



Oregon

Kate Brown, Governor

Water Resources Department

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December 22, 2015

VIA E-MAIL

DAVID VAN ESSEN
39161 RIVER RD
LEBANON, OR 97355

SUBJECT: Water Right Transfer Application T-12007

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12007. 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 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 Department's notice.

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-12007
Michael J. Mattick, District 2 Watermaster (via e-mail)
Ian McGuire, Agent for the applicant and CWRE (via e-mail)

enclosures

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

In the Matter of Transfer Application) **PRELIMINARY DETERMINATION**
T-12007, Linn County) **PROPOSING APPROVAL OF A**
) **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 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.

6. The right to be transferred is as follows:

Certificate: 48982 in the name of CARL A. PRACTH (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 |

7. 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 |

8. 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 |

9. 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 |

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

Determination and Proposed Action

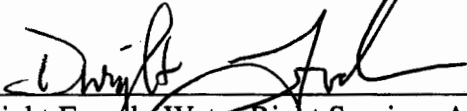
The change in point of diversion proposed in Transfer Application T-12007 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-12007 is approved, the final order will include the following:

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 22nd day of December, 2015.



Dwight French, Water Right Services Administrator, for
Thomas M. Eyster, 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