

STATE OF OREGON

COUNTY OF MARION

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

FESSLER FAMILY LLC  
 ATTN: THOMAS R. FESSLER  
 11796 MONITOR - MCKEE RD  
 WOODBURN OR 97071

confirms the right to use the waters of FOUR WELLS IN BUTTE CREEK BASIN, for SUPPLEMENTAL NURSERY USE on 69.2 ACRES.

This right was perfected under Permit G-15172. The date of priority is JULY 12, 2001. The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 5.55 CUBIC FEET PER SECOND (CFS), BEING 1.48 CFS FROM LICHTE #1, 1.11 CFS FROM FESSLER #1, 1.48 CFS FROM FESSLER #2, AND 1.48 CFS FROM FESSLER #3, or its equivalent in case of rotation, measured at the well.

The period of use is year round.

The wells are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 W	WM	21	SE SE	FESSLER WELL #1 - 630 FEET NORTH AND 1000 FEET WEST FROM SW CORNER, SECTION 22
5 S	1 W	WM	22	SW SW	LICHTE WELL #1 - 1040 FEET NORTH AND 20 FEET EAST FROM SW CORNER, SECTION 22
5 S	1 W	WM	22	SW SW	FESSLER WELL #2 - 550 FEET NORTH AND 1290 FEET EAST FROM SW CORNER, SECTION 22
5 S	1 W	WM	22	SW SW	FESSLER WELL #3 - 20 FEET NORTH AND 460 FEET EAST FROM SW CORNER, SECTION 22

The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.15 cubic foot per second per acre. For the irrigation of **containerized nursery plants**, the amount of water diverted is limited to ONE-FORTIETH of one cubic foot per second (or its equivalent) and 5.0 acre feet per acre per year. For the irrigation of **in ground nursery plants** the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre per year. The use of water for NURSERY OPERATIONS may be made at anytime, during the period of allowed use specified above, that the use is beneficial. For the irrigation of **any other crop**, the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre during the irrigation season of each year.

**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 183.484 and ORS 536.075. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 183.484, ORS 536.075 and OAR 137-004-0080, you may petition for judicial review and 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. In addition, under ORS 537.260 any person with an application, permit or water right certificate subsequent in priority may jointly or severally contest the issuance of the certificate within three months after issuance of the certificate.

A description of the place of use is as follows:

Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 W	WM	21	SE SE	34.7
5 S	1 W	WM	22	SW SW	34.5

Measurement, recording and reporting conditions:

- A. The water user shall maintain the meter or measuring device in good working order. The water user shall keep a complete record of the amount of water used each month, and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the water user to report general water use information, including the place and nature of use of water under the right.
- B. The water user shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

To monitor the effect of water use from the wells authorized under this right, the Director may require 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. The measurement may be required in a different month. If the measurement requirement is stopped the Director may restart it at any time.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board and be submitted to the Department on forms provided by the Department. The Department requires the individual performing the measurement to:

- (A) Identify each well with its associated measurement; and
- (B) Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface; and
- (C) Specify the method used to obtain each well measurement; and
- (D) Certify the accuracy of all measurements and calculations submitted to the Department.

The water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the wells if annual water level measurements reveal any of the following events:

- (A) An average water-level decline of three or more feet per year for five consecutive years; or
- (B) A water-level decline of 15 or more feet in fewer than five consecutive years; or
- (C) A water-level decline of 25 or more feet; or
- (D) Hydraulic interference leading to a decline of 25 or more feet in any neighboring well with senior priority.

The reference level against which any future measurements will be compared is 34.05 feet below land surface for Lichte Well 1, 35.58 feet below land surface for Fessler Well 1, 47.13 feet below land surface for Fessler Well 2, and 42.97 feet below land surface for Fessler Well 3.

The period of non or restricted use shall continue until the annual water level rises above the decline level which triggered the action or until the Department determines, based on the water user's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The water user shall in no instance allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this right. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

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 wells 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 interferences.

The wells shall be maintained in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

The Director may require water level or pump test results every ten years.

Failure to comply with any of the provisions of this right may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the right.

This right is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water shall be limited when it interferes with any prior surface or ground water rights.

The right to the use of the water for the above purpose is restricted to beneficial use on the place of use described.

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