

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

In the Matter of Transfer Application) FINAL ORDER APPROVING AN
T-11587, Klamath County) ADDITIONAL POINT OF
) APPROPRIATION

Authority

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

HOLLANDS DAIRY INC.
19000 S POE VALLEY RD
KLAMATH FALLS, OR 97603

Findings of Fact

1. On April 26, 2013, HOLLANDS DAIRY INC. filed an application for an additional point of appropriation under Certificate 87917. The Department assigned the application number T-11587.
2. Notice of the application for transfer was published on May 7, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 8, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11587 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 10, 2014, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
4. The applicant requested that the date that full beneficial use of the water shall be made be changed from "on or before October 1, 2015," to "on or before October 1, 2016." This change was made in the Preliminary Determination.
5. On February 28, 2014, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11587 and sent a copy to the applicant. Additionally, notice

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.

of the Preliminary Determination for the transfer application was published on the Department's weekly notice on March 4, 2014, and in the Klamath Falls Herald and News newspaper on March 5 and 12, 2014, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

6. The right to be transferred is as follows:

Certificate: 87917 in the name of HOLLANDS DAIRY INC. (perfected under Permit G-15934)
Use: SUPPLEMENTAL IRRIGATION of 303.9 ACRES
Priority Date: MAY 17, 2001
Rate: 3.8 CUBIC FEET 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Period of Use: March 1 through October 31
Source: A WELL (KLAM 19974) in the LOST RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	11.5 E	WM	29	SE SW	WELL 1 - 394 FEET NORTH AND 3094 FEET WEST FROM THE SE CORNER OF SECTION 29

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	11.5 E	WM	29	NE SE	24.8
39 S	11.5 E	WM	29	SE SE	36.1
39 S	11.5 E	WM	32	NE NE	37.9
39 S	11.5 E	WM	32	NW NE	26.8
39 S	11.5 E	WM	32	SW NE	0.9
39 S	11.5 E	WM	32	SE NE	24.5
39 S	11.5 E	WM	33	NE NW	37.9
39 S	11.5 E	WM	33	NW NW	37.7
39 S	11.5 E	WM	33	SW NW	37.7
39 S	11.5 E	WM	33	SE NW	39.6

7. Certificate 87917 identifies the well report as KLAM 19974 as the point of appropriation, however the Department has determined that the correct well report for the point of appropriation is KLAM 52778.
8. Transfer Application T-11587 proposes an additional point of appropriation approximately 0.7 mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	11.5 E	WM	33	SW NW	WELL 2 - 380 FEET SOUTH AND 75 FEET EAST FROM THE NW CORNER OF THE SW1/4 NW1/4 OF SECTION 33

Transfer Review Criteria (OAR 690-380-4010)

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 was present within the five-year period prior to submittal of Transfer Application T-11587.
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.

Conclusions of Law

The additional point of appropriation proposed in Transfer Application T-11587 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The additional point of appropriation proposed in Transfer Application T-11587 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 87917 and any related decree.
3. Water right certificate 87917 is cancelled.
4. The quantity of water diverted at the additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.
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 appropriation (new and existing).
 - b. The water user shall maintain the meters or measuring devices in good working order, shall keep a complete record of the amount of water used each month from each point of appropriation, and shall submit a report for each point of appropriation, which includes the

recorded water use measurements to the Department annually or more frequently as may be required by the Director.

- 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. To monitor the effect of water use from the wells authorized under this right, the Department requires the water user to make and report annual static water level measurements. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.
 7. Following the first year of water use the user shall submit annual reports of static water level measurement from each well. The first of these annual measurements will establish the reference level against which future annual measurements will be compared. Based on an analysis of the data collected, additional measurements may be required in a different month. If the measurement requirement is stopped, the Director may restart it at any time.
 8. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
 9. If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this right, then use of water from the well shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interference.
 10. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. 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 changes and full beneficial use of the water.
 11. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 15 day of April 2014.



Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing Date: APR 23 2014