



Suite 2400
1300 SW Fifth Avenue
Portland, OR 97201-5610

Olivier Jamin
5037785346 tel

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MAR 13 2023

OWRD

March 7, 2023

SENT VIA US MAIL

Dwight French
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

Re: Transfer Applications for Certificates 48627, 89100, and 21358

Dear Dwight:

On behalf of the City of Newport, please find enclosed two applications for permanent water right transfers for storage water right certificates 48627, 89100, and 21358.

The City of Newport is pursuing these transfer applications to comply with the Oregon Water Resources Department's (OWRD) January 22, 2021 Notification of Unsafe / Potentially Unsafe Dam requiring removing the existing dams associated with Certificate 21358 (Big Creek Reservoir #1), and Certificates 48627 and 89100 (Big Creek Reservoir #2) and constructing a replacement dam (Big Creek Dam), which will be the new place of use for all three certificates.

Approval of these transfer applications is critical to ensure the health and safety of the citizens of the City of Newport and to benefit from federal and state funding available for this type of infrastructure project.

The water transfer statutes – ORS 540.505 to ORS 540.530 – and recent case law explicitly recognize OWRD's authority to process transfer applications for storage water rights. ORS 540.510(1)(a) authorizes the "holder of any water use subject to transfer" to apply to change the location of the authorized point of diversion or place of use without losing the existing priority of the water right. The term "water use subject to transfer" is defined broadly by statute to include any "water use established by ... [a] water right certificate." ORS 540.050(4)(b). If the "proposed change can be effected without injury to existing water rights," ORS 540.530(1) then provides that the Water Resources Commission "shall" allow the change. In an opinion letter dated January 9, 2023 in the case *Bridge Creek Ranch, LLC v. Oregon Water Resources Department*, 22CV05598, the Marion County Circuit Court confirmed that "storage of water for different purposes qualifies as a 'water use'," and that "OWRD has the authority to allow transfers of point of diversion and point of use for certificated storage water rights under ORS 540.030."

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The City of Newport understands that OWRD is currently questioning its authority to process storage water rights transfer requests, and intends to appeal the *Bridge Creek* decision. Accordingly, the City is concurrently pursuing legislative action that would specifically allow and request OWRD to process the enclosed transfer requests under HB-3211. However, the City urges OWRD to process the enclosed transfer requests immediately under its existing authority under ORS 540.505 to ORS 540.530 and the *Bridge Creek* case.

Best regards,

Davis Wright Tremaine LLP



Olivier Jamin

cc: Adam Sussman, GSI Water Solutions, Inc.
Spencer Nebel, City Manager, City of Newport

Application for Permanent Water Right Transfer



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.oregon.gov/OWRD

Part 1 of 5 – Minimum Requirements Checklist

This transfer application will be returned if Parts 1 through 5 and all required attachments are not completed and included.

For questions, please call (503) 986-0900, and ask for Transfer Section.

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Check all items included with this application. (N/A = Not Applicable)

- ☒ Part 1 – Completed Minimum Requirements Checklist.
- ☒ Part 2 – Completed Transfer Application Map Checklist.
- ☒ Part 3 – Application Fee, payable by check to the Oregon Water Resources Department, and completed Fee Worksheet, page 3. Try the new online fee calculator at: - http://apps.wrd.state.or.us/apps/misc/wrd_fee_calculator. **\$3,060 enclosed**
- ☒ Part 4 – Completed Applicant Information and Signature.
- ☐ Part 5 – Information about Water Rights to be Transferred: **How many water rights are to be transferred? 2 List them here: Certificates 48627 and 89100 (See Attachment A)**
Please include a separate Part 5 for each water right. (See instructions on page 6)
NOTE: A separate transfer application is required for each water right unless the criteria in OAR 690-380-3220 are met.

Attachments:

- ☒ Completed Transfer Application Map. **(See Attachment B)**
- ☒ Completed Evidence of Use Affidavit and supporting documentation. **(See Attachment C)**
- ☐ ☒ N/A Affidavit(s) of Consent from Landowner(s) (if the applicant does not own the land the water right is on.)
- ☐ ☒ N/A Supplemental Form D – For water rights served by or issued in the name of an irrigation district. Complete when the transfer applicant is not the irrigation district.
- ☒ ☐ N/A Oregon Water Resources Department's Land Use Information Form with approval and signature from each local land use authority in which water is to be diverted, conveyed, and/or used. Not required if water is to be diverted, conveyed, and/or used only on federal lands or if **all** of the following apply: a) a change in place of use only, b) no structural changes, c) the use of water is for irrigation only, and d) the use is located within an irrigation district or an exclusive farm use zone. **(See Attachment D)**
- ☐ ☒ N/A Water Well Report/Well Log for changes in point(s) of appropriation (well(s)) or additional point(s) of appropriation.
- ☐ ☒ N/A Geologist Report for a change from a surface water point of diversion to a ground water point of appropriation (well), if the proposed well is more than 500' from the surface water source and more than 1000' upstream or downstream from the point of diversion. See OAR 690-380-2130 for requirements and applicability.

(For Staff Use Only)

WE ARE RETURNING YOUR APPLICATION FOR THE FOLLOWING REASON(S):

- | | |
|--|--|
| ☐ Application fee not enclosed/insufficient | ☐ Map not included or incomplete |
| ☐ Land Use Form not enclosed or incomplete | ☐ Evidence of Use Form not enclosed or incomplete |
| ☐ Additional signature(s) required | ☐ Part _____ is incomplete |

Other/Explanation _____

Staff: _____ 503- _____ Date: ____/____/____

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Part 2 of 5 – Transfer Application Map

Your transfer application will be returned if any of the map requirements listed below are not met.

Please be sure that the transfer application map you submit includes all the required items and matches the existing water right map. Check all boxes that apply.

