



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

March 2, 2016

FESSLER FAMILY LLC
13009 McKEE SCHOOL ROAD
WOODBURN OR 97071

SUBJECT: Water Right Transfer Application T-12078

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12078. 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 503-986-0886 or Patrick.K.Starnes@wrд.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application T-12078
Joel Plahn, Watermaster 16 District
Don Knauer, CWRE (#75) for the applicant

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12078, Marion County)	PROPOSING APPROVAL OF
)	ADDITIONAL POINTS OF
)	APPROPRIATION

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 June 10, 2015, FESSLER FAMILY LLC filed an application for additional points of appropriation under Certificates 89260, 57082, 87080, 89431, 89432, and 89433. The Department assigned the application number T-12078.
2. Notice of the application for transfer was published on June 16, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 14, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12078 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 16, 2016, 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.

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.
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4. The first right to be transferred is as follows:

Certificate: 89260 in the name of MARY LOU HOLOBOFF (perfected under Permit G-4644)

Use: IRRIGATION OF 60.8 ACRES

Priority Date: MARCH 2, 1970

Rate: 0.430 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 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: A WELL in the PUDDING RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	2 W	WM	10	SW SE	WELL (MARI 3926) - 1150 FEET NORTH AND 1580 FEET WEST FROM THE SE CORNER OF SECTION 10

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
6 S	2 W	WM	10	NE SW	3	4.7
6 S	2 W	WM	10	SE SW	4	9.0
6 S	2 W	WM	10	NW SE		15.2
6 S	2 W	WM	10	SW SE		31.9
Total						60.8

5. Transfer Application T-12078 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approximate distance (feet) from Authorized Well (MARI 3926)
6 S	2 W	WM	9	SW NE	60	WELL (MARI 3898) - 3530 FEET NORTH AND 1470 FEET EAST FROM THE SW CORNER OF DLC 60	5500
6 S	2 W	WM	9	NW SE	60	WELL (MARI 3890) - 2040 FEET NORTH AND 140 FEET EAST FROM THE SW CORNER OF DLC 60	6230
6 S	2 W	WM	9	SW SE	60	WELL (MARI 3905) - 340 FEET SOUTH AND 70 FEET WEST FROM THE SW CORNER OF DLC 97	3740
6 S	2 W	WM	10	SE NW	97	WELL (MARI 3908) - 2120 FEET NORTH AND 230 FEET WEST FROM THE MOST SOUTHERLY SE CORNER OF DLC 97	2874
6 S	2 W	WM	10	SE SW	60	WELL - 360 FEET SOUTH AND 20 FEET WEST FROM THE SOUTHERLY SE CORNER OF DLC 97	1390

6. The second right to be transferred is as follows:

Certificate: 57082 in the name of GEORGE J HAUPTMAN (perfected under Permit G-6277)

Use: IRRIGATION OF 73.2 ACRES

Priority Date: DECEMBER 10, 1974

Rate: 0.920 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 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: A WELL in the PUDDING RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	2 W	WM	10	SE NW	97	WELL (MARI 3908) - 2120 FEET NORTH AND 230 FEET WEST FROM THE MOST SOUTHERLY SE CORNER OF DLC 97

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	2 W	WM	10	NW NE	97	0.3
6 S	2 W	WM	10	SW NE	97	24.8
6 S	2 W	WM	10	NE NW	97	0.3
6 S	2 W	WM	10	SE NW	97	19.7
6 S	2 W	WM	10	NE SW	97	25.2
6 S	2 W	WM	10	SE SW	97	2.9
Total						73.2

7. Transfer Application T-12078 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approximate distance (feet) from Authorized Well (MARI 3908)
6 S	2 W	WM	9	SW NE	60	WELL (MARI 3898) - 3530 FEET NORTH AND 1470 FEET EAST FROM THE SW CORNER OF DLC 60	3180
6 S	2 W	WM	9	NW SE	60	WELL (MARI 3890) - 2040 FEET NORTH AND 140 FEET EAST FROM THE SW CORNER OF DLC 60	4620
6 S	2 W	WM	9	SW SE	60	WELL (MARI 3905) - 340 FEET SOUTH AND 70 FEET WEST FROM THE SW CORNER OF DLC 97	3210
6 S	2 W	WM	10	SW SE		WELL (MARI 3926) - 1150 FEET NORTH AND 1580 FEET WEST FROM THE SE CORNER OF SECTION 10	2874
6 S	2 W	WM	10	SE SW	60	WELL - 360 FEET SOUTH AND 20 FEET WEST FROM THE SOUTHERLY SE CORNER OF DLC 97	2490

7. The third right to be transferred is as follows:

Certificate: 87080 in the names of FESSLER FAMILY, LLC AND NORTHWEST FARM CREDIT SERVICES (perfected under Permit G-11414)

Use: IRRIGATION OF 25.0 ACRES

Priority Date: APRIL 4, 1991

Rate: 0.30 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.

