

Oregon Water Resources Department
Water Right Services Division

Water Right Application R-88821 in the name)
of STEPHAN SMITH and PROGRESSIVE DESIGN)
BUILDERS) FINAL ORDER

Summary: Order approving Application R-88821 and issuing a draft permit.

Authority

The application is being processed in accordance with Oregon Revised Statute (ORS) 537.153 through 537.175, and 390.826, and Oregon Administrative Rule (OAR) Chapter 690, Divisions 5, 33, 300, 310, 400, 410, and the Willamette Basin Program (OAR 690-502). These statutes and rules can be viewed on following website: <https://www.oregon.gov/OWRD/programs/policylawandrules/Pages/default.aspx>

The Department’s main page is <https://www.oregon.gov/OWRD>.

This Final Order is issued pursuant to ORS 537.170(6) to (9) and OAR 690-310-0170 to 0190.

FINDINGS OF FACT

- 1. On May 27, 2020, Stephan Smith and Progressive Design Builders submitted an application to the Department for a water use permit.
- 2. On July 13, 2021, the Department issued a Proposed Final Order recommending approval of the application. The protest period closed August 27, 2021 and no protest was filed.
- 3. The findings of fact in the Proposed Final Order are incorporated herein.

CONCLUSIONS OF LAW

- 1. The conclusions of law in the Proposed Final Order are incorporated herein.
- 2. The proposed use, as conditioned, would not impair or be detrimental to the public interest.

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

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is a Final Order in other than contested case. This order is subject to judicial review under ORS 536.075 and ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to OAR 137-004-0080 you may petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

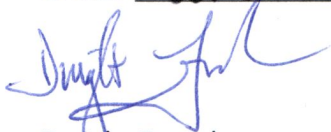
ORDER

Application R-88821 is approved. A permit consistent with the attached draft permit shall be issued upon payment of remaining permit recording fees.

A permit recording fee in the amount of \$610.00 is due no later than 60 days from the date of this Final Order. Failure to submit the required item within 60 days from the date of this Final Order may result in the proposed rejection of Application R-88821.

If you need to request additional time to submit the required item, a written request should be received in the Salem Office of the Department by the deadline above. The Department will evaluate the request and determine whether or not the request may be granted.

DATED OCT 01 2021



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

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- If you have any questions about statements contained in this document, please contact Kim French at Kim.R.French@oregon.gov or 503-979-3168.
 - If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503 986-0900.
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DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF LINN

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

STEPHAN SMITH
PROGRESSIVE DESIGN BUILDERS
PO BOX 727
ALBANY OR 97321

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

APPLICATION FILE NUMBER: R-88821

SOURCE OF WATER: RUNOFF, TRIBUTARY TO CALAPOOIA RIVER

STORAGE FACILITIES: POND A AND POND B

MAXIMUM DAM HEIGHT: THE RESERVOIRS ARE ENTIRELY BELOW GROUND SURFACE; THERE ARE NO DAMS.

PURPOSE OR USE OF THE STORED WATER: WILDLIFE, FISH LIFE AND RECREATION

MAXIMUM VOLUME: 39.3 ACRE-FEET (AF), BEING 25.8 AF IN POND A AND 13.5 AF IN POND B

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: DECEMBER 1 THROUGH JUNE 30

DATE OF PRIORITY: MAY 27, 2020

AUTHORIZED POINTS OF DIVERSION/RESERVOIR LOCATIONS:

POD/Reservoir Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POND A	13 S	3 W	WM	36	SE NE	2119 FEET SOUTH AND 974 FEET EAST FROM NW CORNER, DLC 37
POND B	13 S	3 W	WM	36	SE NE	1908 FEET SOUTH AND 1050 FEET EAST FROM NW CORNER, DLC 37

THE AREA TO BE SUBMERGED BY THE RESERVOIRS:

Twp	Rng	Mer	Sec	Q-Q
13 S	3 W	WM	36	SE NE

PERMIT SPECIFIC 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. **Water Use Measurement, Recording, and Reporting:**
 - A. Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level and dead-pool storage shall be installed in the reservoir. If no dead-pool, the gage must measure the full depth of the reservoir. 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 Director may require the permittee to keep and maintain a record of the volume of water stored, and may require the permittee to report water-storage on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water-use information, the periods of water use and 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.

RESERVOIR CONDITIONS

1. The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe (with a minimum diameter of 8" for any in-channel reservoir). This requirement may be waived if the Department determines other means have been provided to evacuate water when necessary.
2. The permittee shall pass all live flow outside the storage season described above.
3. The Director may require the user to measure inflow and outflow, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.
4. This permit allows an annual appropriation (not to exceed the specified volume). This permit does not provide for the appropriation of water for out-of-reservoir uses, the maintenance of the water level or maintaining a suitable freshwater condition. If any water is to be used for out-of-reservoir purposes, a secondary water right is required. If any additional live flow is to be appropriated to maintain either the water level or a suitable freshwater condition, an additional water right is required.

5. Riparian Area Restoration:

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.

6. Water Quality:

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.

7. In-Water Work:

Any in-water work related to construction, development, or maintenance of the proposed use shall be conducted during the preferred work period of June 1 through October 15, unless an alternate time period is approved by Oregon Department of Fish and Wildlife.

8. Off-Channel Stored Water Releases:

The permittee shall not release polluted water from this off-channel reservoir into waters of the state except when the release is directed by the State engineer to prevent dam failure.

9. Fish Egress:

Native migratory fish may become trapped or entrained in the reservoirs/impoundments during/after flooding events; therefore, the permittee shall work with ODFW regarding development of an approved fish egress from the reservoirs/impoundments or other methods to keep fish out of the reservoirs/impoundments during flood events (e.g., berm construction around the reservoirs).

10. Fish Stocking:

Per ORS 498.222 and OAR 635-007-0600, all persons transporting fish in Oregon need to have a fish transport permit issued by the Oregon Department of Fish and Wildlife (ODFW). The permittee shall not stock fish in the reservoir without a fish transport permit approved by ODFW. As part of the permitting process, the permittee must also screen the inlet and outlet of their pond to insure that fish cannot escape into public waters and/or to keep wild fish from entering the pond.

STANDARD CONDITIONS

1. 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.

2. 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.
3. 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.

DEVELOPMENT AND COMPLETION TIMELINE REQUIREMENTS

1. 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.
2. The permitted volume of water shall be stored within five years of the date of permit issuance. If additional time is needed, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.
3. Within one year after storage of water, 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