

Application for Water Right Instream Transfer

Part 1 of 6 – 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 transfer application will be returned if Parts 1 through 6 and all required attachments are not completed and included.
For questions, please call (503) 986-0900, and ask for Transfer Section.

FOR ALL INSTREAM TRANSFER APPLICATIONS

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

- Part 1 – Completed Minimum Requirements Checklist.
- Part 2 – Completed 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. If you have questions, call Customer Service at (503) 986-0801. **Submitted with original application in Nov 2023.**
Note: Instream transfers are considered both a change in place of use and character of use. In addition, an automatic 50% fee waiver applies to all instream transfers.
- Part 4 – Completed Applicant Information and Signature.
- Part 5 – Completed Instream Use Information.
- Part 6 – Information about the Transferred Water Rights: **How many water rights are to be transferred? Two List them here: Portions of Cert. 98527 (formerly 87480) and Cert. 25786** Please include a separate Part 6 for each water right. (See instructions on page 8)
Attachments:
 - Completed Instream Transfer Application Map. **Separate Map for Each Right (Att. 1-2)**
 - Completed Evidence of Use Affidavit and supporting documentation. **(Att. 3)**
 - N/A Affidavit(s) of Consent from Landowner(s) (if the applicant does not own the land the water right is on.)
 - N/A Supplemental Form D – For water rights served by or issued in the name of an irrigation district. Complete when the transfer applicant is not the irrigation district.
 - Land Use Notice - Notice of the intent to file an instream transfer application must be provided to each affected local government along the proposed reach. Copies of the notices must be enclosed with the instream transfer application. **(Att. 4)**

(For Staff Use Only)

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

___ Application fee not enclosed/insufficient	___ Map not included or incomplete
___ Land Use Form not enclosed or incomplete	
___ Additional signature(s) required	___ Part ___ is incomplete

Other/Explanation _____

Staff: _____ 503- _____ Date: ___/___/___

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 list of CWREs see http://apps.wrd.state.or.us/apps/wr/cwre_license_view/.
- OR**
- N/A Waiver of requirement that map be prepared by a CWRE. Completed map waiver form is signed by the Department’s Regional Manager and included in the application. The map **must** still meet Department mapping requirements described below.
- N/A If **more than 3** water rights are involved, separate maps are needed for each water right. **A separate map is attached for each of the two water rights.**
- Permanent quality printed with dark ink on good quality paper.
- The size of the map can be **8½ x 11 inches**, 8½ x 14 inches, 11 x 17 inches, or up to 30 x 30 inches. For 30 x 30 inch maps, one extra copy is required.
- A north arrow, a legend, and scale.
- The scale of the map must be: **1 inch = 400 feet**, 1 inch = 1,320 feet, the scale of the Final Proof/Claim of Beneficial Use Map (the map used when the permit was certificated), the scale of the county assessor map if the scale is not smaller than 1 inch = 1,320 feet, or a scale that has been pre-approved by the Department.
- Township, Range, Section, quarter-quarter, 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.
- Existing diversion point(s) with distance and bearing or coordinates from a recognized survey corner. This information can generally be found in your water right certificate or permit.

Part 3 of 6 – Fee Worksheet

FEE WORKSHEET for INSTREAM TRANSFER			
1	Base Fee (includes Place of Use and Character of Use to Instream changes to one water right for up to 1 cfs)	1	\$2,450
2	Number of water rights included in transfer <u>2 (2a)</u> Subtract 1 from the number in 2a above: <u>1 (2b)</u> <i>If only one water right, this will be 0</i> Multiply line 2b by \$610 and enter » » » » » » » » » » » » » » »	2	\$610
3	Enter the cfs for the portions of the rights to be transferred (see example below*): <u>0.271 + 0.095 = 0.366 cfs (3a)</u> Subtract 1.0 from the number in 3a above: <u>0 cfs (3b)</u> If 3b is 0, enter 0 on line 3 » » » » » » » » » » » » » » » If 3b is greater than 0, round up to the nearest whole number: <u>0 (3c)</u> and multiply 3c by \$410, then enter on line 3 » » » » » » » » »	3	\$0
4	Add entries on lines 1 through 3 above » » » » » » » » » » Subtotal:	4	\$3,060
5	Multiply line 4 by 0.5 and enter on line 5 » » » » » » » » » » » » » » »	5	\$1,530
6	Subtract line 5 from line 4 » » » » » » » » » » » » » » » Transfer Fee:	6	\$1,530

