BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER APPROVING CHANGES
T-6992, Marion County, Oregon)	IN PLACE OF USE, ADDITIONAL
)	POINTS OF APPROPRIATION AND
)	PARTIAL CANCELLATION OF WATER
)	RIGHTS

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

Applicant

Fessler Family LLC Thomas R. Fessler, Trustee 11796 Monitor-McKee Road Woodburn, OR 97071

Findings of Fact

- Bob Fessler filed an application to transfer the point of appropriation, place of use, character
 of use under Certificates 44869 and 49873. The Department assigned the application number
 T-6992. July 12, 2001 a superseding application was filed under the name Fessler Family
 LLC, by Thomas R. Fessler, trustee, to change the place of use, add points of appropriation
 and partially cancel rights under Certificates 44869, 76995, and 76989.
- 2. The portion of the first right to be transferred is as follows:

Certificate: 44869 in the name of Kathryn Lichte (perfected under Permit G-5214)

Use: Irrigation

Priority Date: January 12, 1973

Quantity: 0.45 cubic foot per second (cfs)

Rate/Duty: 1/80 cfs per acre, not to exceed 2½ acre-feet per acre

Acres: 35.3

Source: Lichte Well #1 in the Pudding River Basin

This is a final order in other than 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 Appropriation:

Γ	owr	nship	Rai	nge	Meridian	Sec	1/4 1/4	Survey Coordinates
:	5	S	1	W	W.M.	22	SW SW	Lichte Well #1: 1600' S and 1300' W from the NE Corner of the NW¼ SW¼ of Section 22

Authorized Place of Use:

Town	nship	ship Range		Meridian	Sec	1/4	1/4	Acres
5	S	1 W		W.M.	21	SE	SE	17.2
5	S	1	W	W.M.	22	SW	SW	18.1

3. Application T-6992 proposes to add 3 authorized points of appropriation approximately ¼ mile from the existing point of appropriation in the Pudding River basin to:

Town	nship	Rai	nge	Meridian	Sec	1/4	1/4	Survey Coordinates
5	S	1	W	W.M.	21	SE	SE	Fessler Well #1: 630' N and 1000' W from the SW corner of Section 22
5	S	1	W	W.M.	22	SW	SW	Fessler Well #2: 550' N and 1290' E from the SW corner of Section 22
5	S	1	W	W.M.	22	SW	SW	Fessler Well #3: 40' N and 440' E from the SW corner of Section 22

4. Application T-6992 proposes to change the place of use of the right to:

Town	nship	Rai	nge	Meridian	Sec	1/4 1/4	Acres
5	S	1 W		W.M.	21	SE SE	19.0
5	S	1	W	W.M.	22	SW SW	16.3

- 5. September 20, 2004 Fessler Family Farms submitted a notarized affidavit authorizing cancellation of 1.9 acres in the SW¼ SW¼ of Section 22, T5S, R1W, W.M. under the right evidenced by Certificate 44869. The quantity of water allowed for irrigation of 1.9 acres is 0.02 cfs, therefore the diversion allowed under the right will be reduced by 0.02 cfs.
- 6. The second right to be transferred is as follows:

Certificate: 76995 in the name of Woodburn Ornamentals, Inc. (perfected under Permit

G-6337)

Use: Irrigation

Priority Date: December 23, 1975

Quantity: 0.42 cfs

Rate/Duty: 1/80 cfs per acre, not to exceed 2½ acre-feet per acre

Acres: 33.9

Source: Fessler Wells #1 and #2 in the Pudding River Basin

Authorized Points of Appropriation:

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Town	Township		nge	Meridian	an Sec 1/4 1/4		Survey Coordinates
5	S	1	W	W.M.	21	SE SE	Fessler Well #1: 630' N and 1000' W from the SE Corner of Section 21

Township		Range		Meridian	Sec	1/4	1/4	Survey Coordinates
5	S	1	W	W.M.	22	SW	sw	Fessler Well #2: 550' N and 1290' E from the SW Corner of Section 22

Authorized Place of Use:

Town	nship	Rai	nge	Meridian	Sec	1/4 1/4	Acres
5	S	1	W	W.M.	21	SE SE	15.7
5	S	1	W	W.M.	22	SW SW	18.2

7. Application T-6992 proposes to add 2 authorized points of appropriation approximately ¼ mile from the existing points of appropriation in the Pudding River basin to:

Town	nship	Range Meridian Sec		Range Meridian Sec 1/4 1/4		1/4 1/4	Survey Coordinates
5	S	1	W	W.M.	22	SW SW	Fessler Well #3: 40' N and 440' E from the SW corner of Section 22
5	S	1	W	W.M.	22	SW SW	Lichte Well #1: 1040' N and 20' E from the SW corner of Section 22

8. Application T-6992 proposes to change the place of use of the right to:

Town	nship	Rai	nge	Meridian	Sec	1/4	1/4	Acres
5	S	1	W	W.M.	21	SE	SE	15.7
5	S	1	W	W.M.	22	SW	SW	18.2

- 9. September 20, 2004 Fessler Family Farms submitted a notarized affidavit authorizing cancellation of 2.1 acres in the SE¼ SE¼ of Section 21 and 0.8 acre in the SW¼ SW¼ of Section 22, T5S, R1W, W.M. under the right evidenced by Certificate 76995. The quantity of water allowed for irrigation of 2.9 acres is 0.04 cfs, therefore the diversion allowed under the right will be reduced by 0.04 cfs.
- 10. The third right to be transferred is as follows:

Certificate: 76989 in the name of Robert F. Fessler (perfected under Permit G-10713)

Use: Nursery Use

Priority Date: December 19, 1986

Quantity: 557 gallons per minute

Rate/Duty: Not specified in certificate

Acres: 33.9

Source: Fessler Wells #1 and #2 in the Pudding River Basin

Authorized Points of Appropriation:

Town	nship	Rai	nge	Meridian	Sec	1/4 1/4	Survey Coordinates
5	S	1	W	W.M.	21	SE SE	Fessler Well #1: 630' N and 1000' W from the SE Corner of Section 21
5	S	1	W	W.M.	22	sw sw	Fessler Well #2: 550' N and 1290' E from the SW Corner of Section 22

Authorized Place of Use:

Town	nship	Rai	nge	Meridian	Sec	1/4 1/	/4	Acres
5	S	1	W	W.M.	21	SE	SE	15.7
5	S	1	W	W.M.	22	sw	SW	18.2

11. Application T-6992 proposes to add 2 authorized points of appropriation approximately \(\frac{1}{4} \) mile from the existing points of appropriation in the Pudding River basin to:

Township		Range		Meridian	Sec	1/4 1/4	Survey Coordinates	
5	S	1	W	W.M.	22	SW SW	Fessler Well #3: 40' N and 440' E from the SW corner of Section 22	
5	S	1	W	W.M.	22	SW SW	Lichte Well #1: 1040' N and 20' E from the SW corner of Section 22	

12. Application T-6992 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	1/4 1/4	Acres
5	S	1	W	W.M.	21	SE SE	15.7
5	S	1	W	W.M.	22	sw sw	18.2

- 13. September 20, 2004 Fessler Family Farms submitted a notarized affidavit authorizing cancellation of 2.0 acres in the SE¼ SE¼ of Section 21 and 0.6 acre in the SW¼ SW¼ of Section 22, T5S, R1W, W.M. under the right evidenced by Certificate 76989. The quantity of water allowed for irrigation of 2.6 acres is 43 gpm, therefore the diversion allowed under the right will be reduced by 43 gpm.
- 14. 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.
- 15. Water has been used within the five years prior to filing of the transfer application according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is 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 right is present.
- 17. The proposed change would not result in enlargement of the right.
- 18. The proposed change would not result in injury to other water rights.

Conclusions of Law

The changes in point of appropriation, place of use, and partial cancellation of water rights proposed in application T-6992 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 point of appropriation, place of use and partial cancellation proposed in application T6992 are approved.
- 2. Water right certificates 44869, 76995 and 76989 are cancelled. A new certificate will be issued describing that portion of the right under Certificate 44869 not transferred nor cancelled by this order.
- 3. The right to 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 44869, 76989 and 76995 and any related decree.
- 4. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
- 5. The portions of the rights identified in Findings #5, #9 and #13 above are cancelled.
- 6. The proposed changes shall be completed on or before October 1, 2006.
- 7. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2007.
- 8. The quantity of water diverted at the additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.
- 9. When required by the Department, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
- 10. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this ______, 2005.

Phillip C. Ward

Director

Mailing date: 6-27-05