

Regular

T-14294

Name City of newport
Spencer nebelAddress 1109 SW Coast Hwy
newport or 97103
s.nebel@newportoregon.govChange in POD PODDate Filed 3/13/2023Initial notice date 8/8/2023

DPD issued date

PD issued date 3/22/2024PD notice date 3/26/2024Date of FO 5/2/2024 Vol 131 Page 19-24

C-Date

COBU due date

COBU Received date

Certificate issued

DESCRIPTION OF WATER RIGHT(s)

Name of Stream Big CreekTrib. of Pacific OceanUse miniCounty Lincoln

Quantity of water (CFS)

No. of Acres

Name of ditch

App# R43412Per # R5134Cert # 48027

PR Date

App# R52124Per # R6171Cert # 89100

PR Date

App#

Per #

Cert #

PR Date

App#

Per #

Cert #

PR Date

App#

Per #

Cert #

PR Date

Date

FEES PAID

Amount

Receipt #

FEES REFUNDED

Amount

Receipt #

Date

Assignments:

Irrigation District

Agent GSI water Solutions Adam Sussman

CWRE

CC's list newport planning department☐ - Oversized map - Location



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

May 2, 2024

City of Newport
Attn: Spencer Nebel
169 SW Coast Hwy
Newport, OR 97365

REFERENCE: Transfer Application T-14294

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

The time allowed to complete the transfer is specified in the final order. YOU SHOULD GIVE PARTICULAR ATTENTION TO THE TIME LIMIT. The water right for any portion of the authorized change in character of use or change in place of use NOT carried out within the time allowed will be lost.

An extension of the time limit can be allowed only upon a showing that diligent effort has been made to complete the actual change(s) within the time allowed.

You are required to hire a Certified Water Rights Examiner (CWRE) to complete a Claim of Beneficial Use report and map which must be submitted to this Department within one year of the date you complete the change(s) or within one year of the completion date authorized in the transfer final order, whichever occurs first.

If you have any questions related to the approval of this transfer, you may contact your caseworker, Arla Davis, by telephone at (503) 979-3129 or by e-mail at Arla.I.davis@water.oregon.gov.

Sincerely,

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

cc: Nikki M. Hendricks, Watermaster Dist. # 1 (via email)
Adam Sussman, Agent

Enclosure

BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of Transfer Application	)	FINAL ORDER APPROVING CHANGES IN
T-14294, LINCOLN County	)	POINTS OF DIVERSION AND CHANGES IN
	)	PLACES OF USE

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Oregon Revised Statute (ORS) 540.510, Sec. 1, establishes the process in which the holder of water right certificates 21358, 48627 and 89100, which authorize the storage of water for municipal use, may apply to change the authorized point of diversion and place of use, under the process described in ORS 540.520 and 540.530, and may change the authorized point of diversion and place of use, under the process described in ORS 540.510 (1)(a), without losing priority of the right if: (a) The water right certificate authorizes the storage of water for municipal use; and (b) The dam at the authorized point of diversion has been determined by the Water Resources Department to have a high hazard rating, as defined in ORS 540.443, and to be unsafe or potentially unsafe, as defined in ORS 540.443. (2) After making a change described in subsection (1) of this section, when constructing the resulting new dam and reservoir, the holder of the water right certificate must comply with other applicable state and federal environmental laws. [2023 c.535 §1]

Applicant

CITY OF NEWPORT
ATTN: SPENCER NEBEL, CITY MANAGER
169 SW COAST HWY
NEWPORT, OR 97365

Findings of Fact

1. On March 13, 2023, CITY OF NEWPORT, ATTN: SPENCER NEBEL, CITY MANAGER, filed an application to change the points of diversion and to change the places of use under Certificates 48627 and 89100. The Department assigned the application number T-14294.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

2. On March 13, 2023, Transfer Application T-14298 was also filed involving Certificate 21358.
3. Notice of the application for transfer was published on August 8, 2023, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On January 22, 2021, the Department notified the City of Newport of an Unsafe/Potentially Unsafe Dam, following a dam inspection performed on October 15, 2018. Notice was sent to the Interim City of Newport Engineer. The dam inspection included the following:
 - a. Corrosion of, and leakage through, the corrugated metal pipe (CMP) portion of the spillway. Subsequent inspections performed by the Department on May 29, 2019, and August 4, 2020, indicated the corrosion of the CMP portion of the overflow spillway continues to worsen with time.
 - b. A seismic stability analysis performed of both Big Creek dams indicated that both dams will deform significantly during a Cascadia Subduction Zone (CSZ) earthquake. The deformation could cause the dam crest to drop below the water line which could lead to overtopping of the dam crest and subsequent catastrophic failure of the dam.
5. On January 23, 2024, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-14294 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 23, 2024, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.
6. On March 5, 2024, the agent for the application requested a longer completion date for Transfer Application T-14294 due to the scale and complexity of the project. Pursuant to OAR 690-380-5140(3), the Department has modified the completion date of Transfer Application T-14294 to October 1, 2045.
7. On March 22, 2024, the Department issued a Preliminary Determination proposing to approve Transfer Application T-14294 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on March 26, 2024, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
8. The first right to be transferred is as follows:

Certificate:	48627 in the name of CITY OF NEWPORT (perfected under Permit R-5134)
Use:	MUNICIPAL
Priority Date:	MARCH 24, 1967, for 310.0 ACRE-FEET and JUNE 5, 1968, for 35.0 ACRE- FEET
Limit:	The amount of water entitled to be stored each year under such right, for the purposes aforesaid, shall not exceed 345.0 acre feet.
Source:	BIG CREEK, tributary PACIFIC OCEAN appropriated under Permit No. 33127 for storage in Big Creek Reservoir No. 2.

The reservoir is located:

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

9. Transfer Application T-14294 proposes to change the place of use of the right to:

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

10. Certificate 48627 does not include a description of the location of the authorized point of diversion. The applicant provided information describing the location of the authorized point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	11 W	WM	33	NE SE	BC 2 - 1875 FEET NORTH AND 1220 FEET WEST FROM THE SE CORNER OF SECTION 33

11. Transfer Application T-14294 also proposes to move the authorized point of diversion approximately 390 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	11 W	WM	33	NW SE	BIG CREEK DAM - 3110 FEET SOUTH AND 1790 FEET WEST FROM THE NE CORNER OF SECTION 33

12. The second right to be transferred is as follows:

Certificate: 89100 in the name of CITY OF NEWPORT (perfected under Permit R-6171)
Use: MUNICIPAL USE
Priority Date: JUNE 27, 1974
Limit: The amount of water the right is entitled is limited to an amount actually used beneficially, and shall not exceed 625.0 ACRE FEET measured at the dam outlet/point of diversion.
Source: BIG CREEK, in BIG CREEK RESERVOIR NO. 2, tributary of the PACIFIC OCEAN, to be appropriated under PERMIT S-38220

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

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

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

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

13. Transfer Application T-14294 also proposes to move the authorized point of diversion approximately 390 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	11 W	WM	33	NW SE	BIG CREEK DAM - 3110 FEET SOUTH AND 1790 FEET WEST FROM THE NE CORNER OF SECTION 33

14. Transfer Application T-14294 also proposes to change the place of use of the right to:

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

15. 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 540.510, Sec. 1, OAR 690-380-0100(14), 690-380-4010(2) and 690-380-2110(2)]

16. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
17. Big Creek Reservoir No. 2 is 56 feet tall and has a length of 450 feet. It can impound up to 970.0 acre-feet of water. A water delivery system sufficient to use the full amount of water

allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-14294.

18. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
19. The water right certificates authorize the storage of water for municipal use.
20. The dam at the authorized point of diversion has been determined by the Water Resources Department to have a high hazard rating, as defined in ORS 540.443, and to be unsafe or potentially unsafe, as defined in ORS 540.443.
21. The proposed point of diversion diverts water from the same source of surface water as the authorized point of diversion, as required by OAR 690-380-2110(2).
22. The proposed changes, as conditioned, would not result in enlargement of the rights.
23. The proposed changes, as conditioned, would not result in injury to other existing water rights.
24. All other application requirements are met.

Conclusions of Law

The changes in points of diversion and changes in places of use proposed in Transfer Application T-14294, are consistent with the requirements of ORS 540.505 to 540.580, 540.510 Sec. 1 [2023 c.535 §1] and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in points of diversion and change in place of use proposed in Transfer Application T-14294 are approved.
2. The right to the use of the water is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in Certificates 48627 and 89100 and any related decree.
3. Approval of this transfer application does not constitute nor grant legal access onto or through another person's property for purposes of accessing the new point of diversion or the new place of use.
4. Water right Certificates 48627 and 89100 are cancelled.
5. The quantity of water diverted at the new point of diversion (BIG CREEK DAM) shall not exceed the quantity of water lawfully available at the original point of diversion (BIG CREEK RESERVOIR NO. 2)
6. Water shall be acquired from the same source of surface water as the original points of diversion.

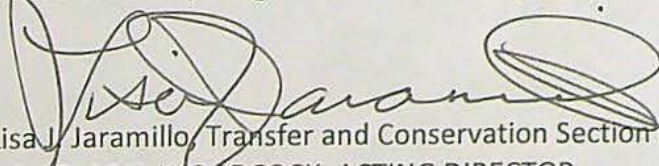
7. Reservoir water use measurement:

- a. Before water use may begin under this order, the water user shall install staff gages, or, with prior approval of the Director, other suitable measuring devices, that measure the entire range and stage between empty and full in each reservoir. Staff gages shall be United States Geological Survey style.
 - b. Before water use may begin under this order, if the reservoir is located in channel, suitable measuring devices must be installed to allow measurement of the amount of water flowing into and out of the reservoir, and an adjustable outlet valve must be installed. The water user shall maintain such devices in good working order. A written waiver may be obtained, if in the judgment of the Director, the installation of suitable measuring devices, or the adjustable outlet valve, will provide no public benefit.
8. Prior to diverting water, 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.

9. When constructing the resulting new dam and reservoir, the holder of the water right certificates must comply with other applicable state and federal environmental laws.
10. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2045**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
11. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated in Salem, Oregon on **MAY 2 - 2024**


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR
Oregon Water Resources Department

Mailing date: **MAY 3 - 2024**

WATER RIGHT TRANSFER COVER SHEET

Transfer: T-14294

Transfer Specialist: ARLA

Transfer Type: Regular Transfer

Reimbursement Authority? ☐

Applicant: CITY OF NEWPORT SPENCER NEBEL 169 SW COAST HWY NEWPORT, OR 97365	Agent: ADAM SUSSMAN 1600 SW WESTERN BLVD SUITE 240 CORVALLIS, OR 97333	Receiving Landowner:
Current Landowner if other than Applicant:	CWRE:	Irrigation District:
Affected Local Gov'ts: City Of Newport	Affected Tribal Gov't:	BOR Notified (date):

Water Rights Affected

File Marked	App. File # or Decree Name	Permit	Certificate	RR/CR Needed	RR/CR Nos.
☒			48627	☐ Yes ☒ No	
☒			89100	☐ Yes ☒ No	
☐				☐ Yes ☐ No	

Key Dates & Initial Actions (Support Staff)

Rec'd: March 13, 2023	Proposed Action(s): POINT OF DIVERSION; PLACE OF USE	
Fees Pd: 5510.00	Acknowledgement Letter Sent ☒	Basin: 18 Middle Coast
Initial Public Notice:	County sent cc: of Ack Letter ☒	County: LINCOLN
WM District: 1 Nikki M. Hendricks	WM Review request sent:	WM Review date received:
ODFW District:	ODFW Review sent:	ODFW Review date received:
Groundwater	GW Review sent:	GW Review date received:

Caseworker Actions: Newspaper & PD Notice:

Newspaper notice needed: ☐	Name of Newspaper:
Newspaper notice sent to coordinator:	Newspaper notice quote requested (NRS1):
Request for news \$ sent:	News \$ received:
Affidavit of publication received:	Last day of publication:

Peer Review: Electronic - checklist is in electronic folder

Document	Drafted	Peer Review	Coordinator	Changes Made	Signature Bin	Signature Date
DPD	Date: 1/10/24 Initials: <u>AD</u>	Date: 1/11/24 Initials: <u>gpm</u>	Date: 1/19/24 Initials: <u>AD</u> <u>FOR PLS</u> <u>505 email</u>	Date: 1/22/24 Initials: <u>AD</u> <u>6000 PLS</u>	CW Sent: 1/23/24 WM Sheet ☒ ODFW Sheet: ☒	N/A
PD	Date: 1/24/24 Initials: <u>AD</u>	Date: 1/24/24 Initials: <u>AD</u> <u>Jms</u>	Date: 1/24/24 Initials: <u>PLS</u>	Date: 3/19/24 Initials: <u>AD</u> Data Review Date: 1/25/24	Date: 3/20/24	Date: 3/22/24
FO	Date: 4/23/24 Initials: <u>AD</u>	Date: 4/23/24 Initials: <u>SG</u>	Date: 4/23/24 Initials: <u>PLS</u>	Date: 4/25/24 Initials: <u>AD</u>	Date: 5/9/24 No. of docs for sig: <u>1</u>	Date: 5/2/24

Special Issues: no comments

Special Order Volume: Vol. 131 Pages 19-24

DAVIS Arla L * WRD

From: Adam Sussman <asussman@gsiws.com>
Sent: Thursday, May 2, 2024 7:28 AM
To: DAVIS Arla L * WRD
Cc: Kim Grigsby
Subject: RE: T-14294 for City of Newport

Good morning, Arla:

Yes, please proceed with the FO for T-14294. We look forward to also seeing the FO for T-14298 soon.

Thanks for the help.

Adam

Adam Sussman

Principal Water Resources Consultant

direct: 541.257.9001 | mobile: 541.602.5188
1600 SW Western Boulevard, Suite 240, Corvallis, OR 97333
GSI Water Solutions, Inc. | www.gsiws.com

From: DAVIS Arla L * WRD <Arla.L.DAVIS@water.oregon.gov>
Sent: Wednesday, May 1, 2024 11:18 AM
To: Adam Sussman <asussman@gsiws.com>
Subject: T-14294 for City of Newport

Good Morning Adam,

The protest period for T-14294 for the City of Newport has now ended and there were no protests received for T-14294. The protest period for T-14298 will not end until May 10, 2024. I believe everyone was comfortable with the final order being issued for T-14294 ahead of T-14298, but wanted to check in with you and make sure I understood that correctly. Let me know if you have any questions. Appreciate your help.

Arla L. Davis

She/Her/Hers

Water Rights Transfer Specialist

Transfer and Conservation Section

725 Summer St. NE, Suite A | Salem, OR 97301 | Phone: 503-979-3129



Integrity | Service | Technical Excellence | Teamwork | Forward-Looking

Work Schedule: Mon-Th – 6:00 a.m. to 4:30 p.m.



