

**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-54015, Water Right Application S-71040) PROPOSED FINAL
in the name of Goschie Farms Inc.) ORDER

Permit Information

Application:	S-71040
Permit:	S-54015
Basin:	Willamette / Watermaster District 16
Date of Priority:	December 12, 1990
Source of Water:	Abiqua Creek, a tributary of Pudding River
Purpose of Use:	Irrigation of 15.3 Acres
Maximum Rate:	0.19 cubic foot per second (cfs)

***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 complete construction of the water system from October 1, 1999, to October 1, 2020.
- Grant an extension of time to apply water to full beneficial use from October 1, 2000, to October 1, 2020.¹
- Make the extension subject to certain conditions set forth below.

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

¹ Pursuant to ORS 537.230(4), upon the completion of beneficial use of water allowed under the permit, the permit holder shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permit holder shall submit a map of the survey and the claim of beneficial use.

ACRONYM QUICK REFERENCE

Department – Oregon Water Resources Department
ODFW – Oregon Department of Fish and Wildlife
PFO – Proposed Final Order
cfs – cubic feet per second
POD – Point of Diversion
COBU – Claim of Beneficial Use and Site Report

AUTHORITY

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

ORS 537.230(3) 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) 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(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 February 26, 1997, Permit S-54015 was issued by the Department. The permit authorizes the use of up to 0.19 cfs of water from Abiqua Creek, a tributary of Pudding River, for irrigation of 15.3 acres. The permit specified actual construction was to begin within one year from permit issuance, being February 26, 1998 and construction of the water system was to be completed by October 1, 1999, and complete application of water was to be made on or before October 1, 2000.

2. On August 3, 2000, the Department received a Claim of Beneficial Use and Site Report (COBU) under Permit S-54015 in the name of Goschie Farms, Inc.
3. On October 27, 2016, the permit holder, Goschie Farms Inc., submitted an "Application for Extension of Time" (Application) to the Department, requesting the time to complete construction of the water system be extended from October 1, 1999, to October 1, 2020, and the time to apply water to full beneficial use under the terms of Permit S-54015 be extended from October 1, 2000, to October 1, 2020. This is the first permit extension requested for Permit S-54015.
4. On November 1, 2016, notification of the Application for Extension of Time for Permit S-54015 was published in the Department's Public Notice. No public comments were received regarding the extension application.
5. On November 21, 2016, the permit holder submitted additional information to supplement their Application for an Extension of Time. The additional information provided was to clarify the rate water that was diverted under Permit S-54015.

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 537.230², 537.248³ and/or 539.010(5)⁴.

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

6. On October 27, 2016, 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)]

7. Actual construction of the water system began prior to permit issuance. The permit holder states, construction began in 1942 on the common point of diversion which is shared by additional water rights. According to the Department records for Permits S-15913 and S-17554, the common point of diversion was constructed prior to permit issuance.

The Department has determined actual construction of the water system began prior to February 26, 1998.

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

8. The Application states work was accomplished within the time allowed in the permit is as follows:

²ORS 537.230 applies to surface water permits only.

³ORS 537.248 applies to reservoir permits only.

⁴ORS 539.010(5) applies to surface water and ground water permits.

- a. Actual construction of the water system began prior to February 26, 1998, as specified in the permit. Work accomplished includes the construction of the point of diversion (POD) authorized under the permit, and installation of above ground irrigation mainline to convey the water to the authorized place of use.
- b. Work was completed during the original development time frame under Permit S-54015. The work accomplished consisted of construction of two unauthorized PODs including the installation of fish screens and meters, and connection of the unauthorized PODs to the existing mainline and irrigation system. The two unauthorized PODs were approved under Transfer T-6895 and authorized for use under other water rights held by Goschie Farms, Inc.

The Department has determined that work has been accomplished within the time allowed in the permit, which provides evidence of good cause and reasonable diligence from the appropriator towards the complete application of water to a beneficial use.

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:

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

9. The Department has considered the permit holder's compliance with conditions, and did not identify any concerns. The Application states that fish screens and meters were installed on the PODs in 1998.

The Department has determined that this extension will allow the permit holder to submit an application for a Permit Amendment to authorize a change in POD and to add an additional POD, complete construction of the water system, and to apply the water to full beneficial use.