Sources: WELLS 1 AND 2 within the CARNES CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	2 W	WM	10	SW NW	97	WELL 1 - 1498 FEET NORTH AND 1620 FEET WEST FROM THE MOST SOUTHERLY SE CORNER OF DLC 97
6 S	2 W	WM	10	SE NW		WELL 2 (MARI 3908) - 2120 FEET NORTH AND 230 FEET WEST FROM THE MOST SOUTHERLY SE CORNER OF DLC 97

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	2 W	WM	10	NW NW	97	2.0
6 S	2 W	WM	10	SW NW	97	23.0
Total						25.0

8. Transfer Application T-12078 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approximate distance (feet) from Authorized Well (MARI 3908)
6 S	2 W	WM	9	SW NE	60	WELL (MARI 3898) - 3530 FEET NORTH AND 1470 FEET EAST FROM THE SW CORNER OF DLC 60	3180
6 S	2 W	WM	9	NW SE	60	WELL (MARI 3890) - 2040 FEET NORTH AND 140 FEET EAST FROM THE SW CORNER OF DLC 60	4620
6 S	2 W	WM	9	SW SE	60	WELL (MARI 3905) - 340 FEET SOUTH AND 70 FEET WEST FROM THE SW CORNER OF DLC 97	3210
6 S	2 W	WM	10	SW SE		WELL (MARI 3926) - 1150 FEET NORTH AND 1580 FEET WEST FROM THE SE CORNER OF SECTION 10	2874
6 S	2 W	WM	10	SE SW	60	WELL - 360 FEET SOUTH AND 20 FEET WEST FROM THE SOUTHERLY SE CORNER OF DLC 97	2490

9. The fourth right to be transferred is as follows:

Certificate: 89431 in the name of BOB FESSLER (perfected under Permit G-2020)
Use: IRRIGATION OF 135.1 ACRES
Priority Date: DECEMBER 20, 1961
Rate: 1.69 CUBIC FEET PER SECOND (CFS), FURTHER LIMITED TO NO MORE THAN 1.06 CFS FROM PERMIT G-5915 WELL, 1.69 CFS FROM PERMIT G-3454 WELL, AND 1.69 CFS FROM PERMIT G-2020 WELL
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.
Sources: THREE WELLS within the UNNAMED TRIBUTARY (LABISH DITCH) BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	2 W	WM	9	SE NE	60	PERMIT G-3454 WELL (ADDITIONAL) (MARI 3898) - 3530 FEET NORTH AND 1470 FEET EAST FROM THE SW CORNER OF DLC 60
6 S	2 W	WM	9	NW SE	60	PERMIT G-5915 WELL (ADDITIONAL) (MARI 3890) - 2040 FEET NORTH AND 140 FEET EAST FROM THE SW CORNER OF DLC 60
6 S	2 W	WM	9	SE SE	60	PERMIT G-2020 WELL (ORIGINAL) (MARI 3905) - 340 FEET SOUTH AND 70 FEET WEST FROM THE SW CORNER OF DLC 97

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	2 W	WM	9	SW NE	60	0.2
6 S	2 W	WM	9	SE NE	60	6.6
6 S	2 W	WM	9	NE SE	60	39.9
6 S	2 W	WM	9	NW SE	60	9.4
6 S	2 W	WM	9	SW SE	60	1.5
6 S	2 W	WM	9	SE SE	60	13.7
6 S	2 W	WM	10	SW NW	60	0.2
6 S	2 W	WM	10	NW SW	60	1.0
6 S	2 W	WM	10	SW SW	60	35.1
6 S	2 W	WM	10	SE SW	60	27.5
Total						135.1

10. Transfer Application T-12078 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approximate distance (feet) from Authorized Wells		
							MARI 3898	MARI 3890	MARI 3905
6 S	2 W	WM	10	SE NW	97	WELL (MARI 3908) - 2120 FEET NORTH AND 230 FEET WEST FROM THE MOST SOUTHERLY SE CORNER OF DLC 97	3180	4620	3210
6 S	2 W	WM	10	SW SE		WELL (MARI 3926) - 1150 FEET NORTH AND 1580 FEET WEST FROM THE SE CORNER OF SECTION 10	5500	6230	3740
6 S	2 W	WM	10	SE SW	60	WELL - 360 FEET SOUTH AND 20 FEET WEST FROM THE SOUTHERLY SE CORNER OF DLC 97	4425	4900	2335

11. The fifth right to be transferred is as follows:

Certificate: 89432 in the name of BOB FESSLER (perfected under Permit G-3454)
Use: IRRIGATION OF 58.0 ACRES
Priority Date: MAY 18, 1967
Rate: 0.720 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: THREE WELLS within the LITTLE PUDDING RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	2 W	WM	9	SE NE	60	PERMIT G-3454 WELL (ORIGINAL) (MARI 3898) - 3530 FEET NORTH AND 1470 FEET EAST FROM THE SW CORNER OF DLC 60
6 S	2 W	WM	9	NW SE	60	PERMIT G-5915 WELL (ADDITIONAL) (MARI 3890) - 2040 FEET NORTH AND 140 FEET EAST FROM THE SW CORNER OF DLC 60.
6 S	2 W	WM	9	SE SE	60	PERMIT G-2020 WELL (ADDITIONAL) (MARI 3905) - 340 FEET SOUTH AND 70 FEET WEST FROM THE SW CORNER OF DLC 97

