



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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March 4, 2014

VIA E-MAIL

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

SUBJECT: Water Right Transfer Application T-11587

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11587. 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 Klamath Falls Herald and News 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 Department's notice *or* 30 days after the last date of newspaper publication, whichever is later.

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 Tracy.L.Fox@ wrd.state.or.us or 503 986-0827 if I may be of assistance.

Sincerely,

Ms. Tracy Fox
Transfer Specialist
Transfer and Conservation Section

cc: T-11587
Scott White, District 17 Watermaster (*via e-mail*)
Adkins Consulting Engineers Inc., CWRE and Agent for the applicant (*via e-mail*)

enclosures

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

In the Matter of Transfer Application) **PRELIMINARY DETERMINATION**
T-11587, Klamath County) **PROPOSING APPROVAL OF AN**
) **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 this Preliminary Determination.
5. The right to be transferred is as follows:
Certificate: 87917 in the name of HOLLANDS DAIRY INC. (perfected under Permit G-15934)

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

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 52778) within 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

- Water Right Certificate 87917 identifies the point of appropriation, a well, as the well report identified as KLAM 19974. It was noted by Department staff that the correct well report for the well is the well report identified as KLAM 52778.
- 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 SW 1/4 NW 1/4 OF SECTION 33

Transfer Review Criteria (OAR 690-380-4010)

- 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.

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

Determination and Proposed Action

The additional point of appropriation proposed in Transfer Application T-11587 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-11587 is approved, the final order will include the following:

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 28 day of February 2014.


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

This Preliminary Determination was prepared by Tracy Fox. If you have questions about the information in this document, you may reach me at 503 986-0827 or Tracy.L.Fox@ wrd.state.or.us.

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