*Example for Line 3a calculation to transfer 45.0 acres of Primary Certificate 12345 (total 1.25 cfs for 100 acres) and 45.0 acres of Supplemental Certificate 87654 (1/80 cfs per acre) on the same land:

1. For irrigation calculate cfs for each water right involved as follows:
 - a. Divide total authorized cfs by total acres in the water right (*for C12345, 1.25 cfs ÷ 100 ac*); then multiply by the number of acres to be transferred to get the transfer cfs (*x 45 ac = 0.56 cfs*).
 - b. If the water right certificate does not list total cfs, but identifies the allowable use as 1/40 or 1/80 of a cfs per acre; multiply number of acres proposed for change by either 0.025 (1/40) or 0.0125 (1/80). (*For C87654, 45.0 ac x 0.0125 cfs/ac = 0.56 cfs*)
2. Add cfs for the portions of water rights on all the land included in the transfer; however **do not count cfs for supplemental rights on acreage for which you have already calculated the cfs fee for the primary right on the same land**. The fee should be assessed only once for each “on the ground” acre included in the transfer. (*In this example, blank 3a would be only 0.56 cfs, since both rights serve the same 45.0 acres. Blank 3b would be 0 and Line 3 would then also become 0*).

Part 4 of 6 – Applicant Information and Signature

Is this a <input type="checkbox"/> Permanent Instream Transfer or <input checked="" type="checkbox"/> Time-Limited Instream Transfer? 10-Year

Applicant Information

APPLICANT/BUSINESS NAME City of John Day (c/o: Melissa Bethel, City Manager)			PHONE NO.	ADDITIONAL CONTACT NO.
ADDRESS 450 East Main Street			FAX NO.	
CITY John Day	STATE OR	ZIP 97845	E-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.				

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 311 B Avenue, Suite P			FAX NO.	
CITY LAKE OSWEGO	STATE OR	ZIP 97034	E-MAIL bob.long@cwmh2o.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:

In November 2023, the City of John Day submitted an application to place four water rights, located on City properties, instream in the John Day River (T-14346). This action was taken as part of a grant funding condition, which is no longer in place. The Department’s initial review determined that two of the four rights included in T-14346 were not eligible and were cancelled by final order in August 2024. The remaining two rights, Certificates 25786 and 87480, are eligible, but the application must be amended to continue the process. Both have had a portion of their rate cancelled and Cert. 87480 has been reissued as Cert. 98527.

This application seeks to amend T-14346 to include only the remaining portions of Certificates 26786 and Certificate 98527 and to update other information within the application. The City now also proposes a 10-year instream transfer instead of a permanent transfer.


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

Check one box

- By signing this application, I understand that, upon receipt of the draft preliminary determination and prior to Department approval of the transfer, I will be required to provide landownership information and evidence that I am authorized to pursue the transfer as identified in OAR 690-380-4010(5); **OR**
- I affirm the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; **OR**
- I affirm that 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.

I understand that prior to Department approval of the transfer, 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**.

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



Applicant Signature

Melissa Bethel; City Manager
Print Name (and Title if applicable)

6/9/25
Date

SIGN HERE

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, See Below 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.

- Two water rights are included in this instream lease application:
 - Certificate 98527
 - Certificate 25786
- Certificate 98527 is located completely within properties owned by the City of John Day, the Applicant.
- A portion of Certificate 25786 falls within City property, while a portion of the POU falls within adjacent properties not owned by the City. This instream transfer application only relates to the section of the water right which exists on City property.
- The remaining portion of Certificate 25786 falls within three adjacent taxlots in T13S, R31E, Section 23 NW-SW, though these landowners are not affected by this proposed transfer:
 - Taxlot 0503: Owned by David & Lisa Holland
 - Taxlot 0504: Owned by Steven & Judith Schuette
 - Taxlot 0505: Owned by Brandon & Christal Culley

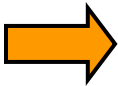
Check the following boxes that apply:

- Check here if any of the water rights proposed for transfer are located within or served by an irrigation district or other water district before the transfer. (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 is supplied under a water service agreement or other contract for stored water with a federal agency or other entity. **N/A**

ENTITY NAME _____	ADDRESS _____	
CITY _____	STATE _____	ZIP _____



To meet State Land Use Consistency Requirements, you must list all local governments (each county, city, municipal corporation, or tribal government) within whose jurisdiction the proposed instream reach will be located.

