

Historic

Name Werth living trust
C/O Dennis Werth
Address 8990 Hebo rd
Grand ronde 97347

Change in APCD
Date Filed 9/27/2022
Initial notice date 10/10/2022
DPD issued date _____
PD issued date _____
PD notice date _____
Date of FO 10/28/2024 Vol 133 Page 281-283

C-Date _____
COBU due date _____
COBU Received date _____
Certificate issued _____

Assignments: _____

Irrigation District _____

Agent aspen rural land - Eric Urstadt

CWRE _____
CC's list Yamhill County Planning

☐ - Oversized map - Location _____

DESCRIPTION OF WATER RIGHT(S)
Name of Stream Unnamed Stream
Trib. of Agency Creek
Use domestic County Yamhill
Quantity of water (CFS) _____ No. of Acres _____
Name of ditch _____
App# 547294 Per # 535430 Cert # 40350 PR Date _____
App# _____ Per # _____ Cert # _____ PR Date _____
App# _____ Per # _____ Cert # _____ PR Date _____
App# _____ Per # _____ Cert # _____ PR Date _____
App# _____ Per # _____ Cert # _____ PR Date _____

FEES PAID
Date 9-30-2022 Amount \$1360.00 Receipt # 139251

FEES REFUNDED
Date _____ Amount _____ Receipt # _____



Oregon

Tina Kotek, Governor

Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone 503 986-0900

Fax 503 986-0904

October 28, 2024

Werth Living Trust
C/O Dennis Werth
8990 Hebo Road
Grand Ronde, OR 97347

REFERENCE: Transfer Application T-14098

Enclosed is a copy of the final order approving your water right transfer application.

Also enclosed is a certificate issued to confirm the historic change in point of diversion approved by the final order contained herein. Please read this document carefully and abide by the requirements.

If you have any questions related to the approval of this transfer, you may contact your caseworker, Joan Smith, by telephone at (503) 986-0892 or by e-mail at Joan.m.smith@water.oregon.gov.

Sincerely,

Elyse D. Richman
Water Right Services Support
Transfers and Conservation Section

cc: Joel M. Plahn, Watermaster Dist. # 22 (via email)
Eric Anthony Urstadt, Agent
Yamhill County Planning Department, Local Government

Enclosures

BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER APPROVING AN
T-14098, YAMHILL County)	ADDITIONAL POINT OF DIVERSION TO
)	REFLECT HISTORIC USE

Authority

ORS 540.532 establishes the process in which a water right holder may submit a request for a change in point of diversion to reflect historical use under an existing water right. OAR Chapter 690-380-2120 implements the statute and provides the Department's procedures and criteria for evaluating historic point of diversion/appropriation transfer applications.

Applicant

WERTH LIVING TRUST
C/O DENNIS WERTH
8990 HEBO ROAD
GRAND RONDE, OR 97347

Findings of Fact

1. On September 27, 2022, WERTH LIVING TRUST, C/O DENNIS WERTH filed a transfer application for authorization of historic points of diversion under Certificate 40350. The Department assigned the application number T-14098.
2. Notice of the application for transfer was published on October 11, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The right to be transferred is as follows:

Certificate: 40350 in the name of LEWIS H. & ALTA M. CLARK (perfected under Permit S-35436)

Use: DOMESTIC USE FOR ONE FAMILY

Priority Date: JULY 27, 1970

Rate: 0.01 CUBIC FOOT PER SECOND

Source: UNNAMED STREAM, tributary of AGENCY CREEK (SOUTH YAMHILL RIVER)

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	7 W	WM	31	SW NW	280 FEET NORTH AND 430 FEET EAST FROM THE W1/4 CORNER OF SECTION 31

Authorized Place of Use:

DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
5 S	7 W	WM	31	SW NW

4. Transfer Application T-14098 proposes an additional point of diversion approximately 1200 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	7 W	WM	31	SE NW	1555 FEET SOUTH AND 1495 FEET EAST FROM NW CORNER OF SECTION 31

5. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

Transfer Review Criteria (ORS 540.532 and OAR 690-380-2120)

6. Pursuant to OAR 690-380-2120(2)(a), evidence has been submitted that the actual, current point of diversion for the water right in question, as described in Finding No. 4, has been in use for more than 10 years.
7. Pursuant to OAR 690-380-2120(2)(c), the Watermaster provided a statement that to his knowledge there has been no complaint of injury due to the use of water at the actual, current point of diversion, prior to the transfer request.
8. The Department did not identify any affected water rights pursuant to OAR 690-380-2120(3).
9. Water has been used within the last five years according to the terms and conditions of the right. There is no evidence available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
10. A gravity fed pump, pipeline, and water tanks sufficient to use the full amount of water allowed under the existing right are present.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

Conclusions of Law

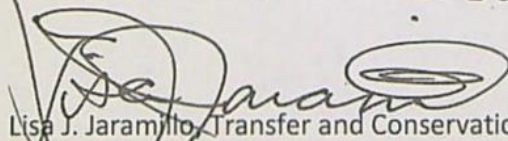
The proposed additional point of diversion to reflect historical use in application T-14098 is consistent with the requirements of ORS 540.532, and OAR 690-380-2120.

Now, therefore, it is ORDERED:

1. The change proposed in T-14098 is approved and effective immediately.
2. The right to the use of the water is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in Certificate 40350 and any related decree.
3. Water right Certificate 40350 is cancelled. Certificate 98012 will be issued to describe the change in point of diversion for the right included in T-14098. Certificate 98012 will supersede Certificate 40350.
4. The quantity of water diverted at the additional point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
5. Prior to October 1, 2026, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

Dated in Salem, Oregon on **OCT 28 2024**



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
IVAN GALL, DIRECTOR
Oregon Water Resources Department

Mailing date: **OCT 29 2024**

STATE OF OREGON

COUNTY OF YAMHILL

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

LEWIS H. & ALTA M. CLARK
RT 1 BOX 214
GRAND RONDE OR 97347

confirms the right to use the waters of UNNAMED STREAM, TRIBUTARY OF AGENCY CREEK (SOUTH YAMHILL RIVER), for DOMESTIC USE FOR ONE FAMILY.

This right was perfected under Permit S-35436 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from JULY 27, 1970.

That the amount of water to which such right is entitled and hereby confirmed for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.01 CUBIC FOOT PER SECOND, or its equivalent in case of rotation, measured at the point of diversion from the stream.

The points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	7 W	WM	31	SW NW	POD 1- 280 FEET NORTH AND 430 FEET EAST FROM THE W1/4 CORNER OF SECTION 31
5 S	7 W	WM	31	SE NW	POD 2 - 1555 FEET SOUTH AND 1495 FEET EAST FROM THE NW CORNER OF SECTION 31

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to -----of one cubic foot per second per acre, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use to which this right is appurtenant is as follows:

DOMESTIC USE FOR ONE FAMILY				
Twp	Rng	Mer	Sec	Q-Q
5 S	7 W	WM	31	SW NW

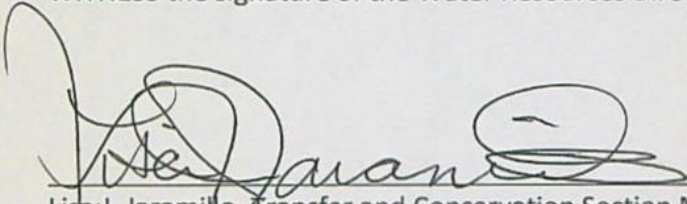
The right to the use of water for the purposes aforesaid is restricted to the lands or place of use herein described.

Prior to October 1, 2026, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

This certificate is issued to confirm an HISTORIC CHANGE IN POINT OF DIVERSION approved by an order of the Water Resources Director entered OCT 28 2024, approving Transfer Application T-14098, and supersedes Certificate 40350, State Record of Water Right Certificates.