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

10. The Application states a maximum rate of 0.19 cfs of water has been diverted from Abiqua Creek, a tributary of Pudding River for irrigation of 15.3 acres.
11. Beneficial use of water has not yet been demonstrated under this permit because water use under Permit S-54015 has not occurred from an authorized POD.
12. According to the permit holder delay of full beneficial use of water under Permit S-54015 was due, in part, to development of additional PODs under Transfer T-6895 and the utilization of those PODs for Permit S-54015. A Claim of Beneficial Use was

submitted for Permit S-54015 describing the two PODs approved under Transfer T-6895 as the PODs used under this 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.

13. As of October 27, 2016, the permit holder states the remaining work to be completed consists of gaining approval of a Permit Amendment to change the location of the authorized point of diversion (POD) and adding an additional POD, completing construction of the water system and applying water to full beneficial use.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2020, to complete construction of the water system and to accomplish the application of water to beneficial use under the terms and conditions of Permit S-54015 is both reasonable and necessary.

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

14. The Applications states the permit holder has invested about \$5,500, which is the total projected cost for complete development of this project.

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

15. The Department has found good faith of the appropriator under Permit S-54015.

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:

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)].

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 S-54015; 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 the Abiqua Creek, (Tributary of Pudding River) at the mouth (watershed ID #71), shows that no water is available during the months of June through October at the 80% exceedance level.
18. The point of diversion is located on Abiqua Creek, a tributary of Pudding River, and is not located within a Withdrawn Area.
19. Abiqua Creek, a tributary of Pudding River is not located within or above a state or federal scenic waterway.
20. Abiqua Creek, a tributary of Pudding River is located within an area ranked "moderate" 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.
21. The point of diversion is in a location listed by the Department of Environmental Quality as a water quality limited stream. Abiqua Creek, River Mile 3.3 to 20.3, is listed under Water Quality Limited for dissolved oxygen.

Other economic interests dependent on completion of the project [OAR 690-315-0040(4)(e)].

22. The Application does not identify other economic interests dependent on completion of the project.

Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0040(4)(f)].

23. 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. The Department determined a need to condition any use of water under Permit S-54015 with a "Permit Amendment" condition. This condition, specified under Item 1 of the "Conditions" section of this PFO, was determined to be necessary due the use of two unauthorized points of diversion. This condition requires the permit holder submit an application for a Permit Amendment by May 1, 2017, to change the authorized point of diversion and authorize an additional point of diversion as described in the COBU submitted to the Department on August 3, 2000.

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

24. 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)]

25. The Application does not identify that delay in the development of this project was caused by any other governmental requirements.

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

26. According to the permit holder, unforeseen events extended the length of time needed to fully develop and perfect Permit S-54015, in that the permit holder believed they had

developed the permit in accordance with the terms and conditions of the permit. The permit holder submitted a COBU to the Department prior to the completion date authorized under the permit. For unknown reasons the Department did not log the COBU into the system and subsequently the Department did not evaluate the COBU until 2016 when it was discovered that the two PODs being used were not authorized under Permit S-54015.

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

27. The Application did not state if a denial of the extension would result in undue hardship.

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 timeline requirements to begin actual construction as required by ORS 537.230, OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
4. Based on Finding of Facts 8 through 16, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2020⁵, 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 complete construction and apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).
6. As authorized in OAR 690-315-0050(5) and as described in Finding 25 above, the Department has established, as specified in the "Conditions" section of this PFO (Item 1), a "Permit Amendment" condition to ensure future diligence and mitigate the effects

⁵Pursuant 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.

of development of competing demands on the resource. The condition requires the permit holder to submit an application for a Permit Amendment by May 1, 2017, to change the authorized point of diversion and authorize an additional point of diversion as described in the COBU submitted to the Department on August 3, 2000.

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 complete construction of the water system under Permit S-54015 from October 1, 1999 to October 1, 2020.

Extend the time to apply water to beneficial use under Permit S-54015 from October 1, 2000 to October 1, 2020.

Subject to the following conditions:

CONDITIONS

1. Permit Amendment Condition

The use of any water under S-54015 is subject to this Permit Amendment Condition. The permit holder shall apply for a Permit Amendment to change the authorized POD and add an additional POD to the locations described in the COBU submitted to the Department on August 3, 2000, by May 1, 2017.

DATED: January 10, 2017


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.*

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 **February 24, 2017**, 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 Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <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) 986-0802.
 - 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 Right Services Division
 725 Summer St NE, Suite A
Fax: 503-986-0901 Salem, OR 97301-1266
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