



# Oregon

Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

May 18, 2016

ROBERT AND DELORES BOOTH  
6585 LITTLE APPLGATE ROAD  
JACKSONVILLE, OR 97530

SUBJECT: Water Right Transfer Application T-12225

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12225. 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 Medford Mail Tribune 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 503-986-0890 or [Sarah.A.Henderson@ wrd.state.or.us](mailto:Sarah.A.Henderson@ wrd.state.or.us) if I may be of assistance.

Sincerely,

Sarah Henderson  
Transfer Specialist  
Transfer and Conservation Section

cc: Transfer Application file T-12225  
Travis N. Kelly, District 13 Watermaster (*via e-mail*)  
Evan Malepsy, Agent and CWRE for the applicant (*via e-mail*)

encs

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

In the Matter of Transfer Application                    )     **PRELIMINARY DETERMINATION**  
T-12225, Jackson County                                 )     **PROPOSING APPROVAL OF A**  
  )     **CHANGE IN POINTS OF DIVERSION**

**Authority**

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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 Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

**Applicant**

**ROBERT AND DELORES BOOTH  
6585 LITTLE APPLGATE ROAD  
JACKSONVILLE, OR 97530**

**Findings of Fact**

1. On December 28, 2015, ROBERT BOOTH filed an application for additional points of diversion under Certificates 16394 and 16396. The Department assigned the application number T-12225.
2. Notice of the application for transfer was published on January 5, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 8, 2016, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12225 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 8, 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.
4. On May 3, 2016, the applicant’s agent requested the type of change to be points of diversion changes, not additional points of diversion.
5. The first right to be transferred is as follows:  
**Certificate:**     16394 in the name of CYRENIUS COMBEST (confirmed by Rogue River Final Decree Volume 4, at Page 1)  
**Use:**             IRRIGATION of 8.5 ACRES, AND DOMESTIC USE

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.

**Priority Date:** 1906

**Rate:** 0.22 CUBIC FOOT PER SECOND

**Source:** LITTLE APPLGATE RIVER, a tributary of APPLGATE RIVER

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	2 W	WM	28	SW NW	8.5

6. Certificate 16394 does not describe the location of the point of diversion, however information is available from the applicants and agent indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	2 W	WM	27	NW NW	1040 FEET SOUTH AND 710 FEET EAST FROM THE NE CORNER OF SECTION 28

7. Transfer Application T-12225 proposes to move the authorized point of diversion approximately 0.8 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	2 W	WM	28	SE NW	2580 FEET SOUTH AND 2880 FEET WEST FROM THE NE CORNER OF SECTION 28

8. The portion of the second right to be transferred is as follows:

**Certificate:** 16396 in the name of R. M. FOREST (confirmed by Rogue River Final Decree Volume 4, at Page 1)

**Use:** IRRIGATION of 7.7 ACRES

**Priority Date:** 1872

**Rate:** 0.19 CUBIC FEET PER SECOND

**Source:** LITTLE APPLGATE RIVER, a tributary of APPLGATE RIVER

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	2 W	WM	28	SE NW	5.0
39 S	2 W	WM	28	NE SW	2.7

9. Certificate 16396 does not describe the location of the point of diversion, however information is available from the applicants and agent indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	2 W	WM	28	SE NE	1890 FEET SOUTH AND 520 FEET WEST FROM THE NE CORNER OF SECTION 28

10. Transfer Application T-12225 proposes to move the authorized point of diversion approximately 0.6 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	2 W	WM	28	SE NW	2580 FEET SOUTH AND 2880 FEET WEST FROM THE NE CORNER OF SECTION 28

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 rights are subject to forfeiture under ORS 540.610.
13. A diversion structure and ditch 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-12225.
14. The proposed change would not result in enlargement of the rights.
15. The proposed change would not result in injury to other water rights.

**Determination and Proposed Action**

The additional points of diversion proposed in Transfer Application T-12225 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-12225 is approved, the final order will include the following:*

1. *The additional points of diversion proposed in Transfer Application T-12225 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 16394 and 16396 and any related decree.*
3. *Water right Certificates 16394 and 16396 are cancelled. A new certificate for 16396 will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the additional points of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.*
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 new point of diversion.*
  - b. *The water user shall maintain the meters or measuring devices in good working order.*
  - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*

6. *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.*

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 changes 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 18 day of May, 2016.



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

This Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-986-0890 or [Sarah.A.Henderson@wrp.state.or.us](mailto:Sarah.A.Henderson@wrp.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.*

**Notice Regarding Service Members:** Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>