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	2 W	WM	9	NE NE	60	1.8
6 S	2 W	WM	9	NW NE	60	1.3
6 S	2 W	WM	9	SW NE	60	21.0
6 S	2 W	WM	9	SE NE	60	32.9
6 S	2 W	WM	10	NW NW	60	0.1
6 S	2 W	WM	10	SW NW	60	0.9
Total						58.0

12. Transfer Application T-12078 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approximate distance (feet) from Authorized Wells		
							MARI 3898	MARI 3890	MARI 3905
6 S	2 W	WM	10	SE NW	97	WELL (MARI 3908) - 2120 FEET NORTH AND 230 FEET WEST FROM THE MOST SOUTHERLY SE CORNER OF DLC 97	3180	4620	3210
6 S	2 W	WM	10	SW SE		WELL (MARI 3926) - 1150 FEET NORTH AND 1580 FEET WEST FROM THE SE CORNER OF SECTION 10	5500	6230	3740
6 S	2 W	WM	10	SE SW	60	WELL - 360 FEET SOUTH AND 20 FEET WEST FROM THE SOUTHERLY SE CORNER OF DLC 97	4425	4900	2335

13. The sixth right to be transferred is as follows:

Certificate: 89433 in the name of BOB FESSLER (perfected under Permit G-5915)

Use: IRRIGATION OF 27.68 ACRES

Priority Date: AUGUST 30, 1973

Rate: 0.33 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.

Sources: THREE WELLS within the LAKE LABISH BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	2 W	WM	9	SE NE	60	PERMIT G-3454 WELL (ADDITIONAL) (MARI 3898) - 3530 FEET NORTH AND 1470 FEET EAST FROM SW CORNER OF DLC 60
6 S	2 W	WM	9	NW SE	60	PERMIT G-5915 WELL (ORIGINAL) (MARI 3890) - 2040 FEET NORTH AND 140 FEET EAST FROM SW CORNER, HARPOOL DLC 60
6 S	2 W	WM	9	SE SE	60	PERMIT G-2020 WELL (ADDITIONAL) (MARI 3905) - 340 FEET SOUTH AND 70 FEET WEST FROM THE SW CORNER OF DLC 97

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
6 S	2 W	WM	9	SW NE	2		0.80
6 S	2 W	WM	9	SW NE		60	6.60
6 S	2 W	WM	9	SE NW			0.70
6 S	2 W	WM	9	NE SW			2.18
6 S	2 W	WM	9	NW SE	3		1.40
6 S	2 W	WM	9	NW SE		60	16.00
Total							27.68

14. Transfer Application T-12078 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approximate distance (feet) from Authorized Wells		
							MARI 3898	MARI 3890	MARI 3905
6 S	2 W	WM	10	SE NW	97	WELL (MARI 3908) - 2120 FEET NORTH AND 230 FEET WEST FROM THE MOST SOUTHERLY SE CORNER OF DLC 97	3180	4620	3210
6 S	2 W	WM	10	SW SE		WELL (MARI 3926) - 1150 FEET NORTH AND 1580 FEET WEST FROM THE SE CORNER OF SECTION 10	5500	6230	3740
6 S	2 W	WM	10	SE SW	60	WELL - 360 FEET SOUTH AND 20 FEET WEST FROM THE SOUTHERLY SE CORNER OF DLC 97	4425	4900	2335

Transfer Review Criteria (OAR 690-380-4010)

15. 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.
16. Pumps, pipelines, and sprinkler systems 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-12078.
17. The proposed change would not result in enlargement of the rights.
18. The proposed change would not result in injury to other water rights.
19. All other application requirements are met.

Determination and Proposed Action

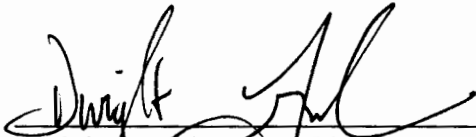
The additional points of appropriation proposed in Transfer Application T-12078 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12078 is approved, the final order will include the following:

1. *The additional points of appropriation proposed in Transfer Application T-12078 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 Certificates 89260, 57082, 87080, 89431, 89432, and 89433, and any related decree.*
3. *Water right Certificates 89260, 57082, 87080, 89431, 89432, and 89433 are cancelled.*
4. *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 point(s) 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 meter(s) or measuring device(s) in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter(s) or measuring device(s); provided however, where the meter(s) or measuring device(s) 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, 2017**. 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, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 2 day of March, 2016.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

This Preliminary Determination was prepared by Kelly Starnes. If you have questions about the information in this document, you may reach me at 503-986-0886 or Patrick.K.Starnes@wrд.state.or.us

Protests should be addressed to the attention of Water Rights Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.