek, and a maximum volume of 26.0 AF of stored water has been diverted, for cranberry operations. This exceed the rate authorized for use from Twomile Creek. The permit authorizes the use of 1.7 cfs of water from Twomile Creek. The permit holder has identified the point of diversion developed on Twomile Creek is not in the location authorized by the permit.
13. Based on information provided in the Application for Extension of Time for Permit R-12894, submitted on August 5, 2021, and the Claim of Beneficial Use for Permit R-12893, submitted on May 5, 2021, to date, Reservoirs #2, and #6, authorized under Permit R-12894, and Reservoir #1 authorized under Permit R-12893, have been developed. No water has been stored in Reservoirs #4, #5, and #7 authorized under Permit R-12894, and Reservoir #3 authorized under Permit R-12895.

Based on FOF 11, and 12, the Department has determined that beneficial use of water has been demonstrated under this permit for the portion that has been developed prior to October 1, 2015.

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

14. An invested approximately \$1,030,100, which is about 95 percent of the total projected cost for complete development of this project. An additional \$50,000 investment is needed for the completion of this project.
15. The Application identified a number of expenditures for C.W.R.E work to resolve water right issues, which is not "actual construction" under this permit and therefore are not counted towards development.

Based on FOF 14, the Department has determined an investment has been made in the application of water to the beneficial use authorized under this permit.

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

The Application provides evidence that work has been accomplished towards completion of the water system; the permit holder has demonstrated compliance with permit conditions; a financial investment has been made, and; beneficial use of water has been demonstrated. The Department has determined the applicant has demonstrated reasonable diligence in previous performance under Permit S-53694.

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.

16. 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 G-12894; 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.
17. Current Water Availability Analysis for Twomile Creek, (Tributary to Pacific Ocean) at the mouth (watershed ID 72803) show that no water is except during the month of February at the 80% exceedance level.
18. Based on the Claim of Beneficial Use for Permit R-12893, a maximum of 8.42 AF of water has been claimed to be stored in Reservoir #1.
19. Based on the Application for Extension of Time submitted for Permit R-12894, submitted on August 5, 2021, a maximum of 14.0 AF has been stored in Reservoir #2, and Reservoir #6, for use under this permit.

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).

20. The points of diversion are located on three unnamed streams (#2, 4, 5) and field runoff, tributaries of Two Mile Creek, and Two Mile Creek, a tributary of the Pacific Ocean, and are not located within a Withdrawn Area.

21. Two Mile Creek, a tributary of the Pacific Ocean is not located within or above a state or federal scenic waterway.
22. The points of diversion are in a location listed by the Department of Environmental Quality as a water quality limited stream. Lower Twomile Creek (H.U.C. Watershed 1710030601_02_104996), Twomile Creek (H.U.C. Watershed 171003060106_02_105009), and Lower Twomile Creek (H.U.C. Watershed 1710030601_02_104993)

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.

23. Two Mile Creek, a tributary of the Pacific Ocean is located within an area ranked "highest" 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.

24. An approximate total of \$1,030,100 has been invested in the project.

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

Other economic interests dependent on completion of the project.

25. The permit holder has identified extended family and employees may experience undue hardship if the extension of time is denied.

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

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

26. 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)]

27. The use and income from the permitted water development will likely result in reasonable returns upon the investment made to date.

Other Governmental Requirements [OAR 690-315-0040(2)(g)]

28. The delay in the timely completion of the development of the project and timely application of water to full beneficial use was caused in part by wetland mitigation

requirements from Oregon Department of Environmental Quality which ended the construction of Reservoir #3, authorized under Permit R-12895. The Application identifies this work as having occurred in 2017.

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

29. The Application identifies depressed cranberry prices as why development of water was not completed.

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

30. A denial of the extension would result in undue hardship.

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

31. The Application provides evidence of good faith of the appropriator under Permit S-53694. The Department has found minimal good faith of the appropriator under Permit S-53694.

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.

32. As of May 13, 2021, the permit holder states the remaining work to be completed consists of applying for a permit amendment to add an additional point of diversion, submitting an Application to Split a Permit, to separate the use of water authorized on lands owned by another land owner, completing construction of the remaining reservoirs authorized under Permit R-12894, constructing a water system to serve the remaining acres, and applying water to full beneficial use.

Based on FOF 32, the Department has determined the work could be completed within the time requested. However, the Department has determined, based on FOF 10, the Department has determined the water user has not been diligent in pursuing additional development of cranberry use or irrigation authorized by the permit during the most recent extension of time period, and therefor the request for additional time to develop the water use to October 1, 2031, is not reasonable. The Department has determined an extension of time to October 1, 2024, is sufficient for the permit holder to submit the permit amendment to authorize the point of diversion developed on Twomile Creek, for the use developed by the most recent date for complete application of water, being October 1, 2015.

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).

LIMITATIONS AND CONDITIONS

1. OAR 690-315-0050(5) provides for extension orders to include, but are not limited to, any condition or provision needed to ensure future diligence, and/or mitigate the effects of the subsequent development on competing demands on the resource. Based on FOF 12, the Department determined the need to place a "Permit Amendment Condition" on this extension of time in order to ensure diligence is exercised in the development and perfection of water use permit. This condition, specified under Item 1 of the "Conditions" section of this PFO, was determined to be necessary because of the use of an unauthorized point of diversion has occurred under this permit.
2. OAR 690-315-0050(5) provides for extension orders to include, but are not limited to, any condition or provision needed to mitigate the effects of the subsequent development on competing demands on the resource. Based on FOF 10, 13, 17, and 32, the Department determined the need to place a "Development Limitation" on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. This condition, specified under Item 2 of the "Conditions" section of this PFO, was determined to be necessary due to no additional construction of reservoirs to store water under Permits R-12893, R-12894, and R-12894, and no additional acres for cranberry use or irrigation has been developed during the most recent extension of time period. Additional time is being provided only to allow for the submittal and review of the permit amendment necessary to authorized the point of diversion developed on Twomile Creek.

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 actual 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 7, through 32, full application of water to beneficial use can be accomplished by October 1, 2024⁴, as required by OAR 690-315-0040(1)(c).

⁴Pursuant to ORS 537.230(5), upon the completion of beneficial use of water allowed under the permit, the

4. The Applicant can complete the project within the time period requested for the extension on the project, but the extension is conditioned to mitigate the effects of the subsequent development on competing demands on the resource and is granted only for the reasonable time necessary to complete water development and apply water to beneficial use. OAR 690-315-0050(5).
5. The Applicant has demonstrated good cause for the extension. OAR 690-315-0050(5).

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-53694 from October 1, 2015, to October 1, 2024.

Subject to the following conditions:

LIMITATIONS AND CONDITIONS

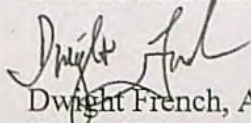
1. Permit Amendment Condition

The permit holder shall submit an Application for Permit Amendment by no later than June 1, 2022, requesting authorization of the point of diversion developed on Twomile Creek. If the Application for Permit Amendment is not submitted by June 1, 2022, the Extension of Time to October 1, 2024, will be terminated.

2. Development Limitation Condition

The use of water under Permit S-53694, shall be limited to no more than 37.52 acres of cranberry use developed by October 1, 2015, further limited to no more than 1.7 cfs of water from Twomile Creek; a maximum of 8.42 AF of water stored in Reservoir #1 under Permit R-12893; and a maximum of 5.0 AF of stored water in Reservoir #2, and 9.0 AF of stored water in Reservoir #6, authorized under Permit R-12984.

DATED: November 30, 2021



Dwight French, Administrator
Water Right Services Division

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

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 Final Order Hearing Rights

1. Under the provisions of OAR 690-315-0100 and 690-315-0060, 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. The written protest must be received by the Water Resources Department no later than **January 14, 2022**, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.
2. A written protest shall include:
 - a. The name, address and telephone number of the petitioner;
 - b. A description of the petitioner'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;
 - c. A detailed description of how the action proposed in the proposed final order would adversely affect or aggrieve the petitioner's interest;
 - d. A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
 - e. Any citation of legal authority supporting the petitioner, if known;
 - f. Proof of service of the protest upon the water right permit holder, if petitioner is other than the water right permit holder; and
 - g. The applicant or non-applicant protest fee required under ORS 536.050.
3. Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:
 - a. Issue a final order on the extension request; or
 - b. Schedule a contested case hearing if a protest has been submitted, and:
 - 1) Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
 - 2) The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

-
- If you have any questions about statements contained in this document, please contact Jeffrey D. Pierceall at (503) 979-3213.
 - If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Patricia McCarty at 503-979-9160.
 - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.
 - Address any correspondence to : Water Right Services Division
725 Summer St NE, Suite A
Fax: 503-986-0901 Salem, OR 97301-1266
-

Application for Extension of Time for a Water Right Permit
(NON-Municipal/NON Quasi-Municipal water Use)



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem Oregon 97301
(503) 986-0900
www.wrd.state.or.us

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Criteria for a Permit Extension of Time

The Department can accept requests for an extension of time on permits to (1) complete construction, and/or to (2) apply water to beneficial use.

In order to approve a permit extension request the Department must be able to find:

1) Construction has begun:

A. For Groundwater Permits

Construction of the well(s), *authorized by the permit*, began within 5 years of the date the permit was issued or by the actual construction date specified in the permit.

B. For Surface Water or Reservoir Permits

Construction of the water system began within 5 years of the date the permit was issued or by the actual construction date specified in the permit.

The Department will also confirm that:

- 2) If required, a fish screen, fish passage or fish by-pass device was installed before or prior to diversion of any water. An exception to the need to confirm installation prior to diversion of any water would be a waiver submitted to the Department from ODFW stating that a fish screen, fish passage or fish by-pass device was not required, provided your permit allows for a waiver.

If you have questions, please call the Department at (503)-986-0900 and ask to speak with a permit extension specialist.

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TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT
*A separate extension application must be submitted for each permit as per
OAR 690-315-0020(2).*

I, Jack, Sheri OR Barbara Fugate

NAME OF PERMIT HOLDER [OAR 690-315-0020(1) and (3)(a)]

P.O. Box 426

ADDRESS

Bandon

CITY

OR

STATE

97411

ZIP

-5413474309

PHONE

E-MAIL ADDRESS

the permit holder of:

Application Number S-73857

Permit Number

S-53694

[OAR 690-315-0020(3)(b)]

do hereby request that the date by which the water development will be completed and water put to full beneficial use, which time now expires on Month: 10 Day: 1 Year: 2015, be extended to October 1, 2031, [OAR 690-315-0020(3)(i)]

I am the permit holder, and may apply for an extension of time under this permit. I understand that false or misleading statements in this extension application are grounds for OWRD to suspend processing of the request and/or reason to deny the extension.

Jack Fugate
Signature

5-10-2021
Date

Jack Fugate
Printed Name

Pres. Fugate Farms LLC
Title

The agent below is authorized to represent the applicant in all matters relating to THIS application.

J R F
Permit Holder Initials

Authorized Agent (Print Agent Name)

Agent contact

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TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT
*A separate extension application must be submitted for each permit as per
 OAR 690-315-0020(2).*

I, Jack, Sheri OR Barbara Fugate

NAME OF PERMIT HOLDER [OAR 690-315-0020(1) and (3)(a)]

P.O. Box 426

ADDRESS

Bandon

CITY

OR

STATE

97411

ZIP

-5413474309

PHONE

E-MAIL ADDRESS

the permit holder of: Application Number S-73857

Permit Number S-53694

[OAR 690-315-0020(3)(b)]

do hereby request that the date by which the water development will be completed and water put to full beneficial use, which time now expires on Month: 10 Day: 1 Year: 2015, be extended to October 1, 2031, [OAR 690-315-0020(3)(i)]

I am the permit holder, and may apply for an extension of time under this permit. I understand that false or misleading statements in this extension application are grounds for OWRD to suspend processing of the request and/or reason to deny the extension.

FOR BANDON BIOTA, L.L.C.

5/10/21

Signature

Date

MICHAEL L. KEISER

PRESIDENT

Printed Name

Title

The agent below is authorized to represent the applicant in all matters relating to THIS application.

Permit Holder Initials

Authorized Agent (Print Agent Name)

Agent contact

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Before submitting your Application for Extension of Time, make sure the following items are included:

- This completed Application for Extension of Time.
- Statutory fee of \$670
- Signature page (Second page of this Application for Extension of Time).
- Letter granting an agent authority to act on behalf of the permit holder (*if applicable*)
- All supporting documentation and/or evidence referenced in the Application for Extension of Time. (ODFW Fish screen approval or waiver, contract for stored water, etc)

MAIL COMPLETED APPLICATION

along with the Supporting documents and/ or evidence and correct fee to:

Water Resources Department
Attn: Water Right Permit Extensions
725 Summer Street NE, Suite A
Salem, Oregon 97301

GENERAL TIPS:

- Permit holders of **municipal or quasi-municipal water use permits DO NOT use this form**. The correct form is APPLICATION FOR EXTENSION OF TIME FOR MUNICIPAL AND QUASI-MUNICIPAL WATER USE PERMITS.
- Request the reasonable amount of time necessary to fully complete construction of the water project and/or to fully use the permitted quantity of water under the terms and conditions of your permit. Should this request be approved, it will be OWRD's expectation that you will complete your project within the new time period allowed. Future extensions may not be granted.
- A separate APPLICATION FOR EXTENSION OF TIME must be submitted for each permit. OAR 690-315-0020(2).
- Permit extensions are evaluated under OAR Chapter 690, Division 315. These rules may be viewed at the State of Oregon, Secretary of State Website. To be granted an extension of time, the Department must make four specific findings; 1) the application is complete, 2) construction of the water system began, 3) there is good cause, and 4) the project can be completed within the time being requested. If the Department cannot make all four findings, the extension of time cannot be approved.
- You may provide OWRD with any additional information or evidence that will aid us in making our decision. Please note that OWRD may require other information that is necessary to evaluate the application. OAR 690-315-0020(3)(n).
- After careful review of the Application for Extension of Time, you may contact OWRD at (503) 986-0900, to ask questions and request assistance from a Permit Extensions Specialist in the Water Rights Services Division.

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- An Application for an Extension of Time will be reviewed for completeness. A response is required for each item contained in the application. OWRD will return any incomplete or deficient applications to the applicant. OAR 690-315-0040(1)(a).

Reference Materials Needed to Complete this Application:

- **The water right permit.** If needed, a copy of the water right permit can be downloaded from the Department's Website, or, a copy of the permit may be requested by water right application number from the Water Rights Division at 503-986-0900 (copy fees will apply).
- **Previous Applications and Orders.** Copies of previous applications and orders that may inform the completion of the Application for Extension of Time, if available, may be downloaded from the Department's Website. **NOTE: If the document requested is not available on the Department's website, you may be required to submit a Public Record Request.**
- **Documentation which demonstrates compliance with permit conditions** (for example, well construction logs; static water level measurement reports; annual water use reports; ODFW fish screen certification; a plan to monitor the effect of water use on ground water aquifers utilized under the permit; etc.).

Questions to complete this application for an Extension of Time

Please see the instruction sheet to help you answer these items.

1. **Beginning Construction within required deadlines.** OAR 690-315-0020(3)(d)

For Groundwater Permits

Has construction of the point of appropriation (well) authorized under this permit begun?

☐ Yes ☐ No

Date construction began Month: _____ Day: _____ Year: _____

Details of construction and attach documentation: _____

For Surface/Reservoir Permit

Has construction of the water system begun? ☒ Yes ☐ No

Date construction began Month: 6 Day: 15 Year: 1993

Details of construction and attach documentation: Construction of bog #1 started, bogs 1-6 completed in January, 1995.

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OAR 690-315-0020(3)(A)(e)(A)

2a. Permits typically contain standard or special conditions that must be fully satisfied to lawfully develop and use permitted water. Review the permit subject to this extension to identify which of the conditions listed in the 2nd column are contained within it. Using the extra row labeled "other" to specify any other additional conditions included in the permit, or specified in a final order approving a permit amendment or prior extension of time. In the 1st column check the box for each condition (row) identified as relevant. In the 3rd column check "Yes" if you have completed or met the permit condition. Check "No" if the condition is not yet satisfied. In the 4th column, give the date when the condition was satisfied or will be satisfied. Attach any pertinent documentation. Note: a pump test condition does not need to be addressed here however; you must submit the results of the test to the Department for approval prior to certification.

CHART-A

Permit Conditions in this Permit		Have Completed or Met?	Date satisfied/ or will be satisfied
Checkbox	Ground water Check those included on this permit		
<input type="checkbox"/>	Installation of a meter/totalizing flow meter	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Submittal of annual water usage report	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Submittal of initial static water level measurement	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Submittal of annual static water level measurements in the month required	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Submittal of Seven consecutive static water level measurements in the month required	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Special well construction standards	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Submittal of a monitoring plan	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Other (Specify):	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Other (Specify):	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Other (Specify):	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	Surface Water or Reservoir		
<input checked="" type="checkbox"/>	Installation of a meter/ totalizing flow meter	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	5/15/1999
<input checked="" type="checkbox"/>	Submittal of annual water use report	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	11/15/2013
<input type="checkbox"/>	Installation of a fish screen	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Installation of a fish by-pass device	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Installation of a fish passage	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Installation of an outlet gate/pipe/ conduit	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Submittal of a letter from ODFW that fish screen, fish by-pass device, and or fish passage is not required	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Submit as-built plans and specification	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Submittal of a letter from an engineer prior to storage	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input checked="" type="checkbox"/>	Other (Specify): Totalizing flow meter at all PODS, some have not been developed. One POD on Two Mile Creek is not an approved location. An extension is needed to submit a permit amendment.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6/30/2022
<input type="checkbox"/>	Other (Specify):	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	Other (Specify):	<input type="checkbox"/> Yes <input type="checkbox"/> No	

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2b. If you have identified that you have NOT complied with Permit conditions, explain the reasons why and indicate a date certain, when you will be in compliance.

The Fugates have been using the POD on Two Mile Creek that was the site inspected for the claim of beneficial use for T-7309 that resulted in certificate 88120. That permit allowed portable pumping from Two Mile Creek along four 1/4-1/4s.

The permit for this water right specifies 2 PODs on Two Mile Creek as shown on the permit map. The POD approved for certificate 88120 was not included in the POD list for this permit. The Fugates want to obtain an Extension of Time to allow a permit amendment to add the POD being used to the Permit. The POD being used is now on property owned by Bandon Biota and an easement was granted to the Fugates for access to the POD and the buried 8" mainline to the Fugate farm. After the permit amendment is issued the Fugates will split the permit and submit the Claim of Beneficial Use for their portion of this water right.

Bandon Biota has started irrigation of some acres this year in the hopes that the Extension of Time will be issued. Bandon Biota was working toward the development of a golf course they have decided that is not viable at this time. They want the Extension of Time to allow the investigation of other development possibilities. With the time required for design and permitting for small ponds they are asking for an extension of 10 years from the current date.

3. Provide evidence of physical work made toward completion of the water system, and of progress made toward making beneficial use of water within the permitted time period (CHART-B); and if applicable, within the time period of the most recent extension granted (CHART-C). CHART-B (below) must be completed for all Application for Extension of Time requests. *Use chronological order.* Itemize each work item, and do not combine multiple work actions in one area. (Planning, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, surveying, clearing land, or planting crops *is not considered work in the development of the water system. Work accomplished under other water rights may not be considered work under this permit.*)

CHART-B

DATE	WORK ACCOMPLISHED BEFORE PERMIT WAS ISSUED <i>List any work done before the permit was issued — eg: well drilled.</i>	COST*
1993-1998	Bogs 1-17 and B3-B4 constructed, Reservoirs 1,2 and 6 constructed	\$868,000
1999	Install pump with meter and fish screen. Installed 8" buried mainline, approx. 3,000 ft.	\$100,000
DATE	WORK ACCOMPLISHED AFTER PERMIT WAS ISSUED and PRIOR TO DATE SPECIFIED IN PERMIT FOR COMPLETE APPLICATION OF WATER <i>List work/actions done during the permitted time period.</i>	COST*
8/15/2000	Date the permit was signed - find date above signature on last page of permit.	
2000-2001	Bogs B1 and B2 were constructed. Bogs B1 and B2 were planted January 2001.	\$32,000
8/15/2001	Permit date "Actual Construction work" shall begin, "A"-Date.	
10/1/2004	Date the permit specified complete application of water to the use shall be made- all permits contain this date.	
DATE	WORK ACCOMPLISHED AFTER the date the permit specified complete application of water and prior to any previous extension order <i>COMPLETE ONLY IF THIS IS YOUR 1st APPLICATION FOR AN EXTENSION OF TIME. List work done after the date specified in the permit for complete application of water up to the date of this Application for Extension of Time.</i>	COST*
Total Cost for Chart-B		\$1,000,000

* If exact cost is not known, you must provide your best estimate.

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Revised 6/14/2019

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FLUGATE PERMIT S-53694
REVISED 10-14-21 WLF

MAY 13 2021

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[OAR 690-315-0020(3)(e)]

3. Provide evidence of physical work made toward completion of the water system, and of progress made toward making beneficial use of water within the permitted time period (CHART-B); and if applicable, within the time period of the most recent extension granted (CHART-C). CHART-B (below) must be completed for all Application for Extension of Time requests. *Use chronological order.* Itemize each work item, and do not combine multiple work actions in one area. (Planning, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, surveying, clearing land, or planting crops is *not* considered work in the development of the water system. *Work accomplished under other water rights may not be considered work under this permit.*)

CHART-B

DATE	WORK ACCOMPLISHED BEFORE PERMIT WAS ISSUED <i>List any work done before the permit was issued – eg. well drilled.</i>	COST*
1993-1998	Bogs 1-17 and B3-B4 constructed, Reservoirs 1,2 and 6 constructed	\$868,000
1999	Install pump with meter and fish screen. Installed 8" buried mainline, approx. 3,000 ft.	\$100,000
DATE	WORK ACCOMPLISHED AFTER PERMIT WAS ISSUED and PRIOR TO DATE SPECIFIED IN PERMIT FOR COMPLETE APPLICATION OF WATER <i>List work/actions done during the permitted time period.</i>	COST*
8/15/2000	Date the permit was signed - find date above signature on last page of permit.	
2000-2001	Bogs B1 and B2 were constructed. Bogs B1 and B2 were planted January 2001.	\$32,000
8/15/2001	Permit date 'Actual Construction work' shall begin, 'A'-Date.	
2002-2003	Dike work, rocking dikes, fencing.	\$150,000
10/1/2004	Date the permit specified complete application of water to the use shall be made- all permits contain this date.	
DATE	WORK ACCOMPLISHED AFTER the date the permit specified complete application of water and prior to any previous extension order <i>COMPLETE ONLY IF THIS IS YOUR 1st APPLICATION FOR AN EXTENSION OF TIME: List work done after the date specified in the permit for complete application of water up to the date of this Application for Extension of Time.</i>	COST*
Total Cost for Chart-B		\$1,150,000

* If exact cost is not known, you must provide your best estimate.

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4. If this is not your 1st Application for Extension of Time request, fill out CHART-C below in addition to CHART-B above. Use *chronological order*.

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CHART-C

DATE	WORK ACCOMPLISHED DURING THE LAST EXTENSION PERIOD <i>List all work done during the last authorized extension period.</i>	COST*
10/1/2004	"Extended From" date for complete application of water used in the most recent Final Order on Extension of Time.	
2007	Fugate Farm, 15 hp pump in Res. #2, 2,400 ft of 6" buried mainline	\$5,800
2008	Fugate Farm, 7 new meters, 6 in reservoir #6 and one in Reservoir #2.	\$6,300
10/1/2015	"Extended To" date for complete application of water resulting from the most recent Final Order on Extension of Time.	
DATE	WORK ACCOMPLISHED AFTER THE LAST EXTENSION PERIOD EXPIRED <i>List all work done after the last authorized date for complete application of water up to the date of this Application for Extension of Time.</i>	COST*
2016	Fugate Farms consulted with an engineer to estimate engineering design of a dam safety dam for Res #3 a POD for this permit.	\$4,000
2017	Fugate Farms started construction of Res#3 a POD for this permit, work stopped due to DEQ.	\$5,000
2018	Fugate Farms hired a wetland delineation for Res #3 for attempted DEQ compliance.	\$5,000
March 2021	Bandon Biota cleared ground, rented pumps and trucks and irrigated partial area permitted.	\$5,500
Jan.-April 2021	Fugate Farms paid for CWRE work on resolving water rights and preparing extensions.	\$6,000
Total Cost of Chart-C		\$37,600

* If exact cost is not known, you must provide your best estimate. [OAR 690-315-0020(3)(f)]

5. Cost of project to date: \$1,037,600

(The total combined cost from CHART-B and CHART-C) [OAR 690-315-0020(f)]

FUGATE PERMIT S-53694
REVISED 10-14-21 WLF

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4. If this is not your 1st Application for Extension of Time request, fill out CHART-C below in addition to CHART-B above. *Use chronological order.*

CHART-C

DATE	WORK ACCOMPLISHED DURING THE LAST EXTENSION PERIOD <i>List all work done during the last authorized extension period.</i>	COST*
10/1/2004	"Extended From" date for complete application of water used in the most recent Final Order on Extension of Time.	
2007	Fugate Farm, 15 hp pump in Res. #2, 2,400 ft of 6" buried mainline	\$5,800
2007	Bandon Biota, stream gaging project.	\$9,000
2008	Fugate Farm, 7 new meters	\$6,300
10/1/2015	"Extended To" date for complete application of water resulting from the most recent Final Order on Extension of Time.	
DATE	WORK ACCOMPLISHED AFTER THE LAST EXTENSION PERIOD EXPIRED <i>List all work done after the last authorized date for complete application of water up to the date of this Application for Extension of Time.</i>	COST*
2016	Fugate Farms consulted with an engineer to estimate engineering design of a dam safety dam for Res #3 a POD for this permit.	\$4,000
2017	Fugate Farms started construction of Res#3 a POD for this permit, work stopped due to DEQ.	\$5,000
2018	Fugate Farms hired a wetland delineation for Res #3 for attempted DEQ compliance.	\$5,000
March 2021	Bandon Biota cleared ground, rented pumps and trucks and irrigated partial area permitted.	\$5,500
Jan.-April 2021	Fugate Farms paid for CWRE work on resolving water rights and preparing extensions.	\$6,000
Total Cost of Chart-C		\$46,600

* If exact cost is not known, you must provide your best estimate. [OAR 690-315-0020(3)(f)]

5. Cost of project to date: \$1,196,600

(The total combined cost from CHART-B and CHART-C) [OAR 690-315-0020(f)]

[OAR 690-315-0020(3)(e)(B)]

Provide evidence of the maximum rate (or duty, if applicable) of water diverted for beneficial use under this permit made to date.

TIP: Report the rate used to date. Unless full beneficial use has been made, this rate will be less than the rate authorized on the permit.

6. For Surface Water Permit Extensions (e.g. S-XXXX or R-XXXX):

TIP: Report the rate in the same units of measurement as specified in the permit.

Maximum rate used to date = 2.0 cfs (cubic feet per second) or,

Maximum rate used to date = _____ gpm (gallons per minute) or,

Maximum volume of stored water used to date = _____ or,

Maximum volume stored annually to date = 26 AF, (owner's calculation)

7. For Ground Water Permit Extensions (e.g. G-XXXX):

TIP: Include information from ALL wells that pertain to this permit, including drilled wells not currently used.

CHART-D

Well # as identified on Permit	Water User's Well #	Has this well been drilled?	IF DRILLED					If yes, provide the Permit, Certificate, or Transfer No.
			Well Log Number e.g. MORR 50473	Well Tag Number e.g. # 27566 or N/A	Is the actual drilled location authorized on this permit or on a permit amendment?	Maximum instantaneous rate used to date from this well - under this permit only (CFS or GPM)	Is this well authorized or utilized under any OTHER water rights?	
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
		Yes <input type="checkbox"/> No <input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	- -
Total instantaneous rate from all wells utilized under this permit								

8. Has a Permit Amendment Application been filed? Yes ☐ No ☒
If yes, identify Transfer No. T-_____

[OAR 690-315-0020(3)(e)(C)]

9. For Irrigation and Nursery Use Permits Extensions

Provide the total number of acres irrigated to date under this permit.

a) Total acres irrigated to date: 37.52

b) List by year, the number of acres irrigated each year since permit issuance.

Year	Acres	Year	Acres	Year	Acres
2009	37.52	2014	37.52	2018	37.52
2010	37.52	2015	37.52	2019	37.52
2012	37.52	2016	37.52	2020	37.52
2013	37.52	2017	37.52	2021	42.5

c) Provide a copy of the application map identifying the acres irrigated.

d) Please specify the number of acres irrigated by each Point of Diversion/Point of Appropriation (POD/POA).

(POD/POA)#_____ Acres_____ (POD/POA) #_____ Acres_____

(POD/POA) #_____ Acres_____ (POD/POA) #_____ Acres_____

Applicants Notes:

The Fugate farm has a simple and efficient water system, the ponds collect winter runoff, in the spring the reservoirs can be topped off if needed using Two Mile Creek. All water used in cranberry operations drains back to the reservoir system, only evaporation and transpiration water is lost. The reservoir water is recycled many times.

Fugate farm has used unnamed streams 1 and 2, reservoirs 1,2 and 6, and Two Mile Creek to irrigate 37.52 acres under permit S-53694. The Two Mile Creek POD location is the approved location for certificate 88120 but was not listed in this permit.