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

March 22, 2024

VIA CERTIFIED MAIL AND E-MAIL

Applicant

CITY OF NEWPORT

SPENCER NEBEL

169 SW COAST HWY

NEWPORT, OR 97365

SUBJECT: Water Right Transfer Application T-14294

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-14294. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Newport News Times newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please don't hesitate to contact me at 503-979-3129 or arla.l.davis@water.oregon.gov, if I may be of assistance.

Sincerely,

Arla L Davis

Arla L Davis

Transfer Specialist

Transfer and Conservation Section

cc: T-14294

Nikki M. Hendricks, District 1 Watermaster (via e-mail)

Adam Sussman, Agent for the applicant (via e-mail)

encs

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-14294, LINCOLN County	)	PROPOSING APPROVAL OF CHANGES IN
	)	POINTS OF DIVERSION AND CHANGES IN
	)	PLACES OF USE

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Oregon Revised Statute (ORS) 540.510, **Sec. 1**, establishes the process in which the holder of water right certificates 21358, 48627 and 89100, which authorize the storage of water for municipal use, may apply to change the authorized point of diversion and place of use, under the process described in ORS 540.520 and 540.530, and may change the authorized point of diversion and place of use, under the process described in ORS 540.510 (1)(a), without losing priority of the right if: (a) The water right certificate authorizes the storage of water for municipal use; and (b) The dam at the authorized point of diversion has been determined by the Water Resources Department to have a high hazard rating, as defined in ORS 540.443, and to be unsafe or potentially unsafe, as defined in ORS 540.443. (2) After making a change described in subsection (1) of this section, when constructing the resulting new dam and reservoir, the holder of the water right certificate must comply with other applicable state and federal environmental laws. [2023 c.535 §1]

Applicant

CITY OF NEWPORT
ATTN: SPENCER NEBEL, CITY MANAGER
169 SW COAST HWY
NEWPORT, OR 97365

Findings of Fact

1. On March 13, 2023, CITY OF NEWPORT, ATTN: SPENCER NEBEL, CITY MANAGER, filed an application to change the points of diversion and to change the places of use under Certificates 48627 and 89100. The Department assigned the application number T-14294.
2. On March 13, 2023, Transfer Application T-14298 was also filed involving Certificate 21358.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, of this preliminary determination.

3. Notice of the application for transfer was published on August 8, 2023, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On January 22, 2021, the Department notified the City of Newport of an Unsafe/Potentially Unsafe Dam, following a dam inspection performed on October 15, 2018. Notice was sent to the Interim City of Newport Engineer. The dam inspection included the following:
 - a. Corrosion of, and leakage through, the corrugated metal pipe (CMP) portion of the spillway. Subsequent inspections performed by the Department on May 29, 2019, and August 4, 2020, indicated the corrosion of the CMP portion of the overflow spillway continues to worsen with time.
 - b. A seismic stability analysis performed of both Big Creek dams indicated that both dams will deform significantly during a Cascadia Subduction Zone (CSZ) earthquake. The deformation could cause the dam crest to drop below the water line which could lead to overtopping of the dam crest and subsequent catastrophic failure of the dam.
5. On January 23, 2024, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-14294 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 23, 2024, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.
6. On March 5, 2024, the agent for the application requested a longer completion date for Transfer Application T-14294 due to the scale and complexity of the project. Pursuant to OAR 690-380-5140(3), the Department has modified the completion date of Transfer Application T-14294 to October 1, 2045.

7. The first right to be transferred is as follows:

Certificate: 48627 in the name of CITY OF NEWPORT (perfected under Permit R-5134)
Use: MUNICIPAL
Priority Date: MARCH 24, 1967, for 310.0 ACRE-FEET and JUNE 5, 1968, for 35.0 ACRE-
 FEET
Limit: The amount of water entitled to be stored each year under such right, for the purposes aforesaid, shall not exceed 345.0 acre feet.
Source: BIG CREEK, tributary PACIFIC OCEAN appropriated under Permit No. 33127 for storage in Big Creek Reservoir No. 2.

The reservoir is located:

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

8. Transfer Application T-14294 proposes to change the place of use of the right to:

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

9. Certificate 48627 does not include a description of the location of the authorized point of diversion. The applicant provided information describing the location of the authorized point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	11 W	WM	33	NE SE	BC 2 - 1875 FEET NORTH AND 1220 FEET WEST FROM THE SE CORNER OF SECTION 33

10. Transfer Application T-14294 also proposes to move the authorized point of diversion approximately 390 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	11 W	WM	33	NW SE	BIG CREEK DAM - 3110 FEET SOUTH AND 1790 FEET WEST FROM THE NE CORNER OF SECTION 33

11. The second right to be transferred is as follows:

Certificate: 89100 in the name of CITY OF NEWPORT (perfected under Permit R-6171)

Use: MUNICIPAL USE

Priority Date: JUNE 27, 1974

Limit: The amount of water the right is entitled is limited to an amount actually used beneficially, and shall not exceed 625.0 ACRE FEET measured at the dam outlet/point of diversion.

Source: BIG CREEK, in BIG CREEK RESERVOIR NO. 2, tributary of the PACIFIC OCEAN, to be appropriated under PERMIT S-38220

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

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

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

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

STORAGE FOR MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
10 S	11 W	WM	34	NW SW

12. Transfer Application T-14294 also proposes to move the authorized point of diversion approximately 390 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	11 W	WM	33	NW SE	BIG CREEK DAM - 3110 FEET SOUTH AND 1790 FEET WEST FROM THE NE CORNER OF SECTION 33

13. Transfer Application T-14294 also proposes to change the place of use of the right to:

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

14. 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 540.510, Sec. 1, OAR 690-380-0100(14), 690-380-4010(2) and 690-380-2110(2)]

15. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
16. Big Creek Reservoir No. 2 is 56 feet tall and has a length of 450 feet. It can impound up to 970.0 acre-feet of water. A water delivery system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-14294.
17. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
18. The water right certificates authorize the storage of water for municipal use.
19. The dam at the authorized point of diversion has been determined by the Water Resources Department to have a high hazard rating, as defined in ORS 540.443, and to be unsafe or potentially unsafe, as defined in ORS 540.443.

20. The proposed point of diversion diverts water from the same source of surface water as the authorized point of diversion, as required by OAR 690-380-2110(2).
21. The proposed changes, as conditioned, would not result in enlargement of the rights.
22. The proposed changes, as conditioned, would not result in injury to other existing water rights.
23. All other application requirements are met.

Determination and Proposed Action

The changes in points of diversion and changes in places of use proposed in Transfer Application T-14294, appear to be consistent with the requirements of ORS 540.505 to 540.580, 540.510 Sec. 1 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-14294 is approved, the final order will include the following:

1. *The changes in points of diversion and change in place of use proposed in Transfer Application T-14294 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in Certificates 48627 and any related decree.*
3. *Approval of this transfer application does not constitute nor grant legal access onto or through another person's property for purposes of accessing the new point of diversion or the new place of use.*
4. *Water right Certificates 48627 and 89100 are cancelled.*
5. *The quantity of water diverted at the new point of diversion (BIG CREEK DAM) shall not exceed the quantity of water lawfully available at the original point of diversion (BIG CREEK RESERVOIR NO. 2)*
6. *Water shall be acquired from the same source of surface water as the original points of diversion.*
7. *Reservoir water use measurement:*
 - a. *Before water use may begin under this order, the water user shall install staff gages, or, with prior approval of the Director, other suitable measuring devices, that measure the entire range and stage between empty and full in each reservoir. Staff gages shall be United States Geological Survey style.*
 - b. *Before water use may begin under this order, if the reservoir is located in channel, suitable measuring devices must be installed to allow measurement of the amount of water flowing into and out of the reservoir, and an adjustable outlet valve must be*

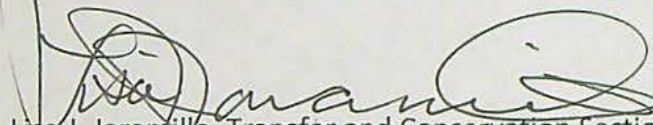
installed. The water user shall maintain such devices in good working order. A written waiver may be obtained, if in the judgment of the Director, the installation of suitable measuring devices, or the adjustable outlet valve, will provide no public benefit.