WITNESS the signature of the Water Resources Director, affixed OCT 28 2024.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
IVAN GALL, DIRECTOR
Oregon Water Resources Department

WATER RIGHT TRANSFER COVER SHEET

Transfer: T- 14098

Transfer Specialist: *Joan*

Transfer Type: Historic POD Transfer

Applicant: DENNIS WERTH 8990 HEBO ROAD GRAND RONDE, OR 97347 Email: _____ Phone: _____		Agent: <input type="checkbox"/> N/A ERIC ANTHONY URSTADT 39290 NW MURTAUGH RD NORTH PLAINS, OR 97133 Email: _____ Phone: _____	
Irrigation District: <input checked="" type="checkbox"/> N/A Email: _____		CWRE: <input type="checkbox"/> N/A Email: _____	
Affected Local Gov'ts: <input type="checkbox"/> N/A Yamhill County Planning Department Email: _____		Affected Tribal Gov't: <input type="checkbox"/> N/A UNAVAILABLE Email: _____	
Current Landowner if other than Applicant: <input type="checkbox"/> N/A Email: _____		Receiving Landowner: <input type="checkbox"/> N/A Email: _____	

Water Rights Affected

File Marked	App. File # or Decree Name	Permit	Certificate	RR/CR Needed	Historic RR/CR Nos.
<input type="checkbox"/>		8-35436	40350	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<input type="checkbox"/>				<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>				<input type="checkbox"/> Yes <input type="checkbox"/> No	

Key Dates & Initial Actions:

Rec'd: September 27, 2022	Proposed Action(s): ADDITIONAL POINT OF DIVERSION	
Fees Pd: 1360.00	WM District: 22	ODFW District: #2 screen now
Initial Public Notice: October 11, 2022	WM Review sent: <input checked="" type="checkbox"/>	ODFW Review sent: <input checked="" type="checkbox"/>
Acknowledgement Letter Sent <input type="checkbox"/>	no devices <input checked="" type="checkbox"/>	GW Review sent: <input type="checkbox"/> N/A
County sent cc: of Ack Letter <input type="checkbox"/>	BOR notified (date): <input type="checkbox"/> N/A	
Newspaper quote requested:	Request for news \$ sent:	News \$ received:
Request to publish sent:	Affidavit of publication received:	Last day of publication:

Document	Drafted	Peer Review	Changes Made	Coordinator	Changes Made	Signature Bin	Signature Date
DPD	Date: 8/3/23 Initials: <i>Joan</i>	Date: 8/10/23 Initials: <i>Joan</i>	Date: _____ Initials: _____	Date: 4/19/24 Initials: <i>PKS</i>	Date: _____ Initials: _____	CW Sent: _____	N/A
PD	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____	Date: _____
FO	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: 10/22/24	Date: 10/28/24

Special Issues: Historic POD

Special Order Volume: Vol. 133 Pages 281-283

T-14098

Historic Change in POD/POA Water Right Transfer Application Completeness Checklist

Checked by: Joan

Date: 10/3/22

(If OK, check box to left; if not, fill in the blank)

- ☒ 1. Page 1 of application: Are all attachments that have been checked actually included?
If not, what is missing? _____
- ☒ 2. Does the attached local "Watermaster Statement" indicate that, based upon the watermaster's knowledge and Department records, no complaint of injury has been made due to use of water at the actual, current point of diversion or appropriation (*i.e., the historic POD/POA*)?
- If NO, a complaint of injury has NOT been made – proceed to Item #3.
 - If YES, a complaint of injury has been made – **STOP!**
The application does **not** meet the criteria for ORS 540.532 (OAR 690-380-2120).
→ Return the application/fees and direct the applicant to *instead* use the standard POD/POA change Transfer Application and process under ORS 540.520 & 540.530 (OAR 690-380-2110).
- ☒ 3. Is the applicant an "individual" as required by ORS 540.532 and defined in OAR 690-380-2120(7)?
- If YES, the applicant is an "individual" – proceed to Item #4.
 - If NO, the applicant is not an "individual" – **STOP!**
The application does **not** meet the criteria for ORS 540.532 and OAR 690-380-2120(7).
→ Return the application/fees and direct the applicant to *instead* use the standard POD/POA change Transfer Application and process under ORS 540.520 & 540.530 (OAR 690-380-2110).
- ☒ 4. Are fees included and correct?
If not, the correct fee would be: _____, so the amount missing is:
- ☒ 5. Page 3 of application: Have all the applicants listed at the top of the page signed at the bottom?
If not, whose signature is missing? _____
- ☒ 6. Are all listed certificates or permits shown by WRIS as non-cancelled?
If not, which are cancelled? _____
For each cancelled certificate, if there has been a remaining right certificate issued that covers the lands in the left side of Table 2, list its number _____ and check the #4 box at left on this checklist.
- ☒ 7. If any certificate is in the name of a "district", is a Supplemental Form D from that district enclosed?
☒ N/A ☐ Form D needed from _____ (district)
8. If all #1-#7 boxes on this checklist are checked, accept the application. Put this check sheet in the transfer folder. If #1, #2, #3, #4, #5, #6 or #7 on this checklist is deficient, the application cannot be accepted. It should be returned and the **deficiencies listed in the "staff" section at the bottom of Application Page 1**, unless the applicant or agent can resolve the deficiencies within 2-3 days.

STATE OF OREGON
COUNTY OF YAMHILL
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

SHARON MARIE KELLOGG-PALANUK
22721 S.W. SPIRIT MOUNTAIN ROAD
GRAND RONDE, OREGON 97347

confirms the right to use the waters of A SPRING, a tributary of AGENCY CREEK, for the purpose of DOMESTIC USE FOR ONE FAMILY INCLUDING THE IRRIGATION OF NOT TO EXCEED ONE-HALF ACRE LAWN AND NONCOMMERCIAL GARDEN AND STOCKWATER.

The right has been perfected under Permit 48511. The date of priority is MARCH 13, 1984. The right is limited to not more than 0.015 CUBIC FOOT PER SECOND, BEING 0.005 CFS FOR STOCK AND 0.01 CFS FOR DOMESTIC, or its equivalent in case of rotation, measured at the point of diversion from the source.

The point of diversion is located as follows:

SW 1/4 NW 1/4, SECTION 31, T 5 S, R 7 W, W.M.; 1550 FEET SOUTH AND 1500 FEET EAST FROM THE NW CORNER OF SECTION 31.

The right shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use under the right, and to which such right is appurtenant, is as follows:

SW 1/4 NW 1/4
SECTION 31
TOWNSHIP 5 SOUTH, RANGE 7 WEST, W.M.

The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described. The right is subject to minimum flows established by the Water Resources Commission with an effective date prior to this right.

WITNESS the signature of the Water Resources Director, affixed this date MARCH 12, 1990.

/s/ WILLIAM H. YOUNG

Water Resources Director

Recorded in State Record of Water Right Certificates numbered 64171

68030.DM



Oregon

Tina Kotek, Governor

Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone 503 986-0900

Fax 503 986-0904

www.oregon.gov/owrd

~~April 22, 2024~~

VIA E-MAIL

WERTH LIVING TRUST
C/O DENNIS WERTH
8990 HEBO ROAD
GRAND RONDE, OR 97347

SUBJECT: Water Right Transfer Application T-14098

Your water right transfer change in point of diversion to reflect historical use is in the first phase of processing.

Submittal of the following required item is needed at this time:

1. You must submit a **Report of Ownership** for the lands where the water right(s) are currently located (i.e., the FROM lands). This report:
 - a) Must be prepared by a title company;
 - b) Shall include a "prepared by" statement and the date the title company prepared the report printed on the cover sheet;
 - c) Must be:
 - i. Prepared within 3 months of the Draft Preliminary Determination showing current ownership; **OR**
 - ii. Prepared within 3 months of recording of a water right conveyance agreement; **OR**
 - iii. Have a prepared date showing ownership at the time a water right conveyance agreement was recorded.