Bandon Biota has used Two Mile Creek to irrigate 5 acres in 2021 under permit S-53694 using Two Mile Creek from the POD approved for certificate 88120 but was not listed in this permit.

[OAR 690-315-0020(3)(i)(j)]

10. In the chart below provide a summary of your future plans and schedule to complete the construction of the water system, and/or apply water to full beneficial use under the terms and conditions of the permit.

CHART-E

APPROXIMATE DATE RANGE (projected)	WORK OR ACTION TO BE ACCOMPLISHED (projected)	ESTIMATED COST (projected)
2021-2022	Fugate farm will apply for a permit amendment to add the POD on Two Mile Creek.	\$3,000
2022-2024	Fugate farm and Bandon Biota will apply to split the permit	\$3,000
2024-2025	Fugate farm will file the claim of beneficial use for their share of this permit	\$3,500
2022-2025	Bandon Biota will do due diligence to develop business alternative plan	??
2025-2028	Bandon Biota, time to deal with Dam designs and permits from DEQ and ODFW, and Army Corps if necessary.	\$60,000
2028-2030	Bandon Biota, construction of reservoirs.	\$250,000
2030-2031	Bandon Biota, irrigation system from reservoirs. Irrigation of acres.	\$50,000
Year: Fugate 2025 Bandon Biota 2031	Date intend to apply water to full beneficial use under the terms and conditions of this permit.	
Total Cost		\$369,500

[OAR 690-315-0020(3)(g)]

11. Estimated remaining cost to complete the project: \$369,500

(The total cost from CHART-E)

[OAR 690-315-0020(3)(j)]

12. Provide a summary of your plan to complete construction, meeting all permit conditions and apply the water to beneficial use: (List all tasks or steps needed to complete the project, the date when each task will be completed, and the cost associated with each task; attach additional pages if necessary.)

For Fugate Farm: They intend to apply for a permit amendment to add the POD being used on Two Mile Creek. When that is complete, they will split the permit and will have met all conditions of the permit. They will submit claims of beneficial use at that time. We assume that the total time from today would be 4 years.

For Bandon Biota: They intend to develop a new plan for the property and the water right. Once that has been decided, they will require time to evaluate the engineering and environmental issues before having the reservoirs # 4, 5 and 7 designed, constructed and storing water. Once the water is available and the acres have been irrigated, they will submit the claim of beneficial use. We assume that the total time from today would be 10 years.

[OAR 690-315-0020(3)(k)]

13. Justify the time requested to complete the project and/or apply the water to full beneficial use. *(Include any other information or evidence to establish that the requested amount of time is sufficient and that you will be able to complete the project within the amount of time requested.)*

For Fugate Farm:

They have decided to stop the expansion of the cranberry operation, they have 49.52 acres planted and have found that the water available is adequate to supply the farm's needs. When the permit amendment is issued and the permit is split they should be able to submit the claim of beneficial use for this permit. We have estimated 4 years to complete the permit amendment, the permit split and prepare the claim of beneficial use.

For Bandon Biota:

They have decided that the golf course they planned to develop is not going to be pursued. They want time to develop a new plan to develop the property and the water rights. We are allowing 10 years to develop the business plan, evaluate the engineering and environmental issues, have the design for ponds completed and permits for construction, the construction itself and the clearing and irrigation of the permitted acres.

[OAR 690-315--0020(3)(l)]

14a. Will a denial of the extension result in undue hardship? *(Describe the hardship and the effects.)*

For the Fugate Farm: The denial of the extension would result in undue hardship because the farm is a family operation, they have invested full time work and financial support for the past 28 years. They are limited to the POD now used for this permit and the certificate 88120 because the property at the POD location is now owned by Bandon Biota. They just want to complete the water right process and continue to farm cranberries.

For Bandon Biota the denial of the extension would result in undue hardship because the loss of the permit before completing the development of the property would reduce the value of the property and limit the options available to them for development.

14b. Are there any other reasonable alternatives that exist for meeting your water use needs? *(Explain in detail, consider other potential sources of water, and describe their feasibility)* With the close proximity to the creeks and the potential for substantial interference with groundwater and the surface water we do not believe that a well would be approved for this location.

[OAR 690-315-0020(3)(h)]

15. Was the delay in the timely completion of this water development project and/or timely application of water to full beneficial use caused by any additional government requirements, other than the conditions contained within the permit, which significantly delayed the completion and perfection of this right? *(Explain in detail, including how much time did this delay the project; list dates.)* Work was started on Res #3, a POD listed in the permit. The permitted Dam Safety dam was too expensive to build so work was started on a 'alternate process dam'. Work was stopped by DEQ with wetland concerns. The Fugates had a wetland delineation done to try to comply with the DEQ concerns. However the cost to continue; water quality survey (\$10k to \$20k) and wetland mitigation (\$100k +) made the construction of Res #3 impractical. The attempt at the development of Res #3 took time and resources from 2016 through 2018.

[OAR 690-315-0020(3)(h)]

16. Describe any unforeseen events which contributed to the delay of completion of this project that you had no control over. *(Explain in detail what the unforeseen events were (i.e. health issues, natural disaster) and how much time was spent addressing the unforeseen events.)* Depressed and uncertain cranberry prices caused financial hardship during the authorized time.

[OAR 690-315-0020(3)(h)]

17. Describe an additional reason why the construction was not completed, and/or water was not beneficially used within permit time limits. *(Provide supporting information for the reason(s) that best fits your circumstances.)*

Water right consultant M. John Youngquist died unexpectedly as did the CWRE he worked with.

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OCT 15 2021

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[OAR 690-315-0020(3)(m)(n)]

18. Provide any other information you wish OWRD to consider while evaluating your Application for Extension of Time.

We would like the extension to allow us to complete the development of the water rights and split the right so each owner can proceed to complete development as best for each. The owners have determined that this is the best way to complete the water rights and maintain harmony in the neighborhood.

FUGATE PERMIT S-53694
REVISED 10-14-21 WHF

MAY 13 2021

OWRD

[OAR 690-315-0020(3)(h)]

15. Was the delay in the timely completion of this water development project and/or timely application of water to full beneficial use caused by any additional government requirements, other than the conditions contained within the permit, which significantly delayed the completion and perfection of this right? *(Explain in detail, including how much time did this delay the project; list dates.)* Work was started on Res #3, a POD listed in the permit. Work was stopped by DEQ with wetland concerns. The Fugates had a wetland delineation done to try to comply with the DEQ concerns, however the mitigation costs made the construction of Res #3 impractical. The attempt at the development of Res #3 took time and resources from 2016 through 2018.

[OAR 690-315-0020(3)(h)]

16. Describe any unforeseen events which contributed to the delay of completion of this project that you had no control over. *(Explain in detail what the unforeseen events were (i.e. health issues, natural disaster) and how much time was spent addressing the unforeseen events.)* Depressed and uncertain cranberry prices caused financial hardship during the authorized time.

[OAR 690-315-0020(3)(h)]

17. Describe an additional reasons why the construction was not completed, and/or water was not beneficially used within permit time limits. *(Provide supporting information for the reason(s) that best fits your circumstances.)* Water right consultant M. John Youngquist died unexpectedly as did the CWRE he worked with.

[OAR 690-315-0020(3)(m)(n)]

18. Provide any other information you wish OWRD to consider while evaluating your Application for Extension of Time.

We would like the extension to allow us to complete the development of the water rights and split the right so each owner can proceed to complete development as best for each. The owners have determined that this is the best way to complete the water rights and maintain harmony in the neighborhood.

[OAR 690-315-0040(2)(f)]

19. Will the income or use of the water project provide a fair and reasonable return on your investment? *(Explain in detail)* Fugate Farms has worked hard to provide a living for the family and will continue to do so as long as the market remains reasonable for the cranberry industry. Bandon Biota is trying to find a business model that will provide a fair and reasonable return.

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

20. Describe in detail if there are other economic interest, beyond those of the permit holder, which are dependent upon the completion of this project. *(Who will be effected and how?)*
For Fugate Farms the impact would include the extended family and employees.

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Attach permit, and documentation to the application



TELEPHONE (503) 357-5717
CELL (503) 939-8381
FAX (503) 357-5698
billflatz@stuntzner.com

2318-B Pacific Avenue
FOREST GROVE, OREGON 97116

COOS BAY - FOREST GROVE - JUNCTION CITY

RECEIVED

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OWRD

May 11, 2021

TO: Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1266

SUBJECT: Extension of Time Submittal, application S-73857, permit S-53694.

To Whom it may concern:

Please find enclosed:

- A completed Extension of Time form and permit.
- A completed Extension of Time map
- A check for \$670 for the statutory review fee.

If there are any questions or issues, I would appreciate a call. I will be out of the office until June, but available by cell phone on and off, 503-939-8381.

Thank you for your help.

Sincerely,
Stuntzner Engineering & Forestry, LLC

Bill Flatz, PE, CWRE

STATE OF OREGON

COUNTY OF COOS

PERMIT TO APPROPRIATE THE PUBLIC WATERS

RECEIVED

MAY 13 2021

OWRD

THIS PERMIT IS HEREBY ISSUED TO

JACK, SHERI OR BARBARA FUGATE
RT 1 BOX 965
BANDON, OREGON 97411

The specific limits for the use are listed below along with conditions of use.

APPLICATION FILE NUMBER: S-73857

SOURCE OF WATER: THREE UNNAMED STREAMS AND RESERVOIR R-1, TO BE CONSTRUCTED UNDER APPLICATION R-73854, PERMIT R-12893 RESERVOIRS R-2, R-4, R-5, R-6, AND R-7, TO BE CONSTRUCTED UNDER APPLICATION R-73855, PERMIT R-12894, AND RESERVOIR R-1, TO BE CONSTRUCTED UNDER APPLICATION R-73856, PERMIT R-12895, TRIBUTARIES OF TWOMILE CREEK; AND TWOMILE CREEK, A TRIBUTARY OF THE PACIFIC OCEAN

PURPOSE OR USE: CRANBERRY OPERATIONS

RATE OF USE: 2.0 CUBIC FEET PER SECOND (CFS), BEING 1.7 CFS FROM TWOMILE CREEK, 0.1 CFS FROM EACH OF THREE UNNAMED STREAMS (#2, 4 AND 5); AND 110.0 ACRE-FEET (AF) OF WATER STORED IN 7 RESERVOIRS, BEING 30.0 AF IN RESERVOIR #1; 5.0 AF IN RESERVOIR #2; 48.0 AF IN RESERVOIR #3; 5.0 AF IN RESERVOIR #4; 4.0 AF IN RESERVOIR #5; 9.0 AF IN RESERVOIR #6; 9.0 AF IN RESERVOIR #7

PERIOD OF ALLOWED USE: DECEMBER 1 THROUGH MARCH 31 FROM LIVE FLOW; STORED WATER MAY BE USED AT ANY TIME

DATE OF PRIORITY: JANUARY 21, 1994

① WROB
POD

THE POINTS OF DIVERSION ARE TO BE LOCATED AS FOLLOWS: SE 1/4 SW 1/4, NE 1/4 SE 1/4, SW 1/4 SE 1/4, SECTION 13; NE 1/4 NE 1/4, NW 1/4 NE 1/4, SW 1/4 NE 1/4, SECTION 24; T29S, R15W, W.M.; POD #1 - 990 FEET SOUTH & 3330 FEET EAST, POD #2 - 1030 FEET NORTH & 2380 FEET EAST, RESERVOIR #1 - 171 FEET SOUTH & 3970 FEET EAST, RESERVOIR #2 - 137 FEET NORTH & 3680 FEET EAST, RESERVOIR #3 - 1310 FEET NORTH & 2620 FEET EAST, RESERVOIR #4 - 1170 FEET SOUTH & 3150 FEET EAST, RESERVOIR #5 - 1150 FEET SOUTH & 3520 FEET EAST, RESERVOIR #6 - 1810 FEET NORTH

Application S-73857 Water Resources Department

PERMIT 53694

& 4600 FEET EAST, RESERVOIR #7 - 2220 FEET SOUTH & 3370 FEET EAST,
ALL FROM THE SW CORNER OF SECTION 13

The amount of water diverted for CRANBERRY OPERATIONS, together with amounts 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.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 SE 1/4 15.0 ACRES
NW 1/4 SE 1/4 3.0 ACRES
SW 1/4 SE 1/4 4.0 ACRES
SE 1/4 SE 1/4 18.0 ACRES
SECTION 13

SW 1/4 NE 1/4 20.0 ACRES
SE 1/4 NE 1/4 2.2 ACRES
NE 1/4 SE 1/4 7.8 ACRES
SECTION 24

TOWNSHIP 29 SOUTH, RANGE 15 WEST, W.M.

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MAY 13 2021

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Measurement, recording and reporting conditions:

② METER

A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used 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. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.

③ REPORT

B. The permittee 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.

Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.

4 EA. P.D.

STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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

This permit 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.

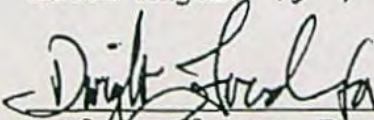
By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

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 Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin within one year from permit issuance. Complete application of the water to the use shall be made on or before October 1, 2004.

Dated August 15, 2000


Paul R. Cleary, Director
Water Resources Department

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NOTE: Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

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FUGATE FARMS WATER RIGHT MAP

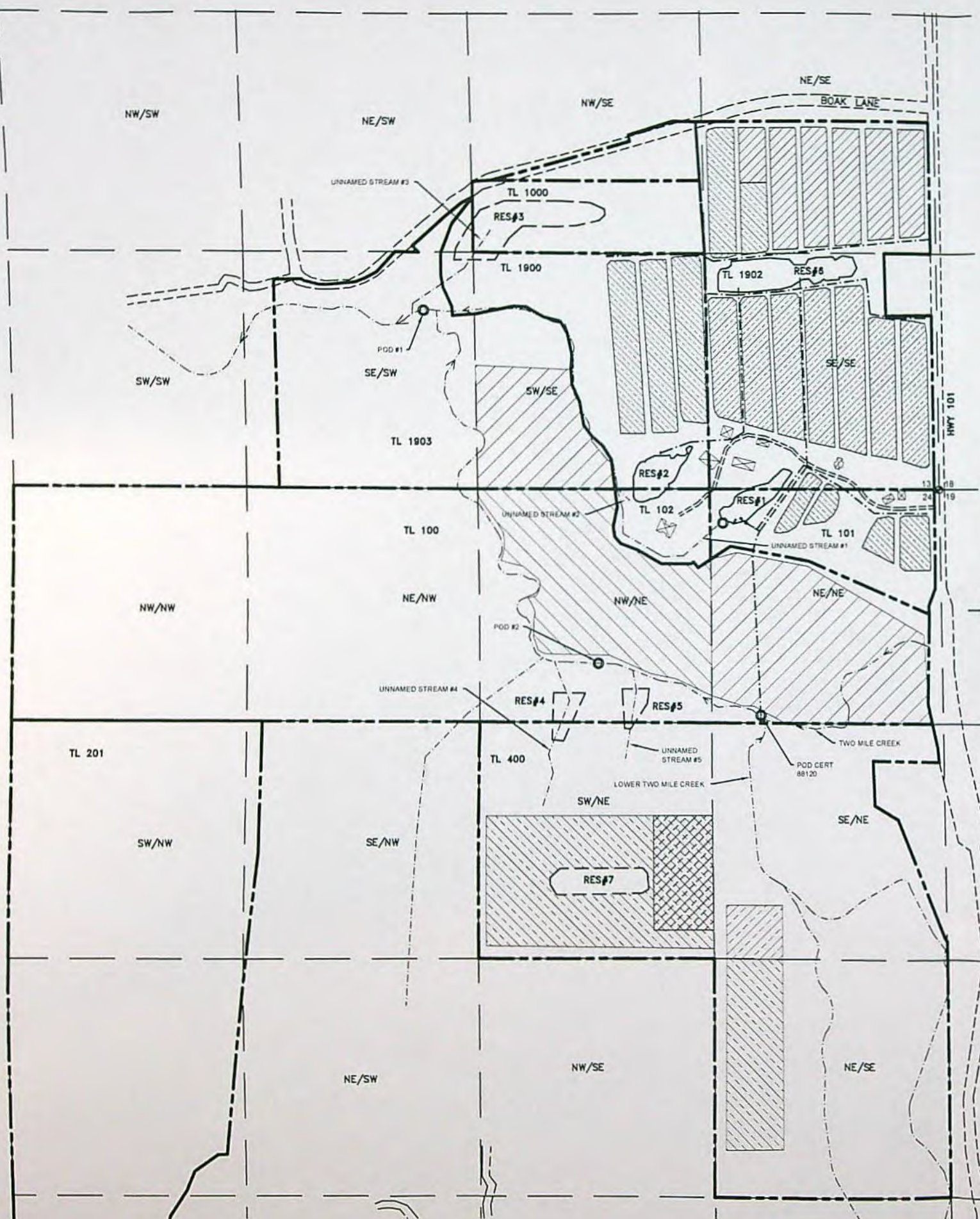
LOCATION: T29S, R15W, W.M. TAX LOTS 1000, 1900 AND 1902 OF SECTION 13, AND
TAX LOTS 101 AND 102 OF SECTION 24, COOS COUNTY, OR
STREET ADDRESS: 87230 BOAK LANE, BANDON OR 97411

PREPARED FOR:
FUGATE FARMS, LLC

APPLICATION S-73857
PERMIT S-53694

APPLICATION R-73854
PERMIT R-12893

FUGATE FARMS PROPERTY, T29S, R15W:
SECTION 13, TAX LOTS 1000, 1900, 1902. SECTION 24, TAX LOTS 101 AND 102.
BANDON BIOTA PROPERTY, T29S, R15W:
SECTION 13, TAX LOT 1903. SECTION 24, TAX LOTS 100, 201, 400.



