

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: **\$4,020**
- Part 5 – Information about Water Rights to be Transferred: **How many water rights are to be transferred? 1 List them here: Certificate 48135**
 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. (Attachment 1)
- Completed Evidence of Use Affidavit and supporting documentation. (Attachment 2)
- N/A Affidavit(s) of Consent from Landowner(s) (if the applicant does not own the land the water right is on.) – on City-owned taxlots
- 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. (Attachment 3)
- N/A Water Well Report/Well Log for changes in point(s) of appropriation (well(s)) or additional point(s) of appropriation. (POA is a shallow sump well, no log)
- 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):

<input type="checkbox"/> Application fee not enclosed/insufficient	<input type="checkbox"/> Map not included or incomplete
<input type="checkbox"/> Land Use Form not enclosed or incomplete	<input type="checkbox"/> Evidence of Use Form not enclosed or incomplete
<input type="checkbox"/> Additional signature(s) required	<input type="checkbox"/> Part _____ is incomplete

Other/Explanation _____

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

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. (**map scale waiver**)
- 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. (**log decks**)
- 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. (**City service area, UGB**)
- 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°).

Part 4 of 5 – Applicant Information and Signature

Applicant Information

APPLICANT/BUSINESS NAME City of John Day (c/o: Casey Myers, Public Works Director)		PHONE NO. (541) 575-0028	ADDITIONAL CONTACT NO.
ADDRESS 450 East Main Street			FAX NO.
CITY John Day	STATE OR	ZIP 97845	E-MAIL NA – PLEASE MAIL
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.			

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

AGENT/BUSINESS NAME ROBERT LONG, CWRE (CWM-H2O, LLC)		PHONE NO. (503) 954 – 1326	ADDITIONAL CONTACT NO.
ADDRESS 1319 SE MLK Jr Blvd, Suite 204			FAX NO.
CITY Portland	STATE OR	ZIP 97214	E-MAIL NA – Please Mail
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 of John Day acquired the lands on which Certificate 48135's place of use and point of appropriation are located through the purchase of the former Oregon Pine Lumber property. The City had initially included the certificate in a list of rights proposed for instream transfer before realizing that the groundwater right is not eligible for instream transfer. The City is working to revitalize the John Day River waterfront area and is developing parks and greenspace for public use. The water available under Certificate 48135, after being transferred to municipal use, would be used for management of these green spaces or other City uses.

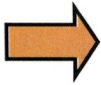
Check One Box

- 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);
- 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; (see attached Ownership Update form)
- 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: Blue Mountain Eagle.
- 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.



Casey Myers Casey Myers Public Works Director 4/9/2024
Applicant signature Print Name (and Title if applicable) 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* (municipal use across the City's service area as defined by the UGB)

*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 _____		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: <input type="checkbox"/> Applicant <input type="checkbox"/> 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

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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 John Day	ADDRESS 450 E Main Street	
CITY John Day	STATE OR	ZIP 97845

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 # 48135

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Description of Water Delivery System

System capacity: **0.15** cubic feet per second (cfs) **OR**
67 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. (see Attachment 2 – Evidence of Use Affidavit)

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)
POA-1	<input checked="" type="checkbox"/> Authorized <input type="checkbox"/> Proposed	N/A (SUMP)	13 S	31 E	22	NE SW	0300	1,340 ft N and 20 ft W of the S ¼ corner, Sec 22
POA-2	<input type="checkbox"/> Authorized <input checked="" type="checkbox"/> Proposed	N/A (SUMP)	13 S	31 E	22	SW SE	0300	1,200 ft N and 860 ft E of the S ¼ corner, Sec 22

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

- | | |
|--|--|
| <input checked="" type="checkbox"/> Place of Use (POU) | <input type="checkbox"/> Supplemental Use to Primary Use (S to P) |
| <input checked="" type="checkbox"/> Character of Use (USE) | <input type="checkbox"/> Point of Appropriation/Well (POA) |
| <input type="checkbox"/> Point of Diversion (POD) | <input checked="" type="checkbox"/> Additional Point of Appropriation (APOA) |
| <input type="checkbox"/> Additional Point of Diversion (APOD) | <input type="checkbox"/> Substitution (SUB) |
| <input type="checkbox"/> Surface Water POD to Ground Water POA (SW/GW) | <input type="checkbox"/> 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 # 48135

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	Acres	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	Acres	New Type of USE	POD(s)/ POA(s)	Priority Date						
										POU/ USE/ APOA	13	S	31	E			City of John Day Service Area	N/A	Muni	POA-1 POA-2	7/17/1970					
												13	S	32	E	30										
TOTAL ACRES:												TOTAL ACRES:						N/A	Municipal Use							

Additional remarks: The proposed transfer takes the original industrial/manufacturing right and changes it to a municipal use right across the City of John Day's entire service area. The transfer also proposes the addition of a second sump well source, POA-2, located near the City's Public Works shop building and the City greenhouses.