If water right conveyance agreements are involved, it is helpful to provide copies of those agreements along with the Report of Ownership.

IMPORTANT: In order for the Department to clearly understand the date that the title company prepared the Report of Ownership, the title company must indicate/state the date that they prepared the report on the coversheet and/or first page of the report.

- d) Must include a list of owners at the time the report was generated; **AND**
- e) Must include a legal description of the property where the water right to be transferred is currently located (i.e., the FROM lands).

Enclosed is a copy of Oregon Department of Fish and Wildlife (ODFW) Additional Fish Screening and Passage Information for the Applicant. You will note that ODFW requires a fish screening and/or by-pass device to be installed. We will establish a deadline for compliance with this condition. -Please contact the ODF&W personnel listed on the document for assistance.

Issuance of the Final Order will occur shortly after we receive your response, the proof of service, and the report of ownership. The order may be issued denying the application as incomplete if I do not receive your response, proof of service, and the report of ownership by ~~May 23, 2024~~.

Please do not hesitate to contact me at 503-986-0892 or Joan.M.Smith@water.oregon.gov , if I may be of assistance.

Sincerely,

Joan Smith
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-14098
Joel M. Plahn, District 22 Watermaster (*via e-mail*)
Eric Anthony Urstadt, Agent for the applicant (*via e-mail*)

Enclosures:
ODFW Contact Sheet



Rural Land Consulting

Water Resources, Water Rights, Land
Surveying, Engineering, Land Use Planning

ERICURSTADT@HOTMAIL.COM
971-250-1520 (MOBILE)

Water Resources Department
Attn: Transfer Section – Historical POD
725 Summer Street NE, Ste. A
Salem, OR, 97301

10 AUG 2022

RECEIVED

SEP 30 2022

OWRD

Subject: Application for Historical POD change

To Whom It May Concern,

Enclosed is an application for a historical POD together with the following attachments:

- A. Historical POD map
- B. Land Use Compatibility
- C. Evidence of Use, Form & Evidence
- D. Watermaster Statement
- E. A check made out to "Oregon Water Resources Department" for \$1360.00

Please let me know if there are any concerns or you need any more information.

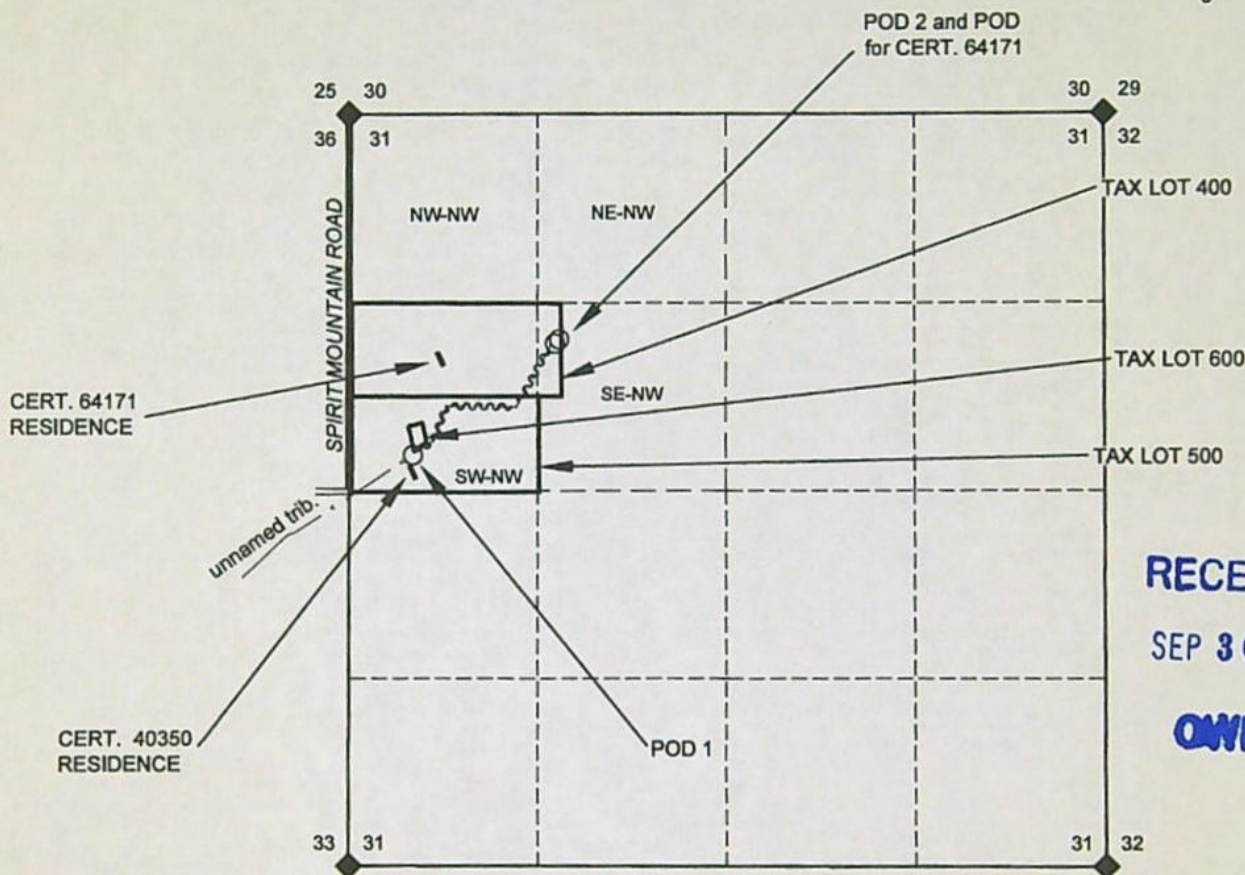
Respectfully,
Aspen Rural Land Consulting

Eric Urstadt, PE, PLS

MAP FOR
Historical POD Map
S31, T5S, R7W, YAMHILL COUNTY
Certificate 40350



1 IN = 1320 FT
0 660 1320



RECEIVED
SEP 30 2022
OWRD

NOTES:

- THIS MAP IS NOT INTENDED TO PROVIDE LEGAL DIMENSIONS OR LOCATIONS OF PROPERTY OWNERSHIP LINES.
- PROPERTY LINES AND QUARTER-QUARTER LINES ARE BASED ON THE TAX ASSESSOR MAP FOR SECTION 31, T5S, R7W.
- A 2021 GOOGLE AERIAL PHOTOS WAS USED TO DETERMINE THE LOCATION OF POD 2 AND TRIB LOCATION.
- THE CERTIFICATE MAP FOR 40350 WAS USED TO LOCATE THE ORIGINAL POD (1) AND THE RESIDENCE.
- NO DONATION LAND CLAIMS ARE WITHIN THIS SECTION AND THIS SECTION IS COMPRISED OF 32 INDIAN LOTS WHICH WERE NOT NOTED ON THE PRIOR CERTIFICATE MAPS, SO THEY ARE NOT NOTED ON THIS MAP.
- THE TRIB (OR DRAINAGEWAY) IS SOMETIMES UNDERGROUND HAVING MINIMAL OR NO CHANNEL; AND THEREFORE MAPPING IS DIFFICULT. THE TRIB IS MAPPED FROM TESTIMONY FROM THE WERTH FAMILY USING AERIAL PHOTO INTERPRETATION; THE USGS QUAD MAPS FOR THE AREA ARE NOT RELIABLE FOR STREAMS IN THIS AREA. THE TRIB SHOWN FLOWS TO AGENCY CREEK.

LOCATIONS OF POD'S:

POD #1 (STREAM)	280' N & 430' E FROM W1/4 S31 (PER CERTIFICATE 40350)
POD #2 (STREAM)	1555' S & 1495' E FROM NW S31.
POD (CERT. 64171) (SPRING)	1550' S & 1500' E FROM NW S31 (PER CERT.)