ENTITY NAME CITY OF JOHN DAY	ADDRESS 450 EAST MAIN STREET	
CITY JOHN DAY	STATE OR	ZIP 97845

**All of the POU's for the water rights included in this instream transfer are located completely within the City Limits of the City of John Day, Applicant. The proposed instream transfer reach is also located completely within the City of John Day City Limits.*

Part 5 of 6 – Proposed Instream Use Information

Identify the Public Use for which the instream right is requested (check at least one box):

- Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
- Recreation
- Navigation
- Pollution Abatement

Instream use proposed to be created by the instream transfer:

Originating Water Right Number	Priority Date	Source	Proposed Instream Period	Rate (cfs)*	Volume (ac-ft)**
Cert. 98527	12/31/1863	John Day River	Irrigation Season (Apr 1 – Sep 30)	0.271	98.04
Cert. 25786	12/31/1889			0.095	34.37
TOTAL				0.366 cfs	132.41 AF

Note: The instream rate may not exceed the max rate allowed by the existing right(s) and the total volume may not exceed to max volume or duty allowed by the existing right(s).

Identify the location of the proposed instream water right.

- Water is requested to be protected at a point.
Location (i.e. the point of diversion (POD) – use the POD Name or Number from Table 1):_____.
- Water is requested to be protected within a reach:
Location of proposed reach (If an instream water right reach is requested, identify the upstream and downstream extent of the reach):
 - *The instream lease is requested to be protected within a reach of the John Day River from an upstream point at the confluence of Canyon Creek (approx. 44.42239, -118.95932) to a downstream point approximately at the City’s western City Limit boundary where it crosses the John Day River (approx. 44.4227, -118.9850).*

Recommendations for conditions on instream use to avoid taking away/impairing existing rights.

- None
- Other (such conditions may include, but are not limited to, reductions in the instream flow levels in cfs per month or total ac-ft, the effective reach(es) or lake levels of the instream flow, measuring locations and the strategy for monitoring the instream flow or lake levels):

Are there any existing instream water rights on the same point or within the same requested reach(es) or lake, or on a portion thereof?

No Yes (identify other instream water rights): **Cert. 59787 (Mult. Instream Uses)**

Note: New instream water rights are generally (but not always) additive to instream water rights established under ORS 537.348 (instream transfer application process) and ORS 537.470 (allocation of conserved water) and replace a portion of instream water rights established under ORS 537.341 (state agency application process) or ORS 537.346 (conversion of minimum perennial streamflows) with an earlier priority date.

Is it your intent to have the proposed instream water right transfer be additive to any instream water right established under ORS 537.348 and ORS 537.470 and replace a portion of any instream water right established under ORS 537.341 and ORS 537.346 with an earlier priority date?

Yes No. If no, please explain your intent:

If the proposed conversion would add to the amounts of an existing instream water right(s) established under ORS 537.341 or 537.346, provide documentation demonstrating why additional instream flows are necessary. Supporting documentation should include information from the Oregon Dept. of Fish and Wildlife (ODFW) (fish life), Dept. of Environmental Quality (DEQ) (pollution abatement), and/or Parks and Recreation Dept. (recreation).

Is the requested instream flow intended to exceed the estimated average natural flow or level occurring from the drainage system?

- No; **OR**
- Yes (Provide supporting documentation that demonstrates why additional flows are significant for the public use requested.); **OR**
- Yes, and it is presumed that flows that exceed the estimated average natural flow or natural lake levels are significant because:
- The requested flow does not exceed the maximum amount of any instream water right application applied for under ORS 537.341 (state agency instream water right application process) for the same reach or portion thereof, and the requested public use is for the same public use as the afore mentioned instream water right application, **and**
 - For the specified time period that flows are requested to exceed the estimated average natural flow or lake level, the stream is in an ODFW flow restoration priority watershed. A copy of the priority watershed map indicating the specific watershed involved should be included with the application. Priority watershed maps may be found on the OWRD web page; **or**
 - The stream is listed as water quality limited and DEQ has provided scientific information that demonstrates that increased flows would improve water quality. The scientific information provided by DEQ should be included with the transfer application.