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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

If YES, list the certificate, water use permit, or ground water registration numbers: N/A (proposed use is municipal, layered rights do not apply).

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)~~

~~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

Identify the primary certificate to be cancelled. Certificate # _____

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

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. *There are no construction logs for the existing sump well. Construction can only be inferred from local geologic information.*

Table 3. Construction of Point(s) of Appropriation

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
POA-1	Yes	N/A	~15 ft	~3 ft	~0-15 ft	Unk.	~10-15 ft	~10 ft	Alluvial Deposits	0.15 cfs
POA-2	No	-	~15-25 ft	12-18"	~0-18 ft	~0-5 ft	~10-20 ft	~10 ft		

*Sump well is installed within the alluvial deposits of the John Day River, which average about 15-ft thick in the area of POA-1. The proposed POA-2 will be a smaller diameter well installed to the bottom of the alluvial deposits. A construction waiver may be required for the well seal due to the shallow target depth.

Application for Water Right Transfer Evidence of Use Affidavit

ATTACHMENT 2
PERMANENT TRANSFER APPLICATION FOR
CERTIFICATE 48135

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 WASHINGTON)

I, CASEY MYERS, in my capacity as PUBLIC WORKS DIRECTOR OF THE CITY OF JOHN DAY (APPLICANT),
 mailing address 450 EAST MAIN STREET
 telephone number (541) 575-0028, being first duly sworn depose and say:

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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 # ; **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 for **Certificate 48135**
- 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)

3. The water rights were used for: (e.g., crops, pasture, etc.): *industrial uses for lumber industry*

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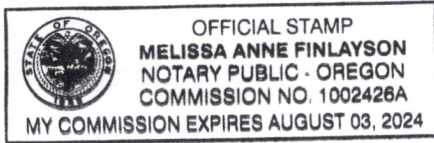
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4. I understand that if I do not attach one or more of the documents shown in the table below to support the above statements, my application will be considered incomplete.

Cary S Myers
Signature of Affiant

4/9/2024
Date

Signed and sworn to (or affirmed) before me this 9th day of April, 2024



Melissa Finlayson
Notary Public for Oregon

My Commission Expires: August 03, 2024

Supporting Documents	Examples
<input type="checkbox"/> Copy of a water right certificate that has been issued within the last five years.	Copy of confirming water right certificate that shows issue date
<input type="checkbox"/> Copies of receipts from sales of irrigated crops or for expenditures related to use of water	<ul style="list-style-type: none"> • Power use records for pumps associated with irrigation use • Fertilizer or seed bills related to irrigated crops • Farmers Co-op sales receipt
<input type="checkbox"/> Records such as FSA crop reports, irrigation district records, NRCS farm management plan, or records of other water suppliers	<ul style="list-style-type: none"> • 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
<input type="checkbox"/> Aerial photos containing sufficient detail to establish location and date of photograph	<p>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.</p> <p>OSU – www.oregonexplorer.info/imagery OWRD – www.wrd.state.or.us Google Earth – earth.google.com TerraServer – www.terraserver.com</p>
<input type="checkbox"/> Approved Lease establishing beneficial use within the last 5 years	Copy of instream lease or lease number
<input checked="" type="checkbox"/> Rebuttal of Presumption Forfeiture for Period of Non-use	EVIDENCE OF USE AFFIDAVIT DOCUMENTATION – REBUTTAL OF CANCELLATION PRESUMPTION



April 1, 2024

Oregon Water Resources Department
Attn: Sarah Henderson - *Transfer and Conservation Section*
725 Summer St. NE Ste A
Salem, Oregon 97301

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RE: EVIDENCE OF USE AFFIDAVIT DOCUMENTATION – REBUTTAL OF CANCELTION PRESUMPTION

Dear OWRD Staff,

This letter is intended to act as a supporting document for the Evidence of Use Affidavit for the City of John Day's (City) permanent transfer application. Specifically, the City intends to rebut the presumption of cancellation of the right proposed for transfer due to non-use. The City's application proposes the permanent transfer of Certificate 48135 to municipal use within the City's service area.