Exp. 30 JUN 2024

LEGEND

- ◆ SECTION CORNER
- POINT OF DIVERSION (POD)
- STREAM OR SURFACE DRAINAGE
- TAX LOT LINE
- SECTION LINE
- QUARTER-QUARTER LINE
- ~~~~~ WATERLINE LINE

14098

MAP BY:
**ASPEN RURAL LAND
CONSULTING**
ERIC URSTADT, PE, PLS
971-250-1520
AUG 2022
Werth-2G

T-14098

After recording, return to:
Mikayla E. Wallace, Attorney
P.O. Box 480
McMinnville, OR 97128

OFFICIAL YAMHILL COUNTY RECORDS
KERIHINTON, COUNTY CLERK

202304017



\$126.00

00654103202300040170100103

05/10/2023 01:49:00 PM

DMR-AGRDMR Cnt=1 Stn=1036 DAVISM
\$50.00 \$5.00 \$11.00 \$60.00

WATER LINE EASEMENT AGREEMENT

This WATER LINE EASEMENT AGREEMENT (the "Agreement") is made and entered into this 27 day of April 2023 (the "Effective Date"), by and between Ron Jahn as Personal Representative of the Estate of Irvin Brockett ("Grantor") and Dennis Ray Werth & Mary Susan Werth, Trustees of the Werth Living Trust, dated April 6, 1998, James Lee Werth, Trustee of the James Lee Werth Living Trust dated March 16, 2010, and Donald Lee Yates and Jo Anne Yates, Trustees of the Yates Living Trust dated December 17, 1999 (collectively, "Grantee"). Grantor and Grantee are referred to collectively herein as the parties and individually as a party.

RECITALS:

- A. Grantor is the owner of certain real property located in Yamhill County, Oregon, as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference ("Grantor's Property").
- B. Grantee is the owner of certain real property located in Yamhill County, Oregon, as more particularly described on Exhibit "B" attached hereto and incorporated herein by reference ("Grantee's Property").
- C. The purpose of this Water Line Easement is to provide for the creation, use and maintenance of an existing water line serving Grantee's Property running along the existing unnamed spring in the southeastern corner of Grantor's Property.

AGREEMENT:

NOW, THEREFORE, for the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

1. Grant of Water Line Easement: Subject to the terms and conditions of this Agreement, Grantor grants to Grantee a perpetual, non-exclusive, ten-foot wide easement for the use and maintenance of an existing water line over, under, across and through the Grantor's Property for the purposes of providing water to Grantee's Property (the "Water Line Easement"). The Water Line Easement shall be ten feet wide, extending five feet on either side of the existing water line below the existing unnamed spring in the southeastern area of Grantor's Property beginning at the point of diversion in Water Right Certificate number 64171 and ending at the southern boundary of Grantor's Property where the existing water line crosses over onto Grantee's Property (the "Water Line Easement Area"). The Waterline Easement Area is depicted approximately on Exhibit "C" as the Location of Water System and Waterline Easement.

This grant of the Water Line Easement includes the following rights and obligations on Grantee's part:

- a. Accessing and performing maintenance-related activities in the Water Line Easement area, subject to Grantee's obligation to give Grantor advance notice, such access to be gained along existing roads or trails to the extent possible and in any event in a manner designed to cause minimum damage or disturbance to Grantor's Property;
- b. Repair, replacement, maintenance, reclamation and/or removal of the existing water pipe in the Water Line Easement Area as from time to time is necessary.

Grantee shall exercise these rights in such a way so the exercise of the rights do not materially harm or materially interfere with Grantor's Property. Specifically, the Grantee will work with the Grantor to discuss any planned excavation, repair, maintenance or other work in the Water Line Easement Area in order to limit the impacts from these activities on Grantor's Property.

Before commencing any repair, maintenance or other work in the Water Line Easement Area or on the water line pipes, Grantee shall give Grantor at least 48 (forty-eight) hours advance notice and allow a representative of Grantor to be present during all such work.

Following any maintenance or repair work on the water line, Grantee shall promptly restore the surface and any impacted areas within or adjacent to the Water Line Easement Area to the condition it occupied prior to such work, all to the reasonable satisfaction of Grantor.

If Grantee voluntarily abandons or permanently ceases to use the water line, and so notifies Grantor in writing, then, at the request of Grantor, Grantee shall disconnect the water line, and restore the Water Line Easement Area and any impacted areas to their prior condition. After such restoration work is completed to Grantor's reasonable satisfaction, this Water Line Easement shall be deemed to have been terminated and of no further force or effect.

2. Future Survey of Water Line Easement Area: In the event either Party elects to engage a surveyor to survey and provide a legal description for the Water Line Easement Area, both Grantor and Grantee agree to cooperate with such endeavor and agree to be bound by the resulting survey as the true and actual description of the Water Line Easement Area.

3. Grantor's Reservation of Rights: Subject to the rights created herein, Grantor expressly reserves to itself, its successors and assigns, the right to use or to grant to others the right to use ground above the Water Line Easement at the Grantor's sole discretion for any lawful purposes whatsoever not inconsistent with the rights granted in this Agreement; provided that any such uses do not interfere with Grantee's use of the Water Line Easement pursuant to this Agreement.

4. Obstructions: Grantor agrees not to build, construct or create or permit others to build, construct or create any building or other structures within the Water Line Easement Area that may interfere with the use or maintenance of the Water Line Easement.

5. Maintenance and Improvement Costs: Subject to Grantee's obligations in Section 1 above, Grantee shall maintain the water line itself in good condition and repair at Grantee's sole cost and expense.

6. Release of Liability of Easement Use: It is expressly understood and agreed that Grantor assumes no liability for any costs (including repair, maintenance or removal costs), property damage or bodily injury resulting from Grantee's maintenance or use of the Water Line Easement, except to the extent such damage or injury is caused by the sole, gross negligence or willful misconduct of Grantor. As such, and except as otherwise stated herein, Grantee shall be responsible for any liability for property damage or

bodily injury to the extent relating to its or its contractors', agents', invitees' or guests' wrongful or negligent use, improvement or maintenance of the Water Line Easement. Except as expressly set forth above, Grantee hereby releases Grantor from and against any claims that Grantee might otherwise have against Grantor for claims arising out of Grantee's use of the Water Line Easement.

7. Covenants Running with the Land: The terms, covenants and conditions set forth in this Agreement shall run with the land described in this Agreement and shall benefit and bind the parties hereto, and any heirs, successors, and assigns of all or any portion of the real property in this Agreement.