For a Time Limited Instream Transfer, please answer the following:

The time-limited instream transfer is for a specific number of years:
2025 Begin Year to **2035** End Year

Time-limited instream transfer is to terminate based upon other conditions:

Conditions: **If the City identifies a municipal need for the water under these certificates, the City reserves the right to terminate the lease in order to initial a standard transfer. The right to terminate the instream transfer is also reserved for if the City sells the lands to which the certificates were originally appurtenant.**

Part 6 of 6 – Water Right Information

Please use a separate Part 6 for each water right being changed. See instructions on page 8, to copy and paste additional Part 6s, or to add additional rows to tables within the form.

CERTIFICATE # 98527 (1 of 2)

Name on Certificate: Prairie Wood Products

The City of John Day City Council passed Resolution 20-850-23 to approve loans for the purchase of a portion of the Iron Triangle Property (TL 2700), on which a portion of this water right is located, on **December 8, 2020. The City acquired the Oregon Pine Property (TL 0300), containing the remainder of the water right, earlier in 2017 (**Attachment 1**). Cert. 98527 is the remaining right from the partial cancellation of Cert. 87480.*

Date(s) of Priority: 12/31/1863

Source(s) of Water to be Affected by the Transfer: John Day River

Description of Water Delivery System

System capacity: **N/A** cubic feet per second (cfs) **OR**
N/A gallons per minute (gpm)

Describe the current water delivery system or the system that was in place at some time within the last five years. Include information on the pumps, canals, pipelines and sprinklers used to divert, convey and apply the water at the authorized place of use:

- *There currently is not a water delivery system in place to divert and utilize water in the manner of the original water right. However, the City is capable of installing and operating a diversion pump at the designated POD to divert water to the place of use in a short timeframe.*
- *The original water delivery system consisted of a pump station installed at the designated POD, which diverted water from the John Day River through a mainline to the place of use (**Attachment 1**).*
- *The Evidence of Use Affidavit includes more information on the site and history of water use.*

Other Water Rights

Are there other water right certificates, water use permits or ground water registrations associated with the “from” lands? Yes No

If YES, list the certificate, water use permit, or ground water registration numbers: **Certificate 48135 (T-14447)** currently has a place of use over roughly the same area. The source for Certificate 48135 is a shallow groundwater point of appropriation. The right is not supplemental to Certificate 98527.

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.

Table 1. Location of Authorized Point(s) of Diversion (POD)

(Note: If the POD name is not specified on the certificate, assign it a name or number here.
Also, if the POD is not described in the Certificate, provide a description below)

POD Name	Priority Date	Twp		Rng		Sec	¼ ¼		Tax Lot, DLC or Gov't Lot	Measured Distances (from a recognized survey corner)
POD 1	12/31/1863	13	S	31	E	22	SW	SE	0300/ 2700	1,160 ft N & 2,525 ft W from SE Corner, Sec 22

(see **Attachment 1**)

Will the proposed instream transfer affect the entire water right?

Yes Then Table 2 on Page 10 does not need to be completed.

No Then complete all of Table 2 to describe the portion of the water right to be changed.

Please use additional pages of Table 2 as needed. See page 8 for instructions. If you have further questions about how to fill out the tables, contact the Department at 503-986-0900 and ask for Transfer Staff.

Table 2. Description of Change to Water Right Certificate # 98572

List only the part of the right that will be changed. If more than one POD serves the lands, specify the acreage associated with each POD.

Twp		Rng		Sec	¼ ¼		Tax Lot	Gov't Lot or DLC	Acres if Applicable	Type of USE listed on Certificate	Priority Date	POD(s) (name or number from Table 1)
13	S	31	E	22	SW	SE	0300/ 2700	N/A	2.1	Industrial/ Manufacturing	12/31/1863	POD 1
TOTAL ACRES									2.1			

Additional remarks: *The entire water right, which includes 0.271 cfs for industrial uses limited to the irrigation season, specifically 2.1 acres of log deck watering (Attachment 1), is proposed for transfer instream.*

Part 6 of 6 – Water Right Information

Please use a separate Part 6 for each water right being changed. See instructions on page 8, to copy and paste additional Part 6s, or to add additional rows to tables within the form.