8. *Prior to diverting water, 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.

9. *When constructing the resulting new dam and reservoir, the holder of the water right certificates must comply with other applicable state and federal environmental laws.*
10. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2045**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.*
11. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on **MAR 22 2024**



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Arla L Davis. If you have questions about the information in this document, you may reach me at 503-979-3129 or arla.l.davis@water.oregon.gov.

Protests

Under the provisions of ORS 540.520(6) & (7) and OAR 690-380-4030, within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, any person may file, jointly or severally, a protest expressing opposition of approval of the transfer application and disagreement with this Preliminary Determination or a standing statement in support of this Preliminary Determination. If this Preliminary Determination determines that a change in point of diversion or appropriation would result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050. Protests and standing

statements must be received by the Water Resources Department within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later.

Protests must be in writing and received in hard copy form with the appropriate statutory protest filing fee; protests cannot be filed by electronic mail. [OAR 690-002-0025(3) and 690-380-0100(9)]. The protest must include the following:

- The person's name, address, and telephone number;
- All reasonably ascertainable issues and all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue may preclude consideration of the issue during the hearing;
- If you are the applicant, a protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$950 required by ORS 536.050 and proof of service of the protest upon the applicant.

Requests for Standing

Under the provisions of OAR 690-380-4030(5), the Department shall provide to persons who have filed standing statements as defined under OAR 690-380-0100(11) notice of any differences between the Department's Preliminary Determination and the Final Order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

Requests for standing must be received in the Water Resources Department no later than 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the preliminary determination as issued.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been filed under OAR 690-380-4030. In accordance with OAR 690-380-4200, notice and conduct of the hearing shall:

- Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties stipulate otherwise; and

- If a protest has asserted that a water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

If after hearing the Department issues a proposed Final Order finding that a change in point of diversion or appropriation will result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050 within 15 days of receipt of the proposed order. Notwithstanding 690-002-0175, if the applicant files a notification of intent to pursue approval of the transfer under 690-380-5030 to 690-380-5050, the deadline for filing exceptions to the proposed order shall be 30 days after the Department provides notice to the parties that the transfer does not meet the requirements of 690-380-5030 to 690-380-5050.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear, or fail to appear at a scheduled hearing, the Director may issue a final order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions, or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 690-137-0555, an agency representative may represent partnerships, corporations, associations, governmental subdivisions or public, or private organizations if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active-duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Will Davidson at 503-507-2749.

If you have questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.

Address any correspondence to: Oregon Water Resources Department, Transfer and Conservation Section, 725 Summer Street NE, Suite A, Salem

DAVIS Arla L * WRD

From: Adam Sussman <asussman@gsiws.com>
Sent: Wednesday, February 21, 2024 2:56 PM
To: DAVIS Arla L * WRD
Cc: FRENCH Dwight W * WRD; JARAMILLO Lisa J * WRD
Subject: FW: Issuance of Draft Preliminary Determination for Regular Transfer T-14294 for The City of Newport - ACTION REQUIRED!!
Attachments: T-14294 DPD approve.pdf

Arla,

Thank you for sending the Draft Preliminary Determination (DPD) for Transfer T-14294 in the name of the City of Newport (City). GSI is providing the following comments on behalf of the City:

We identified two minor errors in the DPD:

Finding of Fact 5: the authorized use should be storage for municipal use.

Finding of Fact 9: the authorized use should be storage for municipal use.

Additionally, the City is familiar with the standard condition described in 7. under Determination and Proposed Action regarding the former place of use no longer receiving water. In the context of this transfer, where the proposed reservoir place of use overlaps with one of the existing reservoirs' place of use such a condition does not make sense as worded and the City would propose it be removed. Alternatively, if OWRD deems that such a condition is necessary the City would suggest a condition worded along the lines of the text below:

7. The former place of use of the transferred right(s) shall no longer receive water under the right(s) once the applicant begins using water at the new place of use.

The City understands and supports the need to account for the amount of water entering and leaving the reservoir. However, the standard condition language provided in the DPD does not consider the complexities associated with the City's proposed reservoir (multiple tributaries flowing into the reservoir, water from the Siletz River being conveyed to Big Creek, and the City's water rights authorizing the use of natural flow.) For these reasons, the City proposes the following revisions to the measurement condition in 8. B under Determination and Proposed Action.:

8. Reservoir water use measurement:

a. Before water use may begin under this order, the water user shall install staff gages, or, with prior approval of the Director, other suitable measuring devices, that measure the entire range and stage between empty and full in each reservoir. Staff gages shall be United States Geological Survey style.

b. Before water use may begin under this order, if the reservoir is located in channel, ~~weirs or other~~ suitable measuring devices must be installed to allow measurement of the amount of water flowing into and out of upstream and downstream of the reservoir, and an adjustable outlet valve must be installed. The water user shall maintain such devices in good working order. A written waiver may be obtained, if in the judgment of the Director, the installation of ~~weirs or other~~ suitable measuring devices, or the adjustable outlet valve, will provide no public benefit.

Finally, the DPD would provide until October 1, 2030, for the City to complete the changes and comply with all conditions. Due to the scale and complexity of this project, including planning, permitting and construction, we are requesting that the Department provide 20 years (October 1, 2045) for the City to complete the changes proposed in the transfer application.

With the above described changes, I am acknowledging on behalf of the City of Newport that we agree with the proposed action and conditions. We look forward to discussing these comments with you and progressing to a Preliminary Determination.

Sincerely,

Kimberly Grigsby

Principal Water Resources Consultant

direct: 541.257.9004; mobile: 503.351.1912

1600 SW Western Boulevard, Suite 240, Corvallis, OR 97333

GSI Water Solutions, Inc. | www.gsiws.com

pronouns: she, her

Adam Sussman

Principal Water Resources Consultant

direct: 541.257.9001 | mobile: 541.602.5188

1600 SW Western Boulevard, Suite 240, Corvallis, OR 97333

GSI Water Solutions, Inc. | www.gsiws.com

DAVIS Arla L * WRD

From: Adam Sussman <asussman@gsiws.com>
Sent: Wednesday, February 21, 2024 2:56 PM
To: DAVIS Arla L * WRD
Cc: FRENCH Dwight W * WRD; JARAMILLO Lisa J * WRD
Subject: FW: Issuance of Draft Preliminary Determination for Regular Transfer T-14298 for The City of Newport - ACTION REQUIRED!!
Attachments: T-14298 DPD approve.pdf

Arla,

Thank you for sending the draft preliminary determination (DPD) for Transfer T-14298, in the name of the City of Newport (City). We have reviewed the DPD and GSI is providing the following comments on behalf of the City:

We identified a few minor errors in the DPD:

- Finding of Fact 1: references to the point of diversion and place of use should be singular instead of plural.
- Finding of Fact 6: the Application number is incorrect. It should be S-26388.
the authorized use should be storage for municipal use.

