

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

In the Matter of Transfer Application) FINAL ORDER APPROVING CHANGES IN
T-14141, Marion County) 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 ROAD
WOODBURN, OR 97071

Findings of Fact

1. On January 3, 2023, FESSLER FAMILY, LLC filed an application to change the place of use under Certificates 96727 and 96728. The Department assigned the application number T-14141.
2. Notice of the application for transfer was published on January 24, 2023, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 30, 2023, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-14141 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 29, 2023, 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.

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 June 27, 2023, the Department issued a Preliminary Determination proposing to approve Transfer Application T-14141 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 June 27, 2023, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
5. The portion of the first right to be transferred is as follows:

Certificate: 96727 in the name of FESSLER FAMILY LLC (perfected under Permit S-25354)

Use: IRRIGATION OF 4.5 ACRES

Priority Date: FEBRUARY 24, 1958

Rate: 0.06 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 a diversion of 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 Points of Diversion:

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

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 W	WM	33	SW NE	1.0
5 S	1 W	WM	33	SE NW	3.5
				Total	4.5

6. Transfer Application T-14141 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 NE	4.3
5 S	1 W	WM	28	NW NE	0.2
				Total	4.5

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

Certificate: 96728 in the name of FESSLER FAMILY LLC (perfected under Permit G-13673)

Use: IRRIGATION OF 0.7 ACRE AND SUPPLEMENTAL IRRIGATION OF 4.5 ACRES

Priority Date: MARCH 24, 1995

Rate: 0.07 CUBIC FOOT PER SECOND (CFS), BEING 0.01 CFS FOR IRRIGATION OF 0.7 ACRE AND 0.06 CFS FOR SUPPLEMENTAL IRRIGATION OF 4.5 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	0.7

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 W	WM	33	SW NE	1.0
5 S	1 W	WM	33	SE NW	3.5
Total					4.5

8. Transfer Application T-14141 also 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 NE	0.7

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 W	WM	28	NE NE	4.3
5 S	1 W	WM	28	NW NE	0.2
Total					4.5

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Transfer Review Criteria [OAR 690-380-0100(14), 690-380-4010(2) and OAR 690-380-2110(2)]

- Water has been used within the last five years 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.
- A water delivery 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-14141.

11. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
12. The proposed changes would not result in enlargement of the rights.
13. The proposed changes would not result in injury to other existing water rights.
14. All other application requirements are met.

Conclusions of Law

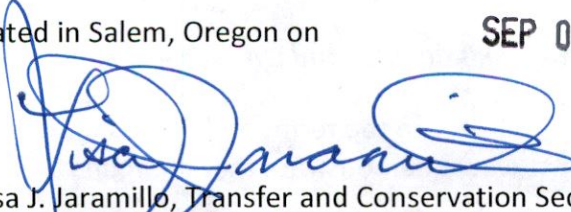
The changes in place of use proposed in Transfer Application T-14141 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in place of use proposed in Transfer Application T-14141 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 96727 and 96728 and any related decree.
3. Water right Certificates 96727 and 96728 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.
4. The former place of use of the transferred rights shall no longer receive water under the right.
5. 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 change and full beneficial use of the water.
6. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated in Salem, Oregon on

SEP 06 2023


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

Mailing date: SEP 07 2023