

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

Water Right Application S-88895 in the)	SUPERSEDING FINAL ORDER
name of K A BERGER FARMS INC.)	APPROVING THE USE OF
)	STORED WATER

Authority

Oregon Revised Statute (ORS) 537.147 establishes the process by which an application to use stored water exclusively may be submitted. Oregon Administrative Rule (OAR) Chapter 690, Divisions 310 and 340 implement the statute, and provide the Department's procedures and criteria for evaluating applications to use stored water exclusively.

FINDINGS OF FACT

1. On November 10, 2020, K A Berger Farms Inc. submitted an application for a water-use permit pursuant to ORS 537.147:

Source: BERGER RESERVOIR, CONSTRUCTED UNDER PERMIT R-15431,
TRIBUTARY TO DEER CREEK

Use: IRRIGATION OF 295.0 ACRES

Volume: 25.0 ACRE-FEET (AF)

Period of Use: MARCH 1 THROUGH OCTOBER 31

County: YAMHILL COUNTY

Place of Use: SECTIONS 27 AND 28 , TOWNSHIP 5 SOUTH, RANGE 5 WEST, W.M.

2. The required examination fees were paid and minimum application requirements were met.
3. The Department has determined that the proposed use is an authorized use under the water right permit, certificate, or decree that allows the storage of water.
4. On November 10, 2020, the Department provided public notice of the application in the Department's weekly public notice. A 30-day comment period followed.

HEARING RIGHTS

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the modifications to the Proposed Final Order may be addressed. Only the applicant or protestant may appeal this order. (ORS 537.170(7)(b).

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.

5. The Department has not received public comments related to the possible issuance of the attached permit. Therefore, the Department has determined that no public interest issues as identified in ORS 537.170(8) have been raised.
6. On January 29, 2021, the Department issued a Final Order approving Application S-88895 and issuing Permit S-55296. Subsequently the Department discovered Permit S-55296 erroneously described an incorrect location for 21.7 acres. The permit should describe the 21.7 acres as being in the SWSE, Section 27, Township 5 South, Range 5 East, W.M., as indicated in the attached permit.

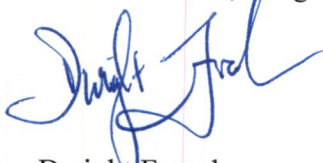
CONCLUSIONS OF LAW

1. Application S-88895 is consistent with the requirements of ORS 537.147 and OAR Chapter 690.

ORDER

This Final Order and Permit S-55301 supersede the January 29, 2021 Final Order and Permit S-55296, which are of no further force or effect.

Dated at Salem, Oregon on FEB 12 2021



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 Kim French at Kim.R.French@oregon.gov or 503-986-0816.

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.