- ☒ ☐ N/A Certified Water Right Examiner (CWRE) Stamp and Original Signature. For a list of CWREs, see http://apps.wrd.state.or.us/apps/wr/cwre_license_view/. CWRE stamp and signature are not required for substitutions.
- ☐ ☒ N/A If **more than three** water rights are involved, separate maps are needed for each water right.
- ☒ Permanent quality printed with dark ink on good quality paper.
- ☒ The size of the map can be 8½ x 11 inches, 8½ x 14 inches, 11 x 17 inches, or up to 30 x 30 inches. For 30 x 30 inch maps, one extra copy is required.
- ☒ A north arrow, a legend, and scale.
- ☒ The scale of the map must be: 1 inch = 400 feet, 1 inch = 1,320 feet, the scale of the Final Proof/Claim of Beneficial Use Map (the map used when the permit was certificated), the scale of the county assessor map if the scale is not smaller than 1 inch = 1,320 feet, or a scale that has been pre-approved by the Department.
- ☒ Township, Range, Section, ¼ ¼, DLC, Government Lot, and other recognized public land survey lines.
- ☒ Tax lot boundaries (property lines) are required. Tax lot numbers are recommended.
- ☒ Major physical features including rivers and creeks showing direction of flow, lakes and reservoirs, roads, and railroads.
- ☒ Major water delivery system features from the point(s) of diversion/appropriation such as main pipelines, canals, and ditches.
- ☒ Existing place of use that includes separate hachuring for each water right, priority date, and use including number of acres in each quarter-quarter section, government lot, or in each quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If less than the entirety of the water right is being changed, a separate hachuring is needed for lands left unchanged.
- ☒ ☐ N/A Proposed place of use that includes separate hachuring for each water right, priority date, and use including number of acres in each quarter-quarter section, government lot, or in each quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions.
- ☒ Existing point(s) of diversion or well(s) with distance and bearing or coordinates from a recognized survey corner. This information can be found in your water right certificate or permit.
- ☒ ☐ N/A If you are proposing a change in point(s) of diversion or well(s), show the proposed location and label it clearly with distance and bearing or coordinates. If GPS coordinates are used, latitude-longitude coordinates may be expressed as either degrees-minutes-seconds with at least one digit after the decimal (example – 42°32'15.5") or degrees-decimal with five or more digits after the decimal (example – 42.53764°).

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Part 3 of 5 – Fee Worksheet

FEE WORKSHEET for PERMANENT TRANSFER (except Substitution)

1	Base Fee (includes one type of change to one water right for up to 1 cfs)	1	\$1,360
2	Types of change proposed: ☒ Place of Use ☐ Character of Use ☒ Point of Diversion/Appropriation Number of above boxes checked = <u>2 (2a)</u> Subtract 1 from the number in line 2a = <u>1 (2b)</u> <i>If only one change, this will be 0</i> Multiply line 2b by \$1090 and enter »	2	\$1,090
3	Number of water rights included in transfer <u>2 (3a)</u> Subtract 1 from the number in line 3a above: <u>1 (3b)</u> <i>If only one water right this will be 0</i> Multiply line 3b by \$610 and enter »	3	\$ 610
4	Do you propose to add or change a well, or change from a surface water POD to a well? ☒ No: enter 0 ☐ Yes: enter \$480 for the 1st well to be added or changed _____ (4a) Do you propose to add or change additional wells? ☒ No: enter 0 ☐ Yes: multiply the number of additional wells by \$410 _____ (4b) Add line 4a to line 4b and enter »	4	0
5	Do you propose to change the place of use or character of use? ☐ No: enter 0 on line 5 ☒ Yes: enter the cfs for the portions of the rights to be transferred (see below*): <u>0 (5a)</u> Subtract 1.0 from the number in 5a above: _____ (5b) If 5b is 0 or less, enter 0 on line 5 » If 5b is greater than 0, round up to the nearest whole number: _____ (5c) and multiply 5c by \$410, then enter on line 5 »	5	0
6	Add entries on lines 1 through 5 above » » » » » » » » » » Subtotal:	6	\$3,060
7	Is this transfer: ☐ necessary to complete a project funded by the Oregon Watershed Enhancement Board (OWEB) under ORS 541.932? ☐ endorsed in writing by ODFW as a change that will result in a net benefit to fish and wildlife habitat? If one or more boxes is checked, multiply line 6 by 0.5 and enter on line 7 » If no box is applicable, enter 0 on line 7 »	7	
8	Subtract line 7 from line 6 » Transfer Fee:	8	\$3,060

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*Example for Line 5a calculation to transfer 45.0 acres of Primary Certificate 12345 (total 1.25 cfs for 100 acres) and 45.0 acres of Supplemental Certificate 87654 (1/80 cfs per acre) on the same land:

1. For irrigation calculate cfs for each water right involved as follows:
 - a. Divide total authorized cfs by total acres in the water right (*for C12345, 1.25 cfs ÷ 100 ac*); then multiply by the number of acres to be transferred to get the transfer cfs (*x 45 ac = 0.56 cfs*).
 - b. If the water right certificate does not list total cfs, but identifies the allowable use as 1/40 or 1/80 of a cfs per acre; multiply number of acres proposed for change by either 0.025 (1/40) or 0.0125 (1/80). (*For C87654, 45.0 ac x 0.0125 cfs/ac = 0.56 cfs*)
2. Add cfs for the portions of water rights on all the land included in the transfer; however **do not count cfs for supplemental rights on acreage for which you have already calculated the cfs fee for the primary right on the same land**. The fee should be assessed only once for each “on the ground” acre included in the transfer. (*In this example, blank 5a would be only 0.56 cfs, since both rights serve the same 45.0 acres. Blank 5b would be 0 and Line 5 would then also become 0*).

FEE WORKSHEET for SUBSTITUTION -N/A

1	Base Fee (includes change to one well)	1	\$990.00
	Number of wells included in substitution _____ (2a) Subtract 1 from the number in 2a above: _____ (2b) <i>If only one well this will be 0</i>		
2	Multiply line 2b by \$480 and enter » » » » » » » » » » » » » » » »	2	
3	Add entries on lines 1 through 2 above » » » » » » Fee for Substitution:	3	

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Part 4 of 5 – Applicant Information and Signature

Applicant Information

OWRD

APPLICANT/BUSINESS NAME The City of Newport, Attn: Spencer Nebel			PHONE NO.	ADDITIONAL CONTACT NO.
ADDRESS 169 SW Coast Highway			FAX NO.	
CITY Newport	STATE OR	ZIP 97365	E-MAIL S.nebel@newportar.gov	
BY PROVIDING AN E-MAIL ADDRESS, CONSENT IS GIVEN TO RECEIVE ALL CORRESPONDENCE FROM THE DEPARTMENT ELECTRONICALLY. COPIES OF THE FINAL ORDER DOCUMENTS WILL ALSO BE MAILED.				