LEGEND		
⊙ POD	✉ BUILDING	⊕ GOV. CORNER
---	MAIN ROAD	FUGATE PERMIT S-53694 CRANBERRY OPERATIONS RES. #1 ONE SOURCE.
- - -	MINOR ROAD	FUGATE CERTIFICATE 88120 CRANBERRY OPERATIONS
- · - · -	BURIED MAINLINE	BANDON BIOTA CERTIFICATE 73636 IRRIGATION
— — —	SECTION & 1/4-1/4 LINES	BANDON BIOTA PERMIT S-53694 IRRIGATED AREA 2021
~~~~~	CREEKS	BANDON BIOTA PERMIT S-53694 PERMITTED AREA
---	PROPERTY LINES	

700 0 350 700  
1 inch = 700 ft.



THIS MAP WAS PREPARED FOR THE PURPOSE OF IDENTIFYING  
THE LOCATION OF A WATER RIGHT ONLY AND IS NOT  
INTENDED TO PROVIDE LEGAL DIMENSIONS OR LOCATION OF  
PROPERTY OWNERSHIP LINES.

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MAY 13 2021

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Project: 320-066  
Drawing Name:  
FUGATE FARMS EOT MAP  
Drawn By: WLF  
Checked by: WLF  
REVISED 05-07-21

**Stuntzner**  
Engineering  
& Forestry



Application: S-73857 Permit: S-53694  
Public Notice Route Slip ... New Application Extension of Time  
per Division 315 Rules... (Extensions received on July 1, 2001 or after)

Applicant/Permit  
Holder(s)

Jack Furate  
P.O. Box 426  
Bandon, OR 97411

Proposed Completion Date: 10-1-2031

☐ WRIG...Money Receipted on: 5-13-21

☐ Extension Specialist ...

☐ Added to tracking spreadsheet

After fee is receipted and app is added to spreadsheet, route to...

☒ Tonya Miller...

☒ Recent Assignment (Check WRIS for Update)

☒ Publish on Public Notice (initial 30-day comment): Date of  
notice 6/8/2021

☒ Update WRIS Database

☒ In the "PNotice Date" field... Enter the date the Extension Application  
was published on the Public Notice.

☒ In the "Ext Filed" field... Enter the date the Extension Application was  
received.

☐ Yes or ☐ No: Return file to Extension Specialist after PN _____

NOTES:



**STATE OF OREGON  
WATER RESOURCES DEPARTMENT**

RECEIPT # **135244**

725 Summer St. N.E. Ste. A  
SALEM, OR 97301-4172  
(503) 986-0900 / (503) 986-0904 (fax)

INVOICE # _____

RECEIVED FROM:

*Fugate Farms LLC*

APPLICATION

*5-13857*

BY:

PERMIT

TRANSFER

CASH: ☐ CHECK: # *4726* OTHER: (IDENTIFY) ☐

TOTAL REC'D \$ *670.00*

**1083 TREASURY 4170 WRD MISC CASH ACCT**

0407 COPIES

\$

OTHER: (IDENTIFY) _____

\$

0243 I/S Lease _____ 0244 Muni Water Mgmt. Plan _____ 0245 Cons. Water _____

**4270 WRD OPERATING ACCT**

**MISCELLANEOUS**

*46111*

0407 COPY & TAPE FEES

\$

0410 RESEARCH FEES

\$

0408 MISC REVENUE: (IDENTIFY) _____

\$

TC162 DEPOSIT LIAB. (IDENTIFY) _____

\$

0240 EXTENSION OF TIME

\$ *670.00*

**WATER RIGHTS:**

**EXAM FEE**

**RECORD FEE**

0201 SURFACE WATER

\$

0202

\$

0203 GROUND WATER

\$

0204

\$

0205 TRANSFER

\$

**WELL CONSTRUCTION**

**EXAM FEE**

**LICENSE FEE**

0218 WELL DRILL CONSTRUCTOR

\$

0219

\$

LANDOWNER'S PERMIT

0220

\$

OTHER (IDENTIFY) _____

**0536 TREASURY 0437 WELL CONST. START FEE**

0211 WELL CONST START FEE

\$

CARD #

0210 MONITORING WELLS

\$

CARD #

OTHER (IDENTIFY) _____

**0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER**

0233 POWER LICENSE FEE (FW/WRD)

\$

0231 HYDRO LICENSE FEE (FW/WRD)

\$

HYDRO APPLICATION

\$

**TREASURY OTHER / RDX**

FUND _____ TITLE _____

OBJ. CODE _____ VENDOR # _____

DESCRIPTION _____

\$

RECEIPT: **135244**

DATED: *5-13-2021*

BY: *[Signature]*





**Oregon**  
Kate Brown, Governor

**Water Resources Department**  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
Fax (503) 986-0904

June 3, 2021

REFERENCE: Application for Extension of Time

Dear Extension of Time Applicant:

The Water Right Services Division has received your application for an extension of time for **APPLICATION FILE #: S-73857 (Permit S-53694)**. Your application will be reviewed in the future. Following the review, you will receive a Proposed Final Order either approving or rejecting the extension of time request. A 45-day protest period begins upon issuance of the Proposed Final Order. After the protest period closes, a Final Order is issued.

You may continue the use of water under your water right until the Water Resources Department formally takes action on your extension application. If your permit includes conditions, water use reporting, water level measurement reporting, etc., you are required to comply with the conditions.

Any additional development that occurs after the expired completion date, identified on the permit or an extension order, can only be claimed upon an approved extension application.

If you have questions concerning your extension of time application, please contact Jeffrey Pierceall at (503) 986-0802. For general information about the Water Resources Department, you may contact the Water Resources' Customer Service Group at (503) 986-0801 or you may access the Department's website at: [www.wrd.state.or.us](http://www.wrd.state.or.us).





# Oregon

Kate Brown, Governor

## Water Resources Department

North Mall Office Building

725 Summer St NE Ste A

Salem, OR 97301-1266

Phone: 503-986-0900

Fax: 503-986-0904

[www.Oregon.gov/OWRD](http://www.Oregon.gov/OWRD)

**NOTE: For water rights information and useful forms, please see our web site at**

**[www.oregon.gov/OWRD](http://www.oregon.gov/OWRD)**

Certified mail number 7018 0360 0000 1345 4125

Return receipt requested

December 1, 2020

JACK FUGATE  
PO BOX 426  
BANDON, OR 97411

Reference: Application S-73857, Permit S-53694

Dear Permit Holder:

This letter is in regard to your water use permit as referenced above. Your permit required you to complete the development of your water use by October 1, 2015.

In order for the Department to consider issuance of a certificate of water right, you are required by law to hire a certified water right examiner to prepare and submit a claim of beneficial use that includes a final proof survey map of the development. The map and claim of beneficial use were to have been submitted to our Department within one year of October 1, 2015. The fee for submitting a claim of beneficial use is \$200.00. Please see the enclosed 'Resource Sheet' for our current database of CWRE's.

If you are not finished with the development of your permit, you need to file an application for an extension of time to complete your development. The fee for filing an extension of time is \$670.00. Please see the enclosed 'Resource Sheet' to access the extension of time form.

In the event that you are no longer using water as allowed by this permit, you should cancel it so that we may clear our records. Please see the enclosed 'Resource Sheet' to access the cancellation form, if you are interested in this option.

**If you have not submitted either a Claim of Beneficial Use or a request for an extension of time for your permit within 60 days of the date of this letter (February 9, 2021) the Department may issue a Final Order to cancel your permit without further notice. If the Department issues a Final Order to cancel your permit, and you request reconsideration of the final order and reinstatement of your permit, there is a \$520.00 reinstatement fee that is charged in addition to the claim of beneficial use or extension of time fee.**

Should you have any questions, please contact me at [Codi.N.Holmes@oregon.gov](mailto:Codi.N.Holmes@oregon.gov), the address above or by telephone at 503-986-0887. Due to Covid-19, email may be the best way to reach me.

Sincerely,

*for* Codi Holmes  
Certificate Specialist

Enclosures (1)

cc: File

OWRD Watermaster District 15







**Oregon**  
Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

December 1, 2020

Bandon Biota, LLC  
2450 N Lakeview Ave  
Chicago, IL 60614-2878

Reference: Application S-73857 Permit S-53694

Dear Property Owner,

You have been identified as the owner of lands covered in part or in whole by the above referenced permit.

Please see the enclosed 'Resource Sheet' to access the assignment form if you wish to continue using this water.

Should you have any questions, please contact me at [Codi.N.Holmes@oregon.gov](mailto:Codi.N.Holmes@oregon.gov), the address above or by telephone at 503-986-0887. Due to Covid-19, email may be the best way to reach me.

Sincerely,

*Geona Albin*

for Codi Holmes  
Certificate Specialist

cc file  
Watermaster #15



7018 0360 0000 1345 4125

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
*Domestic Mail Only*

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

OFFICIAL USE

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

- |                                                              |          |
|--------------------------------------------------------------|----------|
| <input type="checkbox"/> Return Receipt (hardcopy)           | \$ _____ |
| <input type="checkbox"/> Return Receipt (electronic)         | \$ _____ |
| <input type="checkbox"/> Certified Mail Restricted Delivery  | \$ _____ |
| <input type="checkbox"/> Adult Signature Required            | \$ _____ |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$ _____ |

Postmark  
Here

Postage

\$

Total Postage and Fees

\$

Sent To

Street and Apt. No., or PO Box No.

City, State, ZIP+4®



# Mailing List for 60-Day Letter

Application: S-73857

Permit: S-53694

**Permit Holder(s):**

JACK FUGATE  
PO BOX 426  
BANDON OR 97411

<b>Copies Mailed</b>	
by: <u>La</u>	(STAFF)
on: <u>12-1-20</u>	(DATE)

Is the Permit Holder(s) of record currently identified as a landowner of any tax lots involved as confirmed by the County records? YES NO

**Copies of Cancellation Order to be sent to Permit Holder(s) and following:**

1. Watermaster District #15
2. File

**Other persons to receive copies:**

Bandon Biota, LLC  
2450 N Lakeview Ave  
Chicago, IL 60614-2878



# COMPLETENESS PROJECT

Page 1

## 60 Day Letter

PERMIT STATUS REVIEW BY C. Holmes DATE _____ FILE # S-873857

1. Per Dwight French, do not send "C" DATE NOTICE PACKET if: update WRIS if appropriate

____ Extension pending Yes / (No) _____

____ Assignment is pending Yes / (No) _____

____ Cancellation has been requested Yes / (No) _____

____ Claim of Beneficial Use received Yes / (No) _____  
Date information received _____

____ Dept. has already sent a certified 60-Day Compliance letter (date _____, Cert mail # _____)

Was 60 days notice allowed? Y N If No, How Much Time ? _____

Was mail deliverable as addressed? Y N date _____

If mail returned, online/www check ? Y N date _____ successful ? Y N

Re-send Cert. Letter ? Y N date _____

Send cancellation order Y N

2. IF NONE OF THE ABOVE APPLY

____ Send certified "C" date notice packet to permit holder.

"C" DATE OCT. 1 2004 BASIN NUMBER 17 WM # 15

Ext. OCT 1 2015

CWRE or AGENT Yes/No KENNA CLAY JORDAN, CWRE

3. AOI Yes _____ NO X If Yes, name(s) of AOI none

4. Current Landowner(s) and Mailing Address

County of Place of Use COOS Tax Lot(s) 295 15W 24 400

Attach copy of email from County Assessor or Printout from Assessor's Site

new Landowner

Contacts regarding 60 Day Letter:

Hold Action Request from Permit/Landowner - Date of Request _____ Requesting Parties Name _____

Hold Action Until (Date) _____

No more than 60 days beyond original deadline to submit an extension, assignment, or Alt Res CBU

Hold Action Request from CWRE - Date of Request _____ CWRE Name _____

Hold Action Until (Date) _____

No more than 6 months beyond original deadline to submit a CBU



**COMPLETENESS PROJECT**  
**Page 2**

**Final Cancellation Review**

*PERMIT STATUS REVIEW BY* _____ *DATE* _____

1. C Date ____/____/____
  2. Certified Letter Date ____/____/____
  3. Return Receipt Rcvd. ____/____/____
  4. Return Receipt Signed By _____
  5. Other Communication: ____/____/____
- 

Recommend Cancellation ☐ or  
Hold Action until ____/____/____



SECTION 24 T29S R15W W.M.  
COOS COUNTY

1" = 400'

SEE MAP 29S 15W 13

29S 15W 24

CANCELLED NO

402  
202  
203  
103  
104  
105

SEE MAP 29S 15W 23

SEE MAP 29S 14W 19

4-29-2010

29S 15W 24

SEE MAP 295 15W 25



# COOS County Assessor's Summary Report

## Real Property Assessment Report

FOR ASSESSMENT YEAR 2020

October 27, 2020 10:20:18 am

Account # 1240200  
Map # 29S15240000400  
Code - Tax # 5401-1240200

Tax Status ASSESSABLE  
Acct Status ACTIVE  
Subtype NORMAL

Legal Descr See Record

Mailing Name BANDON BIOTA, LLC

Deed Reference # See Record

Agent

Sales Date/Price See Record

In Care Of

Appraiser

Mailing Address 2450 N LAKEVIEW AVE  
CHICAGO, IL 60614-2878

Prop Class 542 MA SA NH Unit  
RMV Class 500 06 27 RRL 22210-1

Situs Address(s)		Situs City					
Code Area	RMV	MAV	Value Summary AV	SAV	MSAV	RMV Exception	CPR %
5401 Land Impr.	40,035 0					Land Impr.	0 0
Code Area Total	40,035	0	32,585	40,035	32,585		0
Grand Total	40,035	0	32,585	40,035	32,585		0

Code Area	ID#	RFPD	Ex	Plan Zone	Value Source	Land Breakdown		Size	Land Class	LUC	Trended RMV
						TD%	LS				
5401	10	<input checked="" type="checkbox"/>		F, EFU	Designated Forest Land	100	A	33.70	F	006*	11,043
5401	20	<input checked="" type="checkbox"/>		F, EFU	Designated Forest Land	100	A	40.00	G	006*	5,577
5401	30	<input checked="" type="checkbox"/>		F, EFU	Farm Use Zoned	100	A	1.10	H4	006*	382
5401	40	<input checked="" type="checkbox"/>		F, EFU	Farm Use Zoned	100	A	1.00	H6	006*	113
5401	50	<input checked="" type="checkbox"/>		F, EFU	Farm Use Zoned	100	A	15.00	K3	006*	11,850
5401	60	<input checked="" type="checkbox"/>		F, EFU	Farm Use Zoned	100	A	15.70	K4	006*	10,283
5401	70	<input checked="" type="checkbox"/>		F, EFU	Farm Use Zoned	100	A	2.60	K6	006*	613
5401	80	<input checked="" type="checkbox"/>		F, EFU	Farm Use Zoned	100	A	5.20	K7	006*	166
5401	90	<input checked="" type="checkbox"/>		F, EFU	Farm Use Zoned	100	A	0.42	U8	006*	8
Grand Total								114.72			40,035

Code Area	ID#	Yr Built	Stat Class	Description	Improvement Breakdown	TD%	Total Sq. Ft.	Ex% MS Acct #	Trended RMV
Grand Total									0

Code Area		Exemptions/Special Assessments/Potential Liability							
Type									
NOTATION(S):									
■ FARM/FOREST POT'L ADD'L TAX LIABILITY									
FARM/FORST									
5401									
FIRE PATROL:									
■ FIRE PATROL TIMBER		Amount	193.39	Acres	114.72	Year	2020		





business information center

**business name search**

oregon business guide

referral list

business registry/renewal

forms/fees

notary public

uniform commercial code

uniform commercial code search

documents &amp; data services

## Business Name Search

[New Search](#)[Printer Friendly](#)

## Business Entity Data

10-27-2020

10:22

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
145564-92	FLLC	INA	DELAWARE	04-25-2003		
Entity Name	BANDON BIOTA, L.L.C.					
Foreign Name						

[New Search](#)[Printer Friendly](#)

## Associated Names

Type	PPB	PRINCIPAL PLACE OF BUSINESS				
Addr 1	2450 N LAKEVIEW					
Addr 2						
CSZ	CHICAGO	IL	60614		Country	UNITED STATES OF AMERICA

Please click [here](#) for general information about registered agents and service of process.

Type	AGT	REGISTERED AGENT	Start Date	04-25-2003	Resign Date	
Of Record	003292-27	C T CORPORATION SYSTEM				
Addr 1	780 COMMERCIAL ST SE STE 100					
Addr 2						
CSZ	SALEM	OR	97301	3465	Country	UNITED STATES OF AMERICA

Type	MAL	MAILING ADDRESS					
Addr 1	SEYFARTH SHAW						
Addr 2	233 S WACKER DRIVE SUITE 8000						
CSZ	CHICAGO	IL	60606		Country	UNITED STATES OF AMERICA	

Type	MEM	MEMBER			Resign Date	
Not of Record	BANDON DUNES LP					
Addr 1	2450 N LAKEVIEW					
Addr 2						
CSZ	CHICAGO	IL	60614		Country	UNITED STATES OF AMERICA





Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem Oregon 97301-1266  
(503) 986-0900  
www.wrd.state.or.us

# Extension of Time Progress Report Form For Checkpoints

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

Permit Holder: JACK, SHERI, & BARBARA FUGATE

Application S-73857

Permit S-53694

Report Due no later than October 1, 2015

RECEIVED BY OWRD

DO NOT SUBMIT PRIOR TO 30 DAYS BEFORE DUE DATE

## Progress Report Form for 2015

SEP 21 2015

As authorized in ORS 690-315-0050(6), this progress report is required in order to ensure diligence is exercised in the development and perfection of Permit S-53694. FAILURE TO SUBMIT THIS REPORT WILL MOST LIKELY RESULT IN ANY FUTURE EXTENSION BEING DENIED.

INSERT DATES	LIST ALL WORK ACCOMPLISHED and FINANCIAL INVESTMENTS For the period of time between October 1, 2010 and October 1, 2015	FINANCIAL INVESTMENT
10-1-2010	All pumps and piping installed	
10-1-2015	meters installed at all points of diversion except Reservoir #3 permit #12895 Still under Construction	\$24,000
8-13-2015	Joint permit Application submitted to corps of engineers, Dam is 90% complete when we receive the corp permit we will finish the dam and submit COBU	\$4,000

2. Compliance with terms and conditions of the permit and/or previous extension.

Meters Installed  
weirs above & below waived

3. Total number of acres irrigated to date = 49 (if applicable)

4. Provide the maximum rate, or duty if applicable, of water diverted for beneficial use under this permit, if any, made to date.

Maximum rate used to date = 2.0 cfs (cubic feet per second)

Maximum rate used to date = 897 gpm (gallons per minute)

Acre-feet stored to date = 23.2 AF

Report the rate in the same units of measurement as specified in the permit, being cfs (cubic feet per second), gpm (gallons per minute) or AF (acre-feet). Do not provide daily, monthly or annual water volume totals.

INCOMPLETE REPORTS WILL BE RETURNED. AN ANSWER IS REQUIRED IN EACH ITEM. USE N/A FOR ITEM 3 IF THE USE IS NOT IRRIGATION.

Signature

Jack Fugate

Date

10-15-15

For OWRD use only

Diligence Shown ☒ Yes ☐ No

Date Public Noticed: _____

Reviewed by: Machelle Bamhaz

Date: 9-22-15



FUGATE FARMS LLC

PO Box 426

Bandon,OR 97411

Sep. 14,2015

RECEIVED BY OWRD

SEP 21 2015

SALEM, OR

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

RE: PROGRESS REPORT 2015 APPLICATION R-73856 PERMIT R-12895

BRIEF HISTORY OF RESEVOIR #3

This reservoir was started as an engineered dam with surveying and engineering costs in excess of \$50,000. The price of cranberries dropped in the late 90's and we were no longer able to afford the cost of the engineered project, so we converted the permit to a non-engineered dam.

The last seven years we have had to concentrate our resources and time to renovating and replanting a portion of our original cranberry vines that were not good producers with better vines. This has greatly increased our production making our farm economically feasible.

The summer of 2010 we once again started work on Reservoir #3 as reported in the Oct. 1, 2011 Progress Report. Late summer of 2011 we were working to complete the dam and received a letter from the Army Corps of Engineers to stop construction on the dam. We contacted Anita Andazola in their North Bend office and were informed that we had to file for a joint permit from the Army Corps of Engineers. Ms. Andazola came to the site and inspected our project and told us we would need to do a wetland delineation. We were not sure of what we could afford to do at this point while still dealing with a severely depressed cranberry market.

This year, 2015, we made the decision to move forward and try to complete the project. We submitted the Corps Joint Application and hired Resource Consultant Michale Scalici to do the wetland delineation. We also hired Stuntzner Engineering to do the flood plain impact analysis. We should have everything in place to receive the Joint Permit by the end of September. However, in the best of circumstances, we will most likely not be able to complete the reservoir until 2016.

We have spent approximately \$18,000 on construction; \$3,500 on materials, pipe and control riser; \$4,000 on wetland delineation; and \$1,000 on flood plain impact report.





# Oregon

Kate Brown, Governor

## Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

November 2, 2015

JACK, SHERI, & BARBARA FUGATE  
PO BOX 426  
BANDON, OR 97411

REFERENCE: Application S-73857 / Permit S-53694

Dear Permit Holder:

The Water Right Services Division received your written 2015 progress report for Permit S-53694. Receipt of the progress report was published on the Department's weekly Public Notice, dated September 29, 2015. The Department did not receive any public comment on the progress report.

After reviewing your Progress Report, the Department determined that diligence toward completion of the project and compliance with the terms and conditions of the permit and extension has been demonstrated.

As per your most recent extension, the date by which water must be applied to full beneficial use within the terms and conditions of your permit is October 1, 2015.

If you have any questions, please feel free to contact me by telephone at (503) 986-0802.

Sincerely,

Machelle A Bamberger  
Extensions  
Water Right Services Division

Enclosure

cc: Application S-73857  
Watermaster District 19 – Greg Wacker



## Route Slip.....Extension of Time Progress Report

### 1. Extension Specialist: Progress Report Review

Date Report was Due: 10/1/2015 (= "Deadline Date" for the corresponding ECP work flow record in WRIS)

Date Report Received: 9/21/2015

Report Complete: ☒ YES

☐ NO – Send letter requesting missing information.  
☐ letter mailed on: _____

### 2. Support Staff: Publish on the Department's Public Notice

☐ 315 ☒ 320 OAR Division under which Progress Report was required

☒ Publish on Public Notice Date: 9/29/15

☒ Update workflow in WRIS

☐ (Fill in Extension Checkpoint 'Completed Date' in appropriate "ECP" work flow record and

☐ add record for Checkpoint Public Notice ("EPR" or "EP2")

☒ Return file to Machelle Bamberger.

### 3. Extension Specialist: Prepare Progress Report Confirmation Letter

*See progress report procedures.doc*

(date / mail out after 30 day comment period)

Date Confirmation Letter Needed: 11/1/2015

☐ Update Progress Report Worksheet.xls

☐ Send to permit holder + anyone who made comments after 30 day public notice  
CC: Watermaster _____

File _____

## PUBLIC NOTICE INFORMATION

Permit Holder's Name: Jack Fugate Attn: _____

Application: S-73857

Permit: S-53694

County: Coos

Source: Three unnamed streams and Reservoir R-1, R-2, R-4, R-5, R-6 and R-7, tributaries of Two Mile Creek and Two Mile Creek, tributary of the Pacific Ocean

Use: Cranberry operations



2012

Oregon Water Resources Department  
October through September  
Water Use Recording and Reporting Form

2013

Consult the water right (permit, certificate, order) to determine applicable reporting conditions; the measurement, recording, and reporting conditions identified in a permitted or certified water right typically follow the place of use description. Use the columns below to document measurements for each authorized point of diversion/appropriation or reservoir. We ask that zeros be reported for any given month when water is not being used. Keep a copy of all measurement reports for your records. We encourage you to submit your water use data via our online utility when available, and to use the Monthly Water Use Forms for record keeping purposes. To lookup water rights, access the water use reporting webpage/online utility, or to obtain additional forms visit our web site: <http://www.wrd.state.or.us>

Jack + Barbara Fugate  
Water Right Holder's Name

Fugate Farms LLC  
Water Right Holder's Business Name or Entity Name

50185  
USER ID#

Water Right Holder's Email

P.O. Box 1245 Bandon, OR 97411  
Water Right Holder's Complete Mailing Address

541-347-4309  
Phone Number

Facility Report ID	51879 ✓	51884 ✓	51885 ✓	51889 ✓
Application:	Permit: S-53694	Permit: S-53694	Permit: S-53694	Permit: S-53694
Other:	Two Mile Creek	Reservoir #1	Reservoir #2	Reservoir 6
Describe the units of measurement as AF (acre-feet), G (gallons), KG (thousand gallons), MG (million gallons), CF (cubic feet), or MCF (million cubic feet)				
October - 2012	9.5	.55	.55	1
November - 2012	4.5	.55	.55	1
December - 2012	0	0	0	0
January - 2013	0	0	0	0
February - 2013	0	0	0	0
March - 2013	5.5	.55	.55	1
April - 2013	9.5	.55	.55	1
May - 2013	9.5	.55	.55	1
June - 2013	9.5	.55	.55	1
July - 2013	9.5	.55	.55	1
August - 2013	9.5	.55	.55	1
September - 2013	9.5	.60	.60	1
TOTAL *	76.5 AF	5.00 AF	5.00 AF	9 AF
Unit of Measurement	<input type="checkbox"/> G <input type="checkbox"/> KG <input type="checkbox"/> MG <input checked="" type="checkbox"/> AF <input type="checkbox"/> CF <input type="checkbox"/> MCF	<input type="checkbox"/> G <input type="checkbox"/> KG <input type="checkbox"/> MG <input checked="" type="checkbox"/> AF <input type="checkbox"/> CF <input type="checkbox"/> MCF	<input type="checkbox"/> G <input type="checkbox"/> KG <input type="checkbox"/> MG <input checked="" type="checkbox"/> AF <input type="checkbox"/> CF <input type="checkbox"/> MCF	<input type="checkbox"/> G <input type="checkbox"/> KG <input type="checkbox"/> MG <input checked="" type="checkbox"/> AF <input type="checkbox"/> CF <input type="checkbox"/> MCF

Describe the method of measurement used: Acres Feet If used for irrigation, total number of acres irrigated: 49.56

I certify this information is true and accurate to the best of my knowledge.

12-30-13 Jack Fugate Jack Fugate, owner Fugate Farms LLC 541-347-4309  
Date Signature Name and Title (print) Company Phone Number

Please complete and mail to: Oregon Water Resources Department, Water Use Reporting Program, 725 Summer Street NE, Suite A: Salem, OR 97301.

RECEIVED BY OWRD

JAN 02 2014

SALEM, OR



## Route Slip.....Extension of Time Progress Report

### 1. Extension Specialist: Progress Report Review

Date Report was Due: 10/1/2011 (= "Deadline Date" for the corresponding ECP work flow record in WRIS)

Date Report Received: 10/13/2011

Report Complete: ☒ YES

☐ NO – Send letter requesting missing information.

☐ letter mailed on: _____

### 2. Support Staff: Publish on the Department's Public Notice

☒ 315 ☐ 320 OAR Division under which Progress Report was required

☒ Publish on Public Notice Date: 11-1-11

☒ Update workflow in WRIS

☒ (Fill in Extension Checkpoint 'Completed Date' in appropriate "ECP" work flow record and

☒ add record for Checkpoint Public Notice ("EP2) (Note: "Begin date = Date report was due)

☒ Return file to Jerry Gainey.

### 3. Extension Specialist: Prepare Progress Report Confirmation Letter

See progress report procedures.doc

(date / mail out after 30 day comment period)

Date Confirmation Letter Needed: _____

☐ Update Progress Report Worksheet.xls

☐ Send to permit holder + anyone who made comments after 30 day public notice

CC: Watermaster _____

File _____

## PUBLIC NOTICE INFORMATION

Permit Holder's Name: Jack or Barbara Fugate Attn: _____

Application: S- 73857

Permit: S- 53694

County: Coos

Source: Three unnamed streams and Reservoir R-1, to be constructed under Application R-73854, Permit R-12893, Reservoirs R-2, R-4, R-5, R-6, and R-7, to be constructed under Application R-73855, Permit R-12894, and Reservoir R-3, to be constructed under Application R-73856, Permit R-12895, tributaries of Two Mile Creek, and Two Mile Creek, tributary of the Pacific Ocean

Use: Cranberry operations





Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem Oregon 97301-1266  
(503) 986-0900  
www.wrd.state.or.us

RECEIVED

OCT 13 2011

WATER RESOURCES DEPT  
SALEM, OREGON

Extension of Time  
Progress Reporting Form  
For Checkpoints

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

Permit Holder: Jack or Barbara Fugate

Application S-73857  
Permit S-53694

Report Due no later than October 1, 2011

Progress Report Form for 2011

As authorized in ORS 690-315-0050(6), this progress report is required in order to ensure diligence is exercised in the development and perfections of Permit S-53694

INSERT DATES	LIST ALL WORK ACCOMPLISHED and FINANCIAL INVESTMENTS For the period of time between October 1, 2004 and October 1, 2011	FINANCIAL INVESTMENT
2010	All meters installed on reservoir pumps Reservoirs 1, 2, & 6	2400
3-2010	Began construction Res. #3 (Reported on Permit R-12895) -corrected-	

2. Compliance with terms and conditions of the permit and/or previous extension.

Totalizing meter installed on diversion pump 2-mile crk in 1999.

3. Total number of acres irrigated to date = 49 (if applicable)

4. Provide the maximum rate, or duty if applicable, of water diverted for beneficial use under this permit, if any, made to date.

Maximum rate used to date = 2.2 cfs (cubic feet per second), or

Maximum rate used to date = _____ gpm (gallons per minute), or

Acre Feet stored to date = 23.2 AF Res. 1, 2 & 6

Report the rate in the same units of measurement as specified in the permit, being cfs (cubic feet per second), gpm (gallons per minute) or AF (acre-feet). Do not provide daily, monthly or annual water volume totals.

Signature

Jack Fugate

Date 10-7-11

For OWRD use only

Diligence Shown ☐ Yes ☐ No

Date Public Noticed: _____

Reviewed by: _____

Date: _____



R-73857


FUGATE FARMS, LLC  
ASSIGNMENT OF INTEREST

AS PART OF THE TERMS OF AND IN COMPLIANCE WITH A GENERAL JUDGMENT OF DISSOLUTION OF MARRIAGE entered in the case of Fugate and Fugate, Coos County Circuit Court Case. No. 09DM0441, the undersigned, Sheri L. Fugate, who is the owner of a twenty percent (20%) interest in Fugate Farms, LLC, hereby, assigns, transfers, and sets over to Len R. Fugate, hereinafter called Assignee, his successors and assigns, all of the beneficial interest in her twenty percent (20%) interest in Fugate Farms, LLC, and all rights and benefits whatsoever accrued in Fugate Farms.

The undersigned covenants that she is the owner of the twenty percent (20%) interest in Fugate Farms, LLC, being conveyed herein to Fugate Farms, LLC.

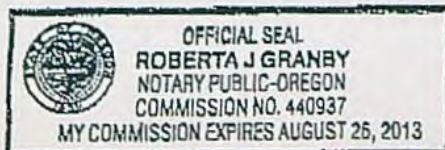
The true and actual consideration paid for this assignment is to clear title in Fugate Farms following the Dissolution of the Marriage of Sheri Fugate and Len Fugate.

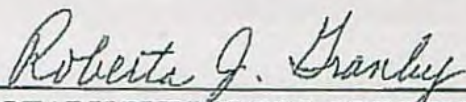
DATED this 30th day of March 2010.

  
_____  
Sheri L. Fugate

STATE OF OREGON,     )  
                                  ) ss:  
County of Coos.        )

On March 30th, 2010, before me personally appeared the within named Sheri L. Fugate, and acknowledged the foregoing Assignment to be her voluntary act and deed.



  
_____  
NOTARY PUBLIC FOR OREGON

RECEIVED

SEP 20 2010

WATER RESOURCES DEPT  
SALEM, OREGON



Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number S-73857

