



## **ACRONYM QUICK REFERENCE**

Application – Application for Extension of Time  
Department – Oregon Department of Water Resources  
FOF – Finding of Fact  
PFO – Proposed Final Order  
cfs – cubic feet per second

## **AUTHORITY**

Generally, see ORS 537.630 and OAR Chapter 690 Division 315.

**ORS 537.630(2)** provides in pertinent part that the Oregon Water Resources Department (Department) for good cause shown shall order and allow an extension of time within which irrigation or other works shall be completed or the right perfected. In determining the extension, the Department shall give due weight to the considerations described under ORS 539.010(5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

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

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

## **FINDINGS OF FACT**

1. On December 18, 2008, Permit G-16421 was issued by the Department. The permit authorized the use of up to 14.9 cfs of water from Well 1, Well 2, Well3, Well 4, and Well 5, in Clover Creek Basin for irrigation use on 1191.0 acres. The permit specified construction of the water system was to be completed by October 1, 2013, and complete application of water was to be made on or before October 1, 2013.
2. On March 28, 2014, the Department issued a Final Order approving a permit extension for Permit G-16421. The extension request resulted in the completion dates for construction and full application of water being extended from October 1, 2013, to October 1, 2023.
3. On December 5, 2014, the Department approved Permit Amendment T-11855 (Special Order Volume 93, Page 921) authorizing a change in the place of use under Permit G-16421 (modified by Permit Amendment T-11855). Superseding Permit G-17327 was issued by the Department on December 5, 2014, to reflect the changes.

4. On September 12, 2016, the Department approved Permit Amendment T-12295 (Special Order Volume 101, Page 789) authorizing a change in the place of use under Permit G-17327 (modified by Permit Amendment T-12295). Superseding Permit G-17645 was issued by the Department on September 12, 2016, to reflect the changes.
5. On December 19, 2024, a partial assignment from Heffernan Family Trust to Green Bravo II, LLC was recorded in the records of the Water Resources Department.
6. On March 19, 2025, the permit holder submitted an “Application for Extension of Time” (Application) to the Department, requesting both the time to complete construction of the water system and the time to apply water to full beneficial use under the terms and conditions of Permit G-17645 be extended from October 1, 2023 to October 1, 2035. This is the first permit extension requested for Permit G-17645.
7. On March 25, 2025, notification of the Application for Extension of Time for G-17645 was published in the Department’s Public Notice. No public comments were received regarding the extension application.

#### **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)]**

8. On March 19, 2025, 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)]**

9. According to the well log received by the Department on May 18, 2011, construction of UNIO 52292 (Well 3) began March 25, 2011.

The Department has determined that the prosecution of the construction of the well began prior to October 1, 2013.

#### **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.<sup>1</sup>*

10. During the most recent extension period, being from October 1, 2013, to October 1, 2023, the following was accomplished:
  - new pivots, mainline and pivot end gun were installed.

The Application provides evidence of progress of physical work made towards completion of the water system, enough to qualify as the minimum necessary for the Department to find good cause and reasonable diligence towards complete application of water to a beneficial use. However, no investment in the development of additional acres of irrigated land has occurred since 2016.

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

*The water right permit holder’s conformance with the permit and previous extension conditions.*

11. The Department has considered the permit holder’s compliance with conditions, and did not identify any concerns.

The Department has determined that the permit holder has demonstrated compliance with permit conditions as required by Permit G-17645.

**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 8.3 cfs of water has been appropriated from Well 3 for irrigation of 670.0 acres.
13. The Application identifies delay of full beneficial use of water under Permit G-17645 was due, in part, to Green Bravo II, LLC acquiring the underlying property in 2019, but the lack of capital improvement resources prevented progress from being made.

Beneficial use of water has been demonstrated under this permit as all permit conditions were satisfied by October 1, 2023.

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<sup>1</sup> “**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.

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

14. The Application identifies an investment of \$637,386 has been made. The costs included items associated with Permit Amendment Applications, repair and maintenance costs (new pump motor, pump rebuild, motor rebuild) of a system which are not “actual construction” under this permit and therefore are not counted towards development. After deducting these costs, the approximate total investment for “actual construction” to date is approximately \$581,386 which is about 23 percent of the total projected cost for complete development of this project. An additional \$1,900,000 investment is needed to complete this project, which includes developing the remaining 521.0 acres for irrigation, and constructing additional wells.

Based on FOF 14, the Department has determined that the permit holder had made an investment, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

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

The Application provides evidence that work has been accomplished towards completion of the water system; the permit holder has demonstrated compliance with permit conditions, and; beneficial use of water has been demonstrated. The Department has determined the applicant has demonstrated reasonable diligence in previous performance under Permit G-17645.

**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.

15. 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-16421; 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.

**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 appropriation for Permit G-17645, located within the Clover Creek Basin, are not located within a limited or critical groundwater area.
17. Clover Creek is not located within or above any state or federal scenic waterway.
18. The points of appropriation are not in an area listed by the Department of Environmental Quality as a water quality limited stream.

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

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

19. Clover Creek is 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 is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife.

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

Economic interests dependent on completion of the project.

20. An approximate total of \$581,386 has been invested in the project.

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

Other economic interests dependent on completion of the project.

21. The Application identifies the agricultural economy would be adversely affected if the extension of time is denied.
22. The Application does not identify any additional economic interests that are directly dependent on the full development of the authorized use.

