

**Oregon Water Resources Department  
Water Right Services Division**

Water Right Application S-89096 in the )  
name of STELLMACHER FAMILY PROPERTIES ) PROPOSED FINAL ORDER  
LLC )

**Summary:** The Department proposes to issue an order approving Application S-89096, as amended, and a permit consistent with the attached 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 the following website: <https://www.oregon.gov/OWRD/programs/policylawandrules/Pages/default.aspx>.

The Department's main website can be found at: <https://www.oregon.gov/OWRD>.

The Department shall presume that a proposed use will not impair or be detrimental to the public interest if:

- a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12);
- b) Water is available;
- c) The proposed use will not injure other water rights; and
- d) The proposed use complies with the rules of the Commission. ORS 537.153(2); OAR 690-310-0110(1)

All four criteria must be met for a proposed use to be presumed to not impair or be detrimental to the public interest. When the criteria are met and the presumption is established, or if the proposed use can be modified or conditioned to meet the presumption criteria, the Department must further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies and any other available information to determine whether the presumption is overcome. OAR 690-310-0120(3).

If the Department determines that the presumption is established and not overcome, the Department shall issue a Proposed Final Order recommending issuance of the permit subject to any appropriate modifications or conditions.

**FINDINGS OF FACT**

**Application History**

1. On April 8, 2021, Stellmacher Family Properties LLC filed a complete application for the following water use:

| Source   | Use                                   | Rate/Volume                      | Period of Use                 |
|--|---------------------------------------|----------------------------------|-------------------------------|
| CALAPOOIA RIVER, TRIBUTARY TO WILLAMETTE RIVER   | PRIMARY IRRIGATION OF 59.5 ACRES      | 0.74 CUBIC FOOT PER SECOND (CFS) | MAY 1 THROUGH JULY 31         |
| STELLMACHER RESERVOIR, CONSTRUCTED UNDER PERMIT R-15495, TRIBUTARY OF WILLAMETTE RIVER | PRIMARY IRRIGATION OF 59.6 ACRES      | 60.0 ACRE-FEET (AF)              | AUGUST 1 THROUGH SEPTEMBER 30 |
|  | SUPPLEMENTAL IRRIGATION OF 59.6 ACRES | 60.0 AF                          | MAY 1 THROUGH JULY 31         |
|  | SUPPLEMENTAL IRRIGATION OF 54.2 ACRES | 60.0 AF                          | MAY 1 THROUGH SEPTEMBER 30    |

**County:** LINN COUNTY

**Place of Use:** SECTION 3, TOWNSHIP 12 SOUTH, RANGE 4 WEST, W.M.

2. On May 21, 2021, the Department mailed the applicant notice of its Initial Review, determining that the diversion of 0.74 CFS of water from Calapooia River, tributary to Willamette River, for irrigation of 59.5 acres is allowable May 1 through July 31 of each year; and the diversion of 60.0 AF of water from Stellmacher Reservoir for irrigation of 59.5 acres and supplemental irrigation of 113.7 acres is not allowable, unless a storage application is submitted and approved by the Department. The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On May 25, 2021, 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 May 17, 2021, the applicant submitted an application to store water in Stellmacher Reservoir. The application was approved and Permit R-15495 was issued on December 21, 2021.
5. On January 6, 2022, the applicant amended the irrigation season for primary irrigation of 59.5 acres from the Calapooia River to May 1 through June 30 and supplemental irrigation of 59.5 acres from water stored in Stellmacher Reservoir to July 1 through September 30 to avoid mitigation required by Oregon Department Fish and Wildlife and the Oregon Department of Environmental Quality.

**Presumption Criteria (a) Consistency with Basin Program**

6. Irrigation is allowed under the Willamette Basin Program (OAR 690-502-0110(1)(c)). ORS 537.153(2); OAR 690-310-0110(1)(a)
7. The use of stored water for irrigation is allowed under the Willamette Basin Program (OAR 690-502-0040(4)(c)). ORS 537.153(2); OAR 690-310-0110(1)(a)

**Presumption Criteria (b) Water Availability**

8. An assessment of live flow 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 surface water is available during the period March 1 through July 31 of each year. ORS 537.153(2); OAR 690-310-0150(2)(c)
9. Water is determined to be available for further appropriation from water legally stored in Stellmacher Reservoir, constructed under Permit R-15495, tributary to Willamette River.

**Presumption Criteria (c) Injury Determination**

10. 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**

11. 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)
12. 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, as conditioned, 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 recommend conditions as necessary to achieve the standards listed in 690-033-0330(2)(a) and (b). As a result of this review, permit Specific Conditions #3 through #9 have been included in the draft permit.

**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**

- 13. No comments were received by the close of the comment period. OAR 690-310-0120(3)
- 14. 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**

- 15. The proposed use is not located within or above a state scenic waterway, as designated under ORS 390.826.
- 16. The amounts requested, 0.74 CFS of live flow and 60.0 AF of stored water, are necessary for the proposed uses. ORS 537.153(3)(c); OAR 690-310-0150(2)(d)
- 17. 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 and prevent damage to public uses of any affected surface waters. These measures are adequate at this time. OAR 690-310-0150(2)(j)
- 18. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

**CONCLUSION OF LAW**

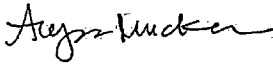
- 1. The proposed use would not impair or be detrimental to the public interest as described in ORS 537.153(2).

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-89096, as amended, and issuance of a permit consistent with the attached draft permit.

