

Oregon Water Resources Department
Water Right Services Division

Application for Extension of Time

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

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), 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.

In summary, the Department proposes to:

- Deny an extension of time to apply water to full beneficial use from October 1, 2015, to October 1, 2031.

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

Department – Oregon Water Resources Department

PFO – Proposed Final Order

cfs - cubic feet per second

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)** contain the factors that the Department must consider to make findings that support a “good cause” determination.

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, and complete application of water was to be made on or before October 1, 2004.
2. On November 16, 2010, a Final Order on Extension of Time was issued resulting in the completion date for full application of water being extended to October 1, 2015.
3. On May 31, 2021, an Application for Extension of Time was submitted to the Department. The Application requested the time to apply water to the beneficial use be extended from October 1, 2015, to October 1, 2031. On January 28, 2022, a Final Order on Extension of Time was issued, resulting in the date for full application of water being extended to October 1, 2024. The Final Order placed two conditions on the Permit; 1) requiring the submittal of a Permit Amendment Application requesting authorization of the point of diversion developed on Two Mile Creek by no later than June 1, 2022, or the

extension of time to October 1, 2024, would be terminated, and 2) limiting the development to no more than 37.52 acres of cranberry use, with limitations on the maximum rate that could be diverted from Two Mile Creek, and limitations on the volumes of water than could be used from the reservoirs authorized as sources under the permit. The Final Order approving the Extension of Time only to October 1, 2024, limiting the development and requiring a permit amendment were determined necessary due to a lack of diligence in the development during the most recent extension period.

4. As of June 1, 2022, the Permit Amendment Application was not submitted, resulting in the termination of the Extension of Time to October 1, 2024. The date for complete application of water to the beneficial use reverted back to October 1, 2015.

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)]

5. On November 14, 2025, 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 deadline specified in the permit.
7. 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.

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.¹

8. 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.
9. During the most recent extension of time period, being from October 1, 2004, to October 1, 2015, no additional land was developed for cranberry or irrigation use.

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

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

10. The Department has considered the permit holder's compliance with conditions, and has determined that the permit holder has failed to comply with the conditions of the Final Order on Extension of Time, issued January 28, 2022, requiring the submittal of a Permit Amendment by June 1, 2022.

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.

11. According to the Application for Extension of Time submitted May 13, 2021, 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 on 37.52 acres. The Application for extension of Time submitted November 14, 2025, identifies that 49.52 acres have been developed (page 13 of 15, item #13). This exceeds 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.
12. Based on information provided in the Claim of Beneficial Use for Permit R-12894, submitted on October 20, 2025, 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-12984, and Reservoir #3 authorized under Permit R-12895.

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

13. The Application identifies an investment of approximately \$1,018,100 has been made. Part of this investment has been identified as "CWRE work", which is not an investment towards development, and no other investment has been made since 2008.

¹ "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.

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

The Application for Extension of Time submitted May 13, 2021, demonstrated a lack of diligence in the development of the permit during the previous extension of time period, resulting in the issuance of a Final Order on Extension of Time issued on January 28, 2022, which required the submittal of a Permit Amendment by June 1, 2022, and to limit the development under the permit to what was authorized by October 1, 2015. The permit holder failed to submit the required Permit Amendment by June 1, 2022, and did not submit the Application for Extension of Time currently being reviewed until November 14, 2025. Due to factors identified in the Proposed Final Order on Extension of Time issued November 30, 2021, the failure to submit the required Permit Amendment by June 1, 2022, and that this Application for Extension of Time was not submitted until November 14, 2025, the Department cannot find that the permit holder has demonstrated reasonable diligence in the development and perfection of the beneficial use.

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

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

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

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

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

14. A review of the amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit 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.
15. Current Water Availability Analysis for Twomile Creek, (Tributary to Pacific Ocean) at the mouth (watershed ID 72803) show that no water is available except during the month of February at the 80% exceedance level.

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

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

16. The 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.
17. Two Mile Creek, a tributary of the Pacific Ocean is not located within or above a state or federal scenic waterway.
18. 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.

19. 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.

20. The Application identifies an investment of \$1,018,100 has been made towards the development of the use authorized under the permit. No investment towards the development of the beneficial use has been made since at least 2008.

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

Other economic interests dependent on completion of the project.

21. The Application does not identify any additional economic interests dependent on the completion of the project beyond the interests of the permit holder.

