

FINDINGS OF FACT

Application History

1. On March 25, 2020, Foley Family Farms LP filed a complete application for the following water use:
 - Source:** REIMER RESERVOIR, CONSTRUCTED UNDER PERMIT R-2147, TRIBUTARY TO YAMHILL RIVER, AND AN UNNAMED STREAM, TRIBUTARY TO YAMHILL RIVER
 - Use:** IRRIGATION OF 69.3 ACRES
 - Period of Use:** MARCH 1 THROUGH OCTOBER 31 FROM STORED WATER AND MARCH 1 THROUGH MAY 31 FROM LIVE FLOW
 - Rate:** 34.65 ACRE-FEET (AF) FROM STORED WATER AND 0.87 CUBIC FOOT PER SECOND (CFS) FROM LIVE FLOW
 - County:** POLK COUNTY
 - Place of Use:** SECTIONS 3 AND 4, TOWNSHIP 7 SOUTH, RANGE 5 WEST, W.M.
2. On June 12, 2020, the Department mailed the applicant notice of its Initial Review, determining that the diversion of 34.65 acre-feet (AF) of stored water from Reimer Reservoir, constructed under Permit R-2147, tributary of Yamhill River, for irrigation of 69.3 acres March 1 through October 31 of each year, and 0.87 cubic foot per second (CFS) of water from an unnamed stream, tributary of Yamhill River, for irrigation of 69.3 acres March 1 through April 30 of each year is allowable. The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On June 16, 2020, the Department provided notice of the application in its weekly public notice, requesting comments, and providing information for interested persons about obtaining future notices and a copy of the Proposed Final Order.
4. On October 6, 2020, the applicant submitted a revised map identifying the point of diversion from Reimer Reservoir and the point of diversion from the unnamed stream, tributary to Yamhill River.

Presumption Criteria (a) Consistency with Basin Program

5. Irrigation is an allowable use, however irrigation from live flow (an unnamed stream) is limited to November 1 through April 30 under the Willamette Basin Program (OAR 690-502-0100(4)(a)). The use of stored water from Reimer Reservoir is allowable during the full period requested (OAR 690-504-0040(4)(c). ORS 537.153(2); OAR 690-310-0110(1)(a)

Presumption Criteria (b) Water Availability

6. An assessment of water availability at 80% exceedance for the proposed use was completed using the Department's Water Availability Reporting System. A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(a). During the period of use requested, the assessment established that live flow water is available March 1 through May 31 of each year. ORS 537.153(2); OAR 690-310-0150(2)(c)
7. Water is available for further appropriation from water legally stored under Certificate 31005.

Presumption Criteria (c) Injury Determination

8. The proposed use will not injure other water rights. ORS 537.153(2); OAR 690-310-0150(2)(e)

Presumption Criteria (d) Whether the Use Complies with Rules of the Commission

9. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright. ORS 537.153(2)(b); OAR 690-310-0150(2)(b)
10. The proposed use is in an area of the state in which OAR 690-033-0210 thru -0230 and OAR 690-033-0310 thru -0340 apply. These rules establish definitions, additional procedures, and standards to aid the Department in determining whether a proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened, or endangered fish species.

OAR 690-033-0210 Lower Columbia Rules (Below Bonneville Dam)

- A. The proposed use of water is detrimental to the protection or recovery of a threatened or endangered species. OAR 690-033-0220(1)
- B. The proposed use can be conditioned or mitigated to avoid the detriment. OAR 690-033-0220(1)
- C. The application is not presumed to impair or be detrimental to the public interest.

OAR 690-033-0310 Statewide Rules

- A. The proposed use occurs occur in an area that may affect the habitat of sensitive, threatened or endangered fish species. OAR 690-033-0310(2)
- B. The applicant has been notified that based on a preliminary determination, the proposed use may affect the habitat of sensitive, threatened or endangered fish species and the application may be conditioned or denied. OAR 690-033-0330(1)(a)
- C. The interagency review team has been notified that an application has been received in an area that may affect the habitat of sensitive, threatened or endangered fish species. OAR 690-033-0330(1)(b)
- D. The interagency review team was convened to review the application and recommended conditions as necessary to achieve the standards listed in 690-033-0330(2)(a) and (b). The draft permit has conditions numbered 2-6 to protect fish habitat and water quality.