The City acquired the properties on which these water rights are located through multiple purchases between about 2017 and 2020. Certificate 48135 is located within the former Oregon Pine Products property (Taxlot 0300) and former Iron Triangle property (Taxlot 2700). The City passed a resolution to appropriate funds to purchase the Oregon Pine property (Resolution 17-768-04) and did so in 2017. The remainder of Certificate 48135, located on the former Iron Triangle property, was purchased by the City in 2020 (Resolution 20-850-23).

The City acquired the properties described above in preparation for several major land improvement projects, including the City's Innovation Gateway Adaptive Water Reuse program (Gateway). As part of a 2021 grant application to OWRD for funding related to the Gateway project, the City proposed transferring the water rights associated with these properties instream. When the grant was approved, the OWRD added a condition (#17) to transfer the proposed rights instream if eligible. Certificate 48135 was deemed ineligible for instream transfer because it is a groundwater right, sourced from a shallow sump well in the John Day River alluvial deposits.

Because Certificate 48135 is not eligible for instream transfer under the grand conditions, the City wishes to transfer the right to municipal use. To do so, the City must demonstrate evidence of use of the water rights or rebut the presumption of cancellation due to non-use. Certificate 48135 was for year-round industrial use related to former lumber mills and staging sites. The lumber industry at the properties in question was inactive for some time before the City purchased the land and acquired the water rights.

Although the City cannot demonstrate beneficial use within the last five years, the City can rebut the presumption of cancellation under ORS 540.610(2)(a) because the City acquired the rights and associated lands for municipal purposes:

“Upon a showing of failure to use beneficially for five successive years, the appropriator has the burden of rebutting the presumption of forfeiture by showing that the water right is for use of water, or rights of use, acquired by cities and towns in this state, by appropriation or by purchase, for all reasonable and usual municipal purposes.”

Because transferring these rights was part of the City's development plan and is directly connected to funding received **after** the land and water rights were acquired, the City can also rebut the presumption of cancellation under ORS 540.610(2)(b):

“Upon a showing of failure to use beneficially for five successive years, the appropriator has the burden of rebutting the presumption of forfeiture by showing that a finding of forfeiture would impair the rights of such cities and towns to the use of water, whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature, or which may hereafter be acquired.”

Although deemed ineligible for instream transfer, cancellation of Certificate 48135 would hinder the City's ability to use the water for proposed conservation efforts and land improvements along the John Day River riparian area. The non-use of Certificate 48135 prior to the City's acquisition of the associated lands was due in part to economic hardship. The City is therefore also able to rebut cancellation under ORS 540.610(2)(d):

“Upon a showing of failure to use beneficially for five successive years, the appropriator has the burden of rebutting the presumption of forfeiture by showing that the use of water, or rights of use, under a water right, if the owner of the property to which the right is appurtenant is unable to use the water due to economic hardship as defined by rule by the Water Resources Commission.”

The industrial use certificate was originally in the name of Blue Mountain Mills, but was part of various lumber operations over time, including D.R. Johnson Lumber and Oregon Pine Products. The lumber industry has been struggling in the John Day area for decades due to market shifts and forestry changes. Grant County lumber mills produced 290-300 million board-feet per year in the late 1980s. Production dropped to less than 100 million board-feet by the late 1990s and to only 20 million board-feet by the 2008 global financial crisis (Blue Mountain Eagle, June 17, 2019).

This dramatic decline in the lumber industry led to the closure of several local mills by the late 2000s, though some activity has recently been resumed by D.R. Johnson (Oregon Public Broadcasting, July 21, 2022; Blue Mountain Eagle, December 21, 2022). Two of the three major lumber mills in John Day closed due to the downturn in 2008 (Blue Mountain Eagle, December 20, 2018; Forest Policy, April 11, 2021), with the third, Malheur Lumber, only narrowly escaping the same result (Timber West, September 2017).

Because of the mill closures within the last 10-15 years, and since the City purchased the land in 2017, the industrial use water rights have not been put to full beneficial use. The root cause of the non-use is the economic hardship of the downturn in the lumber industry and in the nation-wide recession between 2008 and 2012.

Please let us know if there are any issues with processing this application or questions regarding the information included therein. Thank you for your assistance.

Sincerely,

CwM H2O, L.L.C.



