

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-55164, Water Right Application S-71040) FINAL
in the name of Goschie Farms Inc.) ORDER

Permit Information

Application:	S-71040
Permit:	S-55164
Basin:	Middle Willamette / Watermaster District 16
Date of Priority:	December 12, 1990
Source of Water:	Abiqua Creek, a tributary of Pudding River
Purpose or 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, 2020, to October 1, 2021.
- Grant an extension of time to apply water to full beneficial use from October 1, 2000 or October 1, 2020, to October 1, 2021.¹
- 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(5), upon the completion of beneficial use of water allowed under the permit, the permit holder shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permit holder shall submit a map of the survey and the claim of beneficial use.

ACRONYM QUICK REFERENCE

Application – Application for Extension of Time
Department – Oregon Water Resources Department
ODFW – Oregon Department of Fish and Wildlife
PFO – Proposed Final Order
FOF – Finding of Fact
cfs - cubic foot 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) 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 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 by 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. The COBU identified 15.3 acres of irrigation had been developed, from two unauthorized points of diversion.

3. One prior permit extension has been granted for S-54015. The extension request resulted in the completion dates for construction and full application of water being extended from October 1, 2000, to October 1, 2020. The extension of time was conditioned to require the submittal of an Application for a Permit Amendment requesting the authorized points of diversion be changed to the two points of diversion being utilized by the water user.
4. On August 24, 2018, the Department approved Permit Amendment T-12600 (Special Order Volume 109, Page 191) authorizing a change in the point of diversion under Permit S-54015. Superseeding Permit S-55164 was issued to reflect the changes.
5. On March 10, 2021, 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, 2020, to October 1, 2025, and the time to apply water to full beneficial use under the terms and conditions of Permit S-55164 be extended from October 1, 2020, to October 1, 2025.
6. On March 30, 2021, notification of the Application for Permit S-55164 was published in the Department’s Public Notice. No public comments were received.

Review Criteria [OAR 690-315-0040]

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

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

7. On March 10, 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)]

8. 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.

Based on Findings of Fact (FOF) 8, the Department has determined the permit holder began construction prior to February 26, 1998.

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 permit or previous extension.²

9. 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.
10. During the original development time frame under Permit S-54015, work accomplished includes construction of two PODs including the installation of fish screens and meters, and connection of the unauthorized PODs to the existing mainline and irrigation system.
11. During the most recent extension period, being from October 1, 2000, to October 1, October 1, 2020, no additional work was accomplished.

The Department has determined that no additional work on the completion of the water system was accomplished during the most recent extension of time period. The Department recognizes that the previous extension of time was granted to allow for a Permit Amendment to authorize the two points of diversion utilized by the water user, and that development of the water system was complete.

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

The water right permit holder’s conformance with the permit or previous extension conditions. If all conditions have been met.

12. The Department has considered the permit holder’s compliance with conditions according to the Application, and has identified the following concern; the record does not show that a meter or other suitable measuring device has been installed on POD 2.
13. The COBU submitted on August 3, 2000, and the Application for Extension of Time submitted October 27, 2016, identify that meters had been installed in 1998.

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

The Department has determined that the permit holder has not demonstrated compliance with permit conditions as required by Permit S-55164.

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

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

14. The Application identifies maximum rate of 0.19 cfs of water has been diverted from Abiqua Creek, a tributary of Pudding River for irrigation of 10.7 acres under the new permit S-55164.
15. According to the COBU submitted on August 3, 2000, and the Application for Extension of Time submitted October 27, 2016, 0.19 cfs of water has been diverted from two points of diversion for irrigation of 15.3 acres.
16. A delay of full beneficial use of water, incompliance with the terms and conditions under Permit S-55164 was due to no meter being installed on POD 2.

The Department has determined that beneficial use of water, in compliance with the terms and conditions of the permit, has not yet been demonstrated from POD 2 under this permit because not all permit conditions were satisfied by October 1, 2020.

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

17. The permit holder has invested approximately \$5,500, which is about 2.83 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$15,000 investment is needed for the completion of this project. This cost includes the development of 4.7 acres for irrigation.
18. A review of the file, and previous applications and submittals, the Department has identified the only work left to be accomplished is the installation of the required meter at POD 2. The Application identifies the cost of this to be \$800.

The Department has determined that the permit holder had made an investment. No investment has been made in additional construction under the permit during the most recent extension of time period.

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

The Application provides evidence of progress towards completion of the water system; a financial investment has been made; the permit holder has not demonstrated compliance with all permit conditions, and; however, beneficial use has been demonstrated from POD 1. The Department has determined the applicant has demonstrated the minimum necessary for the Department to find reasonable diligence towards complete application of water to a beneficial use.

