

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

In the Matter of Transfer Application) FINAL ORDER
T-14288, Marion County) APPROVING ADDITIONAL POINTS OF
) DIVERSION AND TO CHANGE THE PLACE
) 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 97101

Findings of Fact

1. On July 24, 2023, Fessler Family, LLC filed an application for an additional point of diversion and to change the places of use under Certificates 75776, and 87974 and to change the place of use under Certificate 95394. The Department assigned the application number T-14288.
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 July 24, 2023, Transfer Application T-14287 was filed. This transfer modifies the same right, Certificate 95394, proposed for transfer in T-14288. Certificate 95394 shall be cancelled after both transfer applications are processed.
4. On December 20, 2023, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-14288 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

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.

Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

5. On April 10, 2024, the Department issued a Preliminary Determination proposing to approve Transfer Application T-14288 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 in the Woodburn Independent newspaper 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.
6. The portion of the first right to be transferred is as follows:

Certificate: 75776 in the name of ROBERT F. FESSLER AND MARTHA J. FESSLER (perfected under Permit S-23108)
Use: IRRIGATION OF 8.0 ACRES
Priority Date: FEBRUARY 15, 1954
Rate: 0.099 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, is 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 the PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 W	WM	33	SE NW	NOT DESCRIBED IN CERTIFICATE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 W	WM	33	SW NE	6.2
5 S	1 W	WM	33	NE NW	0.5
5 S	1 W	WM	33	SE NW	1.3
TOTAL					8.0

7. Transfer Application T-14288 proposes an additional point of diversion approximately 4,050 feet downstream to:

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

8. Transfer Application T-14288 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	SE NW	2	5.3
5 S	1 W	WM	28	NE SW		2.7
TOTAL						8.0

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

Certificate: 87974 in the name of ROBERT FESSLER (perfected under Permit S-23108)

Use: IRRIGATION OF 3.8 ACRES

Priority Date: FEBRUARY 15, 1954

Rate: 0.043 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, 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, tributary to PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 W	WM	33	SE NW	(ZOLLNER) POD 1 - 1630 FEET SOUTH AND 2340 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	NE NW	1.8
5 S	1 W	WM	33	SE NW	2.0
TOTAL					3.8

10. Transfer Application T-14288 proposes an additional point of diversion approximately 4,050 feet downstream to:

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

11. Transfer Application T-14288 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	28	NE SW	3.8

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

Certificate: 95394 in the name of FESSLER FAMILY LLC (perfected under Permit G-13673)
Use: SUPPLEMENTAL IRRIGATION OF 4.3 ACRES
Priority Date: MARCH 24, 1995
Rate: 0.053 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, (or its equivalent) and 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Period of Use: MARCH 1 THROUGH OCTOBER 31
Source: WELL 5, in the PUDDING RIVER BASIN

Authorized Point of Diversion:

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:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 W	WM	33	NE NW	2.3
5 S	1 W	WM	33	SE NW	2.0
TOTAL					4.3

13. Transfer Application T-14288 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 W	WM	28	NE SW	4.3

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 690-380-0100(14), 690-380-4010(2), 690-380-2110(2), and 690-380-2200]

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 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-14288.
17. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
18. The proposed additional point of diversion diverts water from the same source of surface water as the authorized points of diversion, as required by OAR 690-380-2110(2).
19. The proposed changes, as conditioned, would not result in enlargement of the rights.
20. The proposed changes, as conditioned, would not result in injury to other existing water rights.
21. All other application requirements are met.

Conclusions of Law

The additional point of diversion and change in places of use proposed in Transfer Application T-14288 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.

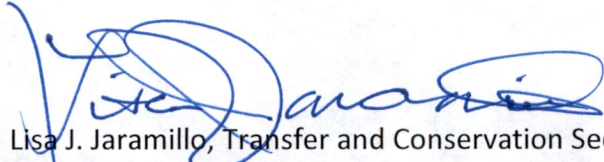
Now, therefore, it is ORDERED:

1. The additional point of diversion and change in places of use proposed in Transfer Application T-14288 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 Certificates 75776, 87974, and 95394 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 additional point of diversion or the new places of use.
4. Water right Certificates 75776, and 87974 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.
5. Water right Certificate 95394 is modified and will be cancelled upon approval of T-14287. A new certificate will be issued describing that portion of the right not affected by this transfer.

6. The quantity of water diverted at the new additional point of diversion ((Pudding) POD 2), together with that diverted at the original point of diversion ((Zollner) POD 1), shall not exceed the quantity of water lawfully available at the original point of diversion ((Zollner) POD 1).
7. Water shall be acquired from the same source of surface water as the original points of diversion.
8. The former place of use of the transferred rights shall no longer receive water under the rights.
9. 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 diversion (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.
10. 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.
11. 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.

12. 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**