

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Transfer Application)	RECONSIDERATION OF A FINAL
T-13448, Yamhill County)	ORDER RECORDED IN SPECIAL
)	ORDER VOLUME 118, PAGES
)	352 – 356, WITHDRAWING A FINAL
)	ORDER AND ISSUING A
)	SUPERSEDING FINAL ORDER
)	APPROVING AN ADDITIONAL POINT
)	OF DIVERSION

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

Applicant

K.A. BERGER FARMS INC.
ATTN: REBECCA BERGER
P.O. BOX 1359
HILLSBORO, OR 97123

Findings of Fact

1. On May 22, 2020, K.A. BERGER FARMS INC., ATTN: REBECCA BERGER filed an application for an additional point of diversion under Certificate 22691. The Department assigned the application number T-13448.
2. Notice of the application for transfer was published on June 9, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 10, 2020, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13448 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 12, 2020, for the applicant to respond. The applicant requested that the Department proceed with issuance of a

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or 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.

Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

4. On November 18, 2020, the Department issued a Preliminary Determination proposing to approve Transfer T-13448 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on November 24, 2020, and in the Yamhill Valley News-Register newspaper on November 10 and November 17, 2020 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
5. On January 7, 2021, the Department issued a Final Order for the application, recorded at Special Order Volume 118, Pages 352 – 356. Shortly following issuance of the order the Department determined that the order should be reconsidered due to a scrivener's error beneath "Now, therefore, it is ORDERED:" which reads "If Transfer Application T-13448 is approved, the final order will include the following", which should not have appeared on the Final Order. On its own motion, the Department withdrew the order and reconsidered the error.
6. This order is issued to supersede the previous order recorded at Special Order Volume 118, Pages 352 – 356, and to remove the scrivener's error.
7. The portion of the right to be transferred is as follows:

Certificate: 22691 in the name of BELLEVUE FARMS INC. (perfected under Permit S-20147)
Use: IRRIGATION of 106.23 ACRES
Priority Date: MARCH 19, 1951
Rate: 0.27 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.
Source: DEER CREEK, a tributary of SOUTH YAMHILL RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC
5 S	5 W	WM	22	SE NE	3	
5 S	5 W	WM	22	SE SW		51
5 S	5 W	WM	23	SW NW		49
5 S	5 W	WM	27	NW NW		
5 S	5 W	WM	28	NW SE		

Authorized Place of Use:

	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres	Points of Diversion
5 S	5 W	WM	27	SW NW			19.60	1, 3, 4, 5, AND 6
5 S	5 W	WM	27	NW SW			28.90	1, 3, 4, 5, AND 6

	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres	Points of Diversion
5 S	5 W	WM	28	SE NE			29.50	1, 3, 4, 5, AND 6
5 S	5 W	WM	28	NE SE			28.23	1, 3, 4, 5, AND 6
TOTAL							106.23	

8. Certificate 22691 does not describe the location of the points of diversion, however information is available from the applicant, indicating that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Measured Distance
5 S	5 W	WM	22	SE SW		51	POD 4 – 110 FEET NORTH AND 1930 FEET EAST FROM THE SW CORNER OF SECTION 22
5 S	5 W	WM	22	SE NE	3		POD 5 – 1940 FEET SOUTH AND 960 FEET WEST FROM THE NE CORNER OF SECTION 22
5 S	5 W	WM	23	SW NW		49	POD 6 – 2180 FEET SOUTH AND 270 FEET EAST FROM THE NW CORNER OF SECTION 23
5 S	5 W	WM	27	NW NW			POD 3 – 260 FEET SOUTH AND 890 FEET EAST FROM THE NW CORNER OF SECTION 27
5 S	5 W	WM	28	NW SE			POD 1 – 1990 FEET NORTH AND 1810 FEET WEST FROM THE SE CORNER OF SECTION 28

9. Transfer Application T-13448 proposes an additional point of diversion upstream as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	5 W	WM	28	SE NE	POD 2 – 1690 FEET SOUTH AND 1420 FEET WEST FROM THE NE CORNER OF SECTION 28

10. The distances from the authorized points of diversion to the additional point of diversion is as follows:

Distance from Authorized Point of Diversion in Miles (mi.)				
POD 1	POD 3	POD 4	POD 5	POD 6
0.4 mi.	0.6 mi.	0.8 mi.	2.2 mi.	2.5 mi.

11. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

Transfer Review Criteria [OAR 690-380-4010(2)]

12. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.

13. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right(s) were present within the five-year period prior to submittal of Transfer Application T-13448.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.
16. All other application requirements are met.

Conclusions of Law

The additional point of diversion proposed in Transfer Application T-13448 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

Now, therefore, it is ORDERED:

1. The order recorded at Special Order Volume 118, Pages 352 – 356 is withdrawn, is of no further force or effect, and is superseded by this order.
2. The additional point of diversion proposed in Transfer Application T-13448 is approved.
3. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 22691 and any related decree.
4. Water right Certificate 22691 is cancelled. A new certificate will be issued describing those portions of the right not affected by this transfer.
5. The quantity of water diverted at the additional point of diversion, (POD 2), together with that diverted at the original points of diversion, (POD 1, POD 3, POD 4, POD 5, AND POD 6), shall not exceed the quantity of water lawfully available at the original points of diversion, (POD 1, POD 3, POD 4, POD 5, AND POD 6).
6. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion.
 - b. The water user shall maintain the meters or measuring devices in good working order.
 - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
7. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish

and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.

8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.
9. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on _____

FEB 04 2021


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M. BYLER, DIRECTOR
Oregon Water Resources Department

Mailing date: **FEB 05 2021**