CERTIFICATE # 25786 (2 of 2)

Name on Certificate: W. Shank

**The place of use of Certificate 25786 is split between City property and private landowner property. The portion of the water right proposed for transfer in this application is located on the City's Wastewater Treatment Plant facility grounds (TL 1402 and 0700), which has been City property since prior to the facility's construction in 1978 (Attachment 2).*

Date(s) of Priority: 12/31/1889

Source(s) of Water to be Affected by the Transfer: John Day River

Description of Water Delivery System

System capacity: N/A cubic feet per second (cfs) OR

N/A gallons per minute (gpm)

Describe the current water delivery system or the system that was in place at some time within the last five years. Include information on the pumps, canals, pipelines and sprinklers used to divert, convey and apply the water at the authorized place of use:

- *There currently is not a water delivery system in place to divert and utilize water in the manner of the original water right. The POD is located on private property not owned by the City not the landowners of the properties also within the POU.*
- *The original water delivery system consisted of a low head dam in the John Day river several miles upstream of the POU (Section 25, NENE) which diverted water through an unnamed ditch. That POD ditch then flowed into Trowbridge Ditch, which carried water to the POU.*
- *The Evidence of Use Affidavit includes more information on the history of water use.*

Other Water Rights

Are there other water right certificates, water use permits or ground water registrations associated with the "from" lands? Yes No

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

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

ground water registration must be filed separately in a ground water registration modification application.

Table 1. Location of Authorized Point(s) of Diversion (POD)

(Note: If the POD name is not specified on the certificate, assign it a name or number here. Also, if the POD is not described in the Certificate, provide a description below)

POD Name	Priority Date	Twp		Rng		Sec	¼ ¼		Tax Lot, DLC or Gov't Lot	Measured Distances (from a recognized survey corner)
POD 1	12/31/1889	13	S	31	E	25	NE	NE		*Approx. 780 ft S and 1,360 ft W from the NE Corner, Section 25

**This water right derived from the 1930 John Day River Decree. The exact location of the POD is not defined and is only described to the quarter-quarter. However, the POD appears to be related to one of multiple diversions for Trowbridge Ditch, which passes along the north edge of the POU. The 1930 decree lists the POD on an unnamed ditch on the John Day River (Attachment 2).*

Will the proposed instream transfer affect the entire water right?

~~Yes~~ Then Table 2 on Page 10 does not need to be completed.

No Then complete all of Table 2 to describe the portion of the water right to be changed.