Determination of Presumption that a Proposed Surface Water Use will not Impair or be Detrimental to the Public Interest

Based on the review of the presumption criteria (a)-(d) above, the presumption has been established. ORS 537.153(2); OAR 690-310-0110(1)(a)-(d)

Further Evaluation of the Proposed Use

11. No comments were received by the close of the comment period. OAR 690-310-0120(3)

12. Information available in Department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the proposed use would impair or be detrimental to the public interest under ORS 537.153. OAR 690-310-0120(3)

Other Criteria and Requirements

13. The proposed use is not located within or above a state scenic waterway, as designated under ORS 390.826.
14. The amount requested, 34.65 AF of stored water and 0.87 CFS of live flow water from an unnamed stream, is necessary for the proposed use.
15. The applicant proposed methods to measure the amount of water diverted, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream, or to prevent damage to public uses of any affected surface waters. These measures are adequate at this time. OAR 690-310-0150(2)(j)
16. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

CONCLUSION OF LAW

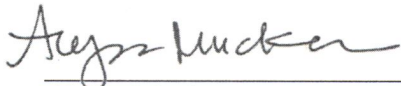
1. The proposed use would not impair or be detrimental to the public interest as described in ORS 537.153(2).

NOTE: When issuing permits, ORS 537.170(6) authorizes the Department to include provisions or restrictions concerning the use, control and management of water to be appropriated for the project.

PROPOSED ORDER

The Department recommends approval of Application S-88827 and issuance of a permit consistent with the attached draft permit.

DATED November 24, 2020



Alyssa Mucken
Water Rights Section Manager, for
Thomas M. Byler, Director
Oregon Water Resources Department

Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), you can protest this Proposed Final Order. Protests must be received by the Water Resources Department no later than **January 8, 2021**.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Protests must be in writing and include the following:

- Your name, address, and telephone number;
- A description of your interest in the Proposed Final Order, and, if you claim 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 your interest;
- A detailed description of how the Proposed Final Order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known;
- To affect the Department's determination that the proposed use in this application will, or will not, impair or be detrimental to the public interest, ORS 537.153(6) requires that a protest demonstrate, by a preponderance of evidence any of the following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) The specific aspect of the public welfare, safety and health under ORS 537.170(8) that would be impaired or detrimentally affected, and specifically how the identified aspect of the public welfare, safety and health under ORS 537.170 (8) would be impaired or be adversely affected;
- If you are the applicant, a protest fee of \$410 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$810 required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing.

Requests for Standing

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), persons other than the applicant who support a Proposed Final Order can request standing for purposes of participating in any contested case proceeding on the Proposed Final Order or for judicial review of a Final Order.

Requests for standing must be received in the Water Resources Department no later than **January 8, 2021**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF POLK

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

FOLEY FAMILY FARMS LP
1701 VILLAGE CENTER CIRCLE
LAS VEGAS NV 89134

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: S-88827

SOURCE	TRIBUTARY TO	VOLUME/RATE	PERIOD OF USE
REIMER RESERVOIR, CONSTRUCTED UNDER PERMIT R-2147	YAMHILL RIVER	34.65 ACRE-FEET	MARCH 1 THROUGH OCTOBER 31
UNNAMED STREAM	YAMHILL RIVER	0.87 CUBIC FOOT PER SECOND	MARCH 1 THROUGH APRIL 30

