

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

Water Right Application R-88742 in the)
name of K A BERGER FARMS INC.)
)
)

FINAL ORDER
APPROVING THE STORAGE OF
SURFACE WATER

Authority

Oregon Revised Statute (ORS) 537.409 establishes the process by which an application to store waters of the public may be submitted.

FINDINGS OF FACT

1. On September 17, 2019, K A Berger Farms Inc. submitted an application for a permit to store water pursuant to ORS 537.409.

Storage Volume	25.0 ACRE-FEET
Dam Height	9.9 FEET
Source	RUNOFF, TRIBUTARY TO DEER CREEK
County	YAMHILL COUNTY
Reservoir Location	SECTION 22, TOWNSHIP 5 SOUTH, RANGE 5 WEST, W.M.

2. The required examination fees were paid and minimum application requirements were met.
3. The Department provided public notice of the application in the Department's weekly public notice on October 22, 2019. A 60-day comment period followed.
4. The Department has not received public comment related to the possible issuance of the attached permit.
5. Consistent with the Watermaster review, the proposed use, as conditioned, will not injure other water rights.
6. The Department has determined that the proposed source has not been withdrawn from further appropriation under ORS 538.
7. The proposed reservoir is not prohibited under ORS 390.835.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a 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 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.

ORS 537.409 does not provide an opportunity to request a contested-case hearing. Appeal rights on this final order approving the application are limited to the above procedures.

8. An assessment of water availability at 50% 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). The assessment established that water is available December 1 through through April 30 of each year for the proposed use.
9. The Department relies on the Oregon Department of Fish and Wildlife's review and recommendations in determining whether a proposed use would pose a significant detrimental impact to existing fishery resources. The Department has determined that the proposed use will not pose a significant detrimental impact to existing fishery resources.

CONCLUSIONS OF LAW

1. Water is available for the proposed use.
2. The proposed use will not injure existing water rights.
3. The proposed use will not pose a significant detrimental impact to existing fishery resources.
4. Application R-88742 is consistent with the requirements of ORS 537.409.

ORDER

Application R-88742 is approved and Permit R-15431 is issued as limited by the conditions contained therein.

Dated at Salem, Oregon on MAR 10 2020



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

If you have questions about statements contained in this document, please contact Lisa Graham at Elisabeth.A.Graham@oregon.gov or 503-986-0808.

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.