

**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 R-15180, Water Right Application R-84459 ) FINAL  
in the name of Bridge Creek Ranch LLC ) ORDER

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**Permit Information**

Application:	R-84459
Permit:	R-15180
Basin:	John Day / Watermaster District 21
Date of Priority:	June 21, 2000
Source of Water:	Bear Creek, a tributary of Bridge Creek and Bridge Creek, a tributary of John Day River
Storage Facility:	Painted Hills Reservoir
Purpose or Use:	Stored water in - Irrigation of Fish Life Acres
Maximum Volume:	500.0 acre-feet (AF)

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***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 apply water to full beneficial use from July 29, 2021, to October 1, 2026.<sup>1</sup>
- 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

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<sup>1</sup> 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  
AF - acre-feet

## **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(6)** requires the Department, for extensions exceeding five years, to establish checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between checkpoints will not exceed five year periods.

## **FINDINGS OF FACT**

1. On July 29, 2016 Permit R-15180 was issued by the Department. The permit authorizes the storage of up to 500.0 AF of water in Painted Hills Reservoir from the Bear Creek, a tributary of Bridge Creek and Bridge Creek, a tributary of John Day River, for Fish Life. The permit specified the permitted volume of water shall be stored within five years of the date of permit issuance, being July 29, 2021.
2. On May 26, 2021, Bridge Creek Ranch LLC, submitted an “Application for Extension of Time” (Application) to the Department, requesting the time by which water development will be completed and water put to full beneficial use under the terms and conditions of

Permit R-15180 be extended from July 29, 2021, to October 1, 2026. This is the first permit extension requested for Permit R-15180.

**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)]**

3. On May 26, 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)]**

4. Construction of the reservoir began prior to permit issuance.
5. According to the Application for a Permit to Construct a Reservoir submitted to the Department on June 21, 2000, the request was to enlarge the existing Painted Hills Reservoir, originally constructed under Permits R-7015, and R-9896.

Based on Findings of Fact (FOF) 4, and 5, the Department has determined the permit holder began construction prior to July 29, 2021.

**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.*

**continued on following page**

**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>2</sup>*

6. Construction of the reservoir began prior to July 29, 2021.
7. During the original development time frame under Permit R-15180, work on the expansion of the reservoir was completed, including the construction of a pipeline from Bear Creek, to the reservoir, raising the earthen dam, construction of a new spillway, and installation of headgates, fish screens, gaging stations, meters, and monitoring stations,

The Application provides evidence that progress of physical work, enough to qualify as the minimum necessary, has been made towards completion of the water system for the Department to find good cause and reasonable diligence towards 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 conditions.*

8. The Department has considered the permit holder's compliance with conditions, including mitigation requirements, and did not identify any concerns.

Based on FOF 8, the Department has determined that the permit holder has demonstrated compliance with permit conditions as required by Permit R-15180.

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

*The amount of beneficial use made of the water during the permit time.*

9. No water has been stored from the Bear Creek, a tributary of Bridge Creek and Bridge Creek, a tributary of John Day River, under Permit R-15180
10. A delay of full beneficial use of water under Permit R-15180 was due, in part, to insufficient flows in Bridge Creek during the limited storage period authorized by the permit, being April 1, through April 14 of each year, after the completion of the expansion of the capacity of the reservoir was completed. The permit holder needs more time in which to store the authorized volume of water.

Based on FOF 9, the Department has determined that beneficial use of water has not yet been demonstrated under this permit because no water has been stored under this permit.

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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.

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

11. An approximate total of \$1,151,758 has been invested. The costs included items associated with engineering, consultation, and additional permits, 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 \$852,160, which is the total projected cost for complete development of this project. The extension of time is necessary to allow for the complete storage of the authored volume of 500.0 AF of water during the limited authorized storage period of April 1, through April 14, of each year.

Based on FOF 11, 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 demonstrated compliance with all permit conditions, however; beneficial use has not been demonstrated. The Department has determined the applicant has demonstrated 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.

12. 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 R-15180; 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.
13. Current Water Availability Analysis for the Bridge Creek, (Tributary of John Day River) at the mouth (watershed ID 204) show that water is available only during the months of May and June at the 50% 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).

14. The points of diversion are located on Bear Creek, a tributary of Bridge Creek, and Bridge Creek, a tributary of John Day River, and are not located within a Withdrawn Area.
15. The Bear Creek, a tributary of Bridge Creek, and Bridge Creek, a tributary of John Day River are located above the John Day River Scenic Waterway.
16. The points of diversion are in a location listed by the Department of Environmental Quality as a water quality limited stream for BioCriteria, Sedimentation and Temperature.

