



# Oregon

Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

December 22, 2015

*VIA E-MAIL*

DAVID VAN ESSEN  
39161 RIVER RD  
LEBANON, OR 97355

SUBJECT: Water Right Transfer Application T-12006

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12006. 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.

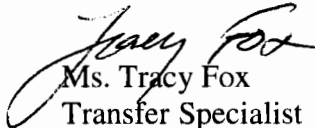
A public notice is being published in the Department's weekly publication and in the Lebanon Express newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in 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@wr.d.state.or.us](mailto:Tracy.L.Fox@wr.d.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-12006  
Michael J. Mattick, District 2 Watermaster (*via e-mail*)  
Ian McGuire, Agent for the applicant and CWRE (*via e-mail*)  
David and Leanne Van Essen, Trustees of the Van Essen Family Living Trust,  
Receiving Landowners (*via e-mail*)

enclosures

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

In the Matter of Transfer Application        )  
T-12006, Linn County                        )  
  )  
  )

PRELIMINARY DETERMINATION  
PROPOSING APPROVAL OF A CHANGE  
IN POINT OF DIVERSION, PLACE OF  
USE AND CHARACTER OF USE

**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

**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.

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.

5. 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        | 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   |
| Total:     |     |     |     |       |     | 9.1   |

6. 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.
7. 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 |

8. 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   |
| 12 S         | 1 W | WM  | 30  | NE NE | 39  | 3.0   |

9. Transfer Application T-12006 proposes to change the character of use to nursery.
10. 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)]***

11. 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.
12. 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.
13. 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.
14. The proposed changes, as conditioned, would not result in enlargement of the right.
15. The proposed changes would not result in injury to other water rights.

**Determination and Proposed Action**

The change in point of diversion, change in place of use and change in character of use proposed in Transfer Application T-12006 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

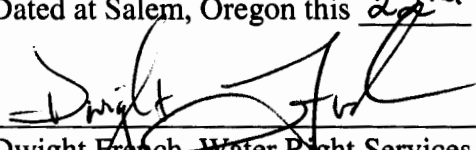
*If Transfer Application T-12006 is approved, the final order will include the following:*

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 22<sup>nd</sup> day of December, 2015.

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

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