Additionally, the City is familiar with the standard condition described in 7. under Determination and Proposed Action regarding the former place of use no longer receiving water. In the context of this transfer, where the proposed reservoir place of use overlaps with one of the existing reservoirs' place of use such a condition does not make sense as worded and the City would propose it be removed. Alternatively, if OWRD deems that such a condition is necessary the City would suggest a condition worded along the lines of the text below:

7. The former place of use of the transferred right(s) shall no longer receive water under the right(s) once the applicant begins using water at the new place of use.

The City understands and supports the need to account for the amount of water entering and leaving the reservoir. However, the standard condition language provided in the DPD does not consider the complexities associated with the City's proposed reservoir (multiple tributaries flowing into the reservoir, water from the Siletz River being conveyed to Big Creek, and the City's water rights authorizing the use of natural flow.) For these reasons, the City proposes the following revisions to the measurement condition in 8. b. under Determination and Action:

8. Reservoir water use measurement:

a. Before water use may begin under this order, the water user shall install staff gages, or, with prior approval of the Director, other suitable measuring devices, that measure the entire range and stage between empty and full in each reservoir. Staff gages shall be United States Geological Survey style.

b. Before water use may begin under this order, if the reservoir is located in channel, ~~weirs or other~~ suitable measuring devices must be installed to allow measurement of the amount of water flowing into and out of ~~upstream and downstream of the reservoir~~, and an adjustable outlet valve must be installed. The water user

shall maintain such devices in good working order. A written waiver may be obtained, if in the judgment of the Director, the installation of ~~weirs or other~~ suitable measuring devices, or the adjustable outlet valve, will provide no public benefit.

Finally, the DPD would provide until October 1, 2030, for the City to complete the changes and comply with all conditions. Due to the scale and complexity of this project, including planning, permitting and construction, we are requesting that the Department provide 20 years (October 1, 2045) for the City to complete the changes proposed in the transfer application.

With the changes described above, I am acknowledging on behalf of the City of Newport that we agree with the proposed action and conditions. We look forward to discussing these comments with you and progressing to a Preliminary Determination.

Sincerely,

Kimberly Grigsby

Principal Water Resources Consultant

direct: 541.257.9004; mobile: 503.351.1912

1600 SW Western Boulevard, Suite 240, Corvallis, OR 97333

GSI Water Solutions, Inc. | www.gsiws.com

pronouns: she, her

Adam Sussman

Principal Water Resources Consultant

direct: 541.257.9001 | mobile: 541.602.5188

1600 SW Western Boulevard, Suite 240, Corvallis, OR 97333

GSI Water Solutions, Inc. | www.gsiws.com

Watermaster Review Form: Water Right Transfer



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

Transfer Application: T-14294

Review Due Date: 09/07/2023

Applicant Name: City of Newport

Proposed Changes: ☒ POU ☒ POD ☐ POA ☐ USE ☐ OTHER

Reviewer(s): Nikki Hendricks

Date of Review: 09/06/2023

1. Do you have evidence that the right has not been used in the last 5 years and that the presumption of forfeiture would not likely be rebuttable? ☐ Yes ☒ No If "Yes", attach evidence (e.g. dated aerial photo showing pavement or building on the land for >5 yrs.)
2. Is there a history of regulation on the source that serves this (or these) right(s) that has involved the transferred right(s) and downstream water rights? ☐ Yes ☒ No Generally characterize the frequency of any regulation or explain why regulation has not occurred:
3. Have headgate notices been issued for the source that serves the transferred right(s)?
☐ Yes ☒ No ☐ Records not available.
4. In your estimation, after the proposed change, would distribution of water for the right(s) result in regulation of other water rights that would not have occurred if use under the original right(s) was/were maximized? ☐ Yes ☒ No If "Yes", explain:
5. In your estimation, if the proposed change is approved, are there upstream water rights that would be affected? ☐ Yes ☒ No If "Yes", describe how the rights would be affected and list the rights most affected:

6. Check here ☐ if it appears that downstream water rights benefit from return flows resulting from the current use of the transferred right(s)? If you check the box, generally characterize the locations where the return flows likely occur and list the water rights that benefit most:

☒ N/A

7. For POD changes and instream transfers, check here if there are channel losses between the old and new PODs or within the proposed instream reach? If you check the box, describe and, if possible, estimate the losses:

☒ N/A

8. For instream transfers that propose protection of a reach beyond the mouth of the source stream:

☒ N/A Would the quantity be measureable into the receiving stream consistent with OAR 690-077-0015(8)? ☐ Yes ☐ No

9. For POU changes: ☐ N/A Is it likely the original place of use would continue to receive water from the same source? ☒ Yes ☐ No If "Yes", explain:

10. For POU or USE changes: ☐ N/A In your best judgment, would use of the existing right at "full face value," result in the diversion of more water than can be used beneficially and without waste?

☐ Yes ☒ No If "Yes", explain:

11. For POU changes that involve micro-irrigation: ☒ N/A

- a. Has the applicant made changes (absent a transfer) to convert to micro-irrigation within the current place of use boundary of the water right proposed for transfer, and previously demonstrated to the Department through monitoring and site inspections by the Watermaster that the proposed transfer will not result in injury or enlargement?

☐ Yes ☐ No If "Yes", explain:

- b. Has a temporary transfer of this nature been previously filed and approved on the same lands (or portions thereof) as those lands involved in this transfer?

☐ Yes ☒ No If "Yes", answer the following:

- i. Were there any problems with more acres being irrigated (or wetted) than were authorized under the temporary transfer? ☐ Yes ☐ No If "Yes", explain:
- ii. Did the designated areas that were to remain dry (or not wetted) under the temporary transfer actually remain dry? ☐ Yes ☐ No If "No", explain:
- iii. Did the applicant comply with and meet all of the conditions of the temporary transfer? ☐ Yes ☐ No If "No", explain:
- iv. Do you have any other observations regarding the temporary transfer? ☐ Yes ☐ No If "Yes", describe:
- v. Did the applicant demonstrate to the Department through monitoring and site inspections by the Watermaster that neither injury nor enlargement occurred as a result of the temporary transfer? ☐ Yes ☐ No If "No", explain:

- c. To the best of your knowledge, if this transfer is approved, does it appear that:

i. "Injury" will occur to other water rights that share the same source? ☐ Yes ☒ No If "Yes", explain:

ii. "Enlargement" of the water right being transferred will occur? ☐ Yes ☒ No If "Yes", explain:

12. Are there other issues not identified through the above questions that should be considered in determining whether the change "can be effected without injury to other rights"?

☐ Yes ☒ No If "Yes", explain:

13. What alternatives may be available for addressing any issues identified above:

14. Do conditions need to be included in the transfer order to avoid enlargement of the right or injury to other rights? ☐ No ☐ Yes, as checked and provided below:

☐ For POU changes that involve micro-irrigation, provide the monitoring and reporting conditions necessary to prevent injury/enlargement:

☐ A Headgate should be required prior to diverting water.

☐ Measurement Devices for POD or POA: (if this condition is selected, also fill in the top sections of Page 4)

*a. Before water use may begin under this order, the water user shall install a **totalizing flow meter***, or, with prior approval of the Director, another suitable measuring device, ☐ at each point of diversion/appropriation (new and existing) OR at each new point of diversion/appropriation ☐ with the exception that water rights issued to the Bureau of Reclamation or an irrigation district (or similar entity) are not subject to this condition.*

b. The water user shall maintain the meters or measuring devices in good working order.

c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.