**Final Order**  
**Extension of Time for Permit Number S-53694**

**Appeal Rights**

**This is a final order in other than a contested case.** This order is subject to judicial review under ORS 183.484. A request 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 either file 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.

**Application History**

Permit S-53694 was issued by the Department on August 15, 2000. The permit called for complete application of water to beneficial use by October 1, 2004. On May 30, 2008 Jack, Sheri or Barbara Fugate submitted to the Department an Application for Extension of Time for Permit S-53694. In accordance with OAR 690-315-0050(2), on June 8, 2010 the Department issued a Proposed Final Order proposing to extend the time to apply water to full beneficial use to October 1, 2015. The protest period closed July 23, 2010 in accordance with OAR 690-315-0060(1). No protest was filed.

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 subject to the following conditions:

**CONDITIONS**

**1. Checkpoint Condition**

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2011 and 2015. *A form will be enclosed with your Final Order.***



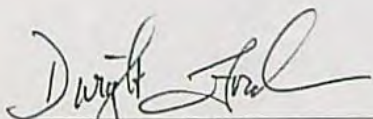
- (a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;
- (b) The Department shall provide notice of receipt of progress reports in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

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-73857, Permit S-53694, therefore, is approved subject to conditions contained herein. The deadline for applying water to full beneficial use is extended to October 1, 2015.

DATED: November 16, 2010



Dwight French, Administrator of  
Water Rights and Adjudications  
for  
Phillip C. Ward, Director



- 
- If you have any questions about statements contained in this document, please contact Jerry Gainey at (503) 986-0812.
  - 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
-



## Mailing List for Extension FO Copies

---

Note: Include a copy of the "Important Notice" document along with the original copy of the Final Order being sent to the permit holder.

---

**FO Date: November 16, 2010**

**Copies Mailed**

**Application S-73857**

**Permit S-53694**

By: JS

On: 11-16-10

**Original mailed to permit holder**

Jack and Barbara Fugate  
PO Box 426  
Bandon, OR 97411

**Copies sent to:**

1. WRD - App. File S-73857/ Permit S-53694
2. WRD - Watermaster District 19, Mitch Lewis
3. WRD - SWR Regional Manager, Bruce Sund
4. WRD - George Robison, Dam Safety
5. Jordan Engineering, Attn: Norm Daft, 460 Jordan Lane, Roseburg, OR 97471
6. ~~WRD~~ Support Staff, Salem

**Fee paid as specified under ORS 536.050 to receive copy:**

7. None

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

**If Progress Reports are included:**

Add record to Progress Report tracking sheet.xls Done: by JS Date 11-10-10

CASEWORKER: SBK



**Oregon Water Resources Department  
Water Rights Division**

**Application for Extension of Time**



In the Matter of the Application for an Extension of Time    )  
for Permit S-53694, Water Right Application S-73857        )  
in the name of Jack, Sheri or Barbara Fugate.                )      PROPOSED FINAL ORDER

---

**Permit Information**

**Application File S-73857    Permit S-53694**

Basin: 17 – South Coast / Watermaster District 19

Date of Priority: January 21, 1994

**Authorized Use of Water**

Source of Water:	Three Unnamed Streams and Reservoirs R-1, R-2, R-3, R-4, R-5, R-6 and R-7, tributaries of Two Mile Creek; and Two Mile Creek tributary to the Pacific Ocean.
Purpose of Use:	Cranberry Operations
Maximum Rate:	2.0 Cubic Feet per Second (cfs) from three unnamed streams and Two Mile Creek and 110.0 Acre-Feet (AF) of stored water from seven reservoirs.

---

**This Extension of Time request is being processed in accordance with Oregon  
Administrative Rule Chapter 690, Division 315**

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

This Proposed Final Order applies only to Permit S-53694, water right Application S-73857.  
A copy of Permit S-53694 is enclosed as Attachment 1.



## Summary of Proposed Final Order for Extension of Time

### The Department proposes to:

- Grant an extension of time to apply water to full beneficial use from October 1, 2004 to October 1, 2015.
- Make the extension subject to certain conditions set forth below.

### ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources  
PFO – Proposed Final Order  
CWRE – Certified Water Rights Examiner

### Units of Measure

cfs – cubic feet per second  
gpm – gallons per minute  
AF – acre-feet

### AUTHORITY

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

ORS 537.230(3) provide 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) provides in pertinent part that the Water Resources Director, for good cause shown, may extend the time within which the full amount of the water appropriated shall be applied to a beneficial use. This statute 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 therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0040 provides in pertinent part that the Water Resources Department shall make findings to determine if an extension of time may be approved to complete construction and/or apply water to full beneficial use.

OAR 690-315-0050(6) allows the Department, for extensions exceeding five years, to establish checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between checkpoints will not exceed five year periods.



## FINDINGS OF FACT

### Background

1. Permit S-53694 was granted by the Department on August 15, 2000. The permit authorizes the use of 2.0 cfs, being 1.7 cfs from Two Mile Creek, 0.1 cfs from each of three unnamed streams (#2, 4 and 5); and 110.0 AF of stored water in seven reservoirs, being 30.0 AF in reservoir #1; 5.0 AF in Reservoir #2; 48.0 AF in Reservoir #3; 5.0 AF in reservoir #4; 4.0 AF in Reservoir #5; 9.0 AF in reservoir #6; and 9.0 AF in Reservoir #7 for cranberry operations. The permit specified complete application of water was to be made on or before October 1, 2004.
2. The permit holder submitted an "Application for Extension of Time" to the Department on May 30, 2008 requesting the time to apply water to full beneficial use under the terms of Permit S-53694 be extended from October 1, 2004 to October 1, 2010. This is the first permit extension requested for Permit S-53694.
3. Notification of the Application for Extension of Time for Permit S-53694 was published in the Department's Public Notice dated June 10, 2008. No public comments were received regarding the extension application.
4. On May 11, 2010 the permit holder submitted additional information to supplement their Application for an Extension of Time. The amendment requested the extended time to apply water to full beneficial use of the water system be changed from October 1, 2010 to October 1, 2015.

### Review Criteria [OAR 690-315-0040]

*The time limits to complete construction and/or apply water to full beneficial use may be extended if the Department finds that the permit holder has met the requirements set forth under OAR 690-315-0040. This determination shall consider the applicable requirements of ORS 537.230¹, 537.248² and/or 539.010(5)³.*

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

5. On May 30, 2008 the Department received a completed Application for Extension of Time 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)]

6. Actual construction of the water system began prior to the August 15, 2001 deadline specified in the permit

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¹ORS 537.230 applies to surface water permits only.

²ORS 537.248 applies to reservoir permits only.

³ORS 539.010(5) applies to surface water and ground water permits.



**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.*

7. As of May 30, 2008 the remaining work to be completed consists of submitting annual water use records, installing totalizing flow meters at each diversion point and applying water to full beneficial use.
8. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2015, to accomplish the application of water to beneficial use under the terms and conditions of Permit S-53694 is both reasonable and necessary.

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

*The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0040(2).*

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

*The Department's determination of reasonable diligence shall consider the requirements set forth under OAR 690-315-0040(3)(a-d). In accordance with OAR 690-315-0040(3), the Department shall consider, but is not limited to, the following factors when determining whether the applicant has demonstrated reasonable diligence in previous performance under the permit:*

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

9. Work was accomplished within the time allowed in the permit or previous extension as follows:
  - a. Construction of the water system began prior to the August 15, 2001 deadline specified in the permit.
  - b. Work completed before the original development time frame under Permit S-53694 includes construction and planting of Bogs 1-17, construction of Bogs B3 and B4, construction of Reservoirs 1, and 6 and installation of pump, meter, piping and fish screens at the Two Mile Creek diversion point. Work completed during the original development time frame includes construction and planting of Bogs B1 and B2, dike work and fencing.

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

10. The following beneficial use was made of the water during the permit or previous extension time limits:
  - a. Since the issuance of Permit S-53694 on August 15, 2000, the permit holder has used 2.0 cfs live flow from three unnamed streams and Two Mile Creek and 26.0 AF of stored water from seven reservoirs for cranberry operations.



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

11. The water right permit holder's conformance with the permit or previous extension conditions.
  - a. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns: (1) the record does not show that a totalizing flow meter has been installed, (2) annual reports of the amount of water used each month have not been received by the Department.
  - b. Failure to comply with permit conditions constitutes illegal use of water. In order to legally perfect the use of water under this permit, the permit holder must demonstrate that all conditions of the permit have been satisfied.

Financial Investments [OAR 690-315-0040(3)(d)]

12. Financial investments made toward developing the beneficial water use.
  - a. As of May 30, 2008 the permit holder has invested approximately \$1,150,000 which is approximately 92 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$100,000 investment is needed for the completion of this project.

Cost to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0040(2)(b)]

13. As of May 30, 2008 the permit holder has invested approximately \$1,150,000 which is approximately 92 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$100,000 investment is needed for the completion of this project.

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

14. The Department has found good faith of the appropriator under Permit S-53694.

The Market and Present Demands for Water [OAR 690-315-0040(2)(d-e)]

*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:*

15. The amount of water available to satisfy other affected water rights and scenic waterway flows; 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); or the habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife [OAR 690-315-0040(4)(a-c)].



- a. 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-53694; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined at such time that such application for a new water right is submitted. The points of diversion are located on three unnamed streams, Two Mile Creek and Reservoirs R-1, R-2, R-3, R-4, R-5, R-6, R-7. The points of diversion are not located within or above any state or federal scenic waterway, are located within an area ranked "high" for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and are located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife. The Two Mile Creek area is listed by the Department of Environmental Quality as a water quality limited stream area.
16. Economic investment in the project to date [OAR 690-315-0040(4)(d)].
  - a. As of May 30, 2008 the permit holder has invested approximately \$1,150,000
17. Other economic interests dependent on completion of the project [OAR 690-315-0040(4)(e)].
  - a. None have been identified.
18. Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0040(4)(f)].
  - a. None have been identified.
19. OAR 690-315-0050(6) requires the Department to place a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A "Checkpoint Condition" is specified under Item 1 of the "Conditions" section of this PFO to meet this condition.

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

20. Use and income from the permitted water development results in reasonable returns upon the investment made to date.

**Other Governmental Requirements [OAR 690-315-0040(2)(g)]**

21. Development of this project was delayed as the permit holders were trying to acquire waivers from the Department to relieve them of the responsibility of installing unnecessary in-channel weirs.

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

22. Unforeseen events extended the length of time needed to fully develop and perfect Permit S-53694, in that the permit holders were faced with the unexpected passing of their water



right consultant and CWRE.

### CONCLUSIONS OF LAW

1. The applicant is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.230(3).
2. 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).
3. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.230 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
4. Full application of water to beneficial use can be accomplished by October 1, 2015⁴, as required by OAR 690-315-0040(1)(c).
5. 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 apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).
6. As required by OAR 690-315-0050(6) and as described in Finding 19 above, the Department has established, as specified in the "Conditions" section of this PFO (Item 1), progress checkpoints in order to ensure future diligence is exercised in the development and perfection of Permit S-53694.

### 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-53694 from October 1, 2004 to October 1, 2015.

---

⁴Pursuant to ORS 537.230(3), 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.



Subject to the following conditions:

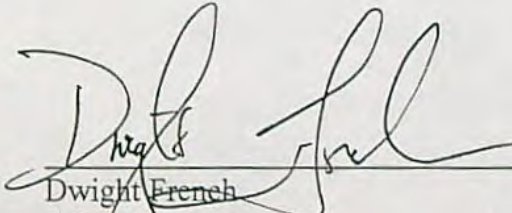
## CONDITIONS

1. **Checkpoint Condition**

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2010 and 2015. Forms will be enclosed with your Final Order.**

- (a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;
- (b) The Department shall provide notice of receipt of progress reports in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

DATED: June 8, 2010

  
Dwight French  
Administrator  
Water Rights & Adjudications Division

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

### **Proposed Final Order Hearing Rights**

- 1. Under the provisions of OAR 690-315-0100(1) and 690-315-0060, 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. The written protest must be received by the Water Resources Department no later than **July 23, 2010**, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.



2. A written protest shall include:
  - a. The name, address and telephone number of the petitioner;
  - b. A description of the petitioner'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;
  - c. A detailed description of how the action proposed in the proposed final order would adversely affect or aggrieve the petitioner's interest;
  - d. A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
  - e. Any citation of legal authority supporting the petitioner, if known;
  - f. Proof of service of the protest upon the water right permit holder, if petitioner is other than the water right permit holder; and
  - g. The applicant or non-applicant protest fee required under ORS 536.050.
3. Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:
  - a. Issue a final order on the extension request; or
  - b. Schedule a contested case hearing if a protest has been submitted, and:
    - 1) Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
    - 2) The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

- 
- If you have any questions about statements contained in this document, please contact Scott Kudlemyer at 503-986-0813.
  - If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Patricia McCarty at 503-986-0820.
  - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.
  - Address any correspondence to :      Water Rights and Adjudications Division  
725 Summer St NE, Suite A  
Salem, OR 97301-1266
- 
- Fax: 503-986-0901





# Oregon

Theodore R. Kulongoski, Governor

Water Resources Department  
North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1266  
503-986-0900  
FAX 503-986-0904

June 24, 2010

Fugate Farms  
Attn: Barbara Fugate  
PO Box 426  
Bandon, OR 97411

REFERENCE: Applications: R-73854, R-73855, R-73856 and R-73857

Dear Ms. Fugate

As per our phone conversation of June 23, 2010, included in this mailing are the Request for Assignment forms you requested. I have included the business card of Jerry Sauter who will be handling this process for you.

If you have any questions regarding these forms please feel free to contact Jerry at (503) 986-0817.

Sincerely,

A handwritten signature in black ink, appearing to be "S. Kudlemyer", with a long horizontal line extending to the right.

Scott Kudlemyer  
Extensions Specialist  
Water Rights and Adjudications

cc: Applications R-73854, R-73855, R-73856 and R-73857



## Mailing List for Extension PFO Copies

PFO Date: June 8, 2010

### Copies Mailed

Application S-73857

Permit S-53694

By: SS  
On: 6/8/10

### Original mailed to Applicant:

Jack, Sheri or Barbara Fugate  
PO Box 426  
Bandon, OR 97411

### Copies sent to:

1. WRD - App. File S-73857/ Permit S-53694
2. WRD - Watermaster District 19, Mitch Lewis
3. Jordan Engineering, Attn: Norm Daft, 460 Jordan Lane, Roseburg, OR 97471

### Fee paid as specified under ORS 536.050 to receive copy:

4. None

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

5. None

CASEWORKER: SBK

Proposed Final Order: Permit S-53694

Page 1 of 1





Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem Oregon 97301  
(503) 986-0900  
www.wrd.state.or.us

# Application for Extension of Time for a Water Right Permit

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

*A separate extension application must be submitted for each permit as per  
OAR 690-315-0020(2).*

*This application and a summary of review criteria and procedures that are generally applicable to this  
application are available at <http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml>.*

I, Jack, Sheri OR Barbara Fugate

NAME OF PERMIT HOLDER [OAR 690-315-0020(1) and (3)(a)]

P.O. Box 426 Bandon OR 97411  
ADDRESS CITY STATE ZIP

541 347-4309  
PHONE E-MAIL ADDRESS

the permit holder of: Application Number S - 73857

Permit Number S - 53694  
[OAR 690-315-0020(3)(b)]

do hereby request that the time in which to:

- ☐ complete construction (of diversion/appropriation works and/or purchase and installation of the equipment necessary to the use of water), which time now expires on October 1, 2004, be extended to October 1, 2010,

and/or the time in which to:

- ☐ apply water to full beneficial use under the terms and conditions of the permit, which time now expires on October 1, 2004, be extended to October 1, 2010.

**RECEIVED**  
MAY 30 2008  
WATER RESOURCES DEPT  
SALEM, OREGON



**Before submitting your Application for Extension of Time, make sure the following items are included:**

- This completed Application for Extension of Time.
- Statutory fee of \$350.
- Signature page (last page of this Application for Extension of Time).
- All supporting documentation and/or evidence referenced in the Application for Extension of Time.

## **MAIL COMPLETED APPLICATION**

**along with the**

**\$350 STATUTORY FEE TO:**

**Water Resources Department  
Attn: Water Right Permit Extensions  
725 Summer Street NE, Suite A  
Salem, Oregon 97301**



### **GENERAL TIPS:**

- Request the reasonable amount of time necessary to fully complete the water construction project and/or to fully use the permitted quantity of water under the terms and conditions of your permit. Should this request be approved, it will be OWRD's expectation that you will complete your project within the new time period allowed. Future extensions may not be granted.
- A separate Application for Extension of Time must be submitted for each permit. OAR 690-315-0020(2).
- An instruction sheet (Instructions for Filling Out Extension of Time Application for Permits) provides details that will help you answer each question on the application. Permit extensions are evaluated under OAR Chapter 690, Division 315. These rules may be viewed at: <http://www.wrd.state.or.us/OWRD/LAW/index.shtml>.

**RECEIVED**

**MAY 30 2008**

**WATER RESOURCES DEPT  
SALEM, OREGON**



- You may provide OWRD with any additional information or evidence that will aid us in making our decision. Please note that OWRD may require other information that is necessary to evaluate the application. OAR 315-0020(3)(n).
- After careful review of the Application for Extension of Time, you may contact OWRD at (503) 986-0900, to ask questions and request assistance from a Permit Extensions Specialist in the Water Rights and Adjudications Division.
- Once an Application for Extension of Time is received by OWRD, it will be reviewed for completeness. OWRD will return any incomplete or deficient applications to the applicant. OAR 690-315-0040(1)(a).

**Reference Materials Needed to Complete this Application:**

- The water right permit. If needed, a copy of the water right permit can be downloaded from the Department's Website at <http://www.wrd.state.or.us> (find the link to the Water Rights Information System (WRIS)). Or, a copy of the permit (or other documents) may be requested by water right application number from the Water Rights Division at 503-986-0900 (copy fees will apply).
- Documentation which demonstrates compliance with permit conditions (for example, well construction logs; static water level measurement reports; annual water use reports; ODFW fish screen certification; a plan to monitor the effect of water use on ground water aquifers utilized under the permit; etc.).

**Answer the Following Questions to Complete this Application for Extension of Time**

- [OAR 690-315-0020(3)(d)]
1. Did the actual construction of the water system/well drilling begin within the time specified in the permit? [yes/no] yes



**TIP:** Not all permits specify a date by which construction was to begin.

Date construction began is: 1993

Details of construction: Construction of bog #1 started. Bogs 1-6 completed

In January, 1995

**RECEIVED**

**MAY 30 2008**

**WATER RESOURCES DEPT  
SAI EM. OREGON**

[OAR 690-315-0020(3)(e)(A)]



2. Permits typically contain standard or special conditions that must be satisfied to lawfully develop and use permitted water. In the development of this water right, have you satisfied the conditions contained in your permit? [yes/no] No

- A) Describe how you have complied with each condition contained in the original permit [and, if applicable, each condition contained in any order approving a permit amendment and/or a final order approving a prior extension of time]. Include the date when the condition was satisfied.



**TIP:**

*The instruction sheet for the Application for Extension of Time provides an explanation of the typical conditions that must be addressed in this question.*

### CHART-A

Condition No.**	Date Satisfied	Describe How Permit Condition Has Been Satisfied
1	1999	Pump and totalizing meter installed for diversion on Two Mile Creek

** Condition No: Hand-number each condition on a copy of your permit (and, if applicable, permit amendment and prior extension).

- B) If you have NOT complied with all applicable conditions, explain the reasons why and indicate with a date certain (in the near future) when compliance will occur.

### CHART-B

Condition No.**	Date Will Comply	Explain Why Each Permit Condition Has NOT Been Satisfied
2	2010	Did not understand condition. Meters have been purchased.
		They will be installed on all existing reservoir pumps in 2008
3	2010	Did not understand condition. Meters will be installed in 2008 on existing
		Pumps and monthly readings will be recorded and submitted annually.

** Condition No: Hand-number each condition on a copy of your permit (and, if applicable, permit amendment and prior extension).

**RECEIVED**

[OAR 690-315-0020(3)(e)]

**MAY 30 2008**



3. Provide evidence of physical progress made toward completion of the water system, and of progress made toward making beneficial use of water within the permitted time period (CHART-C); and if applicable, within the time period of the most recent extension granted (CHART-D).

A) CHART-C (below) must be completed for all Application for Extension of Time requests. *Use chronological order.*

### CHART-C

INSERT DATES	WORK ACCOMPLISHED BEFORE PERMIT WAS ISSUED <i>List any work done before the permit was issued – eg. well drilled.</i>	COST*
1993-1998	Bogs 1-17 constructed and planted. Bogs B3 & B4 constructed	\$868,000
1998	Construct R-1, 2 & 6	
1999	Install pump with meter and fish screen, piping – Two Mile Creek	\$100,000

INSERT DATES	WORK ACCOMPLISHED AFTER PERMIT WAS ISSUED and PRIOR TO DATE SPECIFIED IN PERMIT FOR COMPLETE APPLICATION OF WATER <i>List work/actions done during the permitted time period.</i>	COST*
8/15/2000	The permit was signed - find date above signature on last page of permit.	
2000-2001	Constructed bogs B1 & B2. Planted bogs B1 & B2 Jan. 2001	\$32,000
8/15/2001	The permit specified "Actual Construction Work" shall begin ("A-Date") - not all permits contain this date.	
2002-2003	Dike work, rocking dikes, fencing	\$150,000
10/1/2004	The permit specified complete application of water to the use shall be made ("C-Date") - all permits contain this date.	

INSERT DATES	WORK ACCOMPLISHED AFTER "C-DATE" <u>COMPETE ONLY IF THIS IS YOUR 1st APPLICATION FOR EXTENSION OF TIME:</u> <i>List work done after the date specified in the permit for complete application of water up to the date of this Application for Extension of Time.</i>	COST*
Total Cost to Date		\$1,150,000.00

* If exact cost is not known, you must provide your best estimate. **RECEIVED**



- B) If this is not your 1st Application for Extension of Time request, fill out CHART-D below (in addition to CHART-C above). Use chronological order.

### CHART-D

INSERT DATES	WORK ACCOMPLISHED DURING THE LAST EXTENSION PERIOD <i>List all work done during the last authorized extension period.</i>	COST*
10/1/____	"Extended From" date for complete application of water used in the 1 st (or the most recent) Application for Extension of Time.	
	NA	
10/1/____	"Extended To" date for complete application of water resulting from the 1 st (or the most recent) Application for Extension of Time.	

INSERT DATES	WORK ACCOMPLISHED AFTER THE LAST EXTENSION PERIOD EXPIRED <i>List all work done after the last authorized date for complete application of water up to the date of this Application for Extension of Time.</i>	COST*
	NA	
Total Cost to Date		

* If exact cost is not known, you must provide your best estimate.

[OAR 690-315-0020(3)(f)]

4. Cost of project to date: \$1,150,000.00  
(The total cost from CHART-C and CHART-D)

**RECEIVED**

**MAY 30 2008**

**WATER RESOURCES DEPT  
SALEM, OREGON**



5. Provide the maximum rate, or duty if applicable, of water diverted for beneficial use under this permit and/or prior extensions of time, if any, made to date.



**TIP:** Report the rate in the same units of measurement as specified in the permit, being cfs (cubic feet per second), gpm (gallons per minute) or AF (acre-feet – usually only specified on a reservoir water right). Do not provide daily, monthly or annual water use totals.

Maximum rate = 2.0  
2.2 cfs (cubic feet per second) or,

Maximum rate = _____ gpm (gallons per minute) or,

Acre Feet Stored = 26 AF

see 6-3-08 email  
update

6. Provide the total number of acres irrigated to date under this permit.

Total acres irrigated to date: 48

7. Provide a summary of your future plans and schedule to complete the construction of the water system, and/or apply water to full beneficial use under the terms and conditions of the permit.

### CHART-E

APPROXIMATE DATE RANGE (projected)	WORK OR ACTION TO BE ACCOMPLISHED (projected)	ESTIMATED COST (projected)
Oct 1, 2010	Construct Reservoir 3, install pipes, pump3, meters in Reservoir 3.	\$100,000
Year: 2010	Intend to apply water to full beneficial use under the terms and conditions of this permit.	
Total Cost		\$100,000

8. Estimated remaining cost to complete the project: \$100,000.00  
(The total cost from CHART-E)

**RECEIVED**

**MAY 30 2008**

**WATER RESOURCES DEPT  
SALEM, OREGON**



9. List the reasons why the project was not constructed, and/or water was not beneficially used within permit time limits. Provide supporting information for the reason(s) that best fits your circumstances.

- A) The project is of a size and scope that was originally planned to be phased in over a time frame longer than the one allowed in the permit.

This project, in conjunction with R-12893, R-12895 & R-12894, is of size and scope that  
Was originally planned to be phased in over a time frame longer than allowed in the permit.

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- B) The financial resources needed to develop the project precluded completion of the project within authorized time frames.

Depressed and uncertain cranberry prices caused financial hardship during authorized  
Time frame.

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- C) Good faith attempts to comply with permit conditions and/or acquire permits from other agencies, or otherwise comply with government regulations, delayed completion of the project.

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- D) Acts of God or other unforeseen events delayed full development of the water system and use of water within the authorized time frames.

Water right consultant, M. John Youngquist, died unexpectedly as did the CWRE he

Worked with, Mr. Gossen.

_____  
_____  
_____

[OAR 690-315-0020(3)(k)]

10. **Justify the time requested to complete the project and/or apply the water to full beneficial use.** Your justification should combine information from your answers from Questions 2, 3-A, 3-B, 7 and 9 of this Application for Extension of Time, and should also include any other information or evidence to establish that the requested amount of time is sufficient and that you will be able to complete the project within the amount of time requested.