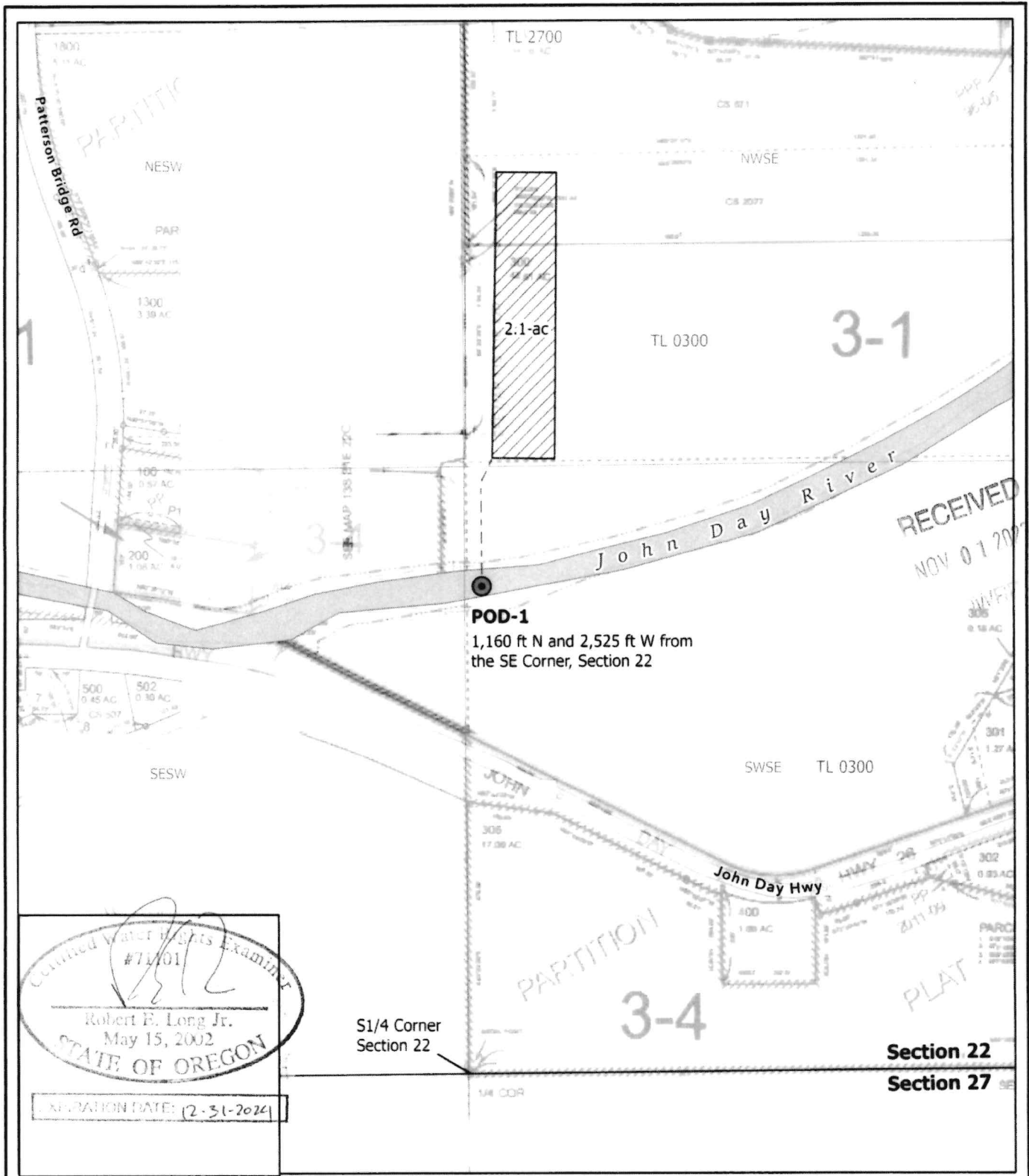
Please use additional pages of Table 2 as needed. See page 8 for instructions. If you have further questions about how to fill out the tables, contact the Department at 503-986-0900 and ask for Transfer Staff.

Table 2. Description of Change to Water Right Certificate # 25786

List only the part of the right that will be changed. If more than one POD serves the lands, specify the acreage associated with each POD.

Twp		Rng		Sec	¼ ¼		Tax Lot	Gov't Lot or DLC	Acres if Applicable	Type of USE listed on Certificate	Priority Date	POD(s) (name or number from Table 1)
13	S	31	E	23	NW	SW	1402	N/A	1.43	Irrigation	12/31/1889	POD 1
13	S	31	E	23	NW	SW	0700	N/A	2.38	Irrigation	12/31/1889	POD 1
TOTAL ACRES									3.81			

Additional remarks: *The water right includes 6.5 acres of irrigation in the NWSW quarter-quarter of Section 25. Of the 6.5 acres, 3.81 acres are located on City property (TLs 0700 and 1402) and are proposed for instream transfer (Attachment 2). The 3.81 acres proposed for transfer accounts for 0.095 cfs (about 43 gpm).*



RECEIVED
NOV 01 2002

United Water Rights Examiner
#71101
[Signature]
Robert E. Long Jr.
May 15, 2002
STATE OF OREGON
EXPIRATION DATE: 2-31-2024

S1/4 Corner
Section 22

Section 22
Section 27

CWM-H2O
Complete Water Management
311 B Avenue, Suite P
Lake Oswego, OR 97034
(503) 954-1326