☒ Reservoir water use measurement: (if this condition is selected, also fill in the top sections of Page 4)

*a. Before water use may begin under this order, the water user shall install **staff gages***, or, with prior approval of the Director, other suitable measuring devices, that measure the entire range and stage between empty and full in each reservoir. Staff gages shall be United States Geological Survey style.*

b. Before water use may begin under this order, if the reservoir is located in channel, weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, an adjustable outlet valve must be installed. The water user shall maintain such devices in good working order. A written waiver may be obtained, if in the judgment of the Director, the installation of weirs or other suitable measuring devices, or the adjustable outlet valve, will provide no public benefit.

* The following alternative device(s) should be substituted for the bold, underlined device in the above selected condition:

☐ Weir
☐ Parshall Flume
☐ Other: _____

☐ Submerged Orifice
☐ Flow Restrictor

Oregon Water Resources Department

Measurement Condition Information for the Applicant

(To be sent with the Draft Preliminary Determination or Final Order)

Transfer #: T- 14294



In order to avoid enlargement of the right or injury to other rights, a **staff gage** will be required to be installed **prior to diversion of water**, as a condition of this transfer:

at each point of diversion/appropriation (new and existing) **OR**

at each new point of diversion/appropriation.

For additional information, or to obtain approval of a different type of measurement device, the applicant should contact the area Watermaster:

Watermaster name: Nikki Hendricks

District: 1

Address: 4000 Blimp Blvd Ste 400

City/State/Zip: Tillamook, OR 97141

Phone: 503-457-8989

Email: Nikki.M.Hendricks@water.oregon.gov

Note: If a device other than the one specified in the Preliminary Determination or Final Order is approved by the Watermaster, fill out and mail the form below to the Salem office.

Approval of an Alternate Measurement Device

T-

(to be filled out after consultation with the applicant, or after a site visit)

On behalf of the Director, I authorize use of the following suitable **alternate measurement device**:

Watermaster signature

District

Date

If this form is used for approval of an alternative measurement device, it must be mailed to:

Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1266

Oregon Department of Fish and Wildlife
Water Right and Diversion Transfer Comment Form
(ODFW provides to WRD so that WRD can make findings according to statutory requirements.)

Reference Transfer #: T-14294

Date of review: 9/6/23

A. Please check box if you believe there is a potential for injury to an instream water right.

☐ The Oregon Department of Fish and Wildlife (ODFW) believes this proposed transfer may injure an instream water right(s) on _____ [stream], tributary to _____, because _____.
(Please attach any available supporting information.)

Note: This will prompt WRD to make a determination whether the transfer will injure an instream water right. (OWRD makes the determination of injury to a water right, while ODFW's role is to raise concerns, and to evaluate proposed mitigation and net benefit to the resource if OWRD consents to injury of an instream water right.)

B. Please check one of the following five boxes related to fish screen requirements pursuant to ORS 540.525 or 540.532:

☐ **1. Screen Maintain**

[Select this option if the new Point of Diversion (POD) requires a fish screen and is currently equipped with an appropriate fish screen that will still be in compliance if the transferred water is diverted from this POD.]

Note: This option will yield the following:

Finding of Fact: The Oregon Department of Fish and Wildlife 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 currently equipped with an appropriate fish screen.

Condition: The water user shall operate and maintain an approved fish screen at the new point of diversion. If Oregon Department of Fish and Wildlife (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.

☒ **2. Screen Now**

[Option 2 should generally be selected if listed fish species are present at the point of diversion and/or the originating water right diversion is currently screened. If Option 2 is selected, provide contact information on the "Fish Screening and Passage Information" sheet. The new diversion may be eligible for cost-share.]

Note: This option will yield the following:

Finding of Fact: 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.

Condition: Prior to diverting water, 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.

*Please return all 3 pages to: Transfers Section, Water Resources Department,
725 Summer St. NE, Suite A, Salem, OR 97301-1266*

☐ **3. Screen 2 Year**

[Option 3 may be checked if the change is from an unscreened diversion to a HISTORIC POD or an existing POD in use for another water right, and cost-share funds are not currently available. It should NOT be checked if listed fish species are present at the point of diversion, the originating water right diversion is screened, cost-share funds are currently available, or the diversion is not eligible for ODFW's cost-share program. Please provide contact information on the "Fish Screening and Passage Information" sheet.] If extraordinary circumstances are present, please explain: _____

Note: This option will yield the following:

Finding of Fact: 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. Listed fish species are not present at the point of diversion, the originating water right diversion is not screened, cost-share funds are not currently available, and the proposed diversion may be eligible for ODFW's cost-share program. A grace period of two years is appropriate until such time as cost-share funds become available to assist in the construction of a fish screen. If cost-share funds do not become available, the water user must screen within the indicated time period regardless of the availability of cost-share funding.

Condition: By October 1, 20__ [Within two years after the date of this order] the water user shall install an approved fish screen at the new point of diversion. The water user may withdraw water at the new point of diversion without a screen until October 1, 20__. The water user shall provide to 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 maintain and operate 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.

☐ **4. Screen Future**

[Use this option if fish are not currently present, but might possibly be at some future time.]

Note: This option will yield the following:

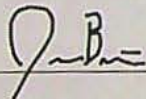
Finding of Fact: The Oregon Department of Fish and Wildlife has determined that the diversion is not currently equipped with an appropriate fish screen, but a fish screen may be required in the future at the new point of diversion to prevent fish from entering the diversion.

Condition: The Oregon Department of Fish and Wildlife (ODFW) may require the water user to install an approved fish screen at the new point of diversion within one year after receiving written notification that a fish screen is required. Once installed the water user shall maintain and operate the fish screen at the new point of diversion according to 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.

☐ **5. No Screen Needed**

[Check this box if fish are not currently present, and are not expected in the future.]

Signature



Jason Brandt
Printed Name

(541) 315-6222
Phone

SW Hydro Coordinator
Title

Oregon Department of Fish and Wildlife
Additional Fish Screening and Passage Information for the Applicant
(To be completed by ODFW for WRD to provide to the applicant.)

Transfer #: T-14294

The applicant should be aware that fish screening and passage may be required for certain changes in point of diversion if the boxes below are checked.

- ☒ Fish screening is required as a condition of this transfer. The fish screen must meet ODFW's design, construction, operational and maintenance standards.

Pursuant to ORS 498.306, cost-share funds may be available to assist in the installation of fish screening.

The applicant should contact the ODFW staff member below to obtain additional information on the design, construction, operational, and maintenance standards for the fish screen and to obtain information about ODFW's cost-sharing program for screening. **Prior to installation, the water user must obtain written approval from ODFW that the required screen meets ODFW's criteria.**

ODFW staff name: Toby Schuyler

Address: 3561 Klindt Dr

City/State/Zip: The Dalles/OR/97058

Phone: (541) 967-2162

- ☒ This transfer may trigger requirements for fish passage under ORS 509.585 because a new point of diversion will be constructed, an existing point of diversion's capacity will be increased, or an existing point of diversion will be abandoned. The applicant should contact the ODFW staff member below for a determination of whether native migratory fish are or were present at the applicable location, which will determine whether fish passage must be addressed.