Agent Information – The agent is authorized to represent the applicant in all matters relating to this application.

AGENT/BUSINESS NAME GSI Water Solutions, Attn: Adam Sussman			PHONE NO. 541-257-9001	ADDITIONAL CONTACT NO.
ADDRESS 1600 SW Western Blvd., Suite 240			FAX NO.	
CITY Corvallis	STATE OR	ZIP 97321	E-MAIL asussman@gsiws.com	
BY PROVIDING AN E-MAIL ADDRESS, CONSENT IS GIVEN TO RECEIVE ALL CORRESPONDENCE FROM THE DEPARTMENT ELECTRONICALLY. COPIES OF THE FINAL ORDER DOCUMENTS WILL ALSO BE MAILED.				

Explain in your own words what you propose to accomplish with this transfer application, and why:
The City is requesting to change the point of diversion and place of use for its storage right Certificates 48627 and 89100 in order to comply with the Oregon Water Resources Department's January 22, 2021, Notification of Unsafe/ Potentially Unsafe Dam, which includes a requirement to remove the existing dam associated with the certificates and construct a replacement dam. The required replacement of the Big Creek Reservoir #2 dam necessitates a change in the authorized point of diversion and place of use for Certificates 48627 and 89100.

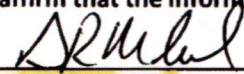
Check One Box

- ☐ By signing this application, I understand that, upon receipt of the draft preliminary determination and prior to Department approval of the transfer, I will be required to provide landownership information and evidence that I am authorized to pursue the transfer as identified in OAR 690-380-4010(5); **OR**
- ☒ I affirm the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; **OR**
- ☐ I affirm the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the water right proposed for transfer is appurtenant and have supporting documentation.

By my signature below, I confirm that I understand:

- Prior to Department approval of the transfer application, I may be required to submit payment to the Department for publication of a notice in a newspaper with general circulation in the area where the water right is located, once per week for two consecutive weeks. If more than one qualifying newspaper is available, I suggest publishing the notice in the following newspaper: **Newport News Times.**
- Amendments to the application may only be made in response to the Department's Draft Preliminary Determination (DPD). The applicant will have a period of at least 30 days to amend the application to address any issues identified by the Department in the DPD, or to withdraw the application. Note that amendments may be subject to additional fees, pursuant to ORS 536.050.
- Failure to complete an approved change in place of use and/or change in character of use, will result in loss of the water right (OAR 690-380-6010).
- Refunds may only be granted upon request and, as set forth in ORS 536.050(4)(a), if the Director determines that a refund of all or part of a fee is appropriate in the interests of fairness to the public or necessary to correct an error of the Department.

I (we) affirm that the information contained in this application is true and accurate.


 Applicant signature

Spencer Nebel, City Manager
 Print Name (and Title if applicable)

03-09-23
 Date

Is the applicant the sole owner of the land on which the water right, or portion thereof, proposed for transfer is located? ☒ Yes ☐ No*

**If NO, include signatures of all deeded landowners (and mailing and/or e-mail addresses if different than the applicant's) or attach affidavits of consent (and mailing and/or e-mail addresses) from all landowners or individuals/entities to which the water right(s) were conveyed.*

Check the following boxes that apply:

- ☒ The applicant is responsible for completion of change(s). Notices and correspondence should continue to be sent to the applicant.
- ☐ The receiving landowner will be responsible for completing the proposed change(s) after the final order is issued. Copies of notices and correspondence should be sent to this landowner.
- ☐ Both the receiving landowner and applicant will be responsible for completion of change(s). Copies of notices and correspondence should be sent to this landowner and the applicant.

At this time, are the lands in this transfer application in the process of being sold? ☐ Yes ☒ No

If YES, and you know who the new landowner will be, please complete the receiving landowner information table below. If you do not know who the new landowner will be, then a request for assignment will have to be filed for at a later date.

If a property sells, the certificated water right(s) located on the land belong to the new owner, unless a sale agreement or other document states otherwise. For more information see:

https://www.oregon.gov/owrd/WRDFormsPDF/Transfer_Property_Transactions.pdf

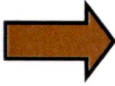
RECEIVING LANDOWNER NAME N/A			PHONE NO.	ADDITIONAL CONTACT NO.
ADDRESS				FAX NO.
CITY	STATE	ZIP	E-MAIL	
Describe any special ownership circumstances:				
The confirming Certificate shall be issued in the name of: ☐ Applicant ☐ Receiving Landowner				

☐ Check here if any of the water rights proposed for transfer are or will be located within or served by an irrigation or other water district. (Tip: Complete and attach Supplemental Form D.) -**N/A**

IRRIGATION DISTRICT NAME	ADDRESS	
CITY	STATE	ZIP

☐ Check here if water for any of the rights supplied under a water service agreement or other contract for stored water with a federal agency or other entity. **N/A**

ENTITY NAME	ADDRESS	
CITY	STATE	ZIP

 To meet State Land Use Consistency Requirements, you must list all county, city, municipal corporation, or tribal governments within whose jurisdiction water will be diverted, conveyed or used.

ENTITY NAME CITY OF NEWPORT PLANNING DEPARTMENT	ADDRESS 169 SW COAST HWY	
CITY Newport	STATE OR	ZIP 97365

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Part 5 of 5 – Water Right Information

Please use a separate Part 5 for each water right being changed. See instructions on page 6, to copy and paste additional Part 5s, or to add additional rows to tables within the form.

CERTIFICATE # 48627

Description of Water Delivery System

System capacity: 345 acre-feet OR

_____ gallons per minute (gpm)

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Describe the current water delivery system or the system that was in place at some time within the last five years. Include information on the pumps, canals, pipelines, and sprinklers used to divert, convey, and apply the water at the authorized place of use. **Big Creek Reservoir #2 Dam (BC 2) is 56 feet tall and has a length of 450 feet. It can impound up to 970 acre-feet of water in Big Creek Reservoir #2.**

Table 1. Location of Authorized and Proposed Point(s) of Diversion (POD) or Appropriation (POA)

(Note: If the POD/POA name is not specified on the certificate, assign it a name or number here.)