**Attachment 3
Instream Transfer Map
Certificate 98527, T13S, R31E, Sec 22**

No.	Date	By	Revisions
1			DRAFT

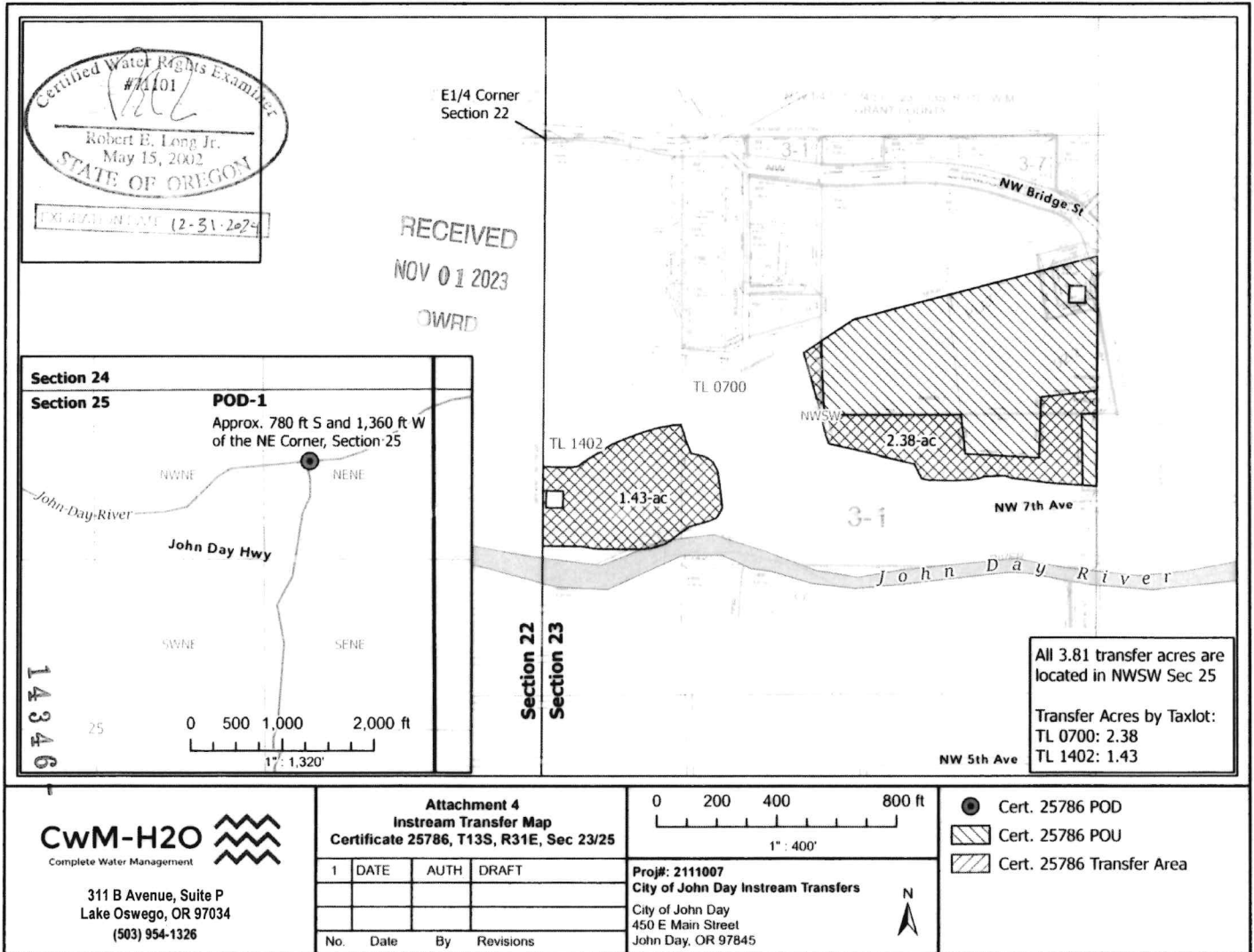
0 200 400 800 ft
1" = 400'

Proj#: 2111007
City of John Day Instream Transfers
City of John Day
450 E Main Street
John Day, OR 97845

N
↑

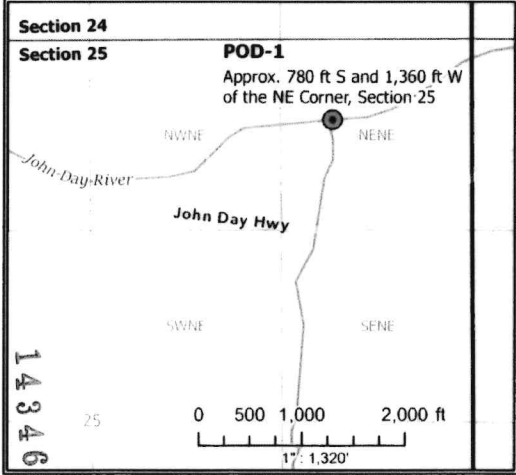
14346

ATTACHMENT 2 - ORIGINAL TRANSFER MAP FOR CERT. 25786 (no changes)