We have hired a new water right consultant/CWRE – Jordan Engineering.

We believe we can complete construction, comply with all permit conditions, and put water

To full beneficial use by 10/1/2010 for all permits we have.

_____

11. **Provide any other information you wish OWRD to consider while evaluating your Extension of Time Application.**

Please note there is an error on permit 53694. Reservoir #1 is referred to twice under

“Source of water”. The second reference should be Reservoir #3 not #1, as application

#73856 and permit #12895 is for reservoir #3.

R-4, 5 & 7 will not be constructed. There will be no irrigation south or east of two mile Creek

I am the permit holder, or have authorization from the permit holder, to apply for an extension of time under this permit. I understand that false or misleading statements in this extension application are grounds for OWRD to suspend processing of the request and/or reason to deny the extension.

Jack Youngquist  
Signature

5-20-08  
Date

**RECEIVED**

**MAY 30 2008**

WRAD

**WATER RESOURCES DEPT  
SALEM, OREGON**



STATE OF OREGON

COUNTY OF COOS

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

JACK, SHERI OR BARBARA FUGATE  
RT 1 BOX 965  
BANDON, OREGON 97411

The specific limits for the use are listed below along with conditions of use.

APPLICATION FILE NUMBER: S-73857

ERROR - SHOULD  
BE R-3

SOURCE OF WATER: THREE UNNAMED STREAMS AND RESERVOIR R-1, TO BE CONSTRUCTED UNDER APPLICATION R-73854, PERMIT R-12893 RESERVOIRS R-2, R-4, R-5, R-6, AND R-7, TO BE CONSTRUCTED UNDER APPLICATION R-73855, PERMIT R-12894, AND RESERVOIR R-1, TO BE CONSTRUCTED UNDER APPLICATION R-73856, PERMIT R-12895, TRIBUTARIES OF TWOMILE CREEK; AND TWOMILE CREEK, A TRIBUTARY OF THE PACIFIC OCEAN

PURPOSE OR USE: CRANBERRY OPERATIONS

RATE OF USE: 2.0 CUBIC FEET PER SECOND (CFS), BEING 1.7 CFS FROM TWOMILE CREEK, 0.1 CFS FROM EACH OF THREE UNNAMED STREAMS (#2, 4 AND 5); AND 110.0 ACRE-FEET (AF) OF WATER STORED IN 7 RESERVOIRS, BEING 30.0 AF IN RESERVOIR #1; 5.0 AF IN RESERVOIR #2; 48.0 AF IN RESERVOIR #3; 5.0 AF IN RESERVOIR #4; 4.0 AF IN RESERVOIR #5; 9.0 AF IN RESERVOIR #6; 9.0 AF IN RESERVOIR #7

PERIOD OF ALLOWED USE: DECEMBER 1 THROUGH MARCH 31 FROM LIVE FLOW; STORED WATER MAY BE USED AT ANY TIME

DATE OF PRIORITY: JANUARY 21, 1994

THE POINTS OF DIVERSION ARE TO BE LOCATED AS FOLLOWS: SE 1/4 SW 1/4, NE 1/4 SE 1/4, SW 1/4 SE 1/4, SECTION 13; NE 1/4 NE 1/4, NW 1/4 NE 1/4, SW 1/4 NE 1/4, SECTION 24; T29S, R15W, W.M.; POD #1 - 990 FEET SOUTH & 3330 FEET EAST, POD #2 - 1030 FEET NORTH & 2380 FEET EAST, RESERVOIR #1 - 171 FEET SOUTH & 3970 FEET EAST, RESERVOIR #2 - 137 FEET NORTH & 3680 FEET EAST, RESERVOIR #3 - 1310 FEET NORTH & 2620 FEET EAST, RESERVOIR #4 - 1170 FEET SOUTH & 3150 FEET EAST, RESERVOIR #5 - 1150 FEET SOUTH & 3520 FEET EAST, RESERVOIR #6 - 1810 FEET NORTH

Application S-73857 Water Resources Department PERMIT 53694

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MAY 30 2008

WATER RESOURCES DEPT  
SALEM, OREGON



& 4600 FEET EAST, RESERVOIR #7 - 2220 FEET SOUTH & 3370 FEET EAST,  
ALL FROM THE SW CORNER OF SECTION 13

The amount of water diverted for CRANBERRY OPERATIONS, together with amounts 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.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 SE 1/4 15.0 ACRES  
NW 1/4 SE 1/4 3.0 ACRES  
SW 1/4 SE 1/4 4.0 ACRES  
SE 1/4 SE 1/4 18.0 ACRES  
SECTION 13

SW 1/4 NE 1/4 20.0 ACRES  
SE 1/4 NE 1/4 2.2 ACRES  
NE 1/4 SE 1/4 7.8 ACRES  
SECTION 24

TOWNSHIP 29 SOUTH, RANGE 15 WEST, W.M.

Measurement, recording and reporting conditions:

1. A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used 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. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
2. B. The permittee 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.

Application S-73857 Water Resources Department **RECEIVED** PERMIT 53694

MAY 30 2008

WATER RESOURCES DEPT  
SALEM, OREGON



3

Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.

#### STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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

This permit 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.

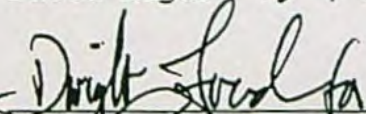
By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

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 Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin within one year from permit issuance. Complete application of the water to the use shall be made on or before October 1, 2004.

Dated August 15, 2000



Paul R. Cleary, Director  
Water Resources Department

RECEIVED

MAY 30 2008

WATER RESOURCES DEPT  
SALEM, OREGON

Application S-73857  
Basin 17

Water Resources Department  
Volume 3 Twomile Creek & Misc

~~PERMIT DRAFT~~  
District 19



NOTE: Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

**RECEIVED**

MAY 30 2008

WATER RESOURCES DEPT  
SALEM, OREGON



Ann Reece

File R-73855

From: Ann Reece  
Sent: Tuesday, June 03, 2008 7:57 AM  
To: 'Norm Daft'  
Subject: RE: Fugate extensions

Norm,

Thanks for the updates, and your quick response. I will amend the extensions accordingly.

Ann Reece  
Water Resources Department

-----Original Message-----

From: Norm Daft [mailto:normthewaterguy@charter.net]  
Sent: Monday, June 02, 2008 4:09 PM  
To: Ann Reece  
Cc: Clay Jordan  
Subject: Fugate extensions

Ann,

Thanks for discussing the Fugate extensions with me. I will address the questions you have.

Permit R-12894 - Information I have from the Fugates indicates the capacity listed on the extension application is correct. They may have over estimated but I don't have any information to the contrary.

Permit R-12894 - The 2020 is a typo. Should be 2010.

Permit S-53694 - The quantity of water used should be 2.0 cfs from live flow and 26 Acre-Feet from storage. Leaving out the use of stored water was an oversight.

I'll do better next time.

Norm

(541) 761-1057



STATE OF OREGON

COUNTY OF COOS

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

JACK, SHERI OR BARBARA FUGATE  
RT 1 BOX 965  
BANDON, OREGON 97411

The specific limits for the use are listed below along with conditions of use.

APPLICATION FILE NUMBER: S-73857

SOURCE OF WATER: THREE UNNAMED STREAMS AND RESERVOIR R-1, TO BE CONSTRUCTED UNDER APPLICATION R-73854, PERMIT R-12893 RESERVOIRS R-2, R-4, R-5, R-6, AND R-7, TO BE CONSTRUCTED UNDER APPLICATION R-73855, PERMIT R-12894, AND RESERVOIR R-~~1~~³, TO BE CONSTRUCTED UNDER APPLICATION R-73856, PERMIT R-12895, TRIBUTARIES OF TWOMILE CREEK; AND TWOMILE CREEK, A TRIBUTARY OF THE PACIFIC OCEAN

PURPOSE OR USE: CRANBERRY OPERATIONS

RATE OF USE: 2.0 CUBIC FEET PER SECOND (CFS), BEING 1.7 CFS FROM TWOMILE CREEK, 0.1 CFS FROM EACH OF THREE UNNAMED STREAMS (#2, 4 AND 5); AND 110.0 ACRE-FEET (AF) OF WATER STORED IN 7 RESERVOIRS, BEING 30.0 AF IN RESERVOIR #1; 5.0 AF IN RESERVOIR #2; 48.0 AF IN RESERVOIR #3; 5.0 AF IN RESERVOIR #4; 4.0 AF IN RESERVOIR #5; 9.0 AF IN RESERVOIR #6; 9.0 AF IN RESERVOIR #7

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& 4600 FEET EAST, RESERVOIR #7 - 2220 FEET SOUTH & 3370 FEET EAST,  
ALL FROM THE SW CORNER OF SECTION 13

The amount of water diverted for CRANBERRY OPERATIONS, together with amounts 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.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 SE 1/4 15.0 ACRES  
NW 1/4 SE 1/4 3.0 ACRES  
SW 1/4 SE 1/4 4.0 ACRES  
SE 1/4 SE 1/4 18.0 ACRES  
SECTION 13

SW 1/4 NE 1/4 20.0 ACRES  
SE 1/4 NE 1/4 2.2 ACRES  
NE 1/4 SE 1/4 7.8 ACRES  
SECTION 24

TOWNSHIP 29 SOUTH, RANGE 15 WEST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used 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. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
- B. The permittee 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.



Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.

#### STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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

This permit 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.

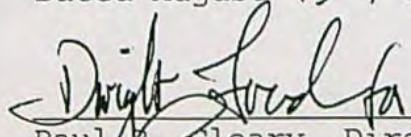
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The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin within one year from permit issuance. Complete application of the water to the use shall be made on or before October 1, 2004.

Dated August 15, 2000

  
Paul R. Cleary, Director  
Water Resources Department



NOTE: Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.



**Scott Kudlemyer**

---

**From:** Kcjengineer@aol.com  
**Sent:** Tuesday, May 11, 2010 2:25 PM  
**To:** scott.b.kudlemyer@state.or.us; normthewaterguy@charter.net  
**Subject:** Fugate Farms

May 11, 2010

Permit Time Extensions:  
R-12893, R-12894, R-12895 and S-53694

Mr. Scott Kudlemyer:

Per our phone call, please consider this a formal request to extend the 4 permits as noted above of October 1, 2010 completion date for an additional 5 years to October 1, 2015.

Please do confirm acceptance of this request.

Respectfully,

Clay Jordan, P.E., S.E., Geotech, CWRE



Extension PFO Checklist for  
**Other than Muni or Quasi-Municipal**

Water Use Permits

(OAR 690-315-0010 through OAR 690-315-0060)

Application: S- 73857 Permit: S- 53694 Permit Amendment? No ☒ Yes ☐ T- _____

Permit Holder's Name: Jack, Sheri, or Barbara Fugate (contact Jordan Clay at 541-673-1931)

Permit Holder's Mailing Address: PO Box 426, Bandon, OR 97411

Phone Number: 541-347-4309

POD Location: Township 29S Range 15W Section 13-SESW, NESE, SWSE, 24-NENE,  
NWNE,SWNE  $\frac{1}{4}$  1/4

Drainage Basin: 17 County: Coos Watermaster District: 19 Watermaster: Mitch Lewis

Date Permit was issued: 8/15/2000

Priority Date: 1/21/1994

Date of PN: 6/10/2008

Source: Three unnamed streams, and Reservoir 1, to be constructed under Permit R-12893; Reservoirs 2, 4, 5, 6, and 7, to be constructed under Permit R-12894; and Reservoir 3, to be constructed under Permit R-12895; all tributary to Two Mile Creek; and Two Mile Creek, tributary to the Pacific Ocean

Use: Cranberry Operations on 70 acres

"Q": 2.0 cfs, being 1.7 cfs from Two Mile Creek, and 0.1 cfs from each of three unnamed streams; and 110 AF of water stored in 7 reservoirs, being 30.0 AF in Reservoir 1, 5.0 AF in Reservoir 2, 48 AF in Reservoir 3, 5.0 AF in Reservoir 4, 4.0 AF in Reservoir 5, 9.0 AF in Reservoir 6, and 9.0 AF in Reservoir 7.

Orig "A" Date: 8/15/2001

Orig "B" Date: 10/1/

Orig "C" Date: 10/1/2004

Extension  
request rec'd: 5/30/2008

Last Authorized  
"B" Date: 10/1/

Last Authorized  
"C" Date: 10/1/2004

Request Number (1, 2, 3...): 1st

Proposed  
"B" Date: 10/1/

Proposed  
C Date: 10/1/2010

Conditions of Permit:

Condition Met?	Condition Not Met?	Permit Condition
<input checked="" type="checkbox"/>	<input type="checkbox"/>	A-date met - construction of bog #1 began in 1993
<input checked="" type="checkbox"/>	<input type="checkbox"/>	install meter prior to wate use (installed for diversion on Two Mile Creek)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	submit annual water use records
<input type="checkbox"/>	<input checked="" type="checkbox"/>	totalizing flow meter installed at each diversion point (all meters are purchased, but not yet installed)
<input type="checkbox"/>	<input type="checkbox"/>	.

Factors to consider in determining "Reasonable Diligence" [OAR 690-315-0040(3)]:

Yes No

- ☒ ☐ Work was accomplished within the time allowed in the permit or previous extension
- ☐ ☒ Water right permit holder conformed with the permit or previous extension conditions
- ☒ ☐ Financial investments were made toward developing the beneficial water use.
- Amount Invested to date: \$1,150,000 Estimated Remaining Cost: \$100,000
- ☒ ☐ Beneficial use made of the water during the permit or previous extension time limits



- see 6-3-08 update*
- Permit holder has beneficially used 2.2 (note - this exceeds the 2.0 cfs authorized in the permit) ☒ cfs ☐ gpm ☐ af of the total permitted quantity of water on 48 acres 2.0 cfs live flow / 26 AF from storage

Has the applicant pursued perfection of the right in good faith and with reasonable diligence? Yes ☒ No ☐

Application: S- 73857 Permit: S- 53964 Township _____ Range _____ Section _____

Determination of the market and the present demand for water or power to be supplied:

Identify the closest surface water or localized water basin. Two Mile Creek  
 Ground Water Permits: Is the POA located...  
 Surface Water Permits: Is the POD located...

- Yes No
- ☐ ☒ above a state scenic waterway? Source: OWRD "Areas Above State Scenic Waterways" Map
- ☐ ☒ within a stream segment designated as a federal wild and scenic river? Source: [www.rivers.gov/wildriverslist.html](http://www.rivers.gov/wildriverslist.html)
- ☒ ☐ within a sensitive, threatened or endangered species area Source: "/>



Application # S-73857 Permit # S-53694

**Public Notice Route Slip ... New Application Extension of Time**  
per Division 315 Rules... (Extensions received on July 1, 2001 or after)

♦ **WRIG...**

Money Received on: S/30/08

♦ **Kim French...**

☒ Added to tracking spreadsheet

**After fee is receipted and app is added to spreadsheet, route to...**

♦ **Jonnine Skaug...**

☒ Publish on Public Notice (initial 30-day comment): Date of notice 6/10/08

☒ Update WRIS Database

☒ In the "PNotice Date" field... Enter the date the Extension Application was published on the Public Notice.

☒ In the "Ext Filed" field... Enter the date the Extension Application was received.

*re-file*





# Oregon

Theodore R. Kulongoski, Governor

Water Resources Department  
North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
503-986-0900  
FAX 503-986-0904

June 10, 2008

REFERENCE: Application for Extension of Time

Dear Extension of Time Applicant:

The Water Rights Section has received your application for an extension of time for **APPLICATION FILE # S-73857 (PERMIT # S-53694)**. Your application will be reviewed in the near future. Following the review, you will receive a Proposed Final Order either approving or rejecting the extension of time request. A 45-day protest period begins upon issuance of the Proposed Final Order. After the protest period closes, a Final Order is issued.

If you have questions concerning your extension of time application, please contact Ann Reece at (503) 986-0827. For general information about the Water Resources Department, you may contact the Water Resources' Customer Service Group at (503) 986-0801 or you may access the Department's Internet home page at: "[www.wrd.state.or.us](http://www.wrd.state.or.us)".



## Scott Kudlemyer

---

**From:** Norm Daft [normthewaterguy@charter.net]  
**Sent:** Tuesday, April 07, 2009 9:41 AM  
**To:** scott.b.kudlemyer@state.or.us  
**Cc:** Clay Jordan  
**Subject:** Fugate extensions

Scott,

This E-mail is in response to our phone conversation yesterday.

I talked with Len Fugate and he has indicated that all staff gages have been installed in existing reservoirs.

Flow meters have been purchased and will be installed within the next few weeks.

As we discussed, I did contact the Watermaster (Mitch Lewis) requesting he look at the reservoirs and determine if weirs above and below are necessary.

In our opinion they should not be. As of this date, I don't believe Mitch has inspected the property.

The property on the south side of Two Mile Creek has been sold. Reservoirs 4,5 and 7 were to be on this property. We are not sure at this time if that portion of the rights will be assigned to the new owner or not.

Due to the uncertain economy, the Fugates would like to extend the completion date on the extensions from Oct. 2010 to Oct. 2012.

Clay Jordan, CWRE, and I helped the Fugate's prepare the extension applications and have asked our help to extend the completion date and provide you with any additional information that may be necessary.

Thanks.

Norm

Norm Daft  
541 761-1057



*Jordan Engineering*  
Structural & Civil

460 Jordan Lane  
Roseburg, OR 97470  
541-673-1931

Water Resources Department  
725 Summer St. NE, Suite A  
Salem, OR 97301

May 29, 2008

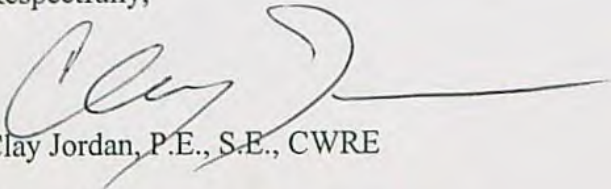
Sir:

Inclosed are four permit extensions signed and dated by the client. As noted on each permit "Jack, Sheri or Barbara Fugate" they are signed as required by only one of the three. These permits include Permits R-12893, R-12894, R-12895 and S-53694. Also inclosed is check number 1604, for including each of the four extensions at \$350 equaling the sum total of \$1,400 made out to OWRD.

Please also note on the inclosed copy of the permits, that permit S-53694 has a scribbles error. On the first page is noted Reservoir R-1 it should have read Reservoir R-3.

If there are any deficiencies or needed information please contact me.

Respectfully,



Clay Jordan, P.E., S.E., CWRE

file: OWRD-cover-4extension  
cc: Mr. John Fugate (contact for the Fugates)  
Mr. Norm Daft

**RECEIVED**  
MAY 30 2008  
WATER RESOURCES DEPT  
SALEM, OREGON





# Oregon

Theodore R. Kulongoski, Governor

October 10, 2006

573857  
Water Resources Department

942 SW 6th Street

Suite E

Grants Pass, OR 97526

(541) 471-2886

FAX (541) 471-2876

John Fugate  
P.O. Box 426  
Bandon, Oregon 97411

Dear Mr. Fugate:

I am sorry for the delay in responding to your questions regarding your permits. You will need to contact Ann Reece in our Salem office. She works with extensions and is very helpful. Her direct number is 503-986-0827.

It appears you will need to file extensions (to request more time to complete your project) on three of your four permits. The permits that appear to need extensions are permit #'s : R-12894; R-12895 and S-53694. Permit R-12894 is for reservoir numbers 2, 4, 5, 6 and 7. Since you have not completed the construction of all of the reservoirs, you will need to file an extension. Permit # R-12895 is for your reservoir number 3. Permit #S-53694 is the permit that allows use of the stored water for all of the reservoir permits. Permit #S-53694 also allows use from three unnamed streams.

Since you have completed reservoir number 1, under permit # R-12893, and began use of that water prior to the Oct. 1, 2004, deadline, you may submit a claim of beneficial use.

I understand that M. John Youngquist was the consultant handling your file. As you are aware Mr. Youngquist has passed away. Clay Jordan has taken over all of the files that Mr. Youngquist was handling. If you choose to hire him you can contact him at: Clay Jordan, Jordan Engineering, 460 Jordan Lane, Roseburg, Oregon 97470. His phone number is (541) 673-1931.

I am enclosing copies of all of your permits for your reference.

I would be happy to make an appointment for you to meet with the Watermaster, Mitch Lewis if need be.

Please feel free to call me if you have further questions.

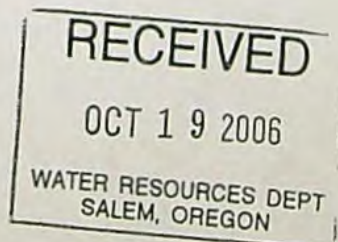
Sincerely,

Denise Pepperling  
Regional Secretary

dp/denise/correspond/fugate oct 10 2006.wpd

Enclosures

c Mitch Lewis, Dist. 19 Watermaster  
Ann Reece, Extensions

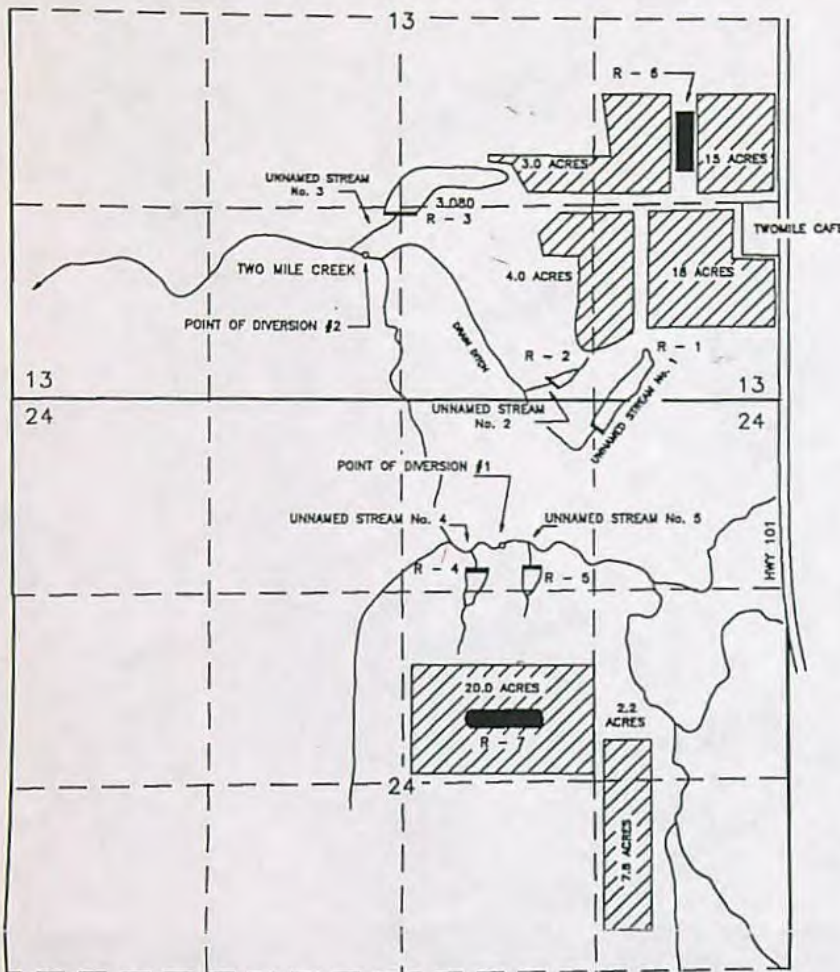




# APPLICATION MAP

IN THE NAME OF JACK OR SHERI FUGATE OR BARBARA

SECTIONS 13 & 24, T 29 S, R 15 W, W.M.



1 INCH = 1320 FEET

RECEIVED

JAN 20 1994

WATER RESOURCES DEPT.  
SALEM, OREGON

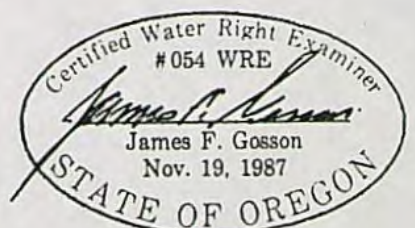
THE POINTS OF DIVERSION ARE TO BE LOCATED AS FOLLOWS:

POINT OF DIVERSION	FEET NORTH/SOUTH	FEET EAST	¼ ¼	SECTION
TWO MILE CREEK No. 1	990 SOUTH	3330 EAST	NW¼NE¼	24
TWO MILE CREEK No. 2	1030 NORTH	2380 EAST	SE¼SW¼	13
R - 1	171 SOUTH	3970 EAST	NE¼NE¼	24
R - 2 / UNNAMED STREAM No. 2	137 NORTH	3680 EAST	SW¼SE¼	13
R - 3	1310 NORTH	2620 EAST	SW¼SE¼	13
R - 4 / UNNAMED STREAM No. 4	1170 SOUTH	3150 EAST	NW¼NE¼	24
R - 5 / UNNAMED STREAM No. 5	1150 SOUTH	3520 EAST	NW¼NE¼	24
R - 6	1810 NORTH	4600 EAST	NE¼SE¼	13
R - 7	2220 SOUTH	3370 EAST	SW¼NE¼	24

ALL FROM THE SOUTHWEST CORNER OF SECTION 13 AND WITHIN TOWNSHIP 29 SOUTH, RANGE 15 WEST, W.M., COOS COUNTY.

Application No. 73857  
Permit No. 53694

THE PURPOSE OF THIS MAP IS TO IDENTIFY THE LOCATION OF THE WATER RIGHT.  
IT IS NOT INTENDED TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF  
PROPERTY OWNERSHIP BOUNDARY LINES.





WATER RESOURCES DEPT.  
COMMERCE BUILDING  
158 12th STREET NE  
SALEM, OR 97301-4172

PRESORTED  
FIRST CLASS



ADDRESS SERVICE REQUESTED

87230 Boak Ln

JACK FUGATE  
FUGATE, SHERI; FUGATE, BARBARA  
RT 1 BOX 965  
BANDON OR 97411

50185

73857

FIRST CLASS





**M. JOHN YOUNGQUIST**  
WATER RESOURCES CONSULTANT  
827 SE MOSHER  
ROSEBURG, OREGON 97470  
PHONE/FAX: (541) 672-5692  
Email: mjoywater@sorcom.com



February 4, 2000

Anita Huffman  
Oregon Water Resources Department  
158 12th Street, NE  
Salem, Oregon 97301-4172

**RECEIVED**

FEB 07 2000

WATER RESOURCES DEPT.  
SALEM, OREGON

Re: Files No. R-73854, R-73855, R-73856 & S-73857

Dear Ms. Huffman:

On behalf of Jack and Lyn Fugate, I am requesting the above noted files be taken off administrative hold and issued. I don't believe there are any problems with files R-73855, R-73856 & S-73857. They were on hold because file no. R-73854 was for an engineered dam and reservoir and the final plans and specifications have not yet been prepared.

Because of the depressed cranberry market, it does not appear financially feasible to construct the engineered dam at the present. In lieu of the proposed 30 foot structure, the Fugate's will build a dam and reservoir at that location, however, it will not exceed 10 feet in height.

They propose to construct (under application no. R-73854) a dam that will not exceed 10 feet in height with a back slope of 3:1 and a front slope of 2:1 with either an eight inch, valved conduit and a thirty inch CMP overflow spillway or a thirty inch conduit with a 30 inch half round riser w/flash boards to pass winter runoff. In either case, the dam will not require engineered plans and specifications.

We request the acre feet requested remain the same and the correct acre feet for the reservoir will be determined when the final proof survey is completed.

We appreciate any assistance in having these files issued this spring. Please contact me if you have any questions.

Yours truly,

M. John Youngquist

cc: Jack & Lyn Fugate  
Route 1, Box 968  
Bandon, Oregon 97411



# Mailing List for Permit Copies

Application# 73857

Mailing List Print Date July 31, 2000

Original mailed to(when permit issued, include copy of permit map):

Applicant: JACK, SHERI AND BARBARA FUGATE, RT 1 BOX 965, BANDON, OREGON 97411

**For Permit only - Permit Copies sent to (Remember to reduce copy margins):**

1. WRD - File # 73857
2. WRD - Ken Stahr - *map*
3. WRD - Data Center
4. WRD - Watermaster District #:19 (w/copy of permit map)
5. WRD - Regional Manager: SWR (w/copy of permit map)

Copies Mailed By: <i>Milnele</i> (SUPPORT STAFF) on: <i>8-29-00</i> (DATE)
----------------------------------------------------------------------------------------

**COPIES TO Other Interested Persons**

6. M JOHN YOUNQUIST, 827 SE MOSHER, ROSEBURG, OR 97470 _____

7. _____

8. _____

Caseworker:AMH



Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number S-73857

Final Order

*Application History*

On January 21, 1994, JACK, SHERI AND BARBARA FUGATE submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on October 24, 1995. The protest period closed December 8, 1995, and no protest was filed.

An interagency team reviewed this proposed use for potential adverse impacts on declining fish populations. This team consisted of representatives from the Oregon Departments of Water Resources (WRD), Environmental Quality, Fish and Wildlife (DFW), and Agriculture. WRD and DFW representatives included both technical and field staff. The interagency team recommended that additional limitations or conditions of use be imposed on this application as follows:

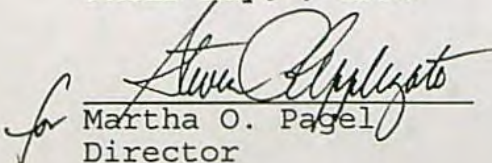
Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.

The proposed use would not impair or be detrimental to the public interest, but the Department's continuing evaluation reveals that the Proposed Final Order requires modification to include the condition listed above.

Order

Upon approval of Application R-73856, Application S-73857 therefore will be approved with the above modifications to the Proposed Final Order, and the attached DRAFT Permit will be issued as limited by the conditions set forth therein.

DATED May 20, 1996

  
for Martha O. Pagel  
Director



### *Hearing and Appeal Rights*

Under the provisions of ORS 537.170, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 527.153(6) to the Department within 14 days after this order is issued. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the above modifications to the proposed final order may be addressed.

Under the provisions of ORS 183.484, the applicant or any person having standing may appeal this order by filing a petition for review in the Circuit Court for Marion County or the circuit court for the county in which the applicant resides or has a principal business office. The petition for review must be filed within 60 days after the date this order is served.



STATE OF OREGON

COUNTY OF COOS

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

JACK, SHERI OR BARBARA FUGATE  
RT 1 BOX 965  
BANDON, OREGON 97411

The specific limits for the use are listed below along with conditions of use.

APPLICATION FILE NUMBER: S-73857

SOURCE OF WATER: THREE UNNAMED STREAMS AND RESERVOIR R-1, TO BE CONSTRUCTED UNDER APPLICATION R-73854, PERMIT _____, RESERVOIRS R-2, R-4, R-5, R-6, AND R-7, TO BE CONSTRUCTED UNDER APPLICATION R-73855, PERMIT _____, AND RESERVOIR R-1, TO BE CONSTRUCTED UNDER APPLICATION R-73856, PERMIT _____, TRIBUTARIES OF TWOMILE CREEK; AND TWOMILE CREEK, A TRIBUTARY OF THE PACIFIC OCEAN

PURPOSE OR USE: CRANBERRY OPERATIONS

RATE OF USE: 2.0 CUBIC FEET PER SECOND (CFS), BEING 1.7 CFS FROM TWOMILE CREEK, 0.1 CFS FROM EACH OF THREE UNNAMED STREAMS (#2, 4 AND 5); AND 110.0 ACRE-FEET (AF) OF WATER STORED IN 7 RESERVOIRS, BEING 30.0 AF IN RESERVOIR #1; 5.0 AF IN RESERVOIR #2; 48.0 AF IN RESERVOIR #3; 5.0 AF IN RESERVOIR #4; 4.0 AF IN RESERVOIR #5; 9.0 AF IN RESERVOIR #6; 9.0 AF IN RESERVOIR #7

PERIOD OF ALLOWED USE: DECEMBER 1 THROUGH MARCH 31 FROM LIVE FLOW; STORED WATER MAY BE USED AT ANY TIME

DATE OF PRIORITY: JANUARY 21, 1994

THE POINTS OF DIVERSION ARE TO BE LOCATED AS FOLLOWS: SE 1/4 SW 1/4, NE 1/4 SE 1/4, SW 1/4 SE 1/4, SECTION 13; NE 1/4 NE 1/4, NW 1/4 NE 1/4, SW 1/4 NE 1/4, SECTION 24; T29S, R15W, W.M.; POD #1 - 990 FEET SOUTH & 3330 FEET EAST, POD #2 - 1030 FEET NORTH & 2380 FEET EAST, RESERVOIR #1 - 171 FEET SOUTH & 3970 FEET EAST, RESERVOIR #2 - 137 FEET NORTH & 3680 FEET EAST, RESERVOIR #3 - 1310 FEET NORTH & 2620 FEET EAST, RESERVOIR #4 - 1170 FEET SOUTH & 3150 FEET EAST, RESERVOIR #5 - 1150 FEET SOUTH & 3520 FEET EAST, RESERVOIR #6 - 1810 FEET NORTH & 4600 FEET EAST, RESERVOIR #7 - 2220 FEET SOUTH & 3370 FEET EAST, ALL FROM THE SW CORNER OF SECTION 13

The amount of water diverted for CRANBERRY OPERATIONS, together with amounts 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.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 SE 1/4 15.0 ACRES  
NW 1/4 SE 1/4 3.0 ACRES  
SW 1/4 SE 1/4 4.0 ACRES  
SE 1/4 SE 1/4 18.0 ACRES  
SECTION 13

SW 1/4 NE 1/4 20.0 ACRES  
SE 1/4 NE 1/4 2.2 ACRES  
NE 1/4 SE 1/4 7.8 ACRES  
SECTION 24

TOWNSHIP 29 SOUTH, RANGE 15 WEST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used 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. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
- B. The permittee 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.

Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.

#### STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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



This permit 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.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

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 Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin within one year from permit issuance and shall be completed on or before October 1, 1998. Complete application of the water to the use shall be made on or before October 1, 1999.

{DATE}

DRAFT

---

Martha O. Pagel, Director  
Water Resources Department





# Oregon

John A. Kitzhaber, M.D., Governor

## Water Resources Department

Commerce Building  
158 12th Street NE  
Salem, OR 97310-0210  
(503) 378-3739  
FAX (503) 378-8130

April 9, 1999

Sheri, Jack, & Barbara Fugate  
Fugate Farms LLC  
Route 1 Box 965  
Bandon, Oregon 97411

RE: Applications R-73854, R-73855, R-73856, & R-73857

Dear Sheri, Jack and Barbara:

On April 8, 1999, the Department received your request for an additional 365 day administrative hold on the processing of the above referenced applications in order for you to complete dam plans and specifications for each of the reservoirs.

Your application has been on administrative hold with the Department longer than the 180 days allowed under OAR 690-310-270. However, also under OAR 690-310-270, the Department may grant a longer administrative hold if the Director finds that a longer period is reasonable and necessary.

Based review of the information you have provided, the Director has determined that a longer administrative hold on the processing of the above referenced applications is reasonable and necessary. The Department has approved your request for a 365 day administrative hold. The Department will not take any action on these applications until **April 8, 2000**. Please let us know if you are ready to proceed sooner.

If you need to request additional time your request will again need to show justification for why additional time is reasonable and necessary, that substantial progress is being made towards being ready to proceed with application processing, and a general timeline, which identifies when the applicant anticipates being ready to continue with the application process.

If you have any questions, please give me a call. I can be reached at (503) 378-8455, extension 268, or toll free within Oregon at 1-800-624-3199.

Sincerely,

Dwight French  
Water Rights Division Acting Administrator

cc: John Drolet, Watermaster District 19



# FUGATE FARMS LLC

Laura K. Snedaker  
Senior Water Rights Examiner  
Water Resources Department  
Commerce Building  
158 12th Street NE  
Salem, OR 97310

RECEIVED  
APR 8 1999  
WATER RESOURCES DEPT.  
SALEM, OREGON

RE: Applications R-73854, R-73855, R-73856, & R-73857

