

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

In the Matter of Transfer Application            )    **FINAL ORDER APPROVING**  
T-11651, Marion County                            )    **ADDITIONAL POINTS OF**  
  )    **APPROPRIATION**

**Authority**

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 NURSERY CO.  
DALE FESSLER  
12666 MONITOR MCKEE RD  
WOODBURN, OR 97071

**Findings of Fact**

1. On August 19, 2013, FESSLER NURSERY CO. filed an application for additional points of appropriation under Certificate 88043. The Department assigned the application number T-11651.
2. Notice of the application for transfer was published on August 27, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 12, 2013, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11651 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 15, 2014, 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.
4. On April 10, 2014, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11651 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on April 15, 2014, and in the Woodburn Independent

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.

newspaper on April 16 and 23, 2014, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

5. The right to be transferred is as follows:

**Certificate:** 88043 in the name of FESSLER NURSERY CO. (perfected under Permit G-9587)

**Use:** GREENHOUSE USE AND IRRIGATION of 2.4 ACRES

**Priority Date:** MARCH 12, 1982

**Rate:** 0.08 CUBIC FOOT PER SECOND (CFS), BEING 0.05 CFS FOR GREENHOUSE USE AND 0.03 CFS FOR IRRIGATION

**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:** FESSLER WELL 2 within the PUDDING RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 W	WM	34	NW NW	FESSLER WELL 2 - 760 FEET SOUTH AND 60 FEET EAST FROM THE NW CORNER OF SECTION 34

**Authorized Place of Use:**

GREENHOUSE				
Twp	Rng	Mer	Sec	Q-Q
5 S	1 W	WM	34	NW NW

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 W	WM	34	NW NW	2.4

6. Transfer Application T-11651 proposes two additional points of appropriation approximately between 700 feet and 800 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 W	WM	34	NW NE	WELL 6 - 120 FEET SOUTH AND 1300 FEET EAST FROM THE NW CORNER OF SECTION 34
5 S	1 W	WM	34	NW NW	WELL 1 - 340 FEET SOUTH AND 610 FEET EAST FROM THE NW CORNER OF SECTION 34

***Transfer Review Criteria (OAR 690-380-4010)***

7. 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 right is subject to forfeiture under ORS 540.610.
8. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-11651.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.
11. All other application requirements are met.

**Conclusion of Law**

The additional points of appropriation proposed in Transfer Application T-11651 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 additional points of appropriation proposed in Transfer Application T-11651 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 88043 and any related decree.
3. Water right certificate 88043 is cancelled.
4. The quantity of water diverted at the additional points of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.
5. 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.
6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.

7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2015**. 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.
8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 27 day of May, 2014.

  
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Dwight French, Water Right Services Administrator, for  
PHILLIP C. WARD, DIRECTOR

Mailing Date:           **MAY 30 2014**