Certified Water Rights Examiner
 #71101
 Robert E. Long Jr.
 May 15, 2002
 STATE OF OREGON
 EXPIRES 12-31-2024

RECEIVED
 NOV 01 2023
 OWRD



All 3.81 transfer acres are
 located in NWSW Sec 25

Transfer Acres by Taxlot:
 TL 0700: 2.38
 TL 1402: 1.43

CWM-H2O 
 Complete Water Management



311 B Avenue, Suite P
 Lake Oswego, OR 97034
 (503) 954-1326

Attachment 4
Instream Transfer Map
Certificate 25786, T13S, R31E, Sec 23/25

1	DATE	AUTH	DRAFT
No.	Date	By	Revisions

0 200 400 800 ft
 1" = 400'

Proj#: 2111007
City of John Day Instream Transfers
 City of John Day
 450 E Main Street
 John Day, OR 97845

- Cert. 25786 POD
-  Cert. 25786 POU
-  Cert. 25786 Transfer Area

Application for Water Right Transfer

Evidence of Use Affidavit

ATTACHMENT 3
INSTREAM TRANSFER APPLICATION FOR
CERTIFICATES 87480 & 25786

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 GRANT)

I, Melissa Bethel, in my capacity as City Manager 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:

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 **Certificates 98527 & 25786**
- 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 (Cert. 98527) and for crop irrigation (Cert. 25786).*

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.

M. Betuel

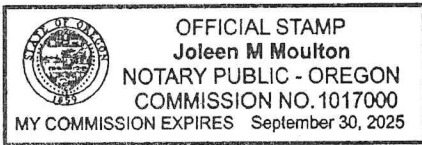
Signature of Affiant

6-10-25

Date

SIGN HERE

Signed and sworn to (or affirmed) before me this 10 day of June, 2025.



Joleen M Moulton

Notary Public for Oregon

My Commission Expires: September 30, 2025

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	Rebuttal of Forfeiture Letter



September 13, 2023 (Updated June 3, 2025)

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

RE: EVIDENCE OF USE AFFIDAVIT DOCUMENTATION – REBUTTAL OF CANCELATION 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) time-limited instream transfer application. Specifically, the City intends to rebut the presumption of cancellation of the rights proposed for transfer due to non-use. The City's application proposes the transfer of two water rights instream in the John Day River for a period of up to 10 years. The two water rights included in this application are Certificates 87480 (industrial use) and 25786 (irrigation), both with points of diversion (PODs) on the John Day River.

The City acquired the properties on which these water rights are located through multiple purchases between about 2017 and 2020. A portion of Certificate 87480's POU is located within the former Oregon Pine Products property (Taxlot 0300). 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 87480 is located on the former Iron Triangle property (Taxlot 2700), which was purchased by the City in 2020 (Resolution 20-850-23). In the case of Certificate 25786, the City already owned a portion of the place of use as part of the City's wastewater treatment plant.

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. This grant did not come to fruition and the City is no longer held to condition #17, though they would like to place these rights instream in a time-limited transfer.

Certificate 87480 is an industrial use right 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. Similarly, the irrigation right associated with the City's wastewater treatment plant area has not been applicable due to land use changes in the place of use, as well as between the upstream POD and place of use.

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 is part of the City’s development plan and was, at the time the application was first filed, 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.”

Cancellation of the water rights in this instream transfer application would hinder the City’s ability to use the water for proposed conservation efforts and land improvements along the John Day River riparian area.

In the case of industrial use Certificate 87480, non-use of the water prior to the City’s acquisition of the associated lands was due 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 is associated with the property that most recently became the D.R. Johnson Lumber facility. 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 financial crisis (Blue Mountain Eagle, June 17, 2019). This dramatic decline in the lumber industry led to the closure of Prairie Wood Products mill in 2008, 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.

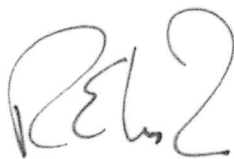
The City’s proposed instream transfers will conserve flow in the John Day River and provide an ecological benefit. The cancellation of these water rights through forfeiture would make that water

subject to appropriation once again (ORS 540.610(5)). Approving the instream transfer with the above rebuttal of cancellation will therefore provide a greater benefit to the river and to the City.

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

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://forestpolicypub.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