



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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April 4, 2014

VIA E-MAIL

RICHARD AND SHIRLEY V. GINGERICH  
PO BOX 910  
CANBY, OR 97013  
verneg@gingerich.com

SUBJECT: Water Right Transfer Application T-11722

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11722. 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 503-986-0890 or [Sarah.A.Henderson@wrdd.state.or.us](mailto:Sarah.A.Henderson@wrdd.state.or.us) if I may be of assistance.

Sincerely,

Sarah Henderson  
Transfer Specialist  
Transfer and Conservation Section

cc: T-11722  
Mike L. McCord, District 16 Watermaster (*via e-mail*)  
John E Borden, Agent and CWRE #372 for the applicant (*via e-mail*)  
[jeborden@comcast.net](mailto:jeborden@comcast.net)

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

In the Matter of Transfer Application            )    **PRELIMINARY DETERMINATION**  
T-11722, Clackamas County                    )    **PROPOSING APPROVAL OF**  
  )    **ADDITIONAL POINTS OF**  
  )    **APPROPRIATION**

**Authority**

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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**

RICHARD AND SHIRLEY V. GINGERICH  
PO BOX 910  
CANBY, OR 97013

**Findings of Fact**

1. On January 21, 2014, RICHARD AND SHIRLEY V. GINGERICH filed an application for additional points of appropriation under Certificate 88893. The Department assigned the application number T-11722.
2. Notice of the application for transfer was published on January 28, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 4, 2014, the Department contacted the applicant and applicants' agent by email to notify them of deficiencies in the application. The Department requested that the deficiencies be resolved by April 1, 2014.
4. On March 6 and 14, 2014, the applicants' agent sent the Department amended documents resolving the deficiencies.
5. On March 19, 2014, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11722 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 18, 2014, for the applicants to respond. The applicants 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:** 88893 in the name of RICHARD AND SHIRLEY V. GINGERICH  
(perfected under Permit G-11443)

**Use:** IRRIGATION of 176.63 ACRES

**Priority Date:** JUNE 23, 1989

**Rate:** 0.98 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, is 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:** A WELL in the WHEELER CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 E	WM	35	SE SE	650 FEET NORTH AND 1290 FEET WEST FROM THE SE CORNER OF SECTION 35

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 E	WM	35	SW NE	4.2
4 S	1 E	WM	35	SE NE	4.6
4 S	1 E	WM	35	SE NW	17.5
4 S	1 E	WM	35	NE SW	12.73
4 S	1 E	WM	35	NE SE	39.4
4 S	1 E	WM	35	NW SE	38.0
4 S	1 E	WM	35	SW SE	25.2
4 S	1 E	WM	35	SE SE	35.0

7. Transfer Application T-11722 proposes four additional points of appropriation, described as follows with the approximate distances from the existing point of appropriation identified:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from authorized well
4 S	1 E	WM	35	SE SE	WELL 3 - 1267 FEET NORTH AND 1295 FEET WEST FROM THE SE CORNER OF SECTION 35	560 feet
4 S	1 E	WM	35	SE SE	WELL 4 - 663 FEET NORTH AND 1210 FEET WEST FROM THE SE CORNER OF SECTION 35	83 feet
4 S	1 E	WM	35	SE SE	WELL 5 - 659 FEET NORTH AND 538 FEET WEST FROM THE SE CORNER OF SECTION 35	751 feet
4 S	1 E	WM	35	SE SE	WELL 6 - 615 FEET NORTH AND 534 FEET WEST FROM THE SE CORNER OF SECTION 35	762 feet

***Transfer Review Criteria (OAR 690-380-4010)***

8. 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.
9. 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-11722.
10. The proposed change would not result in enlargement of the right.
11. The proposed change, as conditioned, would not result in injury to other water rights.
12. All other application requirements are met.

**Determination and Proposed Action**

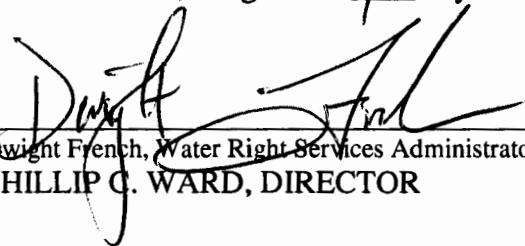
The additional points of appropriation proposed in Transfer Application T-11722 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

*If Transfer Application T-11722 is approved, the final order will include the following:*

1. *The additional points of appropriation proposed in Transfer Application T-11722 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 88893 and any related decree.*
3. *Water right certificate 88893 is cancelled. A new certificate will be issued describing the portion of water right certificate 88893 not affected by this transfer.*
4. *The quantity of water diverted at the new points of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.*
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 appropriation.*
  - 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. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2015**. 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, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 7 day of April, 2014.

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

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Sarah Henderson at 503 986-0890 or at Sarah.A.Henderson@ wrd.state.or.us.

*Protests should be addressed to the attention of Water Right Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.*