

**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 G-15205, Water Right Application G-15271, in            )  
the name of Townsend HB, LLC    )     PROPOSED FINAL ORDER

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Permit Information

Application:                G-15271  
Permit:                     G-15205  
Basin:                     2C – Lower Willamette / Watermaster District 18  
Date of Priority:         December 26, 2000  
Source of Water:         A well in Bausch Creek Drainage  
Purpose or Use:         Irrigation of 62.3 acres  
Maximum Rate:         0.446 cubic foot per second (cfs)

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***Please read this Proposed Final Order in its entirety.***

*In Summary, the Department proposes to:*

- Grant an extension of time to apply water to full beneficial use from October 1, 2015, to October 1, 2023<sup>1</sup>.

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.630 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315.

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<sup>1</sup>Pursuant to ORS 537.630(4), 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.

## **ACRONYM QUICK REFERENCE**

Agent – Eric Urstadt  
Application – Application for Extension of Time  
Department – Oregon Department of Water Resources  
FOF – Finding of Fact  
PFO – Proposed Final Order  
Well 1 – WASH 56924  
cfs – cubic foot per second

## **AUTHORITY**

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

**ORS 537.630(1)** 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) contain the factors that the Department must consider to make findings that support a “good cause” determination.

## **FINDINGS OF FACT**

1. On September 17, 2002, Permit G-15205 was issued by the Department. The permit authorizes the use of up to 0.446 cfs of water from a well in Bausch Creek Drainage for irrigation of 62.3 acres. The permit specified complete application of water was to be made on or before October 1, 2006.
2. One prior permit extension has been granted for Permit G-15205. The most recent extension request resulted in the completion date for full application of water being extended from October 1, 2006, to October 1, 2015.
3. On February 25, 2014, an assignment by proof from Sang Lee and Guk Lee to Townsend HB, LLC was recorded in the records of the Water Resources Department.

4. On February 15, 2017, the permit holder, Townsend HB, LLC, submitted an "Application for Extension of Time" (Application) to the Department, requesting the time to apply water to full beneficial use under the terms and conditions of Permit G-15205 be extended from October 1, 2015, to October 1, 2023.
5. On February 21, 2017, notification of the Application for Permit G-15205 was published in the Department's Public Notice. No public comments were received regarding the 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)**

6. On February 15, 2017, the Department received a completed Application and the fee specified in ORS 536.050 from the permit holder.

**Start of Construction OAR 690-315-0040(1)(b) and 690-315-0040(5)**

7. Construction of the well began prior to permit issuance. The permit holder states, construction began January 16, 2001.
8. According to the well log received by the Department on January 19, 2001, construction of Well WASH 56924 (Well 1) began January 8, 2001.

Based on Finding of Fact (FOF) 7 and 8, the Department has determined that the prosecution of the construction of the well began prior to October 1, 2006, as specified in Permit G-15205.

**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.<sup>2</sup>)

9. During the most recent extension period, being from October 1, 2006, to October 1, 2015, the following was accomplished:
- established electrical service to the Well 1;
  - bored and installed pipeline under county road;
  - installed secondary pump, meter, and irrigation lines.

Based on FOF 9, the Department has determined, that work has been accomplished during the last extension period, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use .

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

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

10. The Department has considered the permit holder's compliance with conditions, and has identified compliance with the following conditions: 1) installation of a flow meter or other suitable device; 2) submittal of annual water use reports; 3) submittal of an initial March static water level measurement; and 4) submittal of annual March static water levels.

Based on FOF 10, the Department has determined that the permit holder has demonstrated compliance with the above permit conditions as required by Permit G-15205.

11. The Department has considered the permit holder's compliance with conditions, and has identified the following concern; Well 1 was not continuously cased and continuously sealed to a minimum depth of 20 feet into hard dense basalt.

Based on FOF 11, the Department has determined that the permit holder has not demonstrated compliance with all permit conditions as required by Permit G-15205.

Failure to comply with permit conditions constitutes illegal use of water. In order to legally perfect the use of water under this permit, the permit holder must demonstrate that all conditions of the permit have been satisfied.

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<sup>2</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.

**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. The Application states a maximum rate of 0.446 cfs of water has been appropriated from Well 1 for irrigation of 62.3 acres.
13. According to the permit holder, delay of beneficial use of water under Permit G-15205 was due, in part, the permit holder's belief that all conditions of the permit had been satisfied. It was not until Department review of the Claim of Beneficial Use that Well 1 was not constructed in accordance with permit conditions.

Based on FOF 11 and 12, the Department has determined that beneficial use of water has not yet been demonstrated under this permit because not all permit conditions were satisfied by October 1, 2015.

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

14. The Application states the permit holder has invested about \$164,500, which is approximately 72 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional \$65,000 investment is needed for the completion of this project.

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 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; beneficial use has not been demonstrated. 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.*

**The amount of water available to satisfy other affected water rights and scenic waterway flows OAR 690-315-0040(4)(a)**

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-15205; 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.

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

16. The point of appropriation for Permit G-15205, located within the Bausch Creek Basin, is not located within a limited or critical groundwater area.
17. Bausch Creek is not located within or above any state or federal scenic waterway.
18. The point of appropriation is not in an area listed by the Department of Environmental Quality as a water quality limited stream.

**The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife OAR 690-315-0040(4)(c)**

19. It 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.

**Economic interests dependent on completion of the project OAR 690-315-0040(4)(d)**

20. The Application states an approximate total of \$164,500 has been invested in the project.

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

21. The Application identifies other economic interests are dependent on completion of the project. Townsend Farms employs 300 full time employees and 2,000 seasonal employees.

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

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 Application states that Townsend Farms expects an annual income of approximately \$250,000 from the acres irrigated under this permit, and expect the return on investment to be one year once the land is put into full production.

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

24. The Application states that the permit holder believes that, in part, the Department is responsible for the well construction condition not being met in that the Department did not determine Well 1 did not meet the construction condition until after the completion date had passed.

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

25. According to the permit holder, unforeseen events extended the length of time needed to fully develop and perfect Permit G-15205, the permit holder believed that the well was constructed to the conditions of Permit G-15205.

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

26. The Application states that a denial would result in a significant hardship, in that the permit holder has invested nearly \$1,000,000 into the development of the property, and denial of this extension would result in the loss of the entire water right. The permit holder states there are no other reasonable alternative sources to meet their water demand.

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

27. The Application provides evidence of good faith of the appropriator under Permit G-15205.

Based on FOF 7, 8, 9, 10, 12, 14 and 27, the Department has determined that the applicant has shown good faith and reasonable diligence.

**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.*

28. As of February 15, 2017, the Application states the remaining work to be completed consists of gaining approval, if necessary, of a Permit Amendment for an additional point of appropriation, completing construction of the water system which includes drilling a new well, and potentially drilling additional wells, meeting all permit conditions, 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, 2023, to accomplish the application of water to beneficial use under the terms and conditions of Permit G-15205 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 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 has complied with the construction timeline requirements to begin construction as required by ORS 537.630, OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
3. Based on Finding of Facts 7 through 27, full application of water to beneficial use can be accomplished by October 1, 2023, as required by OAR 690-315-0040(1)(c).
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.

### PROPOSED ORDER

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

Extend the time to apply water to beneficial use under Permit G-15205 from October 1, 2015, to October 1, 2023.

DATED: March 28, 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 **May 12, 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.