Robert Long, CWRE

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Timber West, September 2017

https://forestnet.com/TWissues/2017_sept_oct/riding.php

Blue Mountain Eagle, December 20, 2018

https://www.bluemountaineagle.com/news/editorial-speak-up-for-our-forests/article_d2648712-8b24-5e92-b545-08510dc2553f.html

Blue Mountain Eagle, June 17, 2019

https://www.bluemountaineagle.com/specialsections/progress/progress-new-growth-emerging-in-timber-industry/article_80796b5a-7c10-11e9-9555-4324441f569d.html

Forest Policy, April 11, 2021

<https://forestpolicy.com/2021/04/11/peace-breaking-out-in-john-day-new-york-times-op-ed/>

Oregon Public Broadcasting, July 21, 2022

<https://www.opb.org/article/2022/07/21/after-more-than-a-decade-a-sawmill-in-east-oregon-reopens/>

Blue Mountain Eagle, December 21, 2022

https://www.bluemountaineagle.com/news/closed-for-15-years-prairie-wood-products-is-up-and-running-again/article_3ac8173a-03a5-11ed-b809-47813b38e041.html

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

Received

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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

Applicant(s): City of John Day (Casey Myers, Public Works Director)

Mailing Address: 450 E Main Street

City: John Day

State: OR

Zip Code: 97845

Daytime Phone:

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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:
13S	31E	21-29, 34	City of John Day Service Area		All land uses within the City UGB	<input checked="" type="checkbox"/> Diverted <input checked="" type="checkbox"/> Conveyed <input checked="" type="checkbox"/> Used	All land uses within the City UGB
13S	32E	30				<input type="checkbox"/> Diverted <input checked="" type="checkbox"/> Conveyed <input checked="" type="checkbox"/> Used	

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

City of John Day (place of use is completely within the City of John Day municipal service area)

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) _____

Estimated quantity of water needed: 0.15 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 _____

Briefly describe:

The City proposes to transfer an industrial right (Cert. 48135) to municipal use over the City service area. The transfer also proposes the addition of a second point of appropriation located near the City's Public Works building.



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. →

For Local Government Use Only

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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:	
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> 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.

Name: Melissa Deitel Title: City Manager

Signature: [Signature] Phone: 541 575-0028 Date: 4-9-24

Government Entity: City of Seaside

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: _____



April 15, 2024

Oregon Water Resources Department
Attn: *Water Rights Services Division*
725 Summer St. NE Ste A
Salem, Oregon 97301

RE: APPLICATION FOR PERMANENT TRANSFER OF WATER RIGHT FOR CITY OF JOHN DAY

Dear OWRD staff,

Please find accompanying this letter an Application for a Permanent Water Right Transfer from the City of John Day (City, Applicant). The water right in question is Certificate 48135, an industrial groundwater right located on the former Oregon Pine Lumber and Iron Triangle properties (Taxlots 0300 and 2700, T13S, R31E, Section 22), which the City purchased in 2017 and 2020. This application is accompanied by an Ownership Update form to revise the water right holder to the City (currently Blue Mountain Mills, Inc.).

The City acquired the properties described above in preparation for several major land improvement projects, including the City's Innovation Gateway Adaptive Water Reuse program (Gateway). As part of a 2021 grant application to OWRD for funding related to the Gateway project, the City proposed transferring the water rights associated with these and other City-owned properties instream in the John Day River. Certificate 48135 was including in the list of water rights originally proposed by the City for instream transfer. However, being a groundwater right, the certificate is ineligible for instream transfer.

Due to its ineligibility to conserve instream, the City is now proposing to transfer Certificate 48135 to municipal use within the City service area. This transfer therefore includes a change in place of use, a change in character of use, and a change in point of appropriation (POA). The proposed new POA would be a shallow sump well in the alluvial aquifer near the City Public Works Department shop building. The well would be used for various applications including grounds maintenance at the Public Works facilities, green space irrigation along the Gateway project improvement areas, operations of the City greenhouses, and park uses.

This transfer application includes an Evidence of Use Affidavit with a letter rebutting the presumption of forfeiture for the water right.

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Please let us know if there are any issues in proceeding with this transfer application or questions regarding the information above. Thank you for your assistance.

Sincerely,

CwM H2O, L.L.C.



Robert Long, CWRE

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List of Enclosed Documents:

- Ownership Update Form for Certificate 48135
- Application for a Permanent Water Right Transfer
 - Attachment 1 – Application Map
 - Attachment 2 – Evidence of Use Affidavit Documentation