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

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

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

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

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

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

24. The Application identifies additional government requirements delayed the development of reservoir 3 (authorized under Permit R-12895), between 2016 and 2018.
25. Permit R-12895, has a competition date of October 1, 2015. Work to develop Reservoir 3 between 2016 to 2018 cannot be considered an additional governmental requirement which delayed the development under this permit because the work was pursued outside of the authorized development timeline provided under Permit R-12895.

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

26. The Application identifies a depressed and uncertain cranberry market as unforeseen events.

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

27. The Application identifies denial of the requested extension would represent an undue hardship for Fugate Farms because they have worked to develop their cranberry operation over the previous 31 years.

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

28. The Application does not provide evidence of reasonable diligence in the development of the permit.

The Department cannot find that the appropriator has acted in good faith in the development of the authorized use under the permit.

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.

29. As of November 14, 2025, the permit holder states work on the Fugate Farm portion of

the permit is complete, an extension of time is needed to allow for a permit amendment to be submitted to correct the location of the point of diversion, and once approved, submit a claim of beneficial use.

30. The Application also identifies throughout that a portion of the property covered by the permit has been sold to Bandon Biota; however, the permit holder has not assigned a portion of the permit to the new land owner. The Application does not identify any work towards the development of cranberry operations on these properties, identified as Tax Lots 100, 201, and 400 (Tax Lot 400 is the only property owned by Bandon Biota which is authorized as a place of use). Utilizing an image dated to September 2024, from Google Earth Pro, no evidence of development of the use on Tax Lot 400 has occurred.

The Department has determined that an extension of time to October 1, 2031, would not be reasonable as it would provide more time to develop a under a permit that was issued 26 years ago, where diligence in the development over the previous decade has not been demonstrated.

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 previously found that an extension of time to October 1, 2024, would have been reasonable and necessary for the permit holder to submit the necessary Permit Amendment Application to alter the permit to reflect the development that actually occurred on the ground, and that the extension of time to October 1, 2024, was only appropriate if the development was limited to the development that occurred by October 1, 2015. The permit holder failed to follow through on the submittal of the permit amendment as required by the Final Order on Extension of Time issued January 22, 2022, and the Application for Extension of Time submitted November 14, 2025, indicates that the development limitation from the Final Order has been exceeded. Additionally, the Application implies that the owners of tax lot 400 may pursue development if an extension of time is approved. As previously determined in the Final Order on Extension of Time issued January 28, 2022, good cause for an extension of time to allow for more development under this permit cannot be found. 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 not 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).

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).

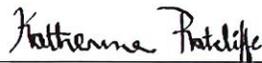
2. The applicant met construction timeline requirements pursuant to ORS 537.230 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
3. The application established that there has been no construction, no financial invest or reasonable diligence towards development in nearly twenty years. The permit holder has not 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).

PROPOSED ORDER

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

Deny the time to apply water to beneficial use under Permit S-53694 from October 1, 2015, to October 1, 2031.

DATED: March 10, 2026



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

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

Protests

Pursuant to OAR 690-315-0060(1), the applicant or any other person adversely affected or aggrieved by the proposed final order may submit a written protest to the proposed final order. Protests must be received by the Water Resources Department no later than **April 17, 2026**, at this address: Oregon Water Resources Department, Water Right Services Division, 725 Summer St NE, Suite A, Salem, OR 97301-1266. Protests may not be submitted by electronic mail. OAR 690-002-0025(3).

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

- The name, address, and telephone number of the protestant
- A detailed description of the protestant's interest in the proposed final order, and, if the protestant claims to represent the public interest, a precise statement of the public interest represented
- A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency

- If the applicant protests, a statement of whether a hearing is requested
- Citation of legal authority supporting the protestant, if known
- Proof of service of the protest on the water right permit holder, if protestant is other than the water right permit holder, and
- If you are the applicant, the protest fee of \$720 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$1,425 required by ORS 536.050.

Within 60 days after the close of the period for requesting a contested case hearing, the Director shall either issue a final order on the extension request, or schedule a contested case hearing if a protest has been submitted, and, upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or, the applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests. The hearing will be conducted as provided in Oregon Revised Statutes (ORS) Chapter 183, and Oregon Administrative Rules (OAR) 137-003-0501 to 137-003-0700.

If the applicant does not request a hearing within 30 days after the close of the protest period, or if the request for a hearing is withdrawn, or the Department or the administrative law judge is notified that the protestant will not appear, or the protestant fails to appear, at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

A party may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active-duty service members have a right to stay 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 800-452-8260, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

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- 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 Will Davidson at 503-507-2749.
 - 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
Salem, OR 97301-1266
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