8. Severability: In the event any of the foregoing provisions of this Agreement are determined by a court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised herefrom, and the remainder of the Agreement will continue in full force and effect.

9. Entire Agreement: This Agreement, including referenced exhibits and attachments hereto, constitutes the entire agreement between the parties and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect whatsoever on this Agreement.

10. Recording: The Grantee hereby agrees to record this Agreement immediately following the Effective Date.

11. Amendment: This Agreement may be amended only by a written agreement signed by each of the parties hereto.

12. Governing Law: This Agreement and the rights and obligations hereunder shall be governed by the laws of the State of Oregon without regard to conflict of laws principles. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall lie in Yamhill County, Oregon. The parties hereby waive their right to trial by jury in any action, proceeding or claim, arising out of this Agreement, which may be brought by either of the parties hereto.

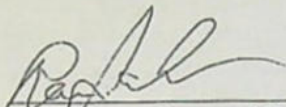
13. Notices: All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered, sent by certified mail return receipt requested, or sent by overnight carrier to the Parties' mailing address then on file with the Yamhill County Tax Assessor's office, and such address shall be presumed to be correct. Any notice that is mailed shall be presumed to be effective the sooner of the date that is: (i) three (3) days after the date of mailing; or (ii) the other Parties' receipt.

14. Counterparts: This Agreement may be executed in any number of counterparts, each of which, when taken together, shall constitute one original document.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the date first above written.

[Signature Pages Follow]

GRANTOR



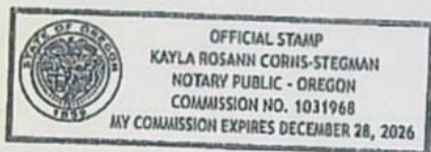
Ron Jahn as Personal Representative
of the Estate of Irvin Brockett

STATE OF OREGON)

) ss.

County of Yamhill Crook)

The foregoing instrument was acknowledged before me this 28 day of April, 2023, by the
above-named **RON JAHN, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF IRVIN
BROCKETT.**


Notary Public for Oregon

My Commission Expires:

12-28-2026

GRANTEE

THE WERTH LIVING TRUST DATED APRIL 6, 1998

By: Dennis Ray Werth
Dennis Ray Werth, Individually and as Trustee

By: Mary Susan Werth
Mary Susan Werth, Individually and as Trustee

STATE OF OREGON)
) ss.
County of Polk)

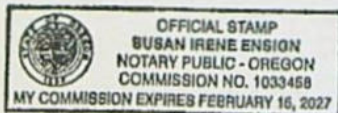
The foregoing instrument was acknowledged before me this 27 day of April, 2023, by the above-named Dennis Ray Werth, Individually and as Trustee of the Werth Living Trust Dated April 6, 1998.



[Signature]
Notary Public for Oregon
My Commission Expires: 2-15-27

STATE OF OREGON)
) ss.
County of Polk)

The foregoing instrument was acknowledged before me this 27 day of April, 2023, by the above-named Mary Susan Werth, Individually and as Trustee of the Werth Living Trust Dated April 6, 1998.



[Signature]
Notary Public for Oregon
My Commission Expires: 2-15-27

GRANTEE

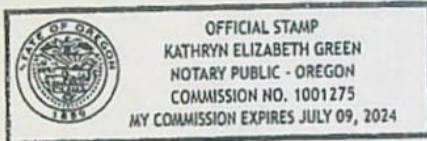
THE YATES LIVING TRUST DATED DECEMBER 17, 1999

By: Donald L. Yates
Donald Lee Yates, Individually and as Trustee

By: Jo Anne Yates
Jo Anne Yates, Individually and as Trustee

STATE OF OREGON)
) ss.
County of Polk)

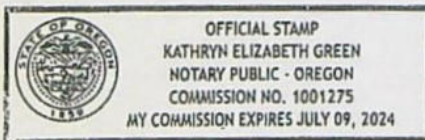
The foregoing instrument was acknowledged before me this 1st day of May, 2023, by the above-named Donald Lee Yates, Individually and as Trustee of the Yates Living Trust Dated December 17, 1999.



Kathryn Elizabeth Green
Notary Public for Oregon
My Commission Expires: 07/09/2024

STATE OF OREGON)
) ss.
County of Polk)

The foregoing instrument was acknowledged before me this 1st day of May, 2023, by the above-named Jo Anne Yates, Individually and as Trustee of the Yates Living Trust Dated December 17, 1999.



Kathryn Elizabeth Green
Notary Public for Oregon
My Commission Expires: 07/09/2024

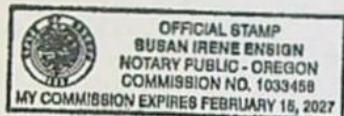
GRANTEE

THE JAMES LEE WERTH LIVING TRUST DATED MARCH 16, 2010

By: James Lee Werth
James Lee Werth, Individually and as Trustee

STATE OF OREGON)
) ss.
County of Polk)

The foregoing instrument was acknowledged before me this 27 day of April, 2023, by the above-named James Lee Werth, Individually and as Trustee of the James Lee Werth Living Trust Dated March 16, 2010.



Susan Irene Ensign
Notary Public for Oregon
My Commission Expires: 2-15-27

EXHIBIT A
LEGAL DESCRIPTION OF GRANTOR'S PROPERTY

Approximately 22.3 acres of real property located in Section 31, T5S, R7W, Yamhill County, Oregon, more fully described below:

Parcel 1

The West 150 feet of the North Half of the Southeast Quarter of the Northwest Quarter of said Section 31, Township 5 South, Range 7 West of the Willamette Meridian in Yamhill County, Oregon.

Parcel 2

The North Half of the Southwest Quarter of the Northwest Quarter of Section 31, in Township 5 South, Range 7 West of the Willamette Meridian in Yamhill County, Oregon.

EXHIBIT B
LEGAL DESCRIPTION OF GRANTEE'S PROPERTY

The South Half ($\frac{1}{2}$) of the Southwest Quarter ($\frac{1}{4}$) of the Northwest Quarter ($\frac{1}{4}$) of Section 31,
Township 5 South, Range 7 West of the Willamette Meridian in Yamhill County, Oregon.

Except a roadway twenty (20) feet in width along the West line thereof.

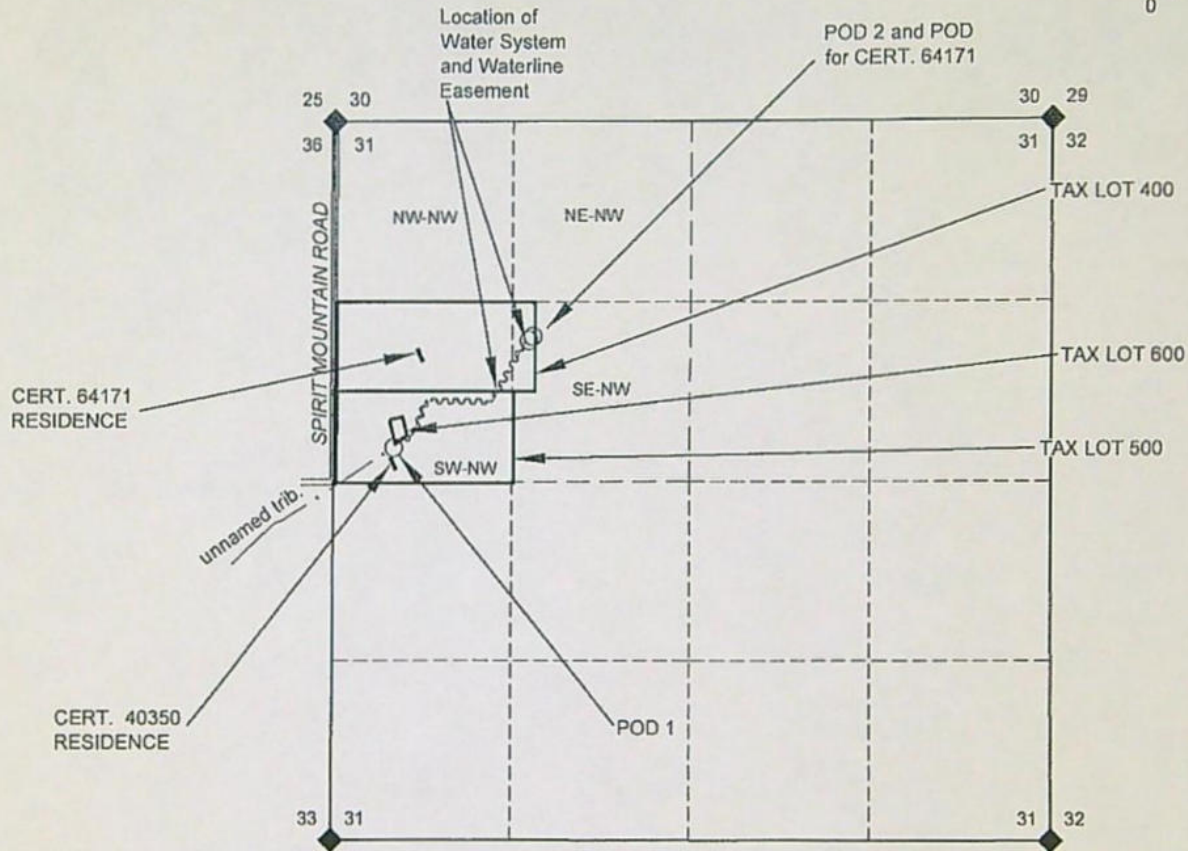
ALSO EXCEPTING THEREFROM that portion conveyed to Walter D. Clark and Helen R. Clark,
husband and wife, by deed recorded May 11, 1970 in Film Volume 79, Page 981, Deed and Mortgage
Records, Yamhill County, Oregon,

and also terms and conditions of Limited Life Estate Deed 2012-18425 Yamhill County, Oregon.

Exhibit "C" - Water Line Easement Area
S31, T5S, R7W, YAMHILL COUNTY
Water Right Certificate 40350



1 IN = 1320 FT
0 660 1320



NOTES:

- THIS MAP IS NOT INTENDED TO PROVIDE LEGAL DIMENSIONS OR LOCATIONS OF PROPERTY OWNERSHIP LINES.
- PROPERTY LINES AND QUARTER-QUARTER LINES ARE BASED ON THE TAX ASSESSOR MAP FOR SECTION 31, T5S, R7W.
- A 2021 GOOGLE AERIAL PHOTOS WAS USED TO DETERMINE THE LOCATION OF POD 2 AND TRIB LOCATION.
- THE CERTIFICATE MAP FOR 40350 WAS USED TO LOCATE THE ORIGINAL POD (1) AND THE RESIDENCE.
- NO DONATION LAND CLAIMS ARE WITHIN THIS SECTION AND THIS SECTION IS COMPRISED OF 32 INDIAN LOTS WHICH WERE NOT NOTED ON THE PRIOR CERTIFICATE MAPS, SO THEY ARE NOT NOTED ON THIS MAP.
- THE TRIB (OR DRAINAGEWAY) IS SOMETIMES UNDERGROUND HAVING MINIMAL OR NO CHANNEL; AND THEREFORE MAPPING IS DIFFICULT. THE TRIB IS MAPPED FROM TESTIMONY FROM THE WERTH FAMILY USING AERIAL PHOTO INTERPRETATION; THE USGS QUAD MAPS FOR THE AREA ARE NOT RELIABLE FOR STREAMS IN THIS AREA. THE TRIB SHOWN FLOWS TO AGENCY CREEK.

LOCATIONS OF POD'S:

POD #1 (STREAM) 280' N & 430' E FROM W1/4 S31 (PER CERTIFICATE 40350)
POD #2 (STREAM) 1555' S & 1495' E FROM NW S31.
POD (CERT. 64171) (SPRING) 1550' S & 1500' E FROM NW S31 (PER CERT.)

LEGEND

- ◆ SECTION CORNER
- POINT OF DIVERSION (POD)
- - - - - STREAM OR SURFACE DRAINAGE
- — — — — TAX LOT LINE
- — — — — SECTION LINE
- - - - - QUARTER-QUARTER LINE
- ~~~~~ WATERLINE LINE