**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.

17. Bear Creek, a tributary of Bridge Creek, and Bridge Creek, a tributary of John Day River are 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 are 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.

18. An approximate total of \$1,151,758 has been invested in the project.

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

Other economic interests dependent on completion of the project.

19. Portions of the funding to complete this project was supplied by Oregon Water Resources Department Water Supply Development Account Grant funds, because of the benefit provided by the discharge of this water under Permit S-55289, during low flows.
20. Riparian areas surrounding Bear Creek, Bridge Creek, and Paint Hills Reservoir have been restored with grant money provided by Oregon Watershed Enhancement Board, and Wheeler Soil and Water Conservation District.
21. Federal Funding has been provided to establish the Bear Creek Pipeline, which is used to discharge water from Painted Hills Reservoir during times of low flow.

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

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

22. OAR 690-315-0050(6) requires the Department to place a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A “Checkpoint Condition” is specified under Item 1 of the “Limitations and Conditions” section of this PFO to meet this condition.

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

23. The project will provide a reasonable return on investment by providing enhanced aquatic habitat in Bridge Creek, and riparian improvements along Bridge Creek and Bear Creek. Additionally, this project is one component of a larger project to increase efficiency of irrigation on lands irrigated by the permit holder.

**Other Governmental Requirements [OAR 690-315-0042(2)(g)]**

24. The delay in the timely completion of the development of the project and/or timely application of water to full beneficial use was caused, in part, by additional government requirements. During the process of securing grant funding, additional requirement arose, which needed to be addressed prior to receiving funding, including requirements by the Department for the permit holder to acquire a secondary permit for the release of water from the reservoir for fish life. Grant funding was held up issuance of Permit S-55289, delaying the completion of the expansion of Painted Hills Reservoir.

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

25. Unforeseen events extended the length of time needed to fully develop and perfect Permit R-15180, in that the permit holders were faced with serious health issues that restricted their ability to complete development of the project in a timely manner. The delay in

grant funding, followed by low flows in Bridge Creek during the authorized storage period once the project was completed prevented the storage of water under this permit.

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

26. A denial of the extension would result in undue hardship, and there are no other reasonable alternatives exist for meeting water use needs. Construction is completed under this project. An extension of time is necessary only to allow for full storage of the authorized volume of water during the limited storage season. A denial of the extension of time would result in the loss of investment by multiple partners, and would not allow for the improvement in aquatic habitat that would result from the complete development of this project.

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

27. The Application provides evidence of good faith of the appropriator under Permit R-15180.

Based on FOF 4, 5, 6, 7, 8, 11, and 18, 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 May 26, 2021, the permit holder states the remaining work to be completed consists of 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, 2026, to accomplish the complete storage of the authorized volume of water, and application of water to beneficial use under the terms and conditions of Permit R-15180 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 complete construction and apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

### **LIMITATIONS AND CONDITIONS**

1. OAR 690-315-0050(6) requires a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A “Checkpoint Condition” is specified under Item 1 of the “Conditions” section of this PFO to meet this condition.

### **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 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 4, through 27, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2026<sup>3</sup>, 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.
6. For extensions exceeding five years, the Department shall establish progress checkpoints to determine if diligence is being excised in the development and perfection of the water use permit. Intervals between progress check points will not exceed five years periods, as required by OAR 690-315-0050(6).

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<sup>3</sup>Pursuant 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.

## 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 R-15180 from July 29, 2021, to October 1, 2026.

Subject to the following conditions:

### LIMITATIONS AND CONDITIONS

#### 1. Checkpoint Condition

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2025**. *A form will be enclosed with your Final Order.*

(a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;

(b) The Department shall provide notice of receipt of progress reports in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

DATED: August 17, 2021



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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 **October 1, 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.

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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  
Salem, OR 97301-1266  
Fax: 503-986-0901
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Mailing List for Extension PFO Copies

PFO Date: August 17, 2021

Copies Mailed

Application: R-84459

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

Permit: R-15180

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

Original mailed to Applicant:

Bridge Creek Ranch LLC  
355 Goodpasture Island Rd.  
Eugene, OR 97401

Copies sent to:

1. WRD - App. File R-84459/ Permit R-15180
2. Agents or CWRE's representing the Permit Holder
3. Other permit holders of record besides applicant

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 21, Ken Thiemann

CASEWORKER: JDP