

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

In the Matter of Transfer Application            )     FINAL ORDER APPROVING A  
T-12007, Linn County                            )     CHANGE IN POINT OF DIVERSION

**Authority**

Oregon Revised Statute (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

**Findings of Fact**

1. On March 16, 2015, DAVID VAN ESSEN filed an application to change the point of diversion under Certificate 48982. The Department assigned the application number T-12007.
2. 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.
3. On November 12, 2015, the Department contacted the agent by telephone and by written correspondence to notify the applicant's agent of a deficiency in the application. Clarification was needed regarding the place of use and the change requested. The Department requested that the deficiency be resolved by December 14, 2015.
4. On November 12, 2015, the agent submitted an amended application page clarifying the change requested and resolving the deficiency.
5. On November 16, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12007 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

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.

Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

6. On December 22, 2015, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12007 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, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

7. The right to be transferred is as follows:

**Certificate:** 48982 in the name of CARL A. PRACHT (perfected under Permit S-22937)

**Use:** IRRIGATION of 16.5 ACRES

**Priority Date:** MAY 10, 1954

**Rate:** 0.20 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 WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC
12 S	1 W	WM	29	NE NE	57

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
12 S	1 W	WM	29	NW NE	53	3.0
12 S	1 W	WM	29	SW NE	53	13.5

8. Certificate 48982 does not describe the measured distances of the authorized point of diversion, the applicant and Certified Water Right Examiner (CWRE) have provided information further describing the authorized point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
12 S	1 W	WM	29	NE NE	57	590 FEET SOUTH AND 1160 FEET WEST FROM THE NE CORNER OF SECTION 29

9. Transfer Application T-12007 proposes to move the authorized point of diversion approximately 1086 feet downstream to:

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 N 1/4 CORNER OF SECTION 29

10. Transfer Application T-12007 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
12 S	1 W	WM	29	NW NE	53	3.0
12 S	1 W	WM	29	SW NE	53	13.5

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-12007.
- 14. The proposed change would not result in enlargement of the right.
- 15. The proposed change would not result in injury to other water rights.

**Conclusions of Law**

The change in point of diversion proposed in Transfer Application T-12007 is 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 proposed in Transfer Application T-12007 is 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 48982 and any related decree.
- 3. Water right Certificate 48982 is cancelled.
- 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. 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.
7. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 8 day of February, 2016.

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

Mailing Date: FEB 17 2016