BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER APPROVING A CHANGE
T-12006, Linn County)	IN POINT OF DIVERSION, PLACE OF
•)	USE AND CHARACTER OF USE

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

DAVID VAN ESSEN 39161 RIVER RD LEBANON, OR 97355

Receiving Landowner

DAVID VAN ESSEN AND LEANNE VAN ESSEN, TRUSTEES OF THE VAN ESSEN FAMILY LIVING TRUST 39161 RIVER RD LEBANON, OR 97355

Findings of Fact

- 1. On March 16, 2015, DAVID VAN ESSEN filed an application to change the point of diversion; place of use; and character of use under Certificate 64160. The Department assigned the application number T-12006.
- 2. DAVID VAN ESSEN AND LEANNE VAN ESSEN, TRUSTEES OF THE VAN ESSEN FAMILY LIVING TRUST is the receiving landowner. The applicant will be responsible for completion of the changes.
- 3. Notice of the application for transfer was published on MARCH 24, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 4. On November 16, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12006 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 16, 2015, 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.

- 5. On December 22, 2015, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12006 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 December 29, 2015, and in the Lebanon Express newspaper on December 30, 2015, and January 6, 2016, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
- 6. The portion of the right to be transferred is as follows:

Certificate: 64160 in the name of WAYNE D. BOSWELL (perfected under Permit

S-44386)

Use: IRRIGATING 9.1 ACRES

Priority Date: AUGUST 20, 1979

Rate: 0.11 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:

SOUTH SANTIAM RIVER, a tributary of the SANTIAM RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	
12 S	1 W	WM	29	NW NE	57	240 FEET SOUTH AND 500 FEET EAST FROM THE N1/4 CORNER OF SECTION 29	

Authorized Place of Use:

	IRRIGATION									
Twp	Twp Rng Mer Sec Q-Q DLC Acres									
12 S	1 W	WM	29	NW NE	53	0.2				
12 S	1 W	WM	29	SW NE	53	2.9				
12 S	1 W	WM	29	NW SE	53	6.0				

- 7. Certificate 64160 does not specify the irrigation season, however the Santiam and South Santiam Rivers Decree establishes the irrigation season for the area as April 1 through September 30.
- 8. Transfer Application T-12006 proposes to move the authorized point of diversion approximately 3750 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	
12 S	1 W	WM	19	SE SE	39	1170 FEET NORTH AND 290 FEET WEST FROM THE SE CORNER OF SECTION 19	

9. Transfer Application T-12006 also proposes to change the place of use of the right to:

NURSERY USES								
Twp Rng Mer Sec Q-Q DLC Acres								
12 S	1 W	WM	19	SE SE	39	6.1		

NURSERY USES								
Twp Rng Mer Sec Q-Q DLC Acres								
12 S	1 W	WM	30	NE NE	39	3.0		

- 10. Transfer Application T-12006 proposes to change the character of use to nursery.
- 11. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

Transfer Review Criteria [OAR 690-380-4010(2)]

- 12. 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.
- 13. 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-12006.
- 14. In order to prevent enlargement of the right, the use of water for nursery use, shall be limited to a rate of diversion of 0.11 cfs a duty of 2.5 acre-feet per acre and shall not exceed a total quantity of 22.75 acre-feet during the time period of April 1 through September 30 of each year.
- 15. The proposed changes, as conditioned, would not result in enlargement of the right.
- 16. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The change in point of diversion, change in place of use and change in character of use proposed in Transfer Application T-12006 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

- 1. The change in point of diversion, change in place of use and change in character of use proposed in Transfer Application T-12006 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 64160 and any related decree.
- 3. Water right Certificate 64160 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.

- 4. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
- 5. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

- 6. The use of water for nursery use, under the right described by Certificate 64160, shall be limited to a rate of diversion of 0.11 cfs a duty of 2.5 acre-feet per acre and shall not exceed a total quantity of 22.75 acre-feet during the time period of April 1 through September 30 of each year.
- 7. The former place of use of the transferred right shall no longer receive water under the right.
- 8. 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 changes and full beneficial use of the water.
- 9. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this

day of February, 2016.

Dwight French, Water Right Services Administrator, for

Thomas M. Byler, Director

Oregon Water Resources Department

Mailing Date: FEB 17 2016