Dear Laura Snedaker:

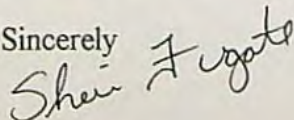
I am writing to request that you place the above referenced application on continued administrative hold from further processing for a period of 365 days. The additional requested time is reasonable and necessary for two reasons; one is that the process for completing the engineering is taking longer than expected. The other is the expense of completing this process has become more than expected, that together with the fact that the price of berries delivered to Ocean Spray has dropped by 33% has put us in a difficult position to complete the project in the specified time.

The following has been completed on the project so far: David J. Newton Associates, was hired to do the engineering, they have completed a review of existing OWR permit and existing geological data; acquisition of preliminary topographic base map; coordination and observation of twenty exploratory trenches, compilation of trench logs and geologic site plan; a meeting in Salem with Mr. Youngquist and M. Craven to discuss wetland delineation; and preparation and submittal of three RFP's to surveyors for topographic base map. Responding to RFP questions, review of the surveyors bids for the topographic base map, selection of the surveyor, coordination with the wetland consultant, and preparation of letter of recommendation. Site meeting with the surveyor, responding to surveyor's questions, laboratory soil testing, and preliminary dam concept development. Coordination with Stuntzner to provide topographic survey, preliminary dam concept development based on the survey and soils testing, and on-site meeting with owner and John Youngquist. Preliminary dam concept development based on the topographic survey, soils testing, and analysis; preliminary geotechnical memorandum; geological cross-sections; and on-site meeting with owner and John Youngquist. We also hired Stuntzner Engineering; they have completed the topographic survey.

We are trying to obtain additional funds to complete the engineering without any delay, but would appreciate the full 365-day extension in case we run into trouble in our efforts. We are anxious to get this process completed and receive all of our permits, as quickly as possible, so in the event we can get everything completed sooner, we will of course submit it to your office at the earliest time possible.

Thank you very much for your time and consideration of our request.

Sincerely



Sheri Fugate  
Sheri, Jack & Barbara Fugate





# Oregon

John A. Kitzhaber, M.D., Governor

## Water Resources Department

Commerce Building  
158 12th Street NE  
Salem, OR 97310-0210  
(503) 378-3739  
FAX (503) 378-8130

October 20, 1998

Sheri, Jack & Barbara Fugate  
Route 1 Box 968  
Bandon, Oregon 97411

RE: Applications R-73854, R-73855, R-73856, & R-73857

Dear Applicants:

On October 9, 1998, the Department received your request to place the above referenced applications on administrative hold from further processing for 180 days in order to submit dam plans and specifications.

Under OAR 690-310-270, the Department may grant an administrative hold on the application process for up to 180 days. Your request an administrative hold has been approved for 180 days.

The Department will not take any action on this application until **April 7, 1999**. Please let us know if you are ready to proceed sooner or if you need additional time. If you need additional time, please send a written request to the Department. A request for additional administrative hold would need to show justification for why additional time is reasonable and necessary, that substantial progress is being made towards being ready to proceed with application processing, and a general time-line, which identifies when the applicant anticipates being ready to continue with the application process.

If you have any questions, please feel free to give me a call. I can be reached at 1 (503) 378-8455, extension 331, or toll free within Oregon at 1 (800) 624-3199.

Sincerely,

Laura K. Snedaker  
Senior Water Rights Examiner

cc: John Drolet, Watermaster District 19



# FUGATE FARMS LLC

RT. 1, BOX 968, BANDON, OREGON 97411 * (541) 347-3927  
JACK & BARBARA LEN & SHERI

October 9, 1998

Jarred Gainey  
Water Right File Technician  
Oregon Water Resources Department  
Commerce Building  
158 12th Street NE  
Salem, OR 97310-0210

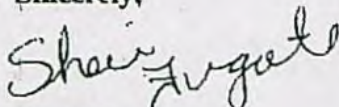
RE: Application Files # R-73854 R-73855 & R-73856, S-73857

Dear Jarred:

Thank you for your letter dated August 24, 1998. At your recommendation we would like to submit this letter as written request for an Administrative hold for up to 180 days on further processing of our applications.

Thank you for your time and consideration of our request. If you have any questions, please contact me at (541) 347-3927 or (541) 670-4568.

Sincerely,



Sheri Fugate  
Fugate Farms, LLC





M. JOHN YOUNGQUIST  
WATER RESOURCES CONSULTANT  
827 SE MOSHER  
ROSEBURG, OREGON 97470  
PHONE/FAX: (541) 672-5692  
Email: mjoywater@sorcom.com



August 24, 1998

Jarred Gainey  
Water Right File Technician  
Oregon Water Resources Department  
158 12th Street, NE  
Salem, Oregon 97310

**RECEIVED**

AUG 25 1998

WATER RESOURCES DEPT.  
SALEM, OREGON

Re: File R-73854 and File S-73857 in the name of Jack Fugate

Dear Mr. Gainey:

As discussed by phone August 21st, please amend File No. R - 73854 to reflect 9.0 acre feet of storage and replace the supplemental sheet contained in File No. S-73857 with the one enclosed.

I have discussed these changes with the applicant and he has authorized me to send this material in on his behalf. Please contact me if you have any questions.

Yours truly,

M. John Youngquist

cc: Jack Fugate



JACK OR SHERI FUGATE APPLICATION TO APPROPRIATE SURFACE WATER

SUPPLEMENTAL SHEET

**RECEIVED**

QUESTION No. 2:

TWO MILE CREEK:	1.7 CUBIC FEET/SECOND
UNNAMED STREAM No. 2	0.1 CUBIC FEET/SECOND
UNNAMED STREAM No. 4	0.1 CUBIC FEET/SECOND
UNNAMED STREAM No. 5	0.1 CUBIC FEET/SECOND

TOTAL:	2.0 CUBIC FEET/SECOND
--------	-----------------------

RESERVOIR No. 1:	9.0 ACRE FEET
RESERVOIR No. 2:	5.0 ACRE FEET
RESERVOIR No. 3:	48.0 ACRE FEET
RESERVOIR No. 4:	5.0 ACRE FEET
RESERVOIR No. 5:	4.0 ACRE FEET
RESERVOIR No. 6:	9.0 ACRE FEET
RESERVOIR No. 7:	9.0 ACRE FEET

TOTAL:	89.0 ACRE FEET
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AUG 25 1998

WATER RESOURCES DEPT.  
SALEM, OREGON





# Oregon

John A. Kitzhaber, M.D., Governor

## Water Resources Department

Commerce Building  
158 12th Street NE  
Salem, OR 97310-0210  
(503) 378-3739  
FAX (503) 378-8130

### CERTIFIED MAIL Return Receipt Requested

August 24, 1998

Jack Fugate  
Fugate, Sheri; Fugate, Barbara  
Rt 1 Box 965  
Bandon, OR 97411

RE: Application Files # R-73854 R-73855 & R-73856, S-73857

Dear Fugates:

On May 20, 1996, the Department issued a Final Order for applications R-73856 & R-73854, S-73857. The Final Order identified that additional information must be submitted to the Department before a permit would be issued. The Department has not yet received the following:

- ▶ Submission of plans and specifications for dam construction for application **R-73856**. If you should have any questions regarding plans and specifications, you can call John Falk at (503) 378-8455 ext. 222, or toll free within Oregon at 1-800-624-3199.

The issuance of permits for applications R-73854, R-73855, and S-73857 is contingent on the approval of plans and specifications for dam construction for application R-73856.

I have spoken with John Youngquist on August 21, 1998, and discussed the financial predicament you were in. What you may want to do for the time being is submit a written request for an Administrative hold for up to 180 days on further processing of your applications.

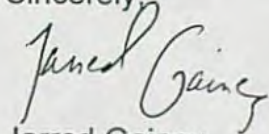
We also discussed the modification of Reservoir #1 from a volume of 30.0 acre-feet to 9.0 acre-feet. Mr. Youngquist will submit a letter notifying the Department of the change.



Please submit this information by **October 26, 1998**. If we do not receive the information requested above by this date, we **will** reject your application consistent with ORS 537.153. If your application is rejected, any fees submitted in excess of the examination fee will be refunded; however, the examination fee is non-refundable and will not be returned. In addition, the priority date associated with your application will be lost.

Should you have any questions regarding your application or the required materials listed above, or if you need to request an extension of time, please call me at (503) 378-8455, extension 264, or toll free within Oregon at 1-800-624-3199.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jarred Gaaney".

Jarred Gaaney  
Water Right File Technician

cc: John Drolet, Watermaster District 19



Date: Thu, 20 Aug 1998 15:45:33 -0700  
From: "John M. Youngquist" <mjywater@sorcom.com>  
Reply-To: mjywater@sorcom.com  
X-Mailer: Mozilla 3.0 (Win95; U)  
To: Jarred.W.GAINEY@wrdd.state.or.us  
Subject: File No. R-73854

Dear Mr. Gainey:

The new volume for the reservoir associated with this file is 9.0 acre feet. Since there is only one reservoir on the form, a new supplemental sheet is not necessary.

There is a surface water application associated with this file. The supplemental sheet on that application should be modified from 30 acre feet to 9.0 acre feet. I do not know the application number of that file. I have a call in to Mr. Fugate, however, he has not yet responded.

If you have that application number handy, please Email it to me so a proper letter may be prepared. I will see the Fugates next week and it would be nice to close this issue.

Thank you for your consideration in this matter.

John Youngquist



Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number S-73857

Final Order

*Application History*

On January 21, 1994, JACK, SHERI AND BARBARA FUGATE submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on October 24, 1995. The protest period closed December 8, 1995, and no protest was filed.

An interagency team reviewed this proposed use for potential adverse impacts on declining fish populations. This team consisted of representatives from the Oregon Departments of Water Resources (WRD), Environmental Quality, Fish and Wildlife (DFW), and Agriculture. WRD and DFW representatives included both technical and field staff. The interagency team recommended that additional limitations or conditions of use be imposed on this application as follows:

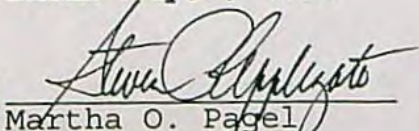
Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.

The proposed use would not impair or be detrimental to the public interest, but the Department's continuing evaluation reveals that the Proposed Final Order requires modification to include the condition listed above.

Order

Upon approval of Application R-73856, Application S-73857 therefore will be approved with the above modifications to the Proposed Final Order, and the attached DRAFT Permit will be issued as limited by the conditions set forth therein.

DATED May 20, 1996

  
for Martha O. Pagel  
Director



### *Hearing and Appeal Rights*

Under the provisions of ORS 537.170, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 527.153(6) to the Department within 14 days after this order is issued. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the above modifications to the proposed final order may be addressed.

Under the provisions of ORS 183.484, the applicant or any person having standing may appeal this order by filing a petition for review in the Circuit Court for Marion County or the circuit court for the county in which the applicant resides or has a principal business office. The petition for review must be filed within 60 days after the date this order is served.



STATE OF OREGON

COUNTY OF COOS

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

JACK, SHERI OR BARBARA FUGATE  
RT 1 BOX 965  
BANDON, OREGON 97411

The specific limits for the use are listed below along with conditions of use.

APPLICATION FILE NUMBER: S-73857

SOURCE OF WATER: THREE UNNAMED STREAMS AND RESERVOIR R-1, TO BE CONSTRUCTED UNDER APPLICATION R-73854, PERMIT _____, RESERVOIRS R-2, R-4, R-5, R-6, AND R-7, TO BE CONSTRUCTED UNDER APPLICATION R-73855, PERMIT _____, AND RESERVOIR R-1, TO BE CONSTRUCTED UNDER APPLICATION R-73856, PERMIT _____, TRIBUTARIES OF TWOMILE CREEK; AND TWOMILE CREEK, A TRIBUTARY OF THE PACIFIC OCEAN

PURPOSE OR USE: CRANBERRY OPERATIONS

RATE OF USE: 2.0 CUBIC FEET PER SECOND (CFS), BEING 1.7 CFS FROM TWOMILE CREEK, 0.1 CFS FROM EACH OF THREE UNNAMED STREAMS (#2, 4 AND 5); AND 110.0 ACRE-FEET (AF) OF WATER STORED IN 7 RESERVOIRS, BEING 30.0 AF IN RESERVOIR #1; 5.0 AF IN RESERVOIR #2; 48.0 AF IN RESERVOIR #3; 5.0 AF IN RESERVOIR #4; 4.0 AF IN RESERVOIR #5; 9.0 AF IN RESERVOIR #6; 9.0 AF IN RESERVOIR #7

PERIOD OF ALLOWED USE: DECEMBER 1 THROUGH MARCH 31 FROM LIVE FLOW; STORED WATER MAY BE USED AT ANY TIME

DATE OF PRIORITY: JANUARY 21, 1994

THE POINTS OF DIVERSION ARE TO BE LOCATED AS FOLLOWS: SE 1/4 SW 1/4, NE 1/4 SE 1/4, SW 1/4 SE 1/4, SECTION 13; NE 1/4 NE 1/4, NW 1/4 NE 1/4, SW 1/4 NE 1/4, SECTION 24; T29S, R15W, W.M.; POD #1 - 990 FEET SOUTH & 3330 FEET EAST, POD #2 - 1030 FEET NORTH & 2380 FEET EAST, RESERVOIR #1 - 171 FEET SOUTH & 3970 FEET EAST, RESERVOIR #2 - 137 FEET NORTH & 3680 FEET EAST, RESERVOIR #3 - 1310 FEET NORTH & 2620 FEET EAST, RESERVOIR #4 - 1170 FEET SOUTH & 3150 FEET EAST, RESERVOIR #5 - 1150 FEET SOUTH & 3520 FEET EAST, RESERVOIR #6 - 1810 FEET NORTH & 4600 FEET EAST, RESERVOIR #7 - 2220 FEET SOUTH & 3370 FEET EAST, ALL FROM THE SW CORNER OF SECTION 13

The amount of water diverted for CRANBERRY OPERATIONS, together with amounts 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.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 SE 1/4 15.0 ACRES  
NW 1/4 SE 1/4 3.0 ACRES  
SW 1/4 SE 1/4 4.0 ACRES  
SE 1/4 SE 1/4 18.0 ACRES  
SECTION 13

SW 1/4 NE 1/4 20.0 ACRES  
SE 1/4 NE 1/4 2.2 ACRES  
NE 1/4 SE 1/4 7.8 ACRES  
SECTION 24

TOWNSHIP 29 SOUTH, RANGE 15 WEST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used 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. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
- B. The permittee 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.

Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.

#### STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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



This permit 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.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

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 Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin within one year from permit issuance and shall be completed on or before October 1, 1998. Complete application of the water to the use shall be made on or before October 1, 1999.

{DATE}

DRAFT

---

Martha O. Pagel, Director  
Water Resources Department



10  
COPY CHECK-OFF SHEET FOR PROPOSED FINAL ORDERS

CC: FILE # S-73857

WATERMASTER # 19

REGIONAL MANAGER: SW (COOK)

KEN STAHR

ODF&W - Coos County:

CWRE (if agent):

DEQ

OTHER STATE AGENCY IF NECESSARY:

DIVISION 33 LIST: _____ COLUMBIA RIVER INTERTRIBAL FISH COMMISSION; U.S. FISH & WILDLIFE;  
(CHECK ONLY IF APPLICABLE) _____ NORTHWEST POWER PLANNING COUNCIL & NATIONAL MARINE FISHERIES

POWER BUILDER UPDATER; FRONT COUNTER

OTHER ADDRESSES OF PEOPLE WHO PAID THE \$10 FEE:

PEOPLE WITH OBJECTIONS, COMMENTS OR REQUESTED COPY W/O \$10 (SEND THE \$10 LETTER):  
RON YOKIM, P.O. BOX 218, ROSEBURG, OR 97470

CASEWORKER : CSL 10/18/95





# FO CHECKLIST

## PFO TO FO CONVERSION

FILE # 73857

OCT 24

REVIEW DATE: 04 /23 /1996

WEEK # WEEK 32

INITIALS : LLS

In preparing the FO, you should check the following:

1. Y / N Were comments or protests received in response to the PFO?
2.    List names and addresses of **ALL** commentors (regardless of comment date) on the PFO CC list.
3.    Verify payment of recording fees (circle the appropriate option)  
(1) Issue FO w/permit if fees are paid Prepare refund request for excess fees  
(2)    Issue FO w/o permit if fees are lacking  
(3)
4. Y / N Has the applicant signed an oath of accuracy for the application? 200  
100  
100  
400.00  
2ND CFS  
1ST CFS
5. Y / N Has ODFW asked for self certification on screening condition?
6. Y / N Is water use prohibited for one or more months of the normal use period?
7. Y / N If #6 = "Y", is short season letter on file?
8.    Assign permit numbers to files with oath, fees, and no protests or other unresolved issues

DENIAL  
LARRY

FO w/o PERMIT  
CORY

JERRY

Route to: (circle one)  
FO & PERMIT  
COMMENTS  
DOUG

Modify FO as needed to:

INITIALS : CB

9.    Respond to significant comments, issues, or disputes related to the proposed use of water
10.    Include or exclude permit conditions and management codes
11.    Notify applicant of additional information or fees required prior to permit issuance (Use standard wording from M:\T\FO\TOOLS if possible)
12.    Correct PFO errors (such as POD or POU location (verify from map), Permit format)
13. Y / N Is further processing possible? If not state reason:

Once FO document is completed:

14.    Save WordPerfect document in M:\T\FO\WEEK & delete duplicates
15.    Print final draft of document and submit to team leader for review
16. Y / N Team leader review completed



Fish District: Coos/Coquille

WAB #

Application # S-73857

Applicant Name

J. Fugate

Date: March 27, 1996

## AREA

☐ Source Watershed☐ Senior instream water right application to junior out-of-stream application☐ No water availability information

## INFORMATION/CONDITIONS

1. Are there water quality concerns related to salmon/steelhead/trout? Y NShould the application be denied? Y NShould the application be restricted? Y N

Jan	Feb	Mar	Apr	May	Jun 1-15	June 16-30	Jul	Aug	Sep 1-15	Sep 16-30	Oct	Nov	Dec

2. Are there adequate flows to protect salmon/steelhead/trout? Y NShould the application be denied? Y NShould the application be restricted? Y N☒ Based on water availability

Jan	Feb	Mar	Apr	May	Jun 1-15	June 16-30	Jul	Aug	Sep 1-15	Sep 16-30	Oct	Nov	Dec

3. Domestic

Should domestic use be conditioned to human consumption? Y N ☐ Based on water availability

## 4. Fish Screening and Passage

☐ A. Requires fish screening and passage, with ODFW certification (applications > 0.5 cfs).☐ B. Requires fish screening and passage, without ODFW certification (applications < 0.5 cfs).☐ C. No dam or obstruction without a fishway.☒ M. Screening may be required* No Screen Required

## 5. Miscellaneous

☐ A. Reservoir Filling☐ B. Water Quality Permits☐ C. Return Flow☐ D. Time Limited Water Right☐ E. Other

## 6. Measurement and Reporting

☐ A. Small diversions (<0.1 cfs or <9.2 ac/ft. may/may)☐ B. Medium diversions (0.1 cfs or >9.2 and <1.5 cfs or <100 ac/ft. shall/may)☐ C. Large diversions (1.5 cfs or >100 ac/ft. shall/shall)☒ T. Totalizing

## FINDINGS

☐ Permit is proposed for denial prior to interagency team review for fishery concerns.☐ Deny permit due to fishery concerns, except for☐ A. Domestic (which may be limited to human consumption, see above)☐ B. Livestock☐ C. Unless water is from storage☐ Do not condition further due to fishery concerns.☒ Condition permit due to fishery concerns listed above.



STATE OF OREGON  
WATER RESOURCES DEPARTMENT  
WATER RIGHTS DIVISION

Before the Director Water Resources Department

In the matter of	)	PROPOSED
Surface Water Application	)	FINAL
S-73857 submitted by	)	ORDER
JACK, SHERI AND BARBARA FUGATE		

**FINDINGS OF FACT**

*Water Use Request*

1. JACK, SHERI AND BARBARA FUGATE requested use of 2.0 cubic feet per second (cfs) of water from Two Mile Creek and 3 unnamed streams, and 110 total acre-feet (af) stored water from seven reservoirs, constructed under applications R73854, R73855, and R73856, tributaries of Two Mile Creek and Pacific Ocean, within the South Coast basin for cranberry use.

2. The area of proposed use is in Coos County within SECTION 13 AND SECTION 24, TOWNSHIP 29 SOUTH, RANGE 15 WEST, W.M.

3. The water delivery system is described by the applicant as follows: water will be pumped from the unnamed streams and Two Mile creek to one of the reservoirs, then repumped to the bogs. The system will consist of a series of electric pumps, buried plastic pipeline and applied via sprinklers.

4. The request was made in Application S-73857 which was received by the Water Resources Department on January 21, 1994.

*Affected Waters*

1. THE THREE UNNAMED STREAMS AND SEVEN RESERVOIRS, TRIBUTARIES OF TWO MILE CREEK, AND TWO MILE CREEK, TRIBUTARY OF THE PACIFIC OCEAN, are not within or above a State Scenic Waterway.

2. Oregon Department of Fish and Wildlife (ODFW) has advised that one or more species of game fish are present at the described point of diversion.

3. There are senior water rights on downstream waters of TWO MILE CREEK, TRIBUTARY OF PACIFIC OCEAN.

*Department Actions*

1. The application was determined to be complete and not defective.

2. A technical review of the application was completed and a report of the results of that review was mailed to the applicant on July 15, 1994.



3. The technical review determined:

- a. CRANBERRY USE is allowed under the South Coast Basin Program.
- b. The use is not prohibited by Statute.
- c. Water is available for further appropriation (at an 80 percent exceedance probability) for the period December 1 through March 31 for live flow, and stored water may be used at any time.
- d. The use would not injure existing water rights.

4. The report of technical review listed these determinations and disclosed a number of conditions and restrictions that would likely be included in the permit if issued. These conditions and restrictions are listed in the attached draft permit.

*Assessment*

1. In proceeding with evaluation of Application S-73857, the following criteria were found to be relevant by the Department.

- a. The South Coast Basin Program (OAR Chapter 690, Division 517)
- b. The Coos County Comprehensive Plan and Zoning Ordinance
- c. The amount of water available in THREE UNNAMED STREAMS AND SEVEN RESERVOIRS, TRIBUTARIES OF TWO MILE CREEK, AND TWO MILE CREEK, TRIBUTARY OF THE PACIFIC OCEAN
- d. The established rate and duty for the proposed use
- e. Pending, senior applications and existing water rights of record
- f. Letter from ODFW regarding fish screening.
- g. Comments received

**CONCLUSIONS OF LAW**

1. Based upon continued evaluation, the Department finds the determinations of the technical review remain valid.

2. Period of allowed use: DECEMBER 1 THROUGH MARCH 31 FROM TWO MILE CREEK AND 3 UNNAMED STREAMS. STORED WATER MAY BE USED AT ANY TIME.

3. The Department finds that no more than 2.0 CFS TOTAL FROM LIVE FLOW, AND 110 AF STORED WATER would be necessary for the proposed use. The amount of water requested, 2.0 CFS, BEING 1.7 CFS FROM TWO MILE CREEK, 0.1 CFS FROM EACH UNNAMED STREAM (#2, 4 AND 5), AND 110 AF TOTAL STORED WATER IN 7 RESERVOIRS, is allowable.

4. Coos County Planning Department staff acknowledged receipt of the Department's Land Use Information Form. Since land use information was not postmarked or received within the 30 day comment period initiated pursuant to OAR 690-11-155, the Department has presumed that the land use served by the proposed water use is compatible with the comprehensive plans and land use regulations of affected local governments.



5. The proposed use would not conflict with existing water rights, and, if exercised in accordance with law, rule, and the proposed conditions would not result in injury to existing water users.

6. The proposed use complies with all other rules of the Commission.

7. Pursuant to Chapter 416, Oregon laws, 1995, enacted by the 68th Oregon Legislative Assembly, and given the findings listed above, a rebuttable presumption has been established that the use will not impair or be detrimental to the public interest if exercised in the manner described in the attached draft permit.

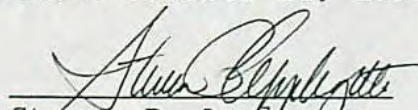
8. Therefore, the proposed use, as conditioned, and described in the attached draft permit, would not impair or be detrimental to the public interest.



**PROPOSED ORDER**

**IT IS PROPOSED** that Application S-73857 in the name of JACK, SHERI AND BARBARA FUGATE be approved for CRANBERRY USE as provided in the attached draft permit.

**DATED October 24, 1995**

  
Steven P. Applegate  
Administrator  
Water Rights and Adjudications Division

**NOTICE:**

This Proposed Final Order is issued by the Department pursuant to Chapter 416, Oregon laws, 1995, enacted by the 68th Oregon Legislative Assembly.

To seek changes in this proposed final order, you must file a formal protest.

Formal protests to this proposed final order must be made in proper form and accompanied by the statutory fee in the amount of \$200. Note: The applicant is not subject to this fee.

For other than the applicant, if you agree with the findings in this proposed order, but wish to maintain your right to participate in any contested case proceeding or judicial review, you must file a written request for standing. Requests for standing in proceedings relating to this application must be made in the proper form and accompanied by the statutory fee in the amount of \$50.

**Protests or requests for standing, along with the appropriate fees must be received by the Water Resources Department in Salem, Oregon by 5:00 pm on December 8, 1995.**

Only the applicant and any persons who timely file a protest or request for standing may participate in further proceedings before the Department or the Commission which deal with this Application.



DRAFT  
STATE OF OREGON

COUNTY OF COOS

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

JACK, SHERI AND BARBARA FUGATE  
RT 1 BOX 965  
BANDON, OREGON 97411

The specific limits for the use are listed below along with conditions of use.

APPLICATION FILE NUMBER: S-73857

SOURCE OF WATER: THREE UNNAMED STREAMS AND SEVEN RESERVOIRS, TRIBUTARIES OF TWO MILE CREEK, AND TWO MILE CREEK, TRIBUTARY OF PACIFIC OCEAN

PURPOSE OR USE: CRANBERRY OPERATIONS

Rate of use:

2.0 CFS, BEING 1.7 CFS FROM TWO MILE CREEK, 0.1 CFS FROM EACH OF THREE UNNAMED STREAMS (#2, 4 AND 5); AND

110 AF TOTAL WATER STORED IN 7 RESERVOIRS, BEING #1 - 30 AF; #2 - 5 AF; #3 - 48 AF; #4 - 5 AF; #5 - 4 AF; #6 - 9 AF; #7 - 9 AF.

Period of allowed use: DECEMBER 1 THROUGH MARCH 31 FROM LIVE FLOW (UNNAMED STREAMS AND TWO MILE CREEK); STORED WATER MAY BE USED AT ANY TIME.

DATE OF PRIORITY: January 21, 1994

The points of diversion are to be located as follows:

POINT OF DIVERSION	FEET NORTH/SOUTH	FEET EAST	1/4 1/4	SECTION
TWO MILE CR #1	990 SOUTH	3330 EAST	NW NE	24
TWO MILE CR #2	1030 NORTH	2380 EAST	SE SW	13
R #1	171 SOUTH	3970 EAST	NE NE	24
R #2/UNN STR #2	137 NORTH	3680 EAST	SW SE	13



POINT OF DIVERSION	FEET NORTH/SOUTH	FEET EAST	1/4 1/4	SECTION
R #3	1310 NORTH	2620 EAST	SW SE	13
R #4/UNN STR #4	1170 SOUTH	3150 EAST	NW NE	24
R #5/UNN STR #5	1150 SOUTH	3520 EAST	NW NE	24
R #6	1810 NORTH	4600 EAST	NE SE	13
R #7	2220 SOUTH	3370 EAST	SW NE	24

ALL FROM THE SOUTHWEST CORNER OF SECTION 13 AND WITHIN TOWNSHIP 29 SOUTH, RANGE 15 WEST, W.M., COOS COUNTY

The amount of water diverted for CRANBERRY OPERATIONS, together with amounts 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.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 SE 1/4 15.0 ACRES  
 NW 1/4 SE 1/4 3.0 ACRES  
 SW 1/4 SE 1/4 4.0 ACRES  
 SE 1/4 SE 1/4 18.0 ACRES  
 SECTION 13

SW 1/4 NE 1/4 20.0 ACRES  
 SE 1/4 NE 1/4 2.2 ACRES  
 NE 1/4 SE 1/4 7.8 ACRES  
 SECTION 24

TOWNSHIP 29 SOUTH, RANGE 15 WEST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used 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. Further, the Director may require the



permittee to report general water use information, including the place and nature of use of water under the permit.

- B. The permittee 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.

#### STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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

This permit 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.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

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 Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin within one year from permit issuance and shall be completed on or before October 1, 1997. Complete application of the water to the use shall be made on or before October 1, 1998.

Issued _____, 199_

DRAFT

Water Resources Department  
Martha O. Pagel  
Director

Application S-73857  
Basin 17  
CSL

Water Resources Department  
Volume 3, Basin 17 Misc.  
3DW

PERMIT DRAFT  
District 19



Application No.

73857



State of Oregon  
WATER RESOURCES DEPARTMENT

# Application for a Permit to Appropriate Surface Water

Applicant(s) Jack or Sheri Fugate or Barbara Fugate

(Please print or type - use dark ink)

Mailing Address: Route 1, Box 965

Bandon,

City

Oregon

State

97411

Zip

(503) 347-3409

Daytime Phone No.

I (We) make application for a permit to appropriate the following described waters of the State of Oregon:

1. **SOURCE OF WATER** for the proposed use: TwoMile Creek and 3 unnamed streams and,  
a tributary of Pacific Ocean 7 reservoirs
2. **TOTAL AMOUNT OF WATER** to be applied to beneficial use: 2.00 cubic feet per second, OR 898 gallons per minute. If water is to be used from more than one source, give the quantity of water from each: and 110 acre feet  
See supplemental sheet

3. **INTENDED USE(s) OF WATER:** Cranberry use

If for more than one use, give the quantity of water from each source for each use; _____

If for DOMESTIC use, state the number of households to be supplied; _____

If for MUNICIPAL OR QUASI-MUNICIPAL use, state the present population to be served, and an estimate of the future requirements; (List population projections, water needs, anticipated areas to be provided water.)

If for MINING use, state the nature (gold, silver, etc.) of the mines to be served; _____

If for IRRIGATION, or other land area use, state the TOTAL number of acres to be developed under each use;

Irrigation

Other (describe)

Cranberry Use: 70.0 acres



4. **DESCRIPTION OF WATER DELIVERY SYSTEM:** Include dimensions and type of construction of diversion works, length and dimensions of supply ditches or pipelines, size and type of pump and motor. If for irrigation, describe the type of system (i.e., flood, wheel line, hand line, drip, other).

Water will be pumped from the unnamed streams and TwoMile Creek to one of the reservoirs then repumped to the bogs.

