



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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November 15, 2012

VIA E-MAIL

DENNIS & AVA GRAUER
TRAVIS & LAYCEE GRAUER
23230 SW DEJONG RD
SHERIDAN, OR 97378
Dennis@Grauerrepair.com

SUBJECT: Water Right Transfer Application T-11472

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11472. 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 503-986-0881, or teri.k.hranac@wrdd.state.or.us, if I may be of assistance.

Sincerely,

Teri Hranac
Transfer Specialist
Transfer and Conservation Section

Enclosures

cc: T-11472
Mike L. McCord, District 16 Watermaster (*via e-mail*)
Nathan E Magness, Agent for the applicant (*via e-mail at magness@wbcable.net*)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11472, Yamhill County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF DIVERSION
)	AND A CHANGE IN PLACE OF USE

Authority

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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicants

DENNIS AND AVA GRAUER
TRAVIS AND LAYCEE GRAUER
23230 SW DEJONG RD
SHERIDAN, OR 97378

Agent

NATHAN MAGNESS
MAGNESS LAND SURVEYING
PO BOX 1239
WILLAMINA, OR 97396

Findings of Fact

Background

1. On September 13, 2012, DENNIS AND AVA GRAUER AND TRAVIS AND LAYCEE GRAUER filed an application to change the point of diversion and to change the place of use under Certificate 39370. The Department assigned the application number T-11472.
2. The portion of the right to be transferred is as follows:

Certificate:	39370 in the name of NORMAN A. AND SHIRLEY M. SEMENZA AND RICHARD CHODRICK (perfected under Permit S-20701)
Use:	IRRIGATION of 3.0 ACRES
Priority Date:	AUGUST 31, 1951
Rate:	0.04 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.

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.

Source: SOUTH YAMHILL RIVER, tributary to the YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	5 W	WM	32	NW SE	790 FEET NORTH AND 4750 FEET EAST OF THE SW CORNER OF TONEY DLC 56

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Change in POD Only	Change in POD and POU
5 S	5 W	WM	32	NE SE	56		0.6
5 S	5 W	WM	32	NE SE	56	1.0	
5 S	5 W	WM	32	NW SE	56		0.4
5 S	5 W	WM	32	NW SE	56	1.0	

- Transfer Application T-11472 proposes to move the authorized point of diversion approximately 600 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
5 S	5 W	WM	32	NE SE	56	610 FEET NORTH OF THE SE CORNER OF TONEY DLC 56

- Transfer Application T-11472 also proposes to change the place of use of 1.0 acre of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	32	NE SE	56	0.8
5 S	5 W	WM	32	NW SE	56	0.2

- Notice of the application for transfer was published on September 18, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On November 2, the Department sent a copy of a draft Preliminary Determination proposing to approve Transfer Application T-11472 to the applicants. The Preliminary Determination cover letter set forth a deadline of December 4, 2012, for the applicants to respond.
- On November 9, 2012, the Watermaster changed the condition requiring installation of a totalizing flow meter at this time. The Department notified the applicants of the changed condition via e-mail on November 9, 2012.
- On November 13, 2012, the applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

9. The water user shall operate and maintain an approved fish screen at the new point of diversion. If Oregon Department of Fish and Wildlife (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.

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

10. Water has been used within the last five years 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.
11. 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-11472.
12. The proposed changes would not result in enlargement of the right.
13. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The change in point of diversion and change in place of use proposed in Transfer Application T-11472 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-11472 is approved, the final order will include the following:

1. *The change in point of diversion and change in place of use proposed in Transfer Application T-11472 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 39370 and any related decree.*
3. *Water right certificate 39370 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. *The Director may require the water user to install a totalizing a flow meter or other suitable measuring devices at the point of diversion. If the Director notifies the water user to install a totalizing flow meter or other measuring device, the water user shall install such device specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meter or measuring device in good working order and shall allow the Watermaster access to the meter or measuring device.*
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. *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, 2014**. 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 15 day of November, 2012.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Teri Hranac. If you have questions about the information in this document, you may reach me at 503-986-0881 or Teri.K.Hranac@wr.d.state.or.us.

Protests should be addressed to the attention of Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.