DATED February 15, 2022



Digitally signed by Alyssa Mucken  
Date: 2022.01.28 13:39:29 -08'00'

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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 **April 1, 2022**.

**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 \$480 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$950 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 **April 1, 2022**. 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;

- A statement that the requester supports the Proposed Final Order as issued;
- A detailed statement of how the requester would be harmed if the Proposed Final Order is modified; and
- A standing fee of \$270. If a hearing is scheduled, an additional fee of \$680 must be submitted along with a petition for party status.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and either:

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear or fail 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 that you have submitted relating to this matter, as the record for purpose of proving a prima facie case upon default.

You 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 servicemembers have a right to stay 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 Kim French at [Kim.R.French@water.oregon.gov](mailto:Kim.R.French@water.oregon.gov) or 503-979-3168.
  - 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 503-979-9160.
  - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.
  - 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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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

STELLMACHER FAMILY PROPERTIES LLC  
30416 STELLMACHER DR SW  
ALBANY OR 97321

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

APPLICATION FILE NUMBER: S-89096

DATE OF PRIORITY: APRIL 8, 2021

| Source   | Use                                   | Rate/Volume                      | Period of Use               |
|--|---------------------------------------|----------------------------------|-----------------------------|
| CALAPOOIA RIVER, TRIBUTARY TO WILLAMETTE RIVER   | PRIMARY IRRIGATION OF 59.5 ACRES      | 0.74 CUBIC FOOT PER SECOND (CFS) | MAY 1 THROUGH JUNE 30       |
| STELLMACHER RESERVOIR, CONSTRUCTED UNDER PERMIT R-15495, TRIBUTARY OF WILLAMETTE RIVER | PRIMARY IRRIGATION OF 59.5 ACRES      | 60.0 ACRE-FEET (AF)              | JULY 1 THROUGH SEPTEMBER 30 |
|  | SUPPLEMENTAL IRRIGATION OF 59.5 ACRES |                                  | MAY 1 THROUGH JUNE 30       |
|  | SUPPLEMENTAL IRRIGATION OF 54.2 ACRES |                                  | MAY 1 THROUGH SEPTEMBER 30  |

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

AUTHORIZED POINTS OF DIVERSION:

| POD Name      | Twp  | Rng | Mer | Sec | Q-Q   | Measured Distances  |
|---------------|------|-----|-----|-----|-------|---|
| NORTH POD     | 12 S | 4 W | WM  | 3   | NE NE | 1590 FEET NORTH AND 810 FEET WEST FROM E1/4 CORNER, SECTION 3 |
| SOUTH POD     | 12 S | 4 W | WM  | 3   | NE SE | 15 FEET SOUTH AND 680 FEET WEST FROM E1/4 CORNER, SECTION 3   |
| RESERVOIR POD | 12 S | 4 W | WM  | 3   | NE SE | 245 FEET SOUTH AND 950 FEET WEST FROM E1/4 CORNER, SECTION 3  |



**AUTHORIZED PLACE OF USE:**

| PRIMARY IRRIGATION |     |     |     |       |       |
|--------------------|-----|-----|-----|-------|-------|
| Twp                | Rng | Mer | Sec | Q-Q   | Acres |
| 12 S               | 4 W | WM  | 3   | SW NE | 21.80 |
| 12 S               | 4 W | WM  | 3   | SE NE | 5.30  |
| 12 S               | 4 W | WM  | 3   | NE SE | 22.50 |
| 12 S               | 4 W | WM  | 3   | NW SE | 1.80  |
| 12 S               | 4 W | WM  | 3   | SE SE | 8.10  |

| SUPPLEMENTAL IRRIGATION |     |     |     |       |       |
|-------------------------|-----|-----|-----|-------|-------|
| Twp                     | Rng | Mer | Sec | Q-Q   | Acres |
| 12 S                    | 4 W | WM  | 3   | NE NE | 10.50 |
| 12 S                    | 4 W | WM  | 3   | NW NE | 2.20  |
| 12 S                    | 4 W | WM  | 3   | SW NE | 27.70 |
| 12 S                    | 4 W | WM  | 3   | SE NE | 10.80 |
| 12 S                    | 4 W | WM  | 3   | NE SE | 27.30 |
| 12 S                    | 4 W | WM  | 3   | NW SE | 27.10 |
| 12 S                    | 4 W | WM  | 3   | SE SE | 8.10  |

**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, 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.

**3. Maintain Passage:**

The permittee shall maintain passage of native migratory fish at all times (ORS 509.610) and shall not construct, operate, or maintain any dam or artificial obstruction to fish passage across any waters of the state that are inhabited, or were historically inhabited, by native migratory fish (ORS 509.585).

**4. Fish Screen:**

The permittee shall install, maintain, and operate fish screening consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion. The required screen and by-pass devices are to be in place and functional

prior to diversion of any water. The permittee shall obtain written approval from ODFW that the installation of the required screen meets the state's criteria or the permittee shall submit documentation that ODFW has determined screens and/or by-pass devices are not necessary.

**5. 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.

**6. 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.

**7. Water Quality:**

All water use under this permit shall comply with state and federal water quality laws. The permittee shall not violate any state and federal water quality standards, shall not cause pollution of any waters of the state, and shall not place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means. The use may be restricted if the quality of source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards.

**8. Agricultural Water Quality Management Area Rules:**

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

**9. 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.

**STANDARD CONDITIONS**

1. 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.

2. 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.
3. 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.
4. 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. 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.
3. 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