



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

April 10, 2014

VIA E-MAIL

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

SUBJECT: Water Right Transfer Application T-11651

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11651. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Woodburn Independent newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at Tracy.L.Fox@ wrd.state.or.us or 503 986-0827 if I may be of assistance.

Sincerely,

Ms. Tracy Fox
Transfer Specialist
Transfer and Conservation Section

cc: T-11651
District 16 Watermaster (*via e-mail*)
Pacific Hydro-Geology Inc., Agent and CWRE for the applicant (*via e-mail*)

enclosure

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11651, Marion County)	PROPOSING APPROVAL OF
)	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. 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

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.
--

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

5. 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)

6. 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.
7. 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.
8. The proposed change would not result in enlargement of the right.

9. The proposed change would not result in injury to other water rights.
10. All other application requirements are met.

Determination and Proposed Action

The additional points of appropriation proposed in Transfer Application T-11651 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.

If Transfer Application T-11651 is approved, the final order will include the following:

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 10 day of April 2014.


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

This Preliminary Determination was prepared by Tracy Fox. If you have questions about the information in this document, you may reach me at 503 986-0827 or Tracy.L.Fox@ wrd.state.or.us.

Protests should be addressed to the Water Rights Services Division, Oregon Water Resources Department, 725 Summer Street, Suite A, Salem, OR 97301-1266.