Exp. 30 JUN 2024

MAP BY:
ASPEN RURAL LAND CONSULTING
ERIC URSTADT, PE, PLS
971-250-1520
AUG 2022
Werth-2G



Oregon
Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

October 5, 2022

DENNIS WERTH
WERTH LIVING TRUST
8990 HEBO ROAD
GRAND RONDE, OR 97347

Reference: Application T- 14098

On September 27, 2022, OWRD received your water right application for an Historic POD Transfer. The application was accompanied by \$1360.00. Our receipt number 139251 is enclosed.

By copy of this letter, we are asking the Watermaster for a report regarding the potential for injury to existing water rights which may be caused by the requested change. A review form is also being sent to Oregon Department of Fish and Wildlife to determine if a fish screen will be required.

If the land is sold before the transfer is approved, the buyer's consent to the transfer will be required unless a recorded deed or other legal document clearly established that the water right was not conveyed in the sale.

Please refer to the following page for a chart showing the steps and expected timelines for the processing of your application.

If you have any questions, please contact the Transfer Section at (503) 979-9931.

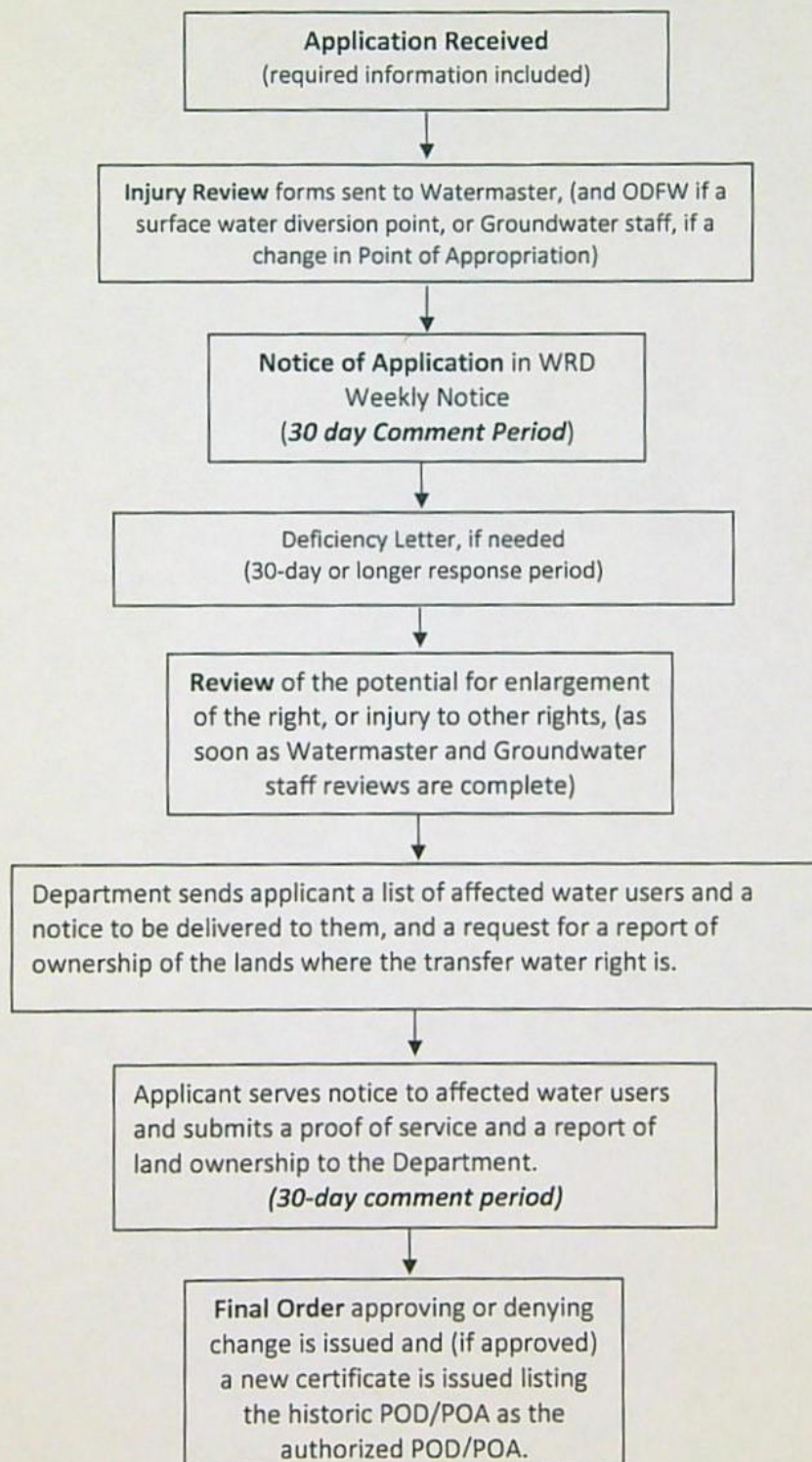
Cc: Watermaster Dist. #22, Joel M. Plahn (via email)
Yamhill county Planning
Eric Anthony Urstadt, Agent