POD/POA Name or Number	Is this POD/POA Authorized on the Certificate or is it Proposed?	If POA, OWRD Well Log ID# (or Well ID Tag # L-____)	Twp	Rng	Sec	¼ ¼	Tax Lot, DLC or Gov't Lot	Measured Distances (from a recognized survey corner)
BC 2	☒ Authorized ☐ Proposed	N/A	10 S	11 W	33	NE SE	900	1875 feet North and 1220 feet West from the SE Corner, Section 33
Big Creek Dam	☐ Authorized ☒ Proposed	N/A	10 S	11 W	33	NW SE	900	3110 feet South and 1790 feet West from the NE Corner, Section 33
	☐ Authorized ☐ Proposed							
	☐ Authorized ☐ Proposed							

Check all type(s) of change(s) proposed below (change "CODES" are provided in parentheses):

- | | |
|--|---|
| ☒ Place of Use (POU) | ☐ Supplemental Use to Primary Use (S to P) |
| ☐ Character of Use (USE) | ☐ Point of Appropriation/Well (POA) |
| ☒ Point of Diversion (POD) | ☐ Additional Point of Appropriation (APOA) |
| ☐ Additional Point of Diversion (APOD) | ☐ Substitution (SUB) |
| ☐ Surface Water POD to Ground Water POA (SW/GW) | ☐ Government Action POD (GOV) |

Will all of the proposed changes affect the entire water right?

- ☒ Yes Complete only the Proposed ("to" or "on" lands) section of Table 2 on the next page. Use the "CODES" listed above to describe the proposed changes.
- ☐ No Complete all of Table 2 to describe the portion of the water right to be changed.

Please use and attach additional pages of Table 2 as needed.
See page 6 for instructions.

Do you have questions about how to fill-out the tables?
Contact the Department at 503-986-0900 and ask for Transfer Staff.

Table 2. Description of Changes to Water Right Certificate # 48627

List the change proposed for the acreage in each $\frac{1}{4}$ $\frac{1}{4}$. If more than one change is proposed, specify the acreage associated with each change.
If there is more than one POD/POA involved in the proposed changes, specify the acreage associated with each POD/POA.

AUTHORIZED (the "from" or "off" lands) The listing that appears on the certificate BEFORE PROPOSED CHANGES List only that part or portion of the water right that will be changed.											Proposed Changes (see "CODES" from previous page)	PROPOSED (the "to" or "on" lands) The listing as it would appear AFTER PROPOSED CHANGES are made.														
Twp	Rng	Sec	$\frac{1}{4}$	$\frac{1}{4}$	Tax Lot	Gvt Lot or DLC	Acres	Type of USE listed on Certificate	POD(s) or POA(s) (name or number from Table 1)	Priority Date		Twp	Rng	Sec	$\frac{1}{4}$	$\frac{1}{4}$	Tax Lot	Gvt Lot or DLC	Acres	New Type of USE	POD(s)/ POA(s) to be used (from Table 1)	Priority Date				
EXAMPLE																										
2	S	9	E	15	NE	NW	100		15.0	Irrigation	POD #1 POD #2	1901	POU/POD	2	S	9	E	1	NW	NW	500	1	10.0		POD #5	1901
														2	S	9	E	2	SW	NW	500		5.0		POD #6	1901
													POU/POD	Please see the proposed location on the map in Attachment B							N/A	Storage for Municipal Use	Big Creek Dam	3/24/1967 & 6/5/1968		
TOTAL ACRES:									TOTAL ACRES:								N/A									

Additional remarks: The proposed place of use shown on the map in Attachment B is the modified location of the reservoir after the new dam (Big Creek Dam) is constructed to address dam safety concerns. The identified location is the proposed place of use for Certificate 48627 as well as Certificates 89100 and 21358.

For Place of Use or Character of Use Changes

Are there other water right certificates, water use permits or ground water registrations associated with the "from" or the "to" lands? ☐ Yes ☐ No ☒ **N/A – Certificate 48627 authorizes the storage of water for municipal use, so "layering" does not apply.**

If YES, list the certificate, water use permit, or ground water registration numbers: _____.

Pursuant to ORS 540.510, any "layered" water use such as an irrigation right that is supplemental to a primary right proposed for transfer must be included in the transfer or be cancelled. Any change to a ground water registration must be filed separately in a ground water registration modification application.

For Substitution (ground water supplemental irrigation will be substituted for surface water primary irrigation) - **N/A**

Ground water supplemental Permit or Certificate # _____;

Surface water primary Certificate # _____.

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For a change from Supplemental Irrigation Use to Primary Irrigation Use - N/A

Identify the primary certificate to be cancelled. Certificate # _____

For a change in point(s) of appropriation (well(s)) or additional point(s) of appropriation: N/A

- ☐ Well log(s) are attached for each authorized and proposed well(s) that are clearly labeled and associated with the corresponding well(s) in Table 1 above and on the accompanying application map.

Tip: You may search for well logs on the Department's web page at:

http://apps.wrd.state.or.us/apps/gw/well_log/Default.aspx

AND/OR

- ☐ Describe the construction of the authorized and proposed well(s) in Table 3 for any wells that do not have a well log. For *proposed wells not yet constructed or built*, provide "a best estimate" for each requested information element in the table. The Department recommends you consult a licensed well driller, geologist, or certified water right examiner to assist with assembling the information necessary to complete Table 3.

Table 3. Construction of Point(s) of Appropriation - N/A

Any well(s) in this listing must be clearly tied to corresponding well(s) described in Table 1 and shown on the accompanying application map. Failure to provide the information will delay the processing of your transfer application until it is received. The information is necessary for the department to assess whether the proposed well(s) will access the same source aquifer as the authorized point(s) of appropriation (POA). The Department is prohibited by law from approving POA changes that do not access the same source aquifer.

Proposed or Authorized POA Name or Number	Is well already built? (Yes or No)	If an existing well: OWRD Well ID Tag No. L-____	Total well depth	Casing Diameter	Casing Intervals (feet)	Seal depth(s) (intervals)	Perforated or screened intervals (in feet)	Static water level of completed well (in feet)	Source aquifer (sand, gravel, basalt, etc.)	Well -specific rate (cfs or gpm). If less than full rate of water right

Part 5 of 5 – Water Right Information

Please use a separate Part 5 for each water right being changed. See instructions on page 6, to copy and paste additional Part 5s, or to add additional rows to tables within the form.