ODFW staff name: Jason Brandt

Address: 4192 North Umpqua Hwy

City/State/Zip: Roseburg/OR/97470

Phone: (541) 315-6222

DAVIS Arla L * WRD

From: MUCKEN Alyssa M * WRD
Sent: Tuesday, August 8, 2023 1:58 PM
To: DAVIS Arla L * WRD
Cc: JARAMILLO Lisa J * WRD
Subject: T-14294 - City of Newport

Hi Arla, could I be added to any the mailing list for any transactions pertaining to this application? For example, DPD's, PD's, FO's. I'm working with the mid-coast place-based planning partners on implementation and the City of Newport's dam is often a topic of discussion.

I'll be sending along the transfer number and public comment period opportunity to partners later today.

Thank you, hope all is well!

Alyssa

Alyssa Mucken (she/her)

Basin Coordinator | NW Region

O R E G O N



WATER RESOURCES
DEPARTMENT

Oregon Water Resources Department

725 Summer St. NE, Suite A, Salem, OR 97301

alyssa.m.mucken@water.oregon.gov | Cell: 503-871-6964

WATER RIGHT TRANSFER COVER SHEET

Transfer: T-14294

Transfer Specialist:

Aula

Transfer Type: Regular Transfer

Reimbursement Authority? ☐

Applicant: SPENCER NEBEL 169 SW COAST HWY NEWPORT, OR 97365 <i>City of Newport</i>	Agent: ADAM SUSSMAN 1600 SW WESTERN BLVD SUITE 240 CORVALLIS, OR 97333	Receiving Landowner:
Current Landowner if other than Applicant:	CWRE:	Irrigation District:
Affected Local Gov'ts: City Of Newport	Affected Tribal Gov't:	BOR Notified (date):

Water Rights Affected

File Marked	App. File # or Decree Name	Permit	Certificate	RR/CR Needed	RR/CR Nos.
☐	R43412	R5134	48627	☐ Yes ☐ No	
☐	R52124	R6171	89100	☐ Yes ☐ No	
☐				☐ Yes ☐ No	

Key Dates & Initial Actions (Support Staff)

Rec'd: March 13, 2023	Proposed Action(s): POINT OF DIVERSION; PLACE OF USE	
Fees Pd: 5510.00	Acknowledgement Letter Sent ☒	Basin: 18 Middle Coast
Initial Public Notice: 8/8/	County sent cc: of Ack Letter ☐	County: LINCOLN
WM District: 1 Nikki M. Hendricks	WM Review request sent:	WM Review date received:
ODFW District:	ODFW Review sent:	ODFW Review date received:
Groundwater	GW Review sent:	GW Review date received:

Caseworker Actions: Newspaper & PD Notice:

Newspaper notice needed: ☐	Name of Newspaper:
Newspaper notice sent to coordinator:	Newspaper notice quote requested (NRS1):
Request for news \$ sent:	News \$ received:
Affidavit of publication received:	Last day of publication:

Peer Review:

Document	Drafted	Peer Review	Coordinator	Changes Made	Signature Bin	Signature Date
DPD	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	CW Sent: _____ WM Sheet ☐ ODFW Sheet: ☐	N/A
PD	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____ Data Review Date: _____	Date: _____	Date: _____
FO	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ No. of docs for sig: _____	Date: _____

Special Issues: _____

Special Order Volume: Vol. _____ Pages _____



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

August 8, 2023

SPENCER NEBEL

169 SW COAST HWY

NEWPORT, OR 97365

Reference: Application T-14294

On March 13, 2023, the Department received your water right Permanent Transfer Application. The application was accompanied by \$5510.00. Receipt number 140294; 140295 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 will also be sent to Oregon Department of Fish and Wildlife to determine if a fish screen is needed.

This application may require publication of a notice for two consecutive weeks in a newspaper with general circulation in the area where the water right is located. If it is determined that newspaper notice will be required, the Department will prepare the notice and notify you of the cost. You will be responsible for submitting payment to the Department prior to publication of the notice.

Except as provided under ORS 540.510(3) for municipalities, you may not use water in the new place of use or from the new point of diversion until a final order approving the transfer application has been issued by the Department. In order to avoid any possible forfeiture of the water right, you should continue to use the water as described by your existing water right.

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

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) 986-0935.

Cc: Watermaster Dist. #1, Nikki M. Hendricks (*via email*)
City of Newport
Adam Sussman, Agent

Enclosure

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 # 140294

INVOICE # _____

RECEIVED FROM: City of Newport
BY: _____

APPLICATION NA
PERMIT _____
TRANSFER see below

CASH: ☐ CHECK: # 61465 OTHER: (IDENTIFY) ☐

TOTAL REC'D \$3,060.00

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 \$ EXAM FEE 0202 \$ RECORD FEE
0203 GROUND WATER \$ 0204 \$
0205 TRANSFER \$ 3,060.00

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR \$ EXAM FEE 0219 \$ LICENSE FEE
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: 140294

DATED: 3-13-23 BY: [Signature]

Distribution - White Copy - Customer, Yellow Copy - Fiscal, Blue Copy - File, Buff Copy - Fiscal

VENDOR: 2334 OREGON WATER RESOURCES DEPARTMENT

INVOICE #

INV DATE

DESCRIPTION

3/03/2023

Check No: 61465

INV AMOUNT

022423 OW/RD

2/24/2023

Application Fee: Water Right Transfer BCD #

3,060.00

TOTAL AMOUNT 3,060.00

OW/RD

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MAR 13 2023

Application for Permanent Water Right Transfer

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

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

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

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

Attachments:

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

(For Staff Use Only)

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

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

Other/Explanation _____

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

Part 2 of 5 – Transfer Application Map

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

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

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

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FEE WORKSHEET for PERMANENT TRANSFER (except Substitution)

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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, $1.25 \text{ cfs} \div 100 \text{ ac}$); then multiply by the number of acres to be transferred to get the transfer cfs ($\times 45 \text{ ac} = 0.56 \text{ cfs}$).
 - 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, $45.0 \text{ ac} \times 0.0125 \text{ cfs/ac} = 0.56 \text{ cfs}$)
2. Add cfs for the portions of water rights on all the land included in the transfer; however **do not count cfs for supplemental rights on acreage for which you have already calculated the cfs fee for the primary right on the same land**. The fee should be assessed only once for each "on the ground" acre included in the transfer. (In this example, blank 5a would be only 0.56 cfs, since both rights serve the same 45.0 acres. Blank 5b would be 0 and Line 5 would then also become 0).