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

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

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

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

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

19. 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-55164; 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.
20. Current Water Availability Analysis for Abiqua Creek, (Tributary of Pudding River) at the mouth (watershed ID 71) show that no water is available during the months of June, July, August, September, and October 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).

21. The points of diversion are located on Abiqua Creek, a tributary of Pudding River, and are not located within a Withdrawn Area.
22. The Abiqua Creek, a tributary of Pudding River is not located within or above a state or federal scenic waterway.
23. The points of diversion are in a location listed by the Department of Environmental Quality as a water quality limited stream for temperature and dissolved oxygen.

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.

24. Abiqua Creek, a tributary of Pudding River 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.

25. An approximate total of \$5,500 has been invested in the project.

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

Other economic interests dependent on completion of the project.

26. Other economic interests dependent on the completion of the project have not been identified.

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

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

27. 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)]

28. 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 690-315-0042(2)(g)]

29. Delay in the development of this project that was not caused by other governmental requirements have not been identified.

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

30. Unforeseen events extended the length of time needed to fully develop and perfect Permit S-55164, in that the COVID-19 pandemic interfered with development.

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

31. A denial of the extension would result in undue hardship, and there are no other reasonable alternatives exist for meeting water use needs. The farm is located within the Mt. Angel Limited Ground Water Area, and new ground water permits are not available.

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

32. Though no work was accomplished during the most recent extension of time period, the permit holder did submit the required permit amendment timely, and in compliance with the conditions set forth in the previous extension of time.
33. The Application provides evidence of good faith of the appropriator under Permit S-55164.

Based on FOF 32, the Department has determined that the applicant has shown minimal good faith and reasonable diligence, enough to allow for a limited extension of time.

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.

34. As of March 10, 2021, the permit holder states the remaining work to be completed consists of installing a meter on POD 2, and developing 4.7 acres for irrigation.
35. The COBU submitted on August 3, 2000, and the Application for Extension of Time submitted October 27, 2016, identify 0.19 cfs of water has been diverted from two points of diversion for irrigation of 15.3 acres.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2025, 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-55164 is not reasonable or necessary. The Department has determined that an extension of time to October 1, 2021, is sufficient for the permit holder to demonstrate compliance with the terms and conditions of the permit, and is both reasonable and necessary.

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

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

The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and fair and reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which

the permit holder had no control, whether denial of the extension will result in undue hardship to the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant has shown that good cause exists for a limited extension of time to complete construction and apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

A review of the record identifies that the entire place of use authorized by this permit have been developed, and an extension of time is need only to allow for demonstration of compliance with the permit condition requiring the installation of a meter. The permit holder submitted the required permit amendment within the time required, and the permit amendment was approved August 24, 2018, providing over two years after the points of diversion were approved to install the required meters. Additionally, Permit S-54015 was originally authorized on February 26, 1997, with the previous extension of time to October 1, 2020, providing more than 23 years to develop the permit. Taking this into consideration, the Department has determined there is good cause for an extension of time to October 1, 2021.

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. Based on FOF 1, 2, 3, 11, 12, 13, 15, 16, 18, 32, and 35, the Department determined the need to place a “Last Extension Condition” 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 1 of the “Conditions” section of this PFO, was determined to be necessary due to the amount of time already authorized for development under this permit, previous information submitted for this permit demonstrates the entire place of use has already been developed, and the remaining work to be completed to develop the permit is limited to the need to install the required meter.

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 8, through 35, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2021³, as required by OAR 690-315-0040(1)(c).

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

4. The Applicant can complete the project within the time period requested for the extension on the project.
5. The Applicant has demonstrated good cause for the extension, but the extension must be conditioned to ensure this is the last extension granted in order to ensure future diligence; 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 complete construction of the water system under Permit S-55164 from October 1, 2020, to October 1, 2021.

Extend the time to apply water to beneficial use under Permit S-55164 from October 1, 2020, to October 1, 2021.

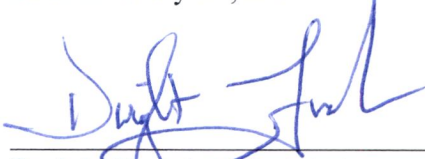
Subject to the following conditions:

LIMITATIONS AND CONDITIONS

1. **Last Extension Condition**

This may be the last extension of time granted for Permit S-55164. Any future extensions of time request shall be denied, unless the permit holder can provide the Department with evidence that diligence is shown during this extension period, and that installation of the required meter did not occur for reasons beyond the control of the permit holder. In addition, all normal extension standards and rules will be evaluated. ORS 539.010(5); OAR 690-315-0040.

DATED: July 27, 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.*

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 **September 10, 2021**, 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.

