

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

In the Matter of Transfer Application            )  
T-8012, Marion County                            )  
  )  
  )     **FINAL ORDER APPROVING A  
CHANGE IN PLACE OF USE AND  
PARTIAL CANCELLATION OF A  
WATER RIGHT**

ORS 540.505 to 540.580 establishes 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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

Robert Fessler  
11796 Monitor-McKee Road NE  
Woodburn, Oregon 97071

**Findings of Fact**

1. On 5-29-1998, Robert Fessler filed a transfer application to change the point of diversion and place of use under Certificate 22342. The Department assigned the application number T-8012.
2. On 4-13-2000, the application was amended by the CWRE, Larry Jebousek, to remove the proposed change in point of diversion.
3. The portion of the right to be transferred is as follows:

**Certificate:** 22342 in the name of Clifford Halkinrud (perfected under Permit S-20217)

**Use:** Irrigation of 2.3 acres

**Priority Date:** November 14, 1950

**Rate:** 0.03 cubic foot per second

**Limit/Duty:** One-eightieth of one cfs per acre, not to exceed 2.5 acre-feet per acre per year

**Source:** Pudding River, tributary to the Molalla River

**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. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may either 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.

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Not.
5 S	1 W	WM	21	SE SW	876

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Not.	Acres
5 S	1 W	WM	21	SE SW	876	2.3

4. Application T-8012 defines the authorized point of diversion as being:

Twp	Rng	Mer	Sec	Q-Q	Not.	Survey Coordinates
5 S	1 W	WM	21	SE SW	876	675 feet North and 1140 feet West from the S¼ Corner of Section 21.

5. Application T-8012 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Not.	Acres
5 S	1 W	WM	21	SE SW	876	1.4
5 S	1 W	WM	21	SW SE	876	0.3
5 S	1 W	WM	28	NE NW	876	0.6

6. On 1-30-2006, an affidavit for partial cancellation of a water right was received from Robert Fessler as follows:

**Certificate:** 22342 in the name of Clifford Halkinrud

**Use:** Irrigation of 4.8 acres

**Priority Date:** November 14, 1950

**Rate:** 0.06 cubic foot per second

**Limit/Duty:** One-eightieth of one cfs per acre, not to exceed 2.5 acre-feet per acre per year

**Source:** Pudding R, tributary to The Molalla R

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Not.
5 S	1 W	WM	21	SE SW	876

**Authorized Place of Use to be cancelled:**

Twp	Rng	Mer	Sec	Q-Q	Not.	Acres
5 S	1 W	WM	21	SE SW	876	1.1
5 S	1 W	WM	21	SW SE	876	3.7

7. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
8. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are 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 are present.
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. The application has noted that the original final proof survey map located the water right approximately 100 feet too far to the south. The transfer application map shows the remaining portion of the water right in its correct location. The correction does not change the total acres of the water right nor the quarter-quarter acre totals.

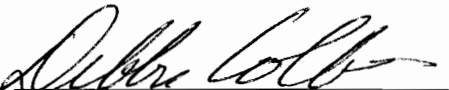
**Conclusions of Law**

The proposed change in place of use in application T-8012 appears to be consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The changes proposed in T-8012 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 Certificate 22342 and any related decree.
3. The portion of the water right under Certificate 22342 appurtenant to the lands identified in Finding of Fact #6 shall be cancelled.
4. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2007**. A Claim of Beneficial Use prepared by a Certified Water Rights 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.
5. The former place of use of the transferred water shall no longer receive water as part of this right.

Dated at Salem, Oregon this 31<sup>st</sup> day of March 2006.

*FOR*   
Phillip C. Ward, Director

Mailing Date APR 11 2006