CERTIFICATE # **89100**

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Description of Water Delivery System

System capacity: **625 acre-feet** OR

_____ gallons per minute (gpm)

Describe the current water delivery system or the system that was in place at some time within the last five years. Include information on the pumps, canals, pipelines, and sprinklers used to divert, convey, and apply the water at the authorized place of use. **Big Creek Reservoir #2 Dam (BC 2) is 56 feet tall and has a length of 450 feet. It can impound up to 970 acre-feet of water in Big Creek Reservoir #2.**

Table 1. Location of Authorized and Proposed Point(s) of Diversion (POD) or Appropriation (POA)

(Note: If the POD/POA name is not specified on the certificate, assign it a name or number here.)

POD/POA Name or Number	Is this POD/POA Authorized on the Certificate or is it Proposed?	If POA, OWRD Well Log ID# (or Well ID Tag # L-____)	Twp	Rng	Sec	¼	¼	Tax Lot, DLC or Gov't Lot	Measured Distances (from a recognized survey corner)
BC 2	☒ Authorized ☐ Proposed	N/A	10 S	11 W	33	NE	SE	900	1875 feet North and 1220 feet West from the SE Corner, Section 33
Big Creek Dam	☐ Authorized ☒ Proposed	N/A	10 S	11 W	33	NW	SE	900	3110 feet South and 1790 feet West from the NE Corner, Section 33
	☐ Authorized ☐ Proposed								
	☐ Authorized ☐ Proposed								

Check all type(s) of change(s) proposed below (change "CODES" are provided in parentheses):

- | | |
|--|---|
| ☒ Place of Use (POU) | ☐ Supplemental Use to Primary Use (S to P) |
| ☐ Character of Use (USE) | ☐ Point of Appropriation/Well (POA) |
| ☒ Point of Diversion (POD) | ☐ Additional Point of Appropriation (APOA) |
| ☐ Additional Point of Diversion (APOD) | ☐ Substitution (SUB) |
| ☐ Surface Water POD to Ground Water POA (SW/GW) | ☐ Government Action POD (GOV) |

Will all of the proposed changes affect the entire water right?

- ☒ Yes Complete only the Proposed ("to" or "on" lands) section of Table 2 on the next page. Use the "CODES" listed above to describe the proposed changes.
- ☐ No Complete all of Table 2 to describe the portion of the water right to be changed.

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Please use and attach additional pages of Table 2 as needed.
See page 6 for instructions.

Do you have questions about how to fill-out the tables?
Contact the Department at 503-986-0900 and ask for Transfer Staff.

Table 2. Description of Changes to Water Right Certificate # 89100

List the change proposed for the acreage in each ¼ ¼. If more than one change is proposed, specify the acreage associated with each change.
If there is more than one POD/POA involved in the proposed changes, specify the acreage associated with each POD/POA.

AUTHORIZED (the "from" or "off" lands) The listing that appears on the certificate BEFORE PROPOSED CHANGES List only that part or portion of the water right that will be changed.											Proposed Changes (see "CODES" from previous page)	PROPOSED (the "to" or "on" lands) The listing as it would appear AFTER PROPOSED CHANGES are made.														
Twp	Rng	Sec	¼	¼	Tax Lot	Gvt Lot or DLC	Acre	Type of USE listed on Certificate	POD(s) or POA(s) (name or number from Table 1)	Priority Date		Twp	Rng	Sec	¼	¼	Tax Lot	Gvt Lot or DLC	Acre	New Type of USE	POD(s)/ POA(s) to be used (from Table 1)	Priority Date				
EXAMPLE																										
2	S	9	E	15	NE	NW	100		15.0	Irrigation	POD #1 POD #2	1901	POU/POD	2	S	9	E	1	NW	NW	500	1	10.0		POD #5	1901
														2	S	9	E	2	SW	NW	500		5.0		POD #6	1901
													POU/POD	Please see the proposed location on the map in Attachment B								N/A	Storage for Municipal Use	Big Creek Dam	6/27/1974	
TOTAL ACRES:														TOTAL ACRES:								N/A				

Additional remarks: **The proposed place shown on the map in Attachment B is the modified location of the reservoir after the new dam (Big Creek Dam) is constructed to address dam safety concerns. The identified location is the proposed place of use for Certificate 89100 as well as Certificates 48627 and 21358.**

For Place of Use or Character of Use Changes

Are there other water right certificates, water use permits or ground water registrations associated with the "from" or the "to" lands? ☐ Yes ☐ No ☒ **N/A – Certificate 89100 authorizes the storage of water for municipal use, so "layering" does not apply.**

If YES, list the certificate, water use permit, or ground water registration numbers:_____.



Pursuant to ORS 540.510, any "layered" water use such as an irrigation right that is supplemental to a primary right proposed for transfer must be included in the transfer or be cancelled. Any change to a ground water registration must be filed separately in a ground water registration modification application.

For Substitution (ground water supplemental irrigation will be substituted for surface water primary irrigation) - **N/A**

Ground water supplemental Permit or Certificate # _____;
Surface water primary Certificate # _____.

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For a change from Supplemental Irrigation Use to Primary Irrigation Use - N/A

Identify the primary certificate to be cancelled. Certificate # _____

For a change in point(s) of appropriation (well(s)) or additional point(s) of appropriation: -N/A

- ☐ Well log(s) are attached for each authorized and proposed well(s) that are clearly labeled and associated with the corresponding well(s) in Table 1 above and on the accompanying application map.

Tip: You may search for well logs on the Department's web page at:

http://apps.wrd.state.or.us/apps/gw/well_log/Default.aspx

AND/OR

- ☐ Describe the construction of the authorized and proposed well(s) in Table 3 for any wells that do not have a well log. For *proposed wells not yet constructed or built*, provide "a best estimate" for each requested information element in the table. The Department recommends you consult a licensed well driller, geologist, or certified water right examiner to assist with assembling the information necessary to complete Table 3.