Enclosure

Historic Point of Diversion Transfer Process

OAR 690 Division 380

Changes: POD/POA to a point that has been in use for 10 years or more



**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

725 Summer St. N.E. Ste. A
SALEM, OR 97301-4172

(503) 986-0900 / (503) 986-0904 (fax)

RECEIPT # **139251**

INVOICE # _____

RECEIVED FROM: Dennis R. Werth

BY: Mary Susan Werth

CASH: _____ CHECK: # _____ OTHER: (IDENTIFY) _____

☐

☒ 4140

☐

APPLICATION _____

PERMIT _____

TRANSFER T-14098

TOTAL REC'D \$ 1,360.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES \$ _____

OTHER: (IDENTIFY) \$ _____

0243 I/S Lease _____ 0244 Muni Water Mgmt. Plan _____ 0245 Cons. Water _____

4270 WRD OPERATING ACCT

MISCELLANEOUS

0407 COPY & TAPE FEES \$ _____

0410 RESEARCH FEES \$ _____

0408 MISC REVENUE: (IDENTIFY) \$ _____

TC162 DEPOSIT LIAB. (IDENTIFY) \$ _____

0240 EXTENSION OF TIME \$ _____

WATER RIGHTS:

0201 SURFACE WATER \$ _____ 0202 \$ _____

0203 GROUND WATER \$ _____ 0204 \$ _____

0205 TRANSFER \$ 1,360.00

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR \$ _____ 0219 \$ _____

LANDOWNER'S PERMIT 0220 \$ _____

OTHER (IDENTIFY) _____

0536 TREASURY 0437 WELL CONST. START FEE

0211 WELL CONST START FEE \$ _____ CARD# _____

0210 MONITORING WELLS \$ _____ CARD# _____

OTHER (IDENTIFY) _____

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

0233 POWER LICENSE FEE (FW/WRD) \$ _____

0231 HYDRO LICENSE FEE (FW/WRD) \$ _____

HYDRO APPLICATION \$ _____

TREASURY OTHER / RDX

FUND _____ TITLE _____

OBJ. CODE _____ VENDOR # _____

DESCRIPTION \$ _____

RECEIPT: **139251**

DATED: 9.30.2022 BY: [Signature]

Application for
**Historic Change in Point of
Diversion/Appropriation**
Part 1 of 5 – Minimum Requirements Checklist



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

**This historic change in point of diversion/appropriation 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 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.
- ☒ Part 4 – Completed Applicant Information and Signature.
- ☒ Part 5 – Information about the Transferred Water Rights: **How many water rights are to be transferred? 1 List them here: 40350**

Please include a separate Part 5 for each water right. (See instructions on page 5)

**NOTE: A separate transfer application is required for each water right unless the
criteria in OAR 690-380-3220 are met.**

Attachments:

- ☒ Completed Application Map (Does not have to be prepared by a Certified Water Right Examiner).
- ☒ Completed Evidence of Use Affidavit and supporting documentation showing that water has been used on the land for five years prior to transfer filing AND diverted at the actual, current point of diversion/appropriation for more than 10 years.
- ☒ Statement from the local Watermaster, based upon the Watermaster's knowledge and Department records, that no complaint of injury has been made due to the use of water at the actual, current point of diversion/appropriation.
- ☒ Land Use Information Form with approval and signature (or signed land use form receipt stub).
- ☐ ☒ N/A Affidavit(s) of Consent from Landowner (if the applicant does not own the land the water right is on.) As confirmed by Joan Smith of WRD on 10AUG 2022, this is not applicable because there is an easement for the POD and pipeline on the neighbor to the north; see Exhibit B for the easement.
- ☐ ☒ N/A Water Well Report/Well Log for changes in point(s) of appropriation (well(s)) or additional point(s) of appropriation.

(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 – Historic Change in Point of Diversion/Appropriation Application Map Checklist

Your historic change in point of diversion/appropriation application will be returned if any of the map requirements listed below are not met.

Please be sure that the historic change in point of diversion/appropriation application map you submit includes all the required items and matches the existing water right map. Check all boxes that apply.

- ☐ ☒ 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 white or clear paper or film.
- ☒ The size of the map can be 8½ x 11 inches, 8½ x 14 inches, or up to 30 x 30 inches. For 30 x 30 inch maps, three (3) paper copies and an electronic copy in a .pdf, .tiff or .jpg format are 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) and county tax lot numbers are required.
- ☒ 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.
- ☒ Authorized 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.
- ☒ Actual, current point of diversion/appropriation. Show the 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°).
- ☒ 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 If for more than one actual, current point of diversion/appropriation. separate hachuring is needed for each place of use served by each point of diversion/appropriation, including the 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.

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Part 3 of 5 — Fee Worksheet

FEE WORKSHEET for HISTORIC POD/POA TRANSFER			
1	Base Fee (includes Historic POD change to one water right for up to 1 cfs)	1	\$1,360
2	Number of water rights included in transfer <u>1 (2a)</u> Subtract 1 from the number in 2a above: <u>0 (2b)</u> <i>If only one water right this will be 0</i> Multiply line 2b by \$610 and enter » » » » » » » » » » » » » » » »	2	0
3	Do you propose to add or change a well, or change from a surface water POD to a well? <input checked="" type="checkbox"/> No: enter 0 <input type="checkbox"/> Yes: enter \$480 for the 1 st well to be added or changed <u>0 (3a)</u> Do you propose to add or change additional wells? <input checked="" type="checkbox"/> No: enter 0 <input type="checkbox"/> Yes: multiply the number of additional wells by \$410 <u>0 (3b)</u> Add line 3a to line 3b and enter » » » » » » » » » » » » » »	3	
4	Add entries on lines 1 through 3 above » » » » » » » » Transfer Fee:	4	1360

☐ Check this box if this project is fully or partially funded by the American Recovery and Reinvestment Act. (Federal stimulus dollars)

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Part 4 of 5 – Applicant Information and Signature

Applicant Information

Note: Applicant must be an INDIVIDUAL, as defined by OAR 690-380-2120, that is "a natural person and does not include a government body, organization, business enterprise, or other such entity."

APPLICANT/BUSINESS NAME Werth Living Trust c/o Dennis Werth*			PHONE NO. 503.879.5238	ADDITIONAL CONTACT NO. 503.931.3874
ADDRESS 8990 Hebo Road			FAX NO. NA	
CITY Grand Ronde	STATE OR	ZIP 97347	E-MAIL drwerth@certurylink.net	
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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*Joan Smith of Water Resources Department stated on 10 AUG 2022 that this type of Living Trust is considered an individual for this application.

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

AGENT/BUSINESS NAME Aspen Rural Land Consulting c/o Eric Urstadt, PE, PLS			PHONE NO. 971.250.1520	ADDITIONAL CONTACT NO. 503.647.1919
ADDRESS 39290 NW Murtaugh Road			FAX NO. NA	
CITY North Plains	STATE OR	ZIP 97133	E-MAIL ericurstadt@hotmail.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 applicant wishes to change the Point of Diversion. *Joan Smith of Water Resources Department stated that this type of Living Trust is considered an individual for this application.

If you need additional space, continue on a separate piece of paper and attach to the application as "Attachment 1".

By signing this application, I understand that prior to Department approval of the historic change in point of diversion/appropriation, I will be required to provide landownership information and evidence that I am authorized to pursue the change as identified in OAR 690-380-4010(5).

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



Dennis Werth, Trustee
Applicant Signature

Dennis Werth, trustee
Print Name (and Title if applicable)

Sept. 22, 2022
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.

Note: An easement is being worked on for the water system features that are on tax lot 400. It will be completed before this transfer is reviewed by Water Resources Department (WRD). Because of this easement, an affidavit of consent on tax lot 400 is not needed; which was confirmed with a conversation with Joan Smith of WRD on 10 AUG 2022.