PURPOSE OR USE OF THE WATER: IRRIGATION OF 69.3 ACRES

DATE OF PRIORITY: MARCH 25, 2020

AUTHORIZED POINTS OF DIVERSION:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD #1 – REIMER RESERVOIR	7 S	5 W	WM	4	NE SE	2280 FEET NORTH AND 520 FEET WEST FROM SE CORNER, SECTION 4
POD #2 – UNNAMED STREAM	7 S	5 W	WM	3	SW SW	1095 FEET NORTH AND 185 FEET EAST FROM SW CORNER, SECTION 3

AUTHORIZED PLACE OF USE:

Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	5 W	WM	3	NW NW	3.6
7 S	5 W	WM	3	SW NW	16.1
7 S	5 W	WM	3	NE SW	15.5
7 S	5 W	WM	3	NW SW	28.4
7 S	5 W	WM	4	NE NE	0.7
7 S	5 W	WM	4	SE NE	2.6
7 S	5 W	WM	4	NE SE	2.4

1. Water Use Measurement, Recording, and Reporting Condition:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion. The permittee shall maintain the device in good working order.
- B. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The permittee shall keep a complete record of the volume of water diverted each month, and shall submit a report which includes water-use measurements to the Department annually, or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

2. Fish Screen Condition:

The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional prior to diversion of any water. Permittee shall obtain written approval from ODFW that the installation of the required screen and by-pass devices meets the state's criteria or the permittee shall submit documentation that ODFW has determined screens and/or by-pass devices are not necessary.

3. Fish Passage Condition:

As required by ORS 509.585, the permittee shall not construct, operate, or maintain any dam or artificial obstruction to fish passage across any waters of this state that are inhabited, or were historically inhabited, by native migratory fish without obtaining approval from the Oregon Department of Fish and Wildlife (ODFW).

The permittee shall either submit a proposal for fish passage to ODFW or apply for a waiver or exemption. Approval of the proposed fish passage facility, waiver, or exemption must be obtained prior to construction of any in-channel obstruction or prior to diversion of water that may create an artificial obstruction due to low flow, and the permittee shall submit proof to ODFW that fish passage has been implemented per the plan, waiver, or exemption prior to diversion of water. The permittee is hereby directed to schedule a consultation with the ODFW Fish Passage Coordinator.

The permittee shall maintain adequate passage of native, migratory fish at all times (ORS 509.601) as per the approved plan, waiver, or exemption.

4. Riparian Condition:

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

5. Water Quality Condition:

The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

6. Agricultural Water Quality Management Area Rules Condition:

The permittee shall comply with basin-specific Agricultural Water Quality Management Area Rules in OAR 603-095. Livestock management and cropping must protect riparian areas on the property, allowing site capable vegetation along streams to establish and grow, while providing the following functions: shade (on perennial and some intermittent streams), bank stability, and infiltration or filtration of overland runoff.

STANDARD CONDITIONS

1. Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.
2. Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.
3. This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.
4. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.
5. The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.
6. Construction of the water system shall begin within five years of the date of permit issuance. The deadline to begin construction may not be extended. This permit is subject to cancellation proceedings if the begin construction deadline is missed.
7. Complete application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit

an application for extension of time, which may be approved based upon the merit of the application.

8. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued _____

DRAFT - THIS IS NOT A PERMIT

Dwight French
Water Right Services Division Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing List for Draft Permit Copies

Application S-88827

PFO Date November 24, 2020

Original mailed via CERTIFIED MAIL to applicant:

FOLEY FAMILY FARMS LP
1701 VILLAGE CENTER CIRCLE
LAS VEGAS NV 89134

Copies Mailed

By: _____
(SUPPORT STAFF)

on: _____
(DATE)

Sent via auto email:

1. Applicant - awagner@foleyfamilywines.com
1. Agent – Nick Blundon - nickblundon@stuntzner.com
2. WRD – Watermaster District #22, Joel M. Plahn
3. WRD - Mike McCord NWR
4. WRD – SW Section

Copies sent to:

1. WRD – File # S-88827
2. Agent – Bill Flatz – billflatz@stuntzner.com

Application Specialist: Kim French