System will consist of a series of electric pumps, buried plastic pipeline and applied via sprinklers.

5. **PROJECT SCHEDULE:** (List month and year)

Proposed date construction work will begin 10-1-94

Proposed date construction work will be completed 10-1-97

Proposed date water use will be completed 10-1-99

NOTE: A map prepared by a Certified Water Right Examiner (CWRE) and a complete legal description of the subject property are required under ORS 537.140 and OAR 690 as a part of your application. The legal description may be copied from your deed, title insurance policy, or land sales contract.

6. a) In the event any deficiencies are noted involving the application map enclosed herein, please return the map with instructions for correction to (check one):

       Applicant      XX CWRE             Other (Identify in REMARKS section)

- b) In the event any deficiencies are noted involving the application, please return the application with instructions for correction to (check one):

       Applicant      XX CWRE             Other (Identify in REMARKS section)

7. Are all lands involved (including the proposed diversion site, place of use, and access for conveying the water) under your ownership? Yes. If not, list in the REMARKS section below, or on an attached sheet, the names and mailing addresses of the legal owners of all property involved in the proposed development.



REMARKS:

I/We certify that the information I have provided in this application is an accurate representation of the proposed water use and is true and correct to the best of my knowledge.

**NOTE:** The permit, when issued, is for the beneficial use of water without waste. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan. It is possible the land use you propose may not be allowed if it is not in keeping with the goals and acknowledged plan. Your city or county planning agency can advise you about the land-use plan in your area.

Barbara L. Fugate  
Signature of Applicant

1-14-94  
Date

Shirley L. Fugate  
Signature of Co-Applicant, if any

                      
Date



-----  
FOR WATER RESOURCES DEPARTMENT USE ONLY

Dear Applicant:

I certify that I have examined the foregoing application, together with the accompanying information, and am returning it to you for:

_____

_____

In order to retain its tentative priority, this application must be returned with the requested corrections or additions on or before:

_____, 19____.

WITNESS my hand this _____ day of _____, 19____.

_____  
*Water Resources Director*

By: _____

This instrument was first received in the office of the Water Resources Director at Salem, Oregon, on the 21 day of January, 1994, at 11 o'clock, A M.

APPLICATION NO: 73857

PERMIT NO: _____



March 3, 1995

Martha Pagel, Director  
Oregon Water Resources Department  
158 12th Street, N.E.  
Salem, Oregon 97310

RE: Applications No. T 7309, 73857, R 73855, R 73854 & R 73856

Dear Mrs. Pagel:

I have three reservoir applications, a surface water application and a transfer pending on my cranberry acreage to be planted along Two Mile Creek south of Bandon. I have considerable investment in my land and am approaching the point I cannot proceed without a minimum supply of irrigation.

My reservoir applications and surface water application have had technical reviews issued. I have no objections to the technical reviews and permit conditions as proposed by the Department. Two of the reservoir applications will require engineered plans and specifications which are currently being prepared.

I am in need of a minimal amount of irrigation water this summer. Please consider expediting either the issuance of the surface water/reservoir applications or expediting the processing of my transfer (T 7309).

Please contact me if there is anything I can do to expedite processing either the applications or transfer. I appreciate any action you could take to assist me.

Sincerely,

*Jack Fugate*

Jack Fugate

Steve,  
We have a bunch of these. Many with older pri-dates. However, if you say "Go" we can get an objection denial letter out quick.  
Doug

*Doug/Doug -  
Status of SW  
Appls - no obj.  
If true, can they  
be issued? Advise*

*need \$220*

*Need Plans + Specs*

*ODFW + WW objections  
(minor) (average)*

RECEIVED

MAR 10 1995

WATER RESOURCES DEPT.  
SALEM, OREGON

*73854, 73856  
Plans + Specs  
ODFW > OBJECTION 5  
WW  
Fees (73857)  
\$220*

*Steve: FYI*

*John Drolet tells me he has  
a non-use affidavit in hand and  
is getting more.*

*This transfer can not be expedited.*

*Larry*



RECEIVED

NOV 13 1995

WATER RESOURCES DEPT.  
SALEM, OREGON



DEPARTMENT OF  
FISH AND  
WILDLIFE

CHARLESTON  
DISTRICT OFFICE

November 8, 1995

Water Rights Section  
Water Resources Department  
158 - 12th Street, NE  
Salem, OR 97310

RE: Water Right Draft Proposed Final Order (PFO) #S-73857

Because one or more species of game fish are present at the described POD, ODFW will require the applicant to provide fish screening pursuant to ORS 498.248. The Satisfactory Report of Technical Review for #S-73857 contained the appropriate condition: #10 Diversion screening or fish passage facilities shall be designed, installed, and operated to Oregon Department of Fish & Wildlife specifications (add: **prior to water being appropriated**).

ODFW's comment letter dated September 2, 1994 supported condition #10. Comments in the September 2, 1994 letter from ODFW are still appropriate.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink that reads "Reese E. Bender".

Reese E. Bender  
Assistant District Fishery Biologist

Enclosure  
c: ODFW--HCD



4475 Boat Basin Drive  
PO Box 5430  
Charleston, OR 97420  
(503) 888-5515  
FAX (503) 888-6860



RECEIVED

NOV 13 1995

WATER RESOURCES DEPT  
SALEM, OREGON

DEPARTMENT C

FISH AND

WILDLIFE

CHARLESTON  
DISTRICT OFFICE

September 2, 1994

Water Rights Section  
Water Resources Department  
158 - 12th Street, NE  
Salem, OR 97310

RE: Water Right Applications #S73857, R 73854, R73855, & R73856  
Reports of Technical Review

Because one or more species of game fish are present at the described  
POD, ODFW supports the inclusion of Proposed Permit Condition #10 for  
S73857.

ODFW requests the following condition relating to in-channel obstructions  
also be included as a permit condition for S73857:

*The permittee shall not construct, operate, or maintain any dam or  
artificial obstruction to fish passage in the channel of the subject  
stream.*

For R 73854, & R73856 ODFW requests WRD include a condition in the  
subject permit that requires the intake structure for the proposed reservoirs  
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(not travel through) the impoundment during periods when diversion is not  
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decreases in water quality (e.g. temperature) that would be detrimental to  
fishes in downstream reaches.

Thank you for the opportunity to comment.

Sincerely,

Reese E. Bender  
Assistant District Fishery Biologist

Enclosure

c: ODFW-HCD



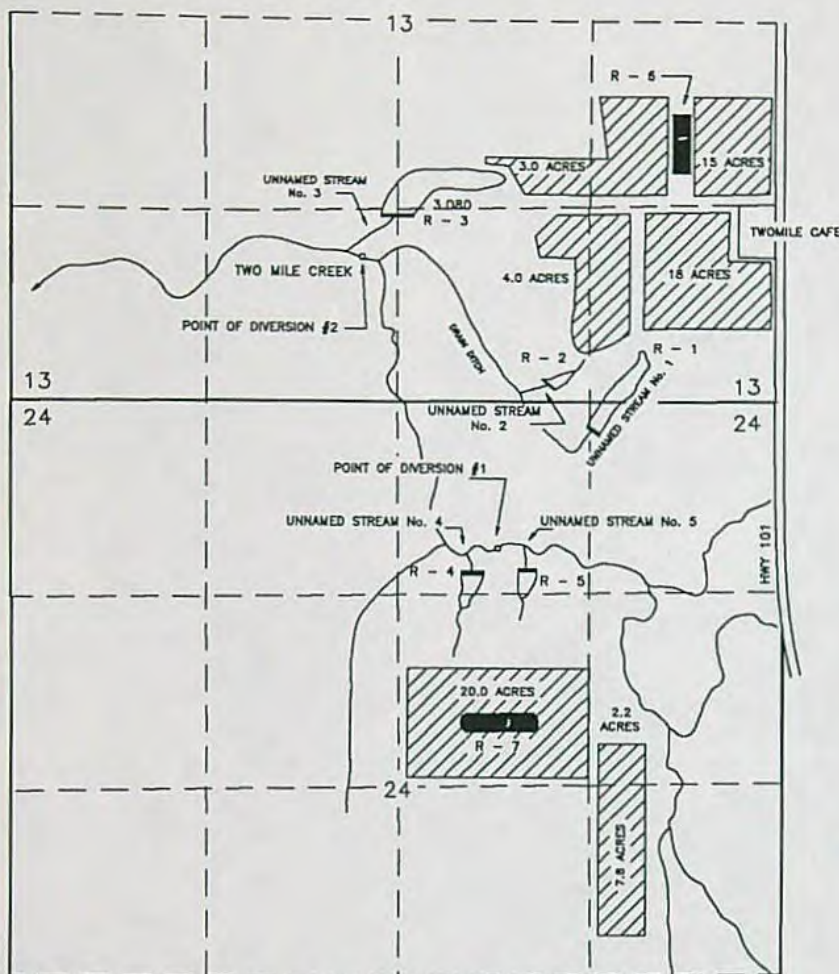
4475 Boat Basin Drive  
PO Box 5430  
Charleston, OR 97421  
(503) 888-5515  
FAX (503) 888-6860



# APPLICATION MAP

IN THE NAME OF JACK OR SHERI FUGATE OR BARBARA

SECTIONS 13 & 24, T 29 S, R 15 W, W.M.



1 INCH = 1320 FEET

**RECEIVED**

JAN 20 1994

WATER RESOURCES DEPT.  
SALEM, OREGON

THE POINTS OF DIVERSION ARE TO BE LOCATED AS FOLLOWS:

POINT OF DIVERSION	FEET NORTH/SOUTH	FEET EAST	¼ ¼	SECTION
TWO MILE CREEK No. 1	990 SOUTH	3330 EAST	NW¼NE¼	24
TWO MILE CREEK No. 2	1030 NORTH	2380 EAST	SE¼SW¼	13
R - 1	171 SOUTH	3970 EAST	NE¼NE¼	24
R - 2 / UNNAMED STREAM No. 2	137 NORTH	3680 EAST	SW¼SE¼	13
R - 3	1310 NORTH	2620 EAST	SW¼SE¼	13
R - 4 / UNNAMED STREAM No. 4	1170 SOUTH	3150 EAST	NW¼NE¼	24
R - 5 / UNNAMED STREAM No. 5	1150 SOUTH	3520 EAST	NW¼NE¼	24
R - 6	1810 NORTH	4600 EAST	NE¼SE¼	13
R - 7	2220 SOUTH	3370 EAST	SW¼NE¼	24

ALL FROM THE SOUTHWEST CORNER OF SECTION 13 AND WITHIN TOWNSHIP 29 SOUTH, RANGE 15 WEST, W.M., COOS COUNTY.

Application No. 73857  
Permit No. 53694

THE PURPOSE OF THIS MAP IS TO IDENTIFY THE LOCATION OF THE WATER RIGHT.  
IT IS NOT INTENDED TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF  
PROPERTY OWNERSHIP BOUNDARY LINES.

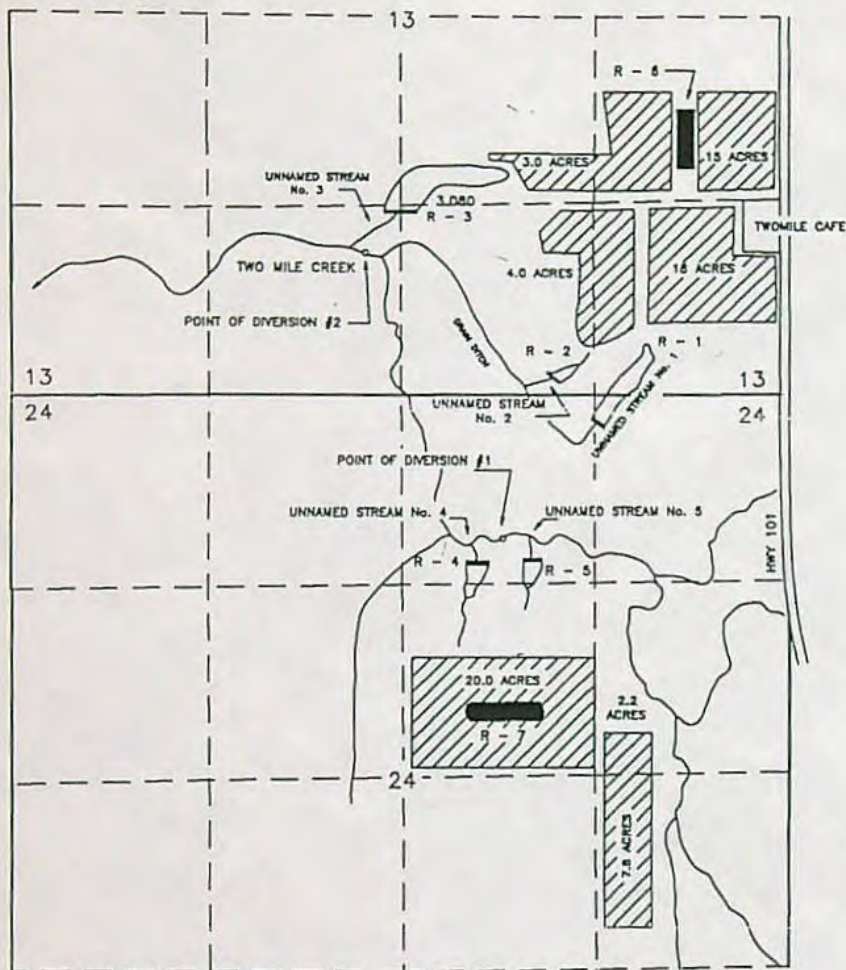




# APPLICATION MAP

IN THE NAME OF JACK OR SHERI FUGATE OR BARBARA

SECTIONS 13 & 24, T 29 S, R 15 W, W.M.



1 INCH = 1320 FEET

RECORDED

JAN 20 1994

WATER RESOURCES DEPT.  
SALEM, OREGON

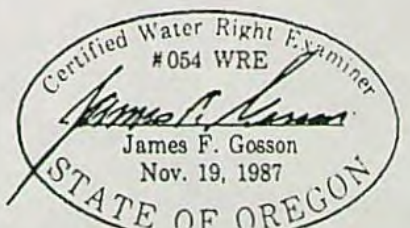
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Application No. 73857  
Permit No.

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PROPERTY OWNERSHIP BOUNDARY LINES.





RECEIVED

JAN 20 1994

WATER RESOURCES DEPT.  
SALEM, OREGON

BARBARA OR JACK OR SHERI FUGATE APPLICATION TO APPROPRIATE SURFACE WATER  
SUPPLEMENTAL SHEET

QUESTION 2:

TWO MILE CREEK:	1.7 CUBIC FEET/SECOND
UNNAMED STREAM No. 2:	0.1 CUBIC FEET/SECOND
UNNAMED STREAM No. 4:	0.1 CUBIC FEET/SECOND
UNNAMED STREAM No. 5:	0.1 CUBIC FEET/SECOND

TOTAL:	2.0 CUBIC FEET/SECOND
--------	-----------------------

RESERVOIR No. 1:	30 ACRE FEET
RESERVOIR No. 2:	5 ACRE FEET
RESERVOIR No. 3:	48 ACRE FEET
RESERVOIR No. 4:	5 ACRE FEET
RESERVOIR No. 5:	4 ACRE FEET
RESERVOIR No. 6:	9 ACRE FEET
RESERVOIR No. 7:	9 ACRE FEET

TOTAL:	110 ACRE FEET OF STORAGE
--------	--------------------------

Application No. 73857  
Permit No.



JULY 15, 1994

JACK OR SHERI FUGATE OR BARBARA FUGATE  
ROUTE 1, BOX 965  
BANDON, OREGON 97411

WATER  
RESOURCES  
DEPARTMENT

Reference: File S 73857

Hello:

This letter informs you of the current status of your application for a water use permit and accompanies the Satisfactory Report of Technical Review For Water Use Permit(s). We apologize for the delay in transmitting this information and Report to you and for any inconvenience the wait may have caused you.

The enclosed Report of Technical Review is the Department's summary of a specialized analysis of various legal and scientific aspects of your application and proposed water use. We are required by the state of Oregon's administrative rules (in OAR 690-11-160) to conduct this official technical review of each application submitted to the Oregon Water Resources Department for a water use permit. This process was designed to insure that your application receives a fair evaluation and to secure protection of existing water rights and of the public at large.

AS THE RESULT OF OUR TECHNICAL EVALUATION, WE HAVE DETERMINED THAT YOUR APPLICATION SATISFIES THE REQUIREMENTS OF THE TECHNICAL REVIEW.

The Department will now move your application to the next phase of processing. This phase includes a public interest review of your proposed water use. No final action may be taken on your application until the public interest review is completed.

You should also note that the Report of Technical Review describes conditions currently anticipated which may limit the water use proposed in your application.

If you wish to object to any of the analyses contained in the Report, you must submit your objection to the Department in writing within 60 days of the date of mailing of this Report or by the date specified below. Your objection must allege that the technical review is defective and you may also submit evidence which demonstrates that your proposed water use will not impair or be detrimental to the public interest.

Copies of the Report of Technical Review will be distributed to all persons who have filed comments or otherwise expressed an interest in the water use proposed in your application. Interested parties must also submit their objections within the prescribed objection period. Those objections must allege that the technical review is defective and/or that the proposed water use may impair or be detrimental to the public interest.



Commerce Building  
158 12th Street NE  
Salem, OR 97310-0210  
(503) 378-3739  
FAX (503) 378-8130



If an objection contains allegations that the technical review is defective, it must be accompanied by facts which support such allegations. If an objection contains allegations that the proposed water use may impair or be detrimental to the public interest, the objection must specify the particular public interest standards which apply as set out in Oregon Revised Statutes (ORS 537.170(5)) and Oregon Administrative Rules (OAR 690-11-195) and state facts showing how such standards would be violated.

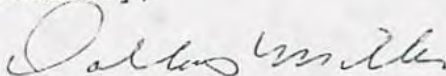
All evidence and objections must be received by our Salem office no later than 5:00 p.m. on or before SEPTEMBER 30, 1994 or the Department may presume there is no opposition to any of the analyses set out in the technical review report. Evidence and objections must be addressed and delivered to: Oregon Water Resources Department, Water Rights Section, 158 12th Street Northeast, Salem, Oregon 97310.

If objections and evidence are submitted on or before the above time and date, the Director of the Water Resources Department will evaluate each issue raised in the objections and either accept or deny them. Objectors are encouraged to indicate whether they would be interested in resolving their concerns through alternative dispute resolution.

If any of the objections are denied, the objector will be allowed thirty days to submit a protest to the denial. The protest must meet the standards set forth in OAR 690-02-030 through 080.

If you have any questions, please feel free to telephone me or any of the Department's Water Rights Section staff. My telephone number is 378-3739, in Salem, or you may call toll free from within the state to 1-800-624-3199.

Sincerely,



DALLAS MILLER  
Water Rights Section  
Enclosures



Report Date: JULY 15, 1994

OREGON WATER RESOURCES DEPARTMENT

**SATISFACTORY REPORT OF TECHNICAL REVIEW**  
**FOR WATER USE PERMIT(S)**

OBJECTIONS TO THE PROPOSED WATER USE AS DESCRIBED BELOW MUST BE RECEIVED IN WRITING BY THE OREGON WATER RESOURCES DEPARTMENT, 158 12th ST N.E., SALEM, OREGON 97310, BY 5 P.M. ON OR BEFORE: SEPTEMBER 30, 1994

1. APPLICATION FILE NUMBER - S 73857
2. MINIMUM APPLICATION INFORMATION

Applicant name/address/county/phone:

JACK OR SHERI FUGATE OR BARBARA FUGATE  
ROUTE 1, BOX 965  
BANDON, OREGON 97411  
COOS CO PH 347-3409

Date application received for filing and/or tentative date of priority: 1/20/94

SOURCE: TWO MILE CREEK, 3 UNNAMED STREAMS AND 7 RESERVOIRS  
TRIBUTARY TO: PACIFIC OCEAN

Purpose and/or use: CRANBERRY USE

Flow: 2.0 CUBIC FEET PER SECOND, BEING 1.7 CFS TWO MILE CREEK, 0.1 CFS UNNAMED STREAM #2, 0.1 CFS UNNAMED STREAM #4, 0.1 CFS UNNAMED STREAM #5, AND 110 ACRE-FEET STORED WATER, BEING 30 ACRE-FEET RES 1, 5 AF RES 2, 48 AF RES 3, 5 AF RES 4, 4 AF RES 5, 9 AF RES 6 AND 9 AF RES 7.

Points of Diversion Location:

NENE, SWNE, SEC 24, SESW, SWSE, NESE, SEC 13, T 29 S, R 15 W, WM; TWOMILE CREEK 1 990'S, 3330' E, TWOMILE CREEK 2 1030'N, 2380'E, RES 1 171'S, 3970'E, RES 2, UNNAMED STREAM 2 137'N, 3680'E, RES 3 1310'N, 2620'E, RES 4, UNNAMED STREAM 4 1170'S, 3150'E, RES 5, UNNAMED STREAM 5, 1150'S, 3520'E, RES 6-1810'N 4600'E, RES 7 2220 S, 3370 E, ALL FROM SW COR SEC 13.



Place of use:

NE SE 15.0 ACRES

NW SE 3.0

SW SE 4.0

SE SE 18.0

SEC 13

T 29 S, R 15 W, WM.

SW NE 20.0 ACRES

SE NE 2.2

NE SE 7.8

SEC 24

SURFACE WATER AVAILABILITY

Water is likely available in excess of needs for all existing rights 80% of the time during each monthly period proposed by the technical review.

Water availability tables are available in the application file and may be reviewed in the office of the Water Resources Department in Salem.

CONFLICTS WITH OTHER WATER RIGHTS:

There are no existing rights from this point of diversion.

There are no existing water rights appurtenant to the lands described in the application.

REPORT CONCLUSIONS:

Based on the Department's review of water availability and Oregon Administrative Rules, water in the amount of 2.0 CFS is likely available for 3 months for cranberry uses.

Therefore, the Director finds that water is available in sufficient amount and during periods which will reasonably support the proposed use.

THE PROPOSED WATER USE, AS CONDITIONED, SATISFIES THE REQUIREMENTS OF THIS TECHNICAL REVIEW.



This Report of Technical Review sets out the Director's technical analysis of the application. In addition to this technical analysis, the Director will evaluate this application to determine whether the proposed water use might impair or be detrimental to the public interest under the standards set out in ORS 537.170(5) and OAR 690-11-195. Matters relating to public interest in the proposed water use which are raised in objections will be evaluated following the 60-day objection period.



## PROPOSED PERMIT CONDITIONS

Application: S 73857

The following conditions will apply to water use under the permit, and will appear in the permit, if issued.

1. Use of water under this permit is subject to all prior rights.
2. Period of allowed use: JANUARY 1 THROUGH MARCH 31 FROM TWO MILE CREEK AND 3 UNNAMED STREAMS, ALL YEAR FROM STORED WATER ONLY FROM RESERVOIRS.
3. Rate of use: 2.0 CUBIC FEET PER SECOND, BEING 1.7 CFS FROM TWO MILE CREEK, 0.1 CFS FROM 3 UNNAMED STREAMS EACH. 110 ACRE-FEET, BEING 30 AF RES 1, 5 AF RES 2, 48 AF RES 3, 5 AF RES 4, 4 AF RES 5, 9 AF RES 6 AND 9 AF RES 7.
4. Water use development requirements:
  - A. Begin construction by (one year from issuance of permit).
  - B. Complete construction by October 1, 1996.
  - C. Completely apply the water to beneficial use by October 1, 1997.
5. Measurement, recording and reporting conditions:
  - A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used 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. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
  - B. The permittee 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.



6. Failure to comply with any of the provisions of the permit may result in action including, but not limited to, restrictions on the use, penalties, or cancellation of the permit.
7. The permit 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.
8. The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.
9. The amount of water diverted for CRANBERRY OPERATIONS, together with amounts 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.
10. Diversion screening or fish passage facilities shall be designed, installed, and operated to Oregon Department of Fish & Wildlife specifications.



# COMPLETENESS DETERMINATION CHECKLIST

**COMPLETED**

HC 10-595

200 Exam

22070ACCR

Application #	Review Date	Reviewer
S-78857	10/5/95	GERRY

420 Total

350 Received

B 70 needed

A checkmark (✓) indicates that the item is Incomplete or defective.

1. Examination fees (and recording fees, if for PFO/FO).
2. Name and address of the applicant, and title if applicable.
3. Source of water.
4. Use of water.
5. Amount of water.
6. Description of delivery system.
7. A statement of **whether** the applicant has written authorization or easements permitting access to lands owned by others.
8. Name(s) and address(es) of the owners of any lands involved, but not owned by the applicant.
9. Proposed dates of beginning and completion of construction, and complete application of water.
10. If for **municipal use**, the present population to be served and expected future water requirements.
11. If for **mining use**, the type of mines and methods of supplying & utilizing the water.
12. If for a **reservoir**:
  - a. The height of the dam.
  - b. The storage capacity.
  - c. The area submerged.
  - d. The maximum depth.
  - e. The construction method (earthfill, concrete, flashboard, etc.).
  - f. A description of the outlet conduit.
  - g. A description of the spillway.
13. If for **groundwater**, the horizontal distance from the well to the nearest surface water source (if within one mile), and the difference in land surface elevation between them.
14. If the application was made under **HB 2107**:
  - a. Name and address of each adjacent property owner and verification that each owner has been mailed a copy of the completed notice.
  - b. A description of the proposed water used and related project, the condition it will address, and the benefits that are expected to result from the project.
  - c. The number of reservoirs per application is appropriate as per OAR 690-11-049 (3)(b)
15. An oath that the application information is true and correct.
16. The signature of the applicant(s).
17. A satisfactory map of the proposed POD & POU.
18. A Land Use Information Form or receipt.
19. A legal description of the property where water will be used.



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SEP - 6 1994

WATER RESOURCES DEPT.  
SALEM, OREGON

Oregon

September 2, 1994



DEPARTMENT OF  
FISH AND  
WILDLIFE

CHARLESTON  
DISTRICT OFFICE

Water Rights Section  
Water Resources Department  
158 - 12th Street, NE  
Salem, OR 97310

RE: Water Right Applications #S73857, R 73854, R73855, & R73856  
Reports of Technical Review

Because one or more species of game fish are present at the described  
POD, ODFW supports the inclusion of Proposed Permit Condition #10 for  
S73857.

ODFW requests the following condition relating to in-channel obstructions  
also be included as a permit condition for S73857:

*The permittee shall not construct, operate, or maintain any dam or  
artificial obstruction to fish passage in the channel of the subject  
stream.*

For R 73854, & R73856 ODFW requests WRD include a condition in the  
subject permit that requires the intake structure for the proposed reservoirs  
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fishes in downstream reaches.

Thank you for the opportunity to comment.

Sincerely,

*Reese E Bender*

Reese E. Bender  
Assistant District Fishery Biologist

Enclosure

c: ODFW--HCD

Post-It™ routing request pad 7664  
59400

ROUTING - REQUEST

Please

☐

READ

☒

HANDLE

☐

APPROVE

and

☐

FORWARD

☐

RETURN

☐

KEEP OR DISCARD

☐

REVIEW WITH ME

Date

*9/12*

From

*Tony Justus*

To *Tom Shook*  
*Mike Mattick*  
*My comments on*  
*TRs*

(503) 888-5515  
FAX (503) 888-6860



RECEIVED

SEP - 6 1994

WATER RESOURCES DEPT.  
SALEM, OREGON

Oregon

September 2, 1994



DEPARTMENT OF  
FISH AND  
WILDLIFE

CHARLESTON  
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Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Reese E. Bender".

Reese E. Bender  
Assistant District Fishery Biologist

Enclosure

c: ODFW--HCD



4475 Boat Basin Drive  
PO Box 5430  
Charleston, OR 97420  
(503) 888-5515  
FAX (503) 888-6860



# DETAILED REPORT ON WATER AVAILABILITY

Basin: South Coast

Stream: TWOMILE CR

> PACIFIC OCEAN

Water Availability Subbasin: 1900000000000000

Exceedance Level: 80

Time: 11:20

Date: 07/13/1994

Month	Natural Stream Flow	CU + Stor Prior to 1/1/93	Water Available 1/1/93	CU + Stor After 1/1/93	Net Minimum Flow	Instream Water Rights	Net Water Available
1	20.80	.10	20.70	.00	20.70	18.00	20.70
2	31.80	.10	31.70	.00	31.70	18.00	31.70
3	27.90	.00	27.90	.00	27.90	18.00	27.90
4	16.90	.10	16.80	.00	16.80	18.00	16.80
5	7.09	.47	6.62	.00	6.62	18.00	6.62
6	3.63	1.39	2.24	.00	2.24	11.00	2.24
7	3.04	2.16	.88	.00	.88	7.00	.88
8	2.68	1.75	.93	.00	.93	7.00	.93
9	2.13	.74	1.39	.00	1.39	7.00	1.39
10	1.66	.09	1.57	.00	1.57	7.00	1.57
11	5.51	.03	5.48	.00	5.48	11.00	5.48
12	17.90	.10	17.80	.00	17.80	18.00	17.80
Stor	19200	421	18800	0	18800	0	18800

15WR  
filed 1-93

Allow  
Jan 1 - 3-31 From stream  
~~414000~~

73131 filed 11/93

(SEE ALSO W.A. in R-73854)



1

Water Availability Subbasin: 1900000000000000 (and Nested Subbasins)

Time: 11:19

Date: 07/13/1994

[illegible]



# LIMITING WATER AVAILABILITY SUBBASINS

Water Availability Subbasin: 1900000000000000

Basin: South Coast

Exceedance Level: 80

Time: 11:19

Date: 07/13/1994

Month	Limiting Subbasin	Stream Name	Water Available?	Net Water Available
1	1900000000000000	TWOMILE CR	YES	20.7
2	1900000000000000	TWOMILE CR	YES	31.7
3	1900000000000000	TWOMILE CR	YES	27.9
4	1900000000000000	TWOMILE CR	YES	16.8
5	1900000000000000	TWOMILE CR	YES	6.6
6	1900000000000000	TWOMILE CR	YES	2.2
7	1900000000000000	TWOMILE CR	YES	.9
8	1900000000000000	TWOMILE CR	YES	.9
9	1900000000000000	TWOMILE CR	YES	1.4
10	1900000000000000	TWOMILE CR	YES	1.6
11	1900000000000000	TWOMILE CR	YES	5.5
12	1900000000000000	TWOMILE CR	YES	17.8
Stor	1900000000000000	TWOMILE CR	YES	18800.0







# WaterWatch

Delivered via FAX and Regular Mail

September 19, 1994

SEP 20 1994

Oregon Water Resources Department  
Water Rights Section  
158 12th Street NE  
Salem, Oregon 97310

Re: Objection to Technical Reports for:  
R73854, R73855, R73856, S73857, Fugate, Cranberry Use,  
Two Mile Creek, Coos Co., South Coast

WaterWatch submits the following objections pursuant to OAR 690-11-170:

◆ **The Technical Reports are Defective**

The technical reports fail to contain many of the elements and evaluations required in OAR 690-11-160(1). The areas of deficiency are the same as those identified in WaterWatch's April 5 objection to application #69165 which we hereby incorporate into this objection.

◆ **The Water Availability Analyses in the Technical Reports are Defective**

The analysis is defective for the following reasons:

- The technical report fails to contain any analysis of water availability, contrary to OAR 690-11.
- The water availability analysis in the technical report fails to take into account flows needed to meet senior pending instream water rights for Two Mile Creek. If the analysis had taken into account the flows requested by ODFW, the report would have concluded that the river is overappropriated from April through December.
- The analysis fails to take into account existing water rights of record. Failure to account for future increases in water use pursuant to rights of record results in an over-estimation of water availability and over-allocation of the resource. This is contrary to the statewide Water Allocation Policy. OAR 690-400-010.



- The analysis fails to take into account existing water rights of record. Failure to account for future increases in water use pursuant to rights of record results in an over-estimation of water availability and over-allocation of the resource. This is contrary to the statewide Water Allocation Policy. OAR 690-400-010.

♦ **The Uses As Proposed are Not in the Public Interest**

The proposed uses fail to pass the public interest considerations in ORS 537.170 and are contrary to the South Coast basin program. *See also*, OAR 690-11-195(3)(d), (4)(a), (4)(c)(A), (4)(d)(A), (4)(f).

The South Coast Basin plan states:

Income from water-related recreation is a major contributor to the economy of the South Coast Basin. Finding 39.

The natural lakes, storage reservoirs and free-flowing streams support part of the water-based recreation use. Finding 40.

The water resources, wetlands and associated habitat are critical to the subsistence and propagation of wildlife in the Basin. Finding 42.

The coastal streams support resident and anadromous species of fish. Finding 43.

The fish resources of the South coast Basin are significant to the State of Oregon. Finding 44.

Adequate streamflow throughout the year is necessary for the maintenance of aquatic life in the coastal streams. Finding 45.

Low summer streamflow in many Basin streams is one factor limiting production of salmonids. Finding 46.

Summer flows in some streams will no support recommended minimum flows. Finding 47.

The Coquille River has water quality problems caused by point and non-point sources of pollution and low flows. Finding 56.



The South Coast Basin supports a variety wildlife and fish life. Coho, Chinook salmon and winter steelhead rely on flows in this area for different stages of their life cycles.

1. **The proposed uses are not in the public interest because they will interfere with flows needed to support public instream uses of water.**

The proposed uses will deplete flows needed for numerous public instream uses of the Two Mile Creek. This river system supports a variety of fish life including chinook salmon, winter steelhead and coho salmon. Petitions have been filed requesting listing of coastal coho and steelhead under the Federal Endangered Species Act. Low flows during summer months impair fish survival by among other things raising water temperatures and decreasing aquatic habitat and fish rearing areas. Low flows in the winter adversely affect fish habitat by among other things exposing spawning gravel and reducing feeding and rearing areas in the river. Water diversions create problems for fish passage and survival in the basin.

Currently there is a pending instream water right application for Two Mile Creek. This pending instream water right application requests flows needed for fish life in the system. The public uses reflected in the instream water right application (protection and conservation of fish life) has a "reasonable expectation of being developed" as evidenced by the pending instream water right application. This instream use provides greater benefit to the public at large than these proposed uses. These fish populations have statewide and even national significance and streamflows are essential for maintenance of these fish. The additional diversion of water from unnamed stream and Two Mile Creek will reduce flows in the system. Thus, the proposed use is not in the public interest because it will preclude flows needed for the pending instream water right applications.

2. **Measurement and reporting.**

These conditions should allow the Director to require measurement and reporting of both **rate and duty** of water stored and used. The proposed permit conditions restrict use based upon a specific rate. If measurement and reporting of water use is to be a useful informational and regulatory tool for the Department, it should provide the information needed to ensure that water use is within the terms of the permit.

The surface waters of Two-Mile Creek are overallocated several months of the year. The information generated by these proposed conditions are essential to the management and control of the water resource. **If** this use were to be permitted, water use measurement and reporting should be a mandatory condition of use. This information is essential for protection of the public interest in the resource. However, we question the Department's ability to control this use, even with these requirements.