14098

At this time, are the lands in this 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:

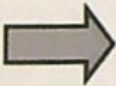
<http://www.oregon.gov/owrd/docs/transfer-propertytransactions.pdf>

RECEIVING LANDOWNER NAME NA			PHONE NO.	ADDITIONAL CONTACT NO.
ADDRESS				FAX NO.
CITY	STATE	ZIP	E-MAIL	

Describe any special ownership circumstances here: NA

☐ 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.

ENTITY NAME NA	ADDRESS	
CITY	STATE	ZIP

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

ENTITY NAME YAMHILL COUNTY PLANNING & DEVELOPMENT	ADDRESS 525 NE 4TH STREET	
CITY MCMINNVILLE	STATE OR	ZIP 97128
ENTITY NAME	ADDRESS	
CITY	STATE	ZIP

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SEP 30 2022

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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 5, to copy and paste additional Part 5s, or to add additional rows to tables

CERTIFICATE # 40350

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SEP 30 2022

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Description of Water Delivery System

System capacity: 0.01* cubic feet per second (cfs) OR
 _____ gallons per minute (gpm)

*Per certificate.

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. The water is gravity flow and conveyed in plastic PVC pipe to two plastic tanks and then on to the residence.

Table 1. Location of Authorized and Current 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 the Current POD/POA that has been used for more than 10 years?	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)
POD 1	<input checked="" type="checkbox"/> Authorized <input type="checkbox"/> Current	NA	5	S	7	W	31	SW	NW	500	280' N & 430' E of W1/4 S31 (per certificate)
POD 2	<input type="checkbox"/> Authorized <input checked="" type="checkbox"/> Current	N/A	5	S	7	W	31	SE	NW	400	1555' S & 1495' E NE S31

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

- ☐ Point of Diversion (POD)
☐ Point of Appropriation/Well (POA)

☒ Additional Point of Diversion (APOD)
☐ Additional Point of Appropriation (APOA)

Will the historic change in point of diversion/appropriation affect the entire water right?

- ☒ Yes Complete only the proposed section of Table 2 on the next page.
- ☐ No Complete all of Table 2 to describe the portion of the water right to be changed.

14098

Please use and attach additional pages of Table 2 as needed. Do you have questions about how to fill-out the tables? See page 5 for instructions, or contact the Department at 503-986-0900 and ask for Transfer Staff.

Table 2. Description of Changes to Water Right Certificate # 40350

List only the part of the right that will be changed. For the acreage in each ¼ ¼, list the change proposed. If more than one actual, current POD/POA, specify the acreage associated with each actual, current POD/POA.

Authorized ("from" lands) as they appear before the changes								Proposed Change (POD, POA, APOD, or APOA)	Current (in use for more than ten years) POD(s)/ POA(s) to be used (from Table 1)	Priority Date
Twp	Rng	Sec	¼ ¼	Tax Lot	Gvt Lot or DLC	Acres (if applicable)	POD(s) or POA(s) (name or number from Table 1)			
								APOD	POD 2	1970

Additional remarks: Note that POD 2 is within a few feet and downstream of the POD for certificate 64171. The spring for 64171 has a permanently flowing overflow that feeds POD 2. The mapped locations for the POD, residence, and water tanks for certificate 64171 were not checked or confirmed for this application.

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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 current 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/)

OR

- ☐ Describe the construction of the authorized and current well(s) in Table 3 for any wells that do not have a well log.

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 adequate information is likely to delay the processing of your transfer application.

Current or Authorized POA Name or Number	OWRD Well ID Tag No. L-____ (if available)	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
NA									

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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

ATTACH C-1/3

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)
County of YAMHILL) ss

I, DENNIS WERTH, in my capacity as TRUSTEE OF WERTH LIVING TRUST,

mailing address 8990 HEBO ROAD

telephone number (503) 879-5238, 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.
- ☐ 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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C-3/3

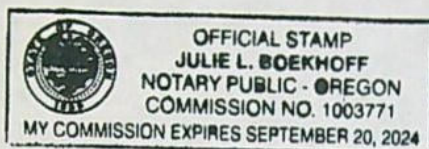
3. The water right was used for: (e.g., crops, pasture, etc.): DOMESTIC USE

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.

Walter R. Wirth Trustee of Wirth Living Trust
Signature of Affiant

Sept. 22, 2022
Date

Signed and sworn to ~~(or affirmed)~~ before me this 22nd day of Sept, 20 22.



Julie L. Boekhoff
Notary Public for Oregon

My Commission Expires: 9.20.2024

Supporting Documents	Examples
<input type="checkbox"/> 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
<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 usage 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 checked="" 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>Sources for aerial photos: OSU – www.oregonexplorer.info/imagery OWRD – www.wrd.state.or.us Google Earth – earth.google.com TerraServer – www.terra-server.com</p>
<input type="checkbox"/> Approved Lease establishing beneficial use within the last 5 years	Copy of instream lease or lease number

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Aspen

Rural Land Consulting

Water Resources, Water Rights, Land Surveying,
Engineering, Land Use Planning

ERICURSTADT@HOTMAIL.COM
971-250-1520 (MOBILE)

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10 AUG 2022

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Subject: Evidence of Use for Historical POD

OWRD

This document is intended to go along with an Evidence of Use Affidavit pertaining to a 2022 Historical POD application of certificate 40350. The image below is a Google earth aerial photo with 2021 imagery. The yellow line is the outline of tax lot 400, the domestic residence for the water right is at the tip of the red arrow.



Prepared by:
Aspen Rural Land Consulting

Eric Urstadt, PE, PLS

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ATTACH D-1/1

Application for Water Right Historic POD/POA Transfer Watermaster Statement



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

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I, Joel Plahn, Watermaster of District 22,

state that to my knowledge, there has been no claim of injury due to use of an historic point of

diversion/appropriation for Certificate 40350

from unnamed trib to Agency Creek (source) located as follows:

☐ By Township, Range Section and distances from a Survey Corner:

Twp	Rng	Mer	Sec	Q-Q	DLC	GLot	Measured Distances
		W.M.					

OR

☐ by GPS coordinates: Latitude: _____

Longitude: _____

OR

☒ as shown on the attached map.

Joel Plahn

Digitally signed by Joel Plahn
DN: O=Water Resources, CN=Joel Plahn,
E=joel.m.plahn@water.oregon.gov
Reason: I am the author of this document
Location: your signing location here
Date: 2022.08.11 12:46:03-07'00'
Foxit PDF Editor Version: 11.2.2

Signature

Date

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ATTACH B - 1/2

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): Werth Living Trust c/o Dennis Werth

Mailing Address: 8990 Hebo Road

City: Grand Ronde

State: OR

Zip Code: 97347

Daytime Phone: 503.879.5238

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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:
<u>5S</u>	<u>7W</u>	<u>31</u>	<u>NA</u>	<u>400</u>	<u>F80</u>	<input checked="" type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input type="checkbox"/> Used	<u>NA</u>
<u>5S</u>	<u>7W</u>	<u>31</u>	<u>NA</u>	<u>400</u>	<u>F80</u>	<input type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	<u>Forestry & residence</u>
_____	_____	_____	_____	_____	_____	<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	_____
_____	_____	_____	_____	_____	_____	<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	_____

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

Yamhill

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) unnamed trib. to Agency Creek

Estimated quantity of water needed: 0.01 ☒ cubic feet per second ☐ gallons per minute ☐ acre-feet

Intended use of water: ☐ Irrigation ☐ Commercial ☐ Industrial ☒ Domestic for 1 household(s)
☐ Municipal ☐ Quasi-Municipal ☐ Instream ☐ Other _____

Briefly describe:

The owner is applying to legalize the point of diversion that has been used for over 30 years via historical use

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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B-2/2

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:	
		<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

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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: Ken Fridley Title: P.D.
Signature: [Signature] Phone: 434-7516 Date: 8/11/22
Government Entity: Yamhill Co.

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: _____