



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

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May 25, 2022

VIA CERTIFIED MAIL AND E-MAIL

HAZENBERG DAIRY
BRAD HAZENBERG
5828 CHAMPOEG RD NE
SAINT PAUL, OR 97137

SUBJECT: Water Right Transfer Application T-13201

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13201. 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 Statesman Journal 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.

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 503-986-0892 or Joan.M.Smith@wrdd.state.or.us if I may be of assistance.

Sincerely,

Joan Smith

Transfer Specialist

Transfer and Conservation Section

cc: Transfer Application file -T-13201
Gregory J. Wacker, District 16 Watermaster (*via e-mail*)
Bruce D. Wilson, Agent for the applicant (*via e-mail*)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13201, Marion County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF APPROPRIATION

Authority

Oregon Revised Statutes (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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

HAZENBERG DAIRY
ATTN: BRAD HAZENBERG
5828 CHAMPOEG RD NE
ST PAUL, OR 97137

Findings of Fact

1. On June 7, 2019, HAZENBERG DAIRY, ATTN: BRAD HAZENBERG, filed an application for an additional point of appropriation under Certificate 89298. The Department assigned the application number T-13201.
2. Notice of the application for transfer was published on June 18, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 22, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13201 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 22, 2022, 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.

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.
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4. The right to be transferred is as follows:

Certificate: 89298 in the name of HAZENBERG DAIRY (perfected under Permit G-13343)

Use: IRRIGATION of 265.2 ACRES, SUPPLEMENTAL IRRIGATION of 78.3 ACRES

Priority Date: JANUARY 13, 1997

Rate: 3.56 CUBIC FEET PER SECOND (CFS) BEING 3.32 CFS FOR IRRIGATION AND 0.98 CFS FOR SUPPLEMENTAL IRRIGATION

Limit/Duty: The amount of water used for irrigation under this right, together with the amount secured under any other right for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

Period of Use: MARCH 1 THROUGH OCTOBER 31

Source: THREE WELLS in the WILLAMETTE RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	4	NW NW	39	WELL #1 (MARI 1072) - 1070 FEET SOUTH AND 520 FEET EAST FROM THE NW CORNER OF SECTION 4
4 S	2 W	WM	5	SE SE	38	WELL #2 (MARI 1072) - 660 FEET NORTH AND 50 FEET WEST FROM THE SE CORNER OF SECTION 5
4 S	2 W	WM	9	NW NW	38	WELL #3 (MARI 50581) - 330 FEET SOUTH AND 1200 FEET EAST FROM THE SE CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
3 S	2 W	WM	32	NE SE	65	11.5
3 S	2 W	WM	32	SW SE	65	0.2
3 S	2 W	WM	32	SE SE	65	16.1
3 S	2 W	WM	33	NW SW	65	9.6
3 S	2 W	WM	33	SW SW	65	5.1
4 S	2 W	WM	4	SW SW	38	7.8
4 S	2 W	WM	5	NE NE	39	16.4
4 S	2 W	WM	5	NW NE	39	1.9
4 S	2 W	WM	5	SW NE	39	12.8
4 S	2 W	WM	5	SE NE	39	38.9
4 S	2 W	WM	5	NE SE	39	30.3
4 S	2 W	WM	5	NE SE	38	3.4
4 S	2 W	WM	5	NW SE	39	10.7
4 S	2 W	WM	5	NW SE	38	2.9
4 S	2 W	WM	5	SW SE	38	13.4
4 S	2 W	WM	5	SE SE	39	4.7
4 S	2 W	WM	5	SE SE	38	35.1
4 S	2 W	WM	8	NE NE	38	26.6
4 S	2 W	WM	9	NW NW	38	17.8
Total						265.2

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
3 S	2 W	WM	32	SW NE	65	14.0
3 S	2 W	WM	32	SE NE	65	1.9
3 S	2 W	WM	32	NE SE	65	19.9
3 S	2 W	WM	32	NW SE	65	18.6
3 S	2 W	WM	32	SE SE	65	7.1
3 S	2 W	WM	33	SW SW	65	15.9
4 S	2 W	WM	4	NW NW	40	0.9
Total						78.3

5. Transfer Application T-13201 proposes an additional point of appropriation approximately 0.8 to 0.1 mile from the existing points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	9	NW NW	38	WELL # 4 - 170 FEET SOUTH AND 870 FEET EAST FROM THE NW CORNER OF SECTION 9

Transfer Review Criteria (OAR 690-380-4010)

6. Water has been used within the last five years prior to submittal of Transfer Application T-13201 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.
7. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-13201.
8. The proposed change would not result in injury to other water rights.
9. The proposed change would not result in enlargement of the right.
10. All other application requirements are met.

Determination and Proposed Action

The additional point of appropriation proposed in Transfer Application T-13201 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-13201 is approved, the final order will include the following:

1. *The additional point of appropriation proposed in Transfer Application T-13201 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 89298 and any related decree.*

3. *Water right Certificate 89298 is cancelled.*
4. *The quantity of water diverted at the additional point of appropriation (Well #4), together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.*
5. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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.*
7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on

MAY 25 2022



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

This Preliminary Determination was prepared by Joan Smith. If you have questions about the information in this document, you may reach me at 503-986-0892 or Joan.M.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.

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

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.*