The technical report proposes to limit the amount and months of use. The Department's enforcement staff is already incapable of control existing rights to use water in the basin. These proposed uses add yet another enforcement responsibility on top of an already unmanageable load. Under these circumstances, it is difficult if not impossible for the state to ensure that these applicants will, **at all times**, use water in compliance with the permit conditions. Given the critical state of the water resource in the basin and the Department's inability to control these uses, even with measurement and reporting, these uses are not in the public interest.

3. **The uses will impair the public interest because fish screening and passage facilities are not mandatory conditions of use.**

The technical report does not require mandatory fish screening and passage facilities. Given the critical status of fish populations in the this basin, the adverse impact diversions and dams have on fish habitat, screening and passage should clearly be required to be in place **before** any diversion or storage of water. In addition, failure to maintain screening and passage facilities must be grounds for shutting off water use. There should be a condition which **clearly** states these requirements.

4. **The proposed use is contrary to Oregon policy.**

ORS 537.170(5)(a) and (c) require the Department to ensure that waters in the basin will be used and controlled for all purposes, not just consumptive purposes. The Statewide Instream Flow Protection Policy states that "(w)here streamflows have been depleted to the point that public uses have been impaired, methods to restore the flows are to be developed and implemented." OAR 690-410-030(1). When considering applications for new water rights the agency is required to consider the needs of instream and out-of-stream uses and the need to develop streamflow restoration programs. OAR 690-410-030(2)(a). No such consideration has been done.

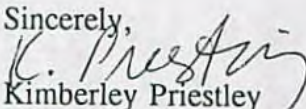
The recent petition for listing of coho and steelhead populations coast wide makes the protection of instream flows even more important for achieving a balance in this basin. The establishment and protection of instream water rights will help to achieve a balanced allocation of water between public instream and other uses in Basin and throughout the state. Establishment of the instream water right also furthers statewide policies, priorities and goals for streamflow restoration including those in OAR 690-11-030(1), 690-410-070, and 690-77-015. Providing streamflow protection for fish is also necessary in order to carry out the state policy of restoring native fish stocks. ORS 496.435. Thus, protection of the public interest requires denial of this application.



Failure of the State to look for or provide other sources of water, in the face of potential listing of the coastal coho creates expectations for water that may not be fulfilled if/when the species are listed. Instream flows in the creek provide critical habitat for fish - without water instream there is **no** habitat. Continuing to issue water rights on a river with a possibility of a listed species, as well as existing water availability and water quality problems makes little sense.

**5. Conservation Conditions are inadequate**

Oregon statutes and rules also call for the state to "aggressively promote" water conservation and places a high priority on eliminating waste and improving the efficiency of water use. ORS 537.460(2)(a) and OAR 690-410-060(1). The proposed conditions do little to further these policies. Given the presence of potentially listed species, the water quality problems and the fact water diversions are one of the causes of anadromous fish declines it is imperative that the water use be as efficient as possible. The proposed use should be held to a high efficiency standard **prior to** any permit issuance.

Sincerely,  
  
Kimberley Priestley  
Legal/Policy Analyst



Applicant's Name: Jack or Sheri Fugate or Barbara Fugate  
Address: Route 1, Box 965  
City: Bandon State: Or. Zip: 97411 Day Phone: (503) 347-3409

SALEM, OREGON

TL-400 _____ Forest

The following section must be completed by a planning official from each county and city listed unless your project will be located entirely within city limits. In this case, only the city planning agency must complete this form. Please request extra forms as needed.

Local planning officials are to complete the remainder of this form. If it cannot be completed while the applicant waits, sign and detach the receipt as instructed below. You will receive notice when the applicant's water right request is filed with the Water Resources Department (WRD). You will have 30 days from the notice date to return this completed this land use form to WRD. If no land use information is received from you within that period, WRD may presume the land use associated with the proposed water right is compatible with your comprehensive plan.

☐ Land uses to be served by proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): _____. Go to section b) on reverse side.

[illegible]

## Receipt for Request for Land Use Information

This receipt must be signed by a local government representative and returned to the applicant for inclusion in the WRD application **IF** the local government cannot provide the above requested land use information while the applicant waits.

Signature: Theda J. Lewis Date of Information Request: 1-18-94



b) Please provide printed name and written signature.

Name:

**Title:**

Date:

Phone:

Signature:

Additional Comments:

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.



## Description of Water Use

**Note to Applicant:** This sheet will provide local planning staff with a basic description of your proposed water use. Please fill out this sheet before bringing the attached land use form to your local planning office. It will help local planning offices complete your land use information form quickly.

**Note to Local Planning Officials:** Please initial this sheet. Do not separate it from the land use information form. If needed, please make a separate copy for your records.

Applicant Name: Jack or Sheri Fugate or Barbara Fugate  
 Address: Route 1, Box 965  
Bandon, Oregon 97411  
 Phone: (503) 347-3409

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JAN 20 1994

WATER RESOURCES DEPT.

SALEM, OREGON

Please indicate what you will use the water for. Check all boxes that apply and fill in the blanks with key characteristics of the project

- ☐ Irrigation (crop type, golf course, nursery or greenhouse): _____
- ☐ Livestock (type of livestock, feedlot, slaughterhouse): _____
- ☐ Residential (# units, single or multi-family, # lots if partition or subdivision): _____
- ☐ Commercial (i.e., retail, office, restaurant, gas station, hotel, service, etc.): _____
- ☐ Industrial (i.e., factory, pulp mill, research and development, processing, etc.): _____
- ☐ Institutional (i.e., school, library, etc.): _____
- ☐ Mining (aggregate, metal, open pit, placer, etc.): _____
- ☐ Recreation (park, campsite, pond, etc.): _____
- ☐ Fish and Wildlife (pond, hatchery, etc.): _____
- ☐ Hydropower (dam, reservoir, power generating or transmitting facilities): _____
- ☒ Other (Name and list key characteristics): Cranberry use

Indicate sources for the proposed water use below:	Indicate the estimated quantity of water the use will require.
<input checked="" type="checkbox"/> Surface Water Name sources: <u>TwoMile Creek &amp; 5 unnamed streams</u>	<u>2.00</u> Cubic feet per second. <u>898</u> Gallons per minute. <u>110</u> Acre-Feet
<input checked="" type="checkbox"/> Reservoir or pond	
<input type="checkbox"/> Ground Water	



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JAN 20 1994

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SALEM, OREGON

RE-RECORDED

93 06 0940

93 06 1183

## MEMORANDUM OF CONTRACT

SELLER : THELMA J. REDMON, Trustee of the Charles J. and Thelma J. Redmon Joint Revocable Living Trust dated July 14, 1992.

BUYER : BARBARA FUGATE

ADDRESS OF BUYER : P. O. Box 5152, Roseburg, OR 97470

DATE OF CONTRACT : June 17, 1993.

DESCRIPTION OF PROPERTY : The real property as described on Exhibit A attached hereto and hereby by reference incorporated herein and made a part hereof.

The above named Seller did, by contract bearing date set forth above, enter into an agreement to sell to the above named Buyer the above described property.

This memorandum does not contain the entire agreement, but is made solely for the purpose of recording the existence of said agreement. The true and actual consideration for the property was \$1,440,000.

The final installment payment on this contract, unless sooner paid, will be due and payable on July 7, 2010.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

Until a change is requested, all tax statements shall be sent to the Buyer at the address set forth above.

Dated this 17 day of June, 1993.

THIS DOCUMENT IS BEING RE-RECORDED  
TO CORRECT LEGAL DESCRIPTION.

*Thelma J. Redmon*  
Thelma J. Redmon, Trustee of the  
Charles J. and Thelma J. Redmon  
Joint Revocable Living Trust dated  
July 14, 1992

STATE OF OREGON )  
County of Coos ) ss.

This instrument was acknowledged before me on June 17, 1993, by Thelma J. Redmon, Trustee of the Charles J. and Thelma J. Redmon Joint Revocable Living Trust dated July 14, 1992.

*Charles M. Rubin*  
Notary Public for Oregon  
My Commission Expires: 10-16-1994



62-394  
TICKET: 1100000  
131 N. D. CO. 113  
Coos Bay, OR 97423-0253

MEMORANDUM OF CONTRACT

ORIGINAL RETURNED SAME DAY

6-24-93

RECORDING # 93060940

I, Mary Ann Wilson,  
Coos County Clerk, certify  
the within instrument  
was filed for record at



11:18 ON 06/22/1993  
By M. BRIGHT Deputy

# pages 4 Fee \$ 48.00

Application No. 73857  
Permit No.



RECEIVED

JAN 20 1994

WATER RESOURCES DEPT.  
SALEM, OREGON

RE-RECORDED

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~~93 06 0940~~

## EXHIBIT A

Parcel A:

A parcel of land in the  $N\frac{1}{2}$  of the  $SE\frac{1}{4}$  of Section 13, Township 29 South, Range 15 West of the Willamette Meridian, Coos County, Oregon, described as follows:

Beginning at a point 900 feet South of the center of said Section 13 on the quarter section line, said point of beginning the Southwest corner of the Stanley Boak and Martha Boak property as described by deed recorded in Book 242, Page 171, Deed Records of Coos County, Oregon; thence South along the quarter section line 420 feet; thence East to the West boundary of the Rural Electrification Administration right of way; thence North along said West boundary to the Southeast corner of the Boak property; thence West along the South boundary of the Boak property 1125 feet, more or less, to the point of beginning.

Parcel B:

The  $N\frac{1}{2}$  of the  $N\frac{1}{2}$  of Section 24, Township 29 South, Range 15 West of the Willamette Meridian, Coos County, Oregon.

ALSO: The  $SE\frac{1}{4}$  of the  $SW\frac{1}{4}$ , Section 13, Township 29 South, Range 15 West of the Willamette Meridian, Coos County, Oregon, EXCEPT the West 175 feet conveyed in Book 246, Page 71, Deed Records of Coos County, Oregon. **

ALSO: The  $SW\frac{1}{4}$  of the  $SE\frac{1}{4}$  of Section 13, Township 29 South, Range 15 West of the Willamette Meridian, Coos County, Oregon, EXCEPT that small triangular tract in the Northwest corner conveyed to Victor Tholix recorded in Book 267, Page 411, Deed Records of Coos County, Oregon.

ALSO: The  $SE\frac{1}{4}$  of the  $SE\frac{1}{4}$ , Section 13, Township 29 South, Range 15 West of the Willamette Meridian, Coos County, Oregon, EXCEPT a parcel conveyed in Book 73, Page 493, Deed Records of Coos County, Oregon, described as follows: Starting at the Northeast corner of the  $SE\frac{1}{4}$  of the  $SE\frac{1}{4}$  of Section 13, Township 29 South, Range 15 West of the Willamette Meridian, Coos County, Oregon; thence West 294 feet; thence South 330 feet; thence East 294 feet; thence North 330 feet to the place of beginning.

ALSO the  $NE\frac{1}{4}$  of the  $SE\frac{1}{4}$  of Section 13, Township 29 South, Range 15 West of the Willamette Meridian, Coos County, Oregon, lying East of the Rural Electrification Administration power right of way line, EXCEPT the North 575 feet as conveyed in Book 242, Page 169, Deed Records of Coos County, Oregon.

Parcel C:

All that portion of the  $N\frac{1}{2}$  of the  $SE\frac{1}{4}$  of Section 13, Township 29 South, Range 15 West of the Willamette Meridian, Coos County, Oregon, lying South of the property conveyed to Victor Tholix, et ux., recorded in Book 267, Page 411, Deed Records of Coos County, Oregon, and West of the West boundary of the Coos Curry Power Line Easement.

Parcel D:

A parcel of land located in the  $NE\frac{1}{4}$  of the  $SW\frac{1}{4}$  of Section 13, Township 29 South, Range 15 West of the Willamette Meridian, Coos County, Oregon, lying South of the 30 foot wide private access roadway running westward from State Highway 101 to the Boak Parcels, said parcel is described as follows:

Beginning at a point on the North-South quarter line through the center of said Section 13, said point being a one-half inch rod set in 1962 which lies 15 feet Southeast and at right angle to the center line of the said private access roadway and located South  $00^{\circ} 34'$  West 961.07 feet from the existing center of said Section 13 along the said quarter line thence running along the said South edge of the roadway, on a curve to the left, said curve is described as follows: Delta Angle =  $15^{\circ} 32'$  Radius = 867.85 feet; Arc Length = 235.28 feet; and the Chord = South  $58^{\circ} 07'$  West, 234.56 feet to the point of tangency of said curve;

EXHIBIT A - page 1

** ALSO EXCEPT: That portion conveyed to Melvin E. Boak et ux in instrument bearing Microfilm Reel No. 81-2-7779, Records of Coos County, Oregon.



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SALEM, OREGON

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thence continue along the said South edge of roadway, South 50° 21' West 225.98 feet; thence leaving said South edge of roadway, South 39° 39' East 91.35 feet to a point located on the 1/16th line running East-West through the center of the SW 1/4 of Section 13; thence South 88° 12' East 311.59 feet along the said 1/16th line, to the C-S 1/16th -C corner located on the said quarter line; thence North 00° 34' East 348.23 feet, along the said quarter line, to the point of beginning.

Parcel 1:

Parcel 1: The S 1/2 of the NE 1/4 and the NE 1/4 of the SE 1/4 of Section 24, Township 29 South, Range 15 West of the Willamette Meridian, Coos County, Oregon, EXCEPTING therefrom that portion of the NE 1/4 of the SE 1/4 conveyed to State of Oregon bearing Microfilm Reel No. ~~66-2-6557~~, Records of Coos County, Oregon. ALSO EXCEPTING therefrom that portion conveyed to Norman L. Spelhaug and Virginia Spelhaug, in instrument recorded July 7, 1981, bearing Microfilm Reel No. 81-3-1429, Records of Coos County, Oregon. ** 66-2-6587

Parcel 2: A tract of land located in the NE 1/4 of Section 24, Township 29 South, Range 15 West of the Willamette Meridian, Coos County, Oregon, and more particularly described as follows:

Beginning at the East quarter corner of said Section 24; thence North 89° 19' 00" West a distance of 362.00 feet; thence North 3° 05' 15" West a distance of 881.91 feet; thence South 63° 17' 22" East a distance of 144.00 feet; thence South 21° 20' 43" East a distance of 774.80 feet to the East line of said Section 24; thence South 0° 41' 00" West a distance of 98.71 feet to the point of beginning.

Subject to and excepting:

1. As disclosed by the tax rolls, the premises herein described have been zoned or classified for farm use. At any time that said land is disqualified for such use, the property will be subject to additional taxes or penalties and interest.
2. As disclosed by the tax rolls, the premises herein described have been zoned or classified as forest lands. At any time that said land is disqualified for such use, the property will be subject to additional taxes or penalties and interest pursuant to the provisions of ORS Chapter 321.
3. Rights of the public in and to that portion lying within streets, roads and highways.
4. Rights of the public in and to that portion of said premises, now or at any time, lying below the ordinary high water line of creek.
5. Any adverse claim based upon the assertion that said land or any portion thereof is now, or at any time has been below high water mark of the creek.
6. Any improvement located upon the insured property, which is described or defined as a mobile home under the provisions of Chapters 803 and 820, Oregon Revised Statutes, and is subject to registration as provided therein.
7. Power line right of way for Rural Electrification Administration as disclosed on the assessor's map.
8. Easement, including the terms and provisions thereof, to Melvin E. Boak and Margaret C. Boak and H. E. Boak and Catherine Boak, recorded in Book 181, Page 19, Records of Coos County, Oregon, for roadway right of way and pipeline and pumping system right of way.



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SALEM, OREGON

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9. Access restrictions, including the terms and provisions thereof, contained in Deed, to State of Oregon, by and through its State Highway Commission, recorded as Microfilm Reel No. 66-02-6392, Records of Coos County, Oregon.
10. Easement, including the terms and provisions thereof, to U.S. Coast Guard, recorded May 28, 1945, in Book 156, Page 156, Records of Coos County, Oregon, for telephone lines.
11. Easement, including the terms and provisions thereof, from Evelyn E. Blake and Denny K. Blake, recorded December 29, 1966, as Microfilm Reel No. 66-12-14585, Records of Coos County, Oregon.
12. Access restrictions, including the terms and provisions thereof, contained in Deed, to State of Oregon, by and through its State Highway Commission, recorded February 24, 1966, as Microfilm Reel No. 66-02-6857, records of Coos County, Oregon.

RE-RECORDED

RECORDING #

93061183

I, Mary Ann Wilson,  
Coos County Clerk, certify  
the within instrument  
was filed for record at



11:13 6-25-1995

By C. Stamer Deputy

# pages 4

Fee \$ 20.00



cc: Larry - FYI  
FWS  
RECEIVED

MAR 10 1995

WATER RESOURCES DEPT.  
SALEM, OREGON

March 3, 1995

Martha Pagel, Director  
Oregon Water Resources Department  
158 12th Street, N.E.  
Salem, Oregon 97310

RE: Applications No. T 7309, 73857, R 73855, R 73854 & R 73856

Dear Mrs. Pagel:

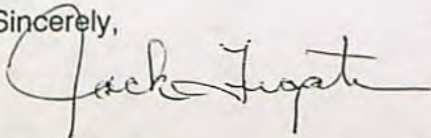
I have three reservoir applications, a surface water application and a transfer pending on my cranberry acreage to be planted along Two Mile Creek south of Bandon. I have considerable investment in my land and am approaching the point I cannot proceed without a minimum supply of irrigation.

My reservoir applications and surface water application have had technical reviews issued. I have no objections to the technical reviews and permit conditions as proposed by the Department. Two of the reservoir applications will require engineered plans and specifications which are currently being prepared.

I am in need of a minimal amount of irrigation water this summer. Please consider expediting either the issuance of the surface water/reservoir applications or expediting the processing of my transfer (T 7309).

Please contact me if there is anything I can do to expedite processing either the applications or transfer. I appreciate any action you could take to assist me.

Sincerely,



Jack Fugate



26 July 94

To Files: 73854  
73855  
73856  
73857

From: J BAER

Subject: TR Mailings

Applicant has not Received  
TR's Dated 14 July 94 &  
15 July 94 for the files.

Requested Additional copies to  
be mailed. This was done

27 July 94



COPY CHECK-OFF SHEET FOR TECHNICAL REVIEWS

CC: FILE #

73857

WATERWATCH

ODF&W - County:

Coos

WATERMASTER #:

19

REGIONAL MANAGER:

South West

CWRE:

James F. Gossow # 054

DEQ

OREGON ASSOCIATION OF NURSERYMEN INC.

KEN STAHR

OTHER ADDRESSES:

Ran Yocken P.O. Box 218 Roseburg, Ore 97470

CASEWORKER (initials/date)

D Millea

ORIGINAL TO APPLICANT 6/28/94

TR SENT 94



## TECHNICAL REVIEW CHECKLIST

1. Application: 73857
2. Review Date: 7-13-94

D Miller

S indicates information was completed or adequately addressed.

U indicates information is needed, or incomplete, or inadequately addressed

N/A indicates Not Applicable

## SUMMARY

S Land Use

NA/yes/no Substantial SW interference w/GW  
(if yes, see results of surface water availability analysis)

S Conflicts WCR

S Water Availability (19000)  
(Water Availability Sub-basin)

U The application, map and supporting data are complete and free of defects.

yes NA A TMDL letter has been received for this source or tributary. If yes, the period of use has been adjusted.

3. 7 The applicant has certified that the information provided in the application is an accurate representation of the proposed use and is true and correct to the best of their knowledge.

4. NA No oath is required because application was filed before June 5, 1992.

5. U Application fees:

Examination fee:	\$ <u>200</u>
Recording fee:	\$ <u>370</u>
TOTAL REQUIRED	\$ <u>570</u>
TOTAL SUBMITTED	\$ <u>350</u>
AMOUNT DUE prior to issuance of permit	\$ <u>220</u>
AMOUNT OVERPAID	
refund due applicant	\$ <u>          </u>

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6. S Proposed dates of beginning and completion of construction, and complete application of water.
7. S A satisfactory map of the proposed place of water use prepared by a certified water right examiner, unless exempt under OAR 690-14-150(3). (A CWRE map is not required for applications filed before November 9, 1987.)
8. S ^{* See legal in file} A written copy of the legal description of the property on which the water is to be used.
9. N/A A copy of written authorization, contract or easement permitting access to the land or reservoir not owned by the applicant.
10. S No statement of ownership was required for applications filed before August, 1990.
11. S The proposed use is not restricted or prohibited by statute.
12. S The source of water is not withdrawn from appropriation by order of the State Engineer or Water Resources Commission, or legislatively withdrawn under ORS Chapter 538.
13. S Cranberry use(s) is are classified uses(s) under the S. COAST Basin Program, OAR 690 - 517-00.1 (8)

**Land Use Compatibility:**

14. As expressed by the Planning Department of COOS
15. / The land uses to be served by proposed water uses (including proposed construction) are allowed or are not regulated by the local comprehensive plan (ordinance section _____).
16. / The land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals which have been obtained.
17. S The local government was notified, and sent no comment pursuant to the rules at the time; land use was presumed in compliance per such statement printed on the application.

**For reservoir applications:**

18. NA Plans, specifications and supporting information for the dam and impoundment area.



(7) The waters of Pony Creek above lower Pony Creek Dam and Ferry and Geiger Creeks above the Ferry Creek - Geiger Creek confluence are classified for municipal use.

(8) All other surface and ground water resources are hereby classified for domestic, livestock, municipal, industrial, fire control, irrigation, agricultural use, mining, power development, recreation, wildlife and fish life uses.

(9) Applications for the use of water for any purposes contrary to classifications specified in the basin program shall not be accepted or granted except as provided by law. The Director shall notify the Board and other interested individuals or agencies of the intent to accept an application for use in conflict with the adopted program in accordance with ORS 536.380 if the proposed use will not have a significant impact on any other water use as provided in sections (1) through (8) of OAR 690-517-001 and in 690-517-002 through 690-517-003.

(10) The planning, construction and operation of any structures or works for the utilization of water in accordance with the aforementioned classifications are to conform with the applicable provisions of ORS 536.310, including but not restricted to the recommendation of the multiple-purpose concept.

#### **Reservations**

690-517-002

Water in the amounts specified is reserved in the following streams for municipal use:

- (1) Chetco River - three cfs, downstream from the confluence with the North Fork Chetco River
- (2) Winchuck River - one cfs, downstream from the confluence with Bear Creek

#### **Minimum Perennial Streamflows**

690-517-003

(1) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life, no appropriations of water except for domestic or livestock uses and irrigation of noncommercial gardens not exceeding one-half acre in area shall be allowed for the waters of the streams and tributaries listed in Table 1 when flows are below the specified levels.

(2) The Water Policy Review Board requests the opportunity to review applications for an allowed beneficial use that has traditionally been identified as nonconsumptive or take-and-put, such as fish hatcheries, hydroelectric facilities, municipal or water process industries that could potentially impact, in an adverse way, the Board's minimum flow regime or the public interest. The Water Policy Review Board intends to continue to protect, in its entirety, that portion of the stream system on which any minimum streamflow has been established. Permitting procedures and water use regulation should reflect that objective as far as possible under the law. The Board solicits the advice or complaints of any party who is aware that the objectives are not being met.

(3) Minimum flows established in the Water Resource Program for the South Coast Basin dated May 22, 1964 (Table 3), shall remain in full force and effect except as follows:

- (a) The minimum perennial streamflow for the Elk River above U.S. Highway 101 crossing (45 cfs) is rescinded.



TOWNSHIP 29S RANGE 15W W. M. CARD #1 SECTION 13

NE				NW				SW				SE				APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
TOTAL ACREAGE IN SUBDIVISION AS SHOWN ON GOVERNMENT PLAT																		
																22051	17313	22935
																22219	17494	26397
																57512	43645	CANCELED
																61356	45600	CANCELED
																X 63703	46883	55656
																63834		REJECT
																66897	48335	
																66897	48335	
																69917	50675	
																R-73170		
																73171		
																613251		

FOR FLOODING CONTACT (SEE BACK OF CARD FOR PLAT OF SECTION) F.H. = Flood Hazard

TOWNSHIP 29S RANGE 15W W. M. CARD #2 SECTION 13

NE				NW				SW				SE				APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
ACREAGE IN LOT OR LEGAL SUBDIVISION AS SHOWN ON GOVERNMENT PLAT, IF OTHER THAN 40 ACRES																		
																73781		
																RES 73854		
																RES 73856		
																73857		
																R-73855		

TOWNSHIP 29S RANGE 15W W. M. SECTION 24

NE				NW				SW				SE				APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
																12550	8902	9072
																16 ² 20570	16074	21883
																22051	17313	22935
																9 ³ 55594	41660	50470
																62429	46551	
																L-12600		
																R-73854		
																73857		
																R-73855		



Info: Talked To Joyce Plymer. Water From Bradley Lake has been used for the household use, lawn and garden.

Pump: 1 HP submersible

Pipe: 1" plastic pipe from lake to house.

LIFT: 35 feet.

use Domestic, lawn & garden.

TIE: Inspection.

9-6-83

Philip Is Ansell

ASST. water Rights Examiner



**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addresscard to:

S-73857  
 JACK FUGATE  
 PO BOX 426  
 BANDON, OR 97411



9590 9402 5870 0038 7395 94

2. Article Number (Transfer from service label)

7018 0360 0000 1345 4125

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

☐ Agent☐ Addressee

B. Received by (Printed Name)

JACK FUGATE

C. Date of Delivery

12-04-20

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

DEC 07 2020

OWRD

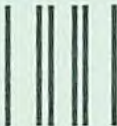
3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery



USPS TRACKING#



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

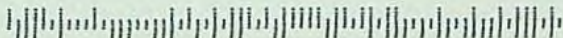
9590 9402 5870 0038 7395 94

United States  
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Oregon Water Resources  
725 Summer St NE, Suite A  
Salem, OR 97301

01-126673





3-501  
NUMBER _____

Check 1250⁰⁰ MO _____ Cash _____

☒ Surface Application

☒ Reservoir Application

_____ Ground Water Application

_____ Transfer Application

_____ Power Claim

_____ Hydroelectric Examination

_____ Hydroelectric License

_____ Copying

_____ Assignment

_____ Extension of Time

_____ Other

_____ P-6

_____ Quadrangle

_____ Basin

_____ Protest

_____ Constructors Examination

_____ Constructors License

_____ Adjudication

200  
150

600  
300

200 x 3  
100

Doug



FILE#: S 73857

JACK FUGATE  
FUGATE, SHERI; FUGATE BARBARA  
RT 1 BOX 965  
BANDON, OR 97411



**STATE OF OREGON  
WATER RESOURCES DEPARTMENT**

RECEIPT # **108880**

3850 PORTLAND ROAD NE  
SALEM, OR 97310  
378-8455 / 378-8130 (FAX)

RECEIVED FROM: High to 7 Sons, Inc.  
BY: _____

APPLICATION	73857
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # X 96-292 OTHER: (IDENTIFY) ☐

TOTAL REC'D \$ 1,250.00

**01-00-0 WRD MISC CASH ACCT**

842.010	ADJUDICATIONS	\$
831.087	PUBLICATIONS / MAPS	\$
830.650	PARKING FEES Name / month	\$
_____	OTHER: (IDENTIFY)	\$

**REDUCTION OF EXPENSE**

CASH ACCT. \$

COST CENTER AND OBJECT CLASS

VOUCHER #

**03-00-0 WRD OPERATING ACCT**

**MISCELLANEOUS:**

840.001	COPY FEES	\$
850.200	RESEARCH FEEDS	\$
880.109	MISC REVENUE: (IDENTIFY)	\$
520.000	OTHER (P-6) (IDENTIFY)	\$

**WATER RIGHTS:**

842.001	SURFACE WATER	\$	842.002	\$
842.003	GROUND WATER	\$	842.004	\$
842.005	TRANSFER	\$	842.006	\$

**WELL CONSTRUCTION**

842.022	WELL DRILL CONSTRUCTOR	\$	842.023	\$
_____	LANDOWNER'S PERMIT	\$	842.024	\$
_____	OTHER (IDENTIFY)			

**EXAM FEE**

\$ 200.00

**RECORD FEE**

\$ 150.00

**EXAM FEE**

\$

**LICENSE FEE**

\$

**06-00-0 WELL CONST START FEE**

842.013	WELL CONST START FEE	\$	CARD #	
_____	MONITORING WELLS	\$	CARD #	

**45-00-0 LOTTERY PROCEEDS**

864.000	LOTTERY PROCEEDS	\$
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**07-00-0 HYDRO ACTIVITY**

LIC NUMBER

842.011	POWER LICENSE FEE (FW/WRD)	\$
842.115	HYDRO LICENSE FEE (FW/WRD)	\$

HYDRO APPLICATION

\$

RECEIPT # **108880**

DATED: 1/28/94

BY: Coy Engel