

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

In the Matter of Transfer Application	)	FINAL ORDER
T-14287, Marion County	)	APPROVING A CHANGE IN PLACE OF USE

**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**

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

**Findings of Fact**

1. On July 24, 2023, Fessler Family LLC, filed an application to change the places of use under Certificates 95394 and 96728. The Department assigned the application number T-14287.
2. Notice of the application for transfer was published on August 8, 2023, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 6, 2023, the Department issued a Final Order approving Transfer Application T-14141 recorded at Special Order Volume 129, Page 3. The order cancelled a portion of Certificate 96728 and subsequently Certificate 97217 was issued describing that portion of the right not affected by T-14141.
4. The Department has determined that the portion of the former Certificate 96728 being transferred, is described in remaining right Certificate 97217.

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.



5. On July 24, 2023, Transfer Application T-14288 was filed. This transfer modifies the same right, Certificate 95394, proposed for transfer in T-14287. Certificate 95394 shall be cancelled after both transfer applications are processed.
6. On December 20, 2023, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-14287 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 19, 2024, 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.
7. On April 10, 2024, the Department issued a Preliminary Determination proposing to approve Transfer Application T-14287 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on April 17, 2024, and April 24, 2024, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
8. The portion of the first right to be transferred is as follows:

**Certificate:** 95394 in the name of FESSLER FAMILY LLC (perfected under Permit G-13673)

**Use:** PRIMARY IRRIGATION OF 4.5 ACRES

**Priority Date:** MARCH 24, 1995

**Rate:** 0.056 CUBIC FOOT PER SECOND FOR IRRIGATION OF 4.5 ACRES

**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) 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:**

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 W	WM	33	NE NW	4.5

9. Transfer Application T-14287 proposes to change the place of use of the right to:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 W	WM	28	NE SW	4.5



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

**Certificate:** 97217 in the name of FESSLER FAMILY LLC (perfected under Permit G-13673)  
**Use:** PRIMARY IRRIGATION OF 13.0 ACRES  
**Priority Date:** MARCH 24, 1995  
**Rate:** 0.163 CUBIC FOOT PER SECOND FOR IRRIGATION OF 13.0 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.  
**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:**

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 W	WM	33	SW NE	6.9
5 S	1 W	WM	33	SE NW	6.1
TOTAL					13.0

11. Transfer Application T-14287 proposes to change the place of use of the right to:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 W	WM	28	NE SW	13.0

**Transfer Review Criteria [OAR 690-380-0100(14), 690-380-4010(2) and OAR 690-380-2200]**

12. Water has been used within the last five years prior to the submittal of Transfer Application T-14287 according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
13. A water delivery system sufficient to use the full amount of water allowed under the existing rights was present within the five-year period prior to submittal of Transfer Application T-14287.
14. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
15. The proposed changes, as conditioned, would not result in enlargement of the rights.



16. The proposed changes, as conditioned, would not result in injury to other existing water rights.

17. All other application requirements are met.

### **Conclusions of Law**

The change in places of use proposed in Transfer Application T-14287 appear 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.

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

1. The change in places of use proposed in Transfer Application T-14287 are approved.
2. The right to the use of the water is restricted to beneficial use at the places of use described and is subject to all other conditions and limitations contained in Certificates 95394, 97217 and any related decree.
3. Approval of this transfer application does not constitute nor grant legal access onto or through another person's property for purposes of accessing the new places of use.
4. Water right Certificate 97217 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
5. Water right Certificate 95934 is modified and will be cancelled upon approval of T-14288. A new certificate will be issued describing that portion of the right not affected by this transfer.
6. The former places of use of the transferred rights shall no longer receive water under the rights.
7. 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.
  - 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.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2025**. 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.

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

Dated in Salem, Oregon on **JUN 10 2024**



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
DOUGLAS E. WOODCOCK, ACTING DIRECTOR  
Oregon Water Resources Department

Mailing Date: **JUN 11 2024**