

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING AN
T-13190, Marion County	)	ADDITIONAL POINT OF DIVERSION
	)	AND A CHANGE IN PLACES OF USE

**Authority**

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, 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**

FESSLER FAMILY, LLC  
13009 MCKEE SCHOOL RD  
WOODBURN, OR 97071

**Findings of Fact**

1. On May 23, 2019, FESSLER FAMILY, LLC filed an application for an additional point of diversion and a change in place of use under Certificate 29565, and to change the place of use under Certificate 93027. The Department assigned the application number T-13190.
2. Notice of the application for transfer was published on June 4, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 24, 2020, the Department contacted the applicant's agent by telephone and by written correspondence to notify the agent of deficiencies in the application. The "TO" lands in Table 2 under Certificate 93027, identified 7.0 acres in the SE NW of Section 33, T5S, R1W, WM, however the application map identified 5.1 acres. Table 2 also indicated the change in place of use of the supplemental irrigation to Section 28, T5S, R1W, WM, would be receiving water from an additional point of diversion, being POD 2. Completing a transfer of a groundwater right to a surface water point of diversion is not authorized, and is considered to be not the same source. The Department requested that the deficiencies be resolved by October 26, 2020.

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.

4. On September 25, 2020, the agent submitted a revised Table 2 and application map, resolving the deficiencies.
5. On October 15, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13190 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 16, 2020, 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.
6. On October 21, 2020, the applicant requested to extend the date for completing full beneficial use of water to October 1, 2024, in order to account for any unforeseen circumstances.
7. On February 11, 2021, the Department issued a Preliminary Determination proposing to approve Transfer T-13190 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on February 16, 2021, and in the Woodburn Independent newspaper on February 17 and 24, 2021 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
8. The first right to be transferred is as follows:

**Certificate:** 29565 in the name of FRANK BOEN (perfected under Permit S-25354)  
**Use:** IRRIGATION of 15.8 ACRES  
**Priority Date:** FEBRUARY 24, 1958  
**Rate:** 0.20 CUBIC FOOT 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, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** ZOLLNER CREEK, a tributary of PUDDING RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
5 S	1 W	WM	33	SE NW

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 W	WM	33	SW NE	4.4
5 S	1 W	WM	33	SE NW	11.4
Total					15.8



9. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 29565 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 W	WM	33	SE NW	POD 1 - 1695 FEET SOUTH AND 2295 FEET EAST FROM THE NW CORNER OF SECTION 33

10. Transfer Application T-13190 proposes an additional point of diversion approximately 1.3 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 W	WM	28	NW SW	POD 2 (ADDITIONAL) - 1830 FEET NORTH AND 260 FEET EAST FROM THE NW CORNER OF SECTION 33

11. Transfer Application T-13190 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	1 W	WM	28	NE NW	43	0.4
5 S	1 W	WM	28	NW NW	43	0.1
5 S	1 W	WM	28	SW NW	43	7.9
5 S	1 W	WM	28	SE NW	43	2.4
5 S	1 W	WM	28	NE SW	43	0.1
5 S	1 W	WM	28	NW SW	43	0.4
5 S	1 W	WM	33	SW NE		1.0
5 S	1 W	WM	33	SE NW		3.5
Total						15.8

12. The portion of the second right to be transferred is as follows:

**Certificate:** 90327 in the name of FESSLER FAMILY LLC (perfected under Permit G-13673)

**Use:** IRRIGATION of 13.7 ACRES and SUPPLEMENTAL IRRIGATION of 15.8 ACRES

**Priority Date:** MARCH 24, 1995

**Rate:** 0.372 CUBIC FOOT PER SECOND, BEING 0.172 CFS FOR IRRIGATION OF 13.7 ACRES, AND 0.200 CFS FOR SUPPLEMENTAL IRRIGATION OF 15.8 ACRES

**Limit/Duty:** The amount of water used for irrigation under this right, 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) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

**Period of Use:** MARCH 1 THROUGH OCTOBER 31 FOR IRRIGATION

**Source:** WELL 5 in the PUDDING RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 W	WM	33	SW NE	WELL 5 - 2390 FEET SOUTH AND 2800 FEET EAST FROM THE NW CORNER OF SECTION 33

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 W	WM	33	SW NE	4.4
5 S	1 W	WM	33	SE NW	9.3
Total					13.7

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 W	WM	33	SW NE	4.4
5 S	1 W	WM	33	SE NW	11.4
Total					15.8

13. Transfer Application T-13190 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 W	WM	33	SW NE	6.7
5 S	1 W	WM	33	SE NW	7.0
Total					13.7

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	1 W	WM	28	NE NW	43	0.4
5 S	1 W	WM	28	NW NW	43	0.1
5 S	1 W	WM	28	SW NW	43	7.9
5 S	1 W	WM	28	SE NW	43	2.4
5 S	1 W	WM	28	NE SW	43	0.1
5 S	1 W	WM	28	NW SW	43	0.4
5 S	1 W	WM	33	SW NE		1.0
5 S	1 W	WM	33	SE NW		3.5
Total						15.8

14. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

***Transfer Review Criteria [OAR 690-380-4010(2)]***

15. 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 rights are subject to forfeiture under ORS 540.610.
16. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-13190.



17. The proposed changes would not result in enlargement of the rights.
18. The proposed changes would not result in injury to other water rights.
19. All other application requirements are met.

#### **Determination and Proposed Action**

The additional point of diversion and change in places of use proposed in Transfer Application T-13190 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-13190 is approved, the final order will include the following:*

1. *The additional point of diversion and change in places of use proposed in Transfer Application T-13190 are 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 Certificates 29565 and 90327, and any related decree.*
3. *Water right Certificates 29565 and 90327 are cancelled. A new certificate will be issued describing that portion of Certificate 90327 not affected by this transfer.*
4. *The quantity of water, as authorized by Certificate 29565, diverted at the new additional point of diversion (POD 2), together with that diverted at the original point of diversion (POD 1), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 1).*
5. *Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*
6. *The former place of use of the transferred rights shall no longer receive water under the rights.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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.*

8. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on

**APR 01 2021**

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

Mailing date:                     **APR 01 2021**