



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
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NOVEMBER 19, 2020

VIA E-MAIL

BERGER FARMS INC.
ATTN: REBECCA BERGER
PO BOX 1359
HILLSBORO, OR 97123

SUBJECT: Water Right Transfer Application T-13448

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13448. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Yamhill Valley News-Register newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at tamera.l.smith@oregon.gov or 503-986-0864 if I may be of assistance.

Sincerely,

Transfer Caseworker
Transfer and Conservation Section

cc: T-13448
Joel M. Plahn, District 22 Watermaster *(via e-mail)*
Elizabeth Howard, Agent for the applicant *(via e-mail)*

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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
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	

5. 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

6. 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

7. 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.

8. 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)]

9. 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.
10. 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.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

Determination and Proposed Action

The additional point of diversion proposed in Transfer Application T-13448 appears to be 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.

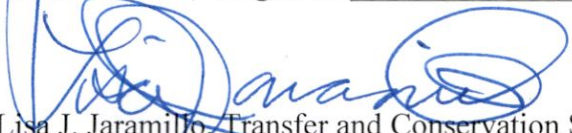
If Transfer Application T-13448 is approved, the final order will include the following:

1. *The additional point of diversion proposed in Transfer Application T-13448 is approved.*
2. *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.*
3. *Water right Certificate 22691 is cancelled. A new certificate will be issued describing those portions of the right not affected by this transfer.*

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4. *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).*
 5. *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.*
 6. *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.*
 7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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.*

8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on NOV 18 2020


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

This Preliminary Determination was prepared by: Tamera Smith. If you have any questions about the information in this document, you may reach me at 503-986-0864 or tamera.l.smith@oregon.gov

Protests should be addressed to the attention of Water Rights Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

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.

Notice Regarding Service Members: Active duty Service Members have a right to stay these proceedings under the federal Service Members 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 number.