Table 3. Construction of Point(s) of Appropriation - N/A

Any well(s) in this listing must be clearly tied to corresponding well(s) described in Table 1 and shown on the accompanying application map. Failure to provide the information will delay the processing of your transfer application until it is received. The information is necessary for the department to assess whether the proposed well(s) will access the same source aquifer as the authorized point(s) of appropriation (POA). The Department is prohibited by law from approving POA changes that do not access the same source aquifer.

Proposed or Authorized POA Name or Number	Is well already built? (Yes or No)	If an existing well: OWRD Well ID Tag No. L-____	Total well depth	Casing Diameter	Casing Intervals (feet)	Seal depth(s) (intervals)	Perforated or screened intervals (in feet)	Static water level of completed well (in feet)	Source aquifer (sand, gravel, basalt, etc.)	Well-specific rate (cfs or gpm). If less than full rate of water right

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Attachment A

Certificates 48627 and 89100

Application for Water Right Transfer of Certificates 48627 & 89100 – City of Newport

14294

STATE OF OREGON

COUNTY OF

LINCOLN

CERTIFICATE OF WATER RIGHT

This Is to Certify, That CITY OF NEWPORT

of City Hall, Newport, State of Oregon, 97365, has made

proof to the satisfaction of the Water Resources Director, of a right to store the waters of Big Creek, tributary Pacific Ocean appropriated under Permit No. 33127 for storage in Big Creek Reservoir No. 2

for the purpose of
municipal

under Reservoir Permit No. R-5134, and that said right to store said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from March 24, 1967 for 310 a.f., June 5, 1968 for 35 a.f.

that the amount of water entitled to be stored each year under such right, for the purposes afore-said, shall not exceed 345.0 acre feet

The reservoir is located in

NE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 33
W $\frac{1}{2}$ NW $\frac{1}{4}$
N $\frac{1}{2}$ SW $\frac{1}{4}$
W $\frac{1}{2}$ SE $\frac{1}{4}$
Section 34
T. 10 S., R. 11 W., W. M.

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WITNESS the signature of the Water Resources Director, affixed

this date 14284 October 5, 1979


Water Resources Director

STATE OF OREGON
COUNTY OF LINCOLN
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

CITY OF NEWPORT
169 SW COAST HIGHWAY
NEWPORT OR 97365

confirms the right to store the waters of BIG CREEK, in BIG CREEK RESERVOIR No. 2, tributary of the PACIFIC OCEAN, to be appropriated under PERMIT S-38220 for MUNICIPAL USE.

This right was perfected under Permit R-6171. The date of priority is JUNE 27, 1974. The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 625.0 ACRE FEET measured at the dam outlet/point of diversion.

The Center of Dam/ Point of Diversion for Big Creek Reservoir No. 2 Dam is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	11 W	WM	33	NE SE	1875 FEET NORTH AND 1220 FEET WEST FROM THE SE CORNER, SECTION 33

The area submerged by Big Creek Reservoir # 2 is as follows:

Twp	Rng	Mer	Sec	Q-Q
10 S	11 W	WM	33	NE SE
10 S	11 W	WM	34	NW NW
10 S	11 W	WM	34	SW NW
10 S	11 W	WM	34	NE SW
10 S	11 W	WM	34	NW SW

Issued MAR 05 2014


Dwight W. French
Administrator, Water Right Services, for
Phillip C. Ward, Director
Oregon Water Resource Department

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NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484 and ORS 536.075. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 183.484, ORS 536.075 and OAR 137-004-0080, you may petition for judicial review and petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied. In addition, under ORS 537.260 any person with an application, permit or water right certificate subsequent in priority may jointly or severally contest the issuance of the certificate within three months after issuance of the certificate.

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Attachment B Application Maps

Application for Water Right Transfer of Certificates 48627 & 89100 – City of Newport

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Attachment C
Evidence of Use Affidavit

Application for Water Right Transfer of Certificates 48627 & 89100 – City of Newport

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Application for Water Right Transfer

Evidence of Use Affidavit



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

Please print legibly or type. Be as specific as possible. Attach additional pages if you need more spacing.
Supporting documentation must be attached.

State of Oregon)
) ss
County of LINCOLN

I, SPENCER NEBEL, in my capacity as CITY MANAGER FOR THE CITY OF NEWPORT,

mailing address 169 SW Coast Highway, Newport, OR 97365

telephone number (____)____, being first duly sworn depose and say:

1. My knowledge of the exercise or status of the water right is based on (check one):

☐ Personal observation ☒ Professional expertise

2. I attest that:

☒ Water was used during the previous five years on the **entire** place of use for
Certificate # 48627 AND 89100; OR

☐ My knowledge is specific to the use of water at the following locations within the last five years:

Certificate #	Township	Range	Mer	Sec	¼ ¼	Gov't Lot or DLC	Acres (if applicable)

OR

- ☐ Confirming Certificate # _____ has been issued within the past five years; **OR**
- ☐ Part or all of the water right was leased instream at some time within the last five years. The instream lease number is: _____ (Note: If the entire right proposed for transfer was not leased, additional evidence of use is needed for the portion not leased instream.); **OR**
- ☒ The water right is not subject to forfeiture and documentation that a presumption of forfeiture for non-use would be rebutted under ORS 540.610(2) is attached.
- ☐ Water has been used at the actual current point of diversion or appropriation for more than 10 years for Certificate # _____ (For Historic POD/POA Transfers)

(continues on reverse side)

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3. The water right was used for: (e.g., crops, pasture, etc.): STORAGE FOR MUNICIPAL USE

4. I understand that if I do not attach one or more of the documents shown in the table below to support the above statements, my application will be considered incomplete.

[Signature]

Signature of Affiant

March 9, 2023

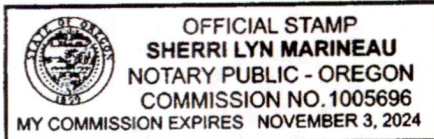
Date

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Signed and sworn to (or affirmed) before me this 9th day of March, 2023.