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

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

23. Permit G-17645 includes a condition requiring the submittal of static water level measurements annually in the month of March. The condition provides that; “The water user shall not allow excessive decline, as defined in Commission Rules, to occur within the aquifer as a result of use under this permit.”
24. Static Water Level Measurements taken between March 2012 and March 2023, reveal a decline of the static water level in UNIO 52292 of more than 154.0 feet.
25. Oregon Administrative Rule 690-008-001(7) defines “excessively declining water levels” as ongoing lowering of the water level in a groundwater reservoir or part thereof which: (a) Precludes, or could preclude, the perpetual use of a reservoir; or (b) Represents an average downward trend of three or more feet per year for at least 10 years; or (c) Represents, over a five year period, an average annual lowering of the water level by 1% or more of the initial saturated thickness as determined by observation or investigation in the affected area; or (d) Results in water quality deterioration.

Based on FOF 23, 24, and 25, the Department has determined the water use has allowed for excessive decline to occur within the aquifer as a result of use under the permit. Because of these aquifer declines, the Department has determined that the resource cannot support additional development of water to irrigate the undeveloped 521.0 acres.

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

26. 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)]**

27. Delay in the development of this project was not caused by any other governmental requirements.

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

28. The Application identifies the following as unforeseen events:
  - a. The purchase of the property in 2019 slowed down the water right development;
  - b. the economic downturn experienced as a result of the COVID-19 Pandemic; and
  - c. the loss of the use of Well 3 due to unsustainable water level declines.

The Department has considered the above events, and has determined; 1) the purchase of the property in 2019 is a business decision, and is not an unforeseen event; 2) that the COVID-19 pandemic did result in a delay in development, but the permit has been afforded sixteen years for development as of the current date for complete application of water, being October 1, 2024; and the loss of use from Well 3 due to unsustainable water level declines has been apparent for more than a decade, and is not an unforeseen event.

**Denial of the Extension Will Result in Undue Hardship [OAR 690-315-0040(2)(i)]**

29. The Application states; “A denial of the extension would preclude the opportunity to fully develop the permit and exact a huge loss of long-term revenue and investment returns from the 520 acres of undeveloped authorized place of use. As described further in response to Question 14b, there is no alternative water source for this property, and denial of the extension would mean that the property will have to be farmed as dryland. As discussed further in response to Question 19, dryland is less economically productive than irrigated land, and denial of the extension would result in the loss of productive farmland, which will directly result in lost revenue for the Permittees and local community.”

The Department has considered the above information, and does not dispute that a denial would result in the loss of irrigation to approximately 520.0 acres of land, however, due to excessive declines associated with the use of water from Well 3, additional development under the permit cannot be supported by the resource.

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

30. The Application provides evidence of work accomplished towards the development of the beneficial use, however, the application does not identify any work towards the development of additional irrigated acres after 2016.
31. The Application does indicate that the permit holder recognizes that excessive declines have occurred in Well 3, and the use from that well is unsustainable.

**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 March 19, 2025, the remaining work to be completed consists of constructing additional wells, and apply water for irrigation to the remaining 521.0 acres.

The Department has determined that the resource cannot support additional development of irrigated acres, therefore, the water user cannot complete the development by October 1, 2035, as requested.

**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 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).

## CONCLUSIONS OF LAW

1. The permit holder 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 permit holder has complied with the time allowed for construction work under the permit pursuant to ORS 537.630 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
3. 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 complete construction of the water system under Permit G-17645 from October 1, 2023, to October 1, 2035.

Deny the time to apply water to beneficial use under Permit G-17645 from October 1, 2023, to October 1, 2035.

DATED: April 29, 2025

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

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

### Protests

Pursuant to OAR 690-315-0060(1), the applicant or any other person adversely affected or aggrieved by the proposed final order may submit a written protest to the proposed final order. Protests must be received by the Water Resources Department no later than **June 13, 2025**, at

this address: Oregon Water Resources Department, Water Right Services Division, 725 Summer St NE, Suite A, Salem, OR 97301-1266. Protests may not be submitted by electronic mail. OAR 690-002-0025(3).

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

- The name, address, and telephone number of the protestant
- A detailed description of the protestant's interest in the proposed final order, and, if the protestant claims to represent the public interest, a precise statement of the public interest represented
- A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency
- If the applicant protests, a statement of whether a hearing is requested
- Citation of legal authority supporting the protestant, if known
- Proof of service of the protest on the water right permit holder, if protestant is other than the water right permit holder, and
- If you are the applicant, the protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$950 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





Mailing List for Extension PFO Copies

PFO Date: April 29, 2025

Copies Mailed

Application: G-16902

By: \_\_\_\_\_

Permit: G-17645

On: \_\_\_\_\_

Original mailed to Applicant:

Green Bravo II, LLC  
One Embarcadero Center, Suite 3860  
San Francisco, CA 94111

Copies sent to:

1. WRD - App. File G-16902/ Permit G-17645
2. HEFFERNAN FAMILY TRUST  
63600 VIEWPOINT LANE  
NORTH POWDER, OR 97867
3. Adam Sussman, GSI

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 8, Marcy Osborn
6. WRD – ER Regional Manager, Jason Spriet

CASEWORKER: JDP