[Signature]
Notary Public for Oregon

My Commission Expires: 11/3/2024

Supporting Documents	Examples
☐ Copy of a water right certificate that has been issued within the last five years. (not a remaining right certificate)	Copy of confirming water right certificate that shows issue date
☐ Copies of receipts from sales of irrigated crops or for expenditures related to use of water	• Power usage records for pumps associated with irrigation use • Fertilizer or seed bills related to irrigated crops • Farmers Co-op sales receipt
☐ Records such as FSA crop reports, irrigation district records, NRCS farm management plan, or records of other water suppliers	• District assessment records for water delivered • Crop reports submitted under a federal loan agreement • Beneficial use reports from district • IRS Farm Usage Deduction Report • Agricultural Stabilization Plan • CREP Report
☒ Aerial photos containing sufficient detail to establish location and date of photograph	Multiple photos can be submitted to resolve different areas of a water right. If the photograph does not print with a "date stamp" or without the source being identified, the date of the photograph and source should be added.
☐ Approved Lease establishing beneficial use within the last 5 years	Copy of instream lease or lease number
☒ A presumption of forfeiture for non-use would be rebutted under ORS 540.610(2).	A finding of forfeiture would impair the rights of the city to the use of water. See certificates in Attachment A.



Evidence of Use Certificates 48627 and 89100

Township 10 South,
Range 11 West (W.M.)

LEGEND

Tax Lot

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NOTE

Aerial imagery taken on July 7, 2020.



Date: February 9, 2023
Data Sources: BLM, ESRI, ODOT,
USGS, NAIP Imagery (2020)



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Attachment D

Land Use Information Form

Application for Water Right Transfer of Certificates 48627 & 89100 – City of Newport

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Land Use Information Form



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.oregon.gov/OWRD

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NOTE TO APPLICANTS

In order for your application to be processed by the Water Resources Department (WRD), this Land Use Information Form must be completed by a local government planning official in the jurisdiction(s) where your water right will be used and developed. The planning official may choose to complete the form while you wait, or return the receipt stub to you. Applications received by WRD without the Land Use Form or the receipt stub will be returned to you. Please be aware that your application will not be approved without land use approval.

This form is NOT required if:

- 1) Water is to be diverted, conveyed, and/or used only on federal lands; **OR**
- 2) The application is for a water right transfer, allocation of conserved water, exchange, permit amendment, or ground water registration modification, and all of the following apply:
 - a) The existing and proposed water use is located entirely within lands zoned for exclusive farm-use or within an irrigation district;
 - b) The application involves a change in place of use only;
 - c) The change does not involve the placement or modification of structures, including but not limited to water diversion, impoundment, distribution facilities, water wells and well houses; and
 - d) The application involves irrigation water uses only.

NOTE TO LOCAL GOVERNMENTS

The person presenting the attached Land Use Information Form is applying for or modifying a water right. The Water Resources Department (WRD) requires its applicants to obtain land-use information to be sure the water rights do not result in land uses that are incompatible with your comprehensive plan. Please complete the form or detach the receipt stub and return it to the applicant for inclusion in their water right application. You will receive notice once the applicant formally submits his or her request to the WRD. The notice will give more information about WRD's water rights process and provide additional comment opportunities. You will have 30 days from the date of the notice to complete the land-use form and return it to the WRD. If no land-use information is received from you within that 30-day period, the WRD may presume the land use associated with the proposed water right is compatible with your comprehensive plan. Your attention to this request for information is greatly appreciated by the Water Resources Department. If you have any questions concerning this form, please contact the WRD's Customer Service Group at 503-986-0801.

Land Use Information Form



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.oregon.gov/OWRD

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Applicant(s): The City of Newport

Mailing Address: 169 SW Coast Highway

City: Newport

State: OR

Zip Code: 97365

Daytime Phone: _____

A. Land and Location

Please include the following information for all tax lots where water will be diverted (taken from its source), conveyed (transported), and/or used or developed. Applicants for municipal use, or irrigation uses within irrigation districts may substitute existing and proposed service-area boundaries for the tax-lot information requested below.

Township	Range	Section	¼ ¼	Tax Lot #	Plan Designation (e.g., Rural Residential/RR-5)	Water to be:	Proposed Land Use:
<u>See attached map</u>					_____	☐ Diverted ☐ Conveyed ☒ Used	<u>Storage for municipal use</u>
_____	_____	_____	_____	_____	_____	☐ Diverted ☐ Conveyed ☐ Used	_____

List all counties and cities where water is proposed to be diverted, conveyed, and/or used or developed:

City of Newport

B. Description of Proposed Use

Type of application to be filed with the Water Resources Department:

- ☐ Permit to Use or Store Water ☒ Water Right Transfer ☐ Permit Amendment or Ground Water Registration Modification
☐ Limited Water Use License ☐ Allocation of Conserved Water ☐ Exchange of Water

Source of water: ☒ Reservoir/Pond ☐ Ground Water ☐ Surface Water (name) Big Creek Reservoir #2

Estimated quantity of water needed: 970 ☐ cubic feet per second ☐ gallons per minute ☒ acre-feet

Intended use of water: ☐ Irrigation ☐ Commercial ☐ Industrial ☐ Domestic for _____ household(s)
☐ Municipal ☐ Quasi-Municipal ☐ Instream ☒ Other Storage for municipal use

Briefly describe:

The Oregon Water Resources Department has required the City to remove and replace the existing dam for Big Creek Reservoir #2 due to unsafe and potentially unsafe conditions. Accordingly, the City is filing a transfer application to request to change the location of the point of diversion (dam) and place of use (reservoir) for the water rights that authorize the storage of water in Big Creek Reservoir #2.



Note to applicant: If the Land Use Information Form cannot be completed while you wait, please have a local government representative sign the receipt at the bottom of the next page and include it with the application filed with the Water Resources Department.

See bottom of Page 3. →

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For Local Government Use Only

The following section must be completed by a planning official from each county and city listed unless the project will be located entirely within the city limits. In that case, only the city planning agency must complete this form. This deals only with the local land-use plan. Do not include approval for activities such as building or grading permits.

Please check the appropriate box below and provide the requested information

- ☒ Land uses to be served by the proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s):
- ☐ Land uses to be served by the proposed water uses (including proposed construction) involve discretionary land-use approvals as listed in the table below. (Please attach documentation of applicable land-use approvals which have already been obtained. Record of Action/land-use decision and accompanying findings are sufficient.) **If approvals have been obtained but all appeal periods have not ended, check "Being pursued."**

Type of Land-Use Approval Needed (e.g., plan amendments, rezones, conditional-use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Land-Use Approval:	
		☐ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued
		☐ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued
		☐ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued
		☐ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued
		☐ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued

Local governments are invited to express special land-use concerns or make recommendations to the Water Resources Department regarding this proposed use of water below, or on a separate sheet.

RESERVOIR PROPERTIES ARE LOCATED IN A P-1 (PUBLIC STRUCTURES) ZONE. DAM REPLACEMENT IS ALLOWED PER NMC 14.03.100 (4). WILL SERVE EXISTING USES

Name: DERRICK TOKOS Title: COMMUNITY DEVELOPMENT
 Signature: [Signature] Phone: 541.574.0626 Date: 3/7/23
 Government Entity: CITY OF NEWPORT

Note to local government representative: Please complete this form or sign the receipt below and return it to the applicant. If you sign the receipt, you will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD may presume the land use associated with the proposed use of water is compatible with local comprehensive plans.

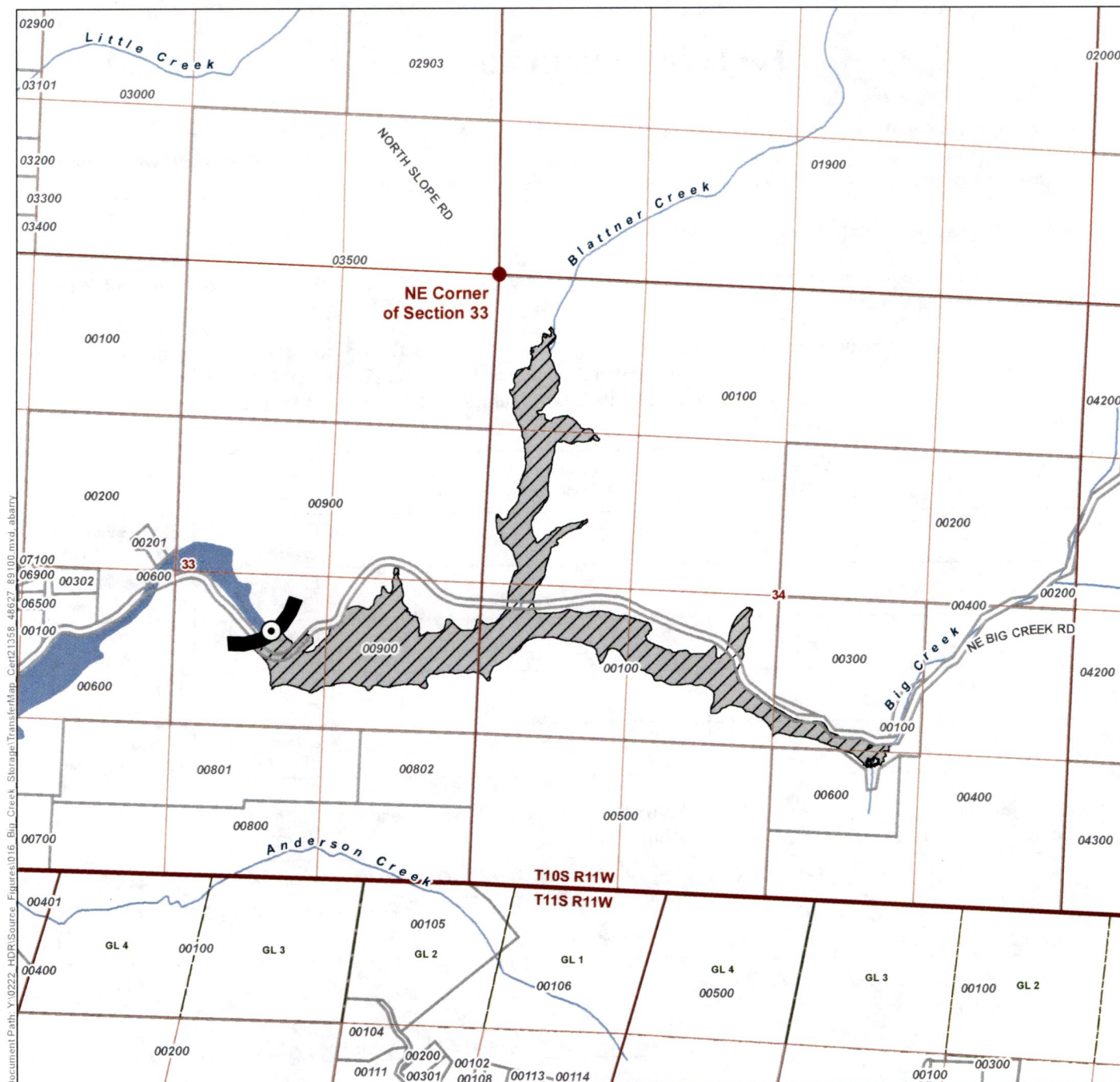
Receipt for Request for Land Use Information

Applicant name: _____

City or County: _____ Staff contact: _____

Signature: _____ Phone: _____ Date: _____

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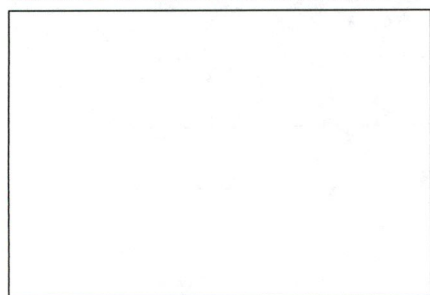
LEGEND

- Proposed Point of Diversion (POD)
- Big Creek Dam
- Proposed Place of Use (POU)
- Government Lot (GL)
- Tax Lot
- Watercourse
- Waterbody

Transfer Application for the City of Newport Proposed Point of Diversion and Place of Use Certificates 21358, 48627 and 89100

Lincoln County
Township 10 South, Range 11 West (W.M.)

CERTIFIED WATER RIGHTS EXAMINER STAMP



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LOCATION DESCRIPTION

Proposed Point of Diversion
Located 3110 feet South and 1790 feet West from the NE corner of Section 33, Township 10 South, Range 11 West (W.M.)

DISCLAIMER

This map was prepared for the purpose of identifying the location of a water right only and it is not intended to provide legal dimensions or location of property ownership lines.

Date: February 13, 2023
Data Sources: BLM, ESRI, OWRD, USGS, Lincoln County, HDR (2022)



0 660 1,320
1 inch = 1,320 feet