14294

MAR 13 2023

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Part 4 of 5 – Applicant Information and Signature

Applicant Information

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

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

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

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

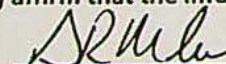
Check One Box

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

By my signature below, I confirm that I understand:

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

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


Applicant signature

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

03-09-23
Date

Part 5 of 5 – Water Right Information

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

CERTIFICATE # **48627**

Description of Water Delivery System

System capacity: **345 acre-feet** OR

_____ gallons per minute (gpm)

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

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

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

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

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

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

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

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

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

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

Check the following boxes that apply:

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

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

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

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

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

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

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

IRRIGATION DISTRICT NAME	ADDRESS		
CITY	STATE	ZIP	

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

ENTITY NAME	ADDRESS		
CITY	STATE	ZIP	

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

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

14294

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

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

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

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

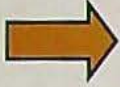
AUTHORIZED (the "from" or "off" lands) The listing that appears on the certificate BEFORE PROPOSED CHANGES List only that part or portion of the water right that will be changed.											Proposed Changes (see "CODES" from previous page)	PROPOSED (the "to" or "on" lands) The listing as it would appear AFTER PROPOSED CHANGES are made.														
Twp	Rng	Sec	¼ ¼	Tax Lot	Gvt Lot or DLC	Acres	Type of USE listed on Certificate	POD(s) or POA(s) (name or number from Table 1)	Priority Date	Twp		Rng	Sec	¼ ¼	Tax Lot	Gvt Lot or DLC	Acres	New Type of USE	POD(s)/ POA(s) to be used (from Table 1)	Priority Date						
EXAMPLE																										
2	S	9	E	15	NE	NW	100		15.0	Irrigation	POD #1 POD #2	1901	POU/POD	2	S	9	E	1	NW	NW	500	1	10.0		POD #5	1901
														2	S	9	E	2	SW	NW	500		5.0		POD #6	1901
													POU/POD	Please see the proposed location on the map in Attachment B							N/A	Storage for Municipal Use	Big Creek Dam	3/24/1967 & 6/5/ 1968		
TOTAL ACRES:													TOTAL ACRES:								N/A					

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

For Place of Use or Character of Use Changes

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

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



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

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

Ground water supplemental Permit or Certificate # _____;

Surface water primary Certificate # _____.

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

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Identify the primary certificate to be cancelled. Certificate # _____

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

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

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

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

AND/OR

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

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

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

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

Part 5 of 5 – Water Right Information

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

CERTIFICATE # 89100

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Description of Water Delivery System

MAR 13 2023

System capacity: 625 acre-feet OR

OWRD

_____ gallons per minute (gpm)

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

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

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

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

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

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

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

☒ Yes Complete only the Proposed ("to" or "on" lands) section of Table 2 on the next page. Use the "CODES" listed above to describe the proposed changes.

☐ No Complete all of Table 2 to describe the portion of the water right to be changed.

14294

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

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

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

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

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

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

For Place of Use or Character of Use Changes

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

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



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

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

Ground water supplemental Permit or Certificate # _____;

Surface water primary Certificate # _____.

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

Identify the primary certificate to be cancelled. Certificate # _____

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

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

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

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

AND/OR

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

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

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

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

14294

STATE OF OREGON

COUNTY OF

LINCOLN

CERTIFICATE OF WATER RIGHT

This Is to Certify, That CITY OF NEWPORT

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

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

municipal for the purpose of

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

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

The reservoir is located in

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

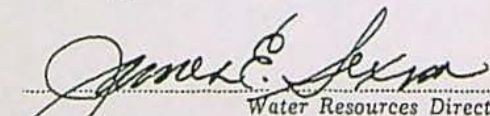
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MAR 13 2023

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WITNESS the signature of the Water Resources Director, affixed

this date 14294 October 5, 1979


 Water Resources Director

STATE OF OREGON

COUNTY OF LINCOLN

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

CITY OF NEWPORT
169 SW COAST HIGHWAY
NEWPORT OR 97365

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

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

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

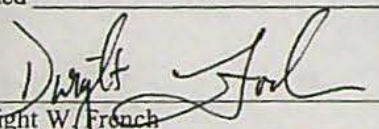
Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	11 W	WM	33	NE SE	1875 FEET NORTH AND 1220 FEET WEST FROM THE SE CORNER, SECTION 33

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

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

Issued

MAR 05 2014


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

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NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

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

Application for Water Right Transfer Evidence of Use Affidavit



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

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

State of Oregon)
) ss
County of LINCOLN

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

mailing address 169 SW Coast Highway, Newport, OR 97365

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

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

☐ Personal observation

☒ Professional expertise

2. I attest that:

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

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

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

OR

☐ Confirming Certificate # _____ has been issued within the past five years; OR

☐ Part or all of the water right was leased instream at some time within the last five years. The
instream lease number is: _____ (Note: If the entire right proposed for
transfer was not leased, additional evidence of use is needed for the portion not leased instream.); OR

☒ The water right is not subject to forfeiture and documentation that a presumption of forfeiture for non-use
would be rebutted under ORS 540.610(2) is attached.

☐ Water has been used at the actual current point of diversion or appropriation for more than
10 years for Certificate # _____ (For Historic POD/POA Transfers)

(continues on reverse side)

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

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

[Signature]
Signature of Affiant

March 9, 2023
Date

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



[Signature]
Notary Public for Oregon

My Commission Expires: 11/3/2024

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



Evidence of Use Certificates 48627 and 89100

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

LEGEND

 Tax Lot

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NOTE

Aerial Imagery taken on July 7, 2020.



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



Land Use Information Form



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

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Applicant(s): The City of Newport

Mailing Address: 169 SW Coast Highway

City: Newport

State: OR

Zip Code: 97365

Daytime Phone: _____

A. Land and Location

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

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

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

City of Newport

B. Description of Proposed Use

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

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

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

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

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

Briefly describe:

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



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

See bottom of Page 3. →

For Local Government Use Only

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

Please check the appropriate box below and provide the requested information

☒ Land uses to be served by the proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s):

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

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

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

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

Name: DERRICK TOKAS Title: COMMUNITY DEVELOPMENT

Signature: [Signature] Phone: 541.574.0626 Date: 3/7/23

Government Entity: CITY OF NEWPORT

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

Receipt for Request for Land Use Information

Applicant name: _____

City or County: _____ Staff contact: _____

Signature: _____ Phone: _____ Date: _____



LEGEND

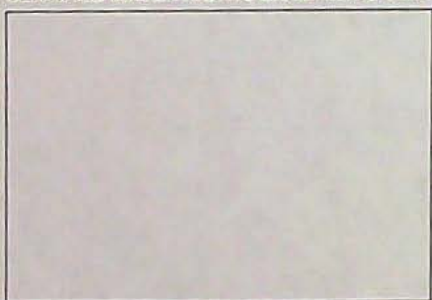
- Proposed Point of Diversion (POD)
- Big Creek Dam
- Proposed Place of Use (POU)
- Government Lot (GL)
- Tax Lot
- Watercourse
- Waterbody

Transfer Application for the City of Newport Proposed Point of Diversion and Place of Use

Certificates 21358, 48627 and 89100

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

CERTIFIED WATER RIGHTS EXAMINER STAMP



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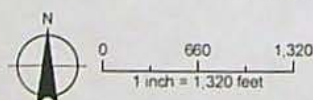
LOCATION DESCRIPTION

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

DISCLAIMER

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

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





LEGEND

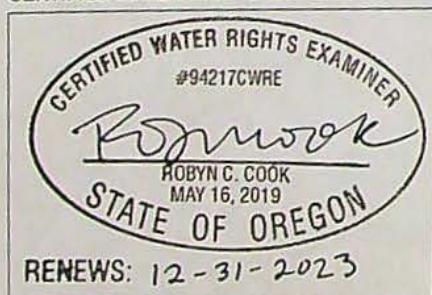
- ⊙ Authorized Point of Diversion (POD)
- Big Creek Reservoir #2 Dam
- ▨ Authorized Place of Use (POU)
- Government Lot (GL)
- Tax Lot
- Watercourse
- Waterbody

Transfer Application for the City of Newport Authorized Point of Diversion and Place of Use

Certificates 48627 and 89100

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

CERTIFIED WATER RIGHTS EXAMINER STAMP



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LOCATION DESCRIPTION

Authorized Point of Diversion
Located 1875 feet North and 1220 feet West from the SE corner
of Section 33, Township 10 South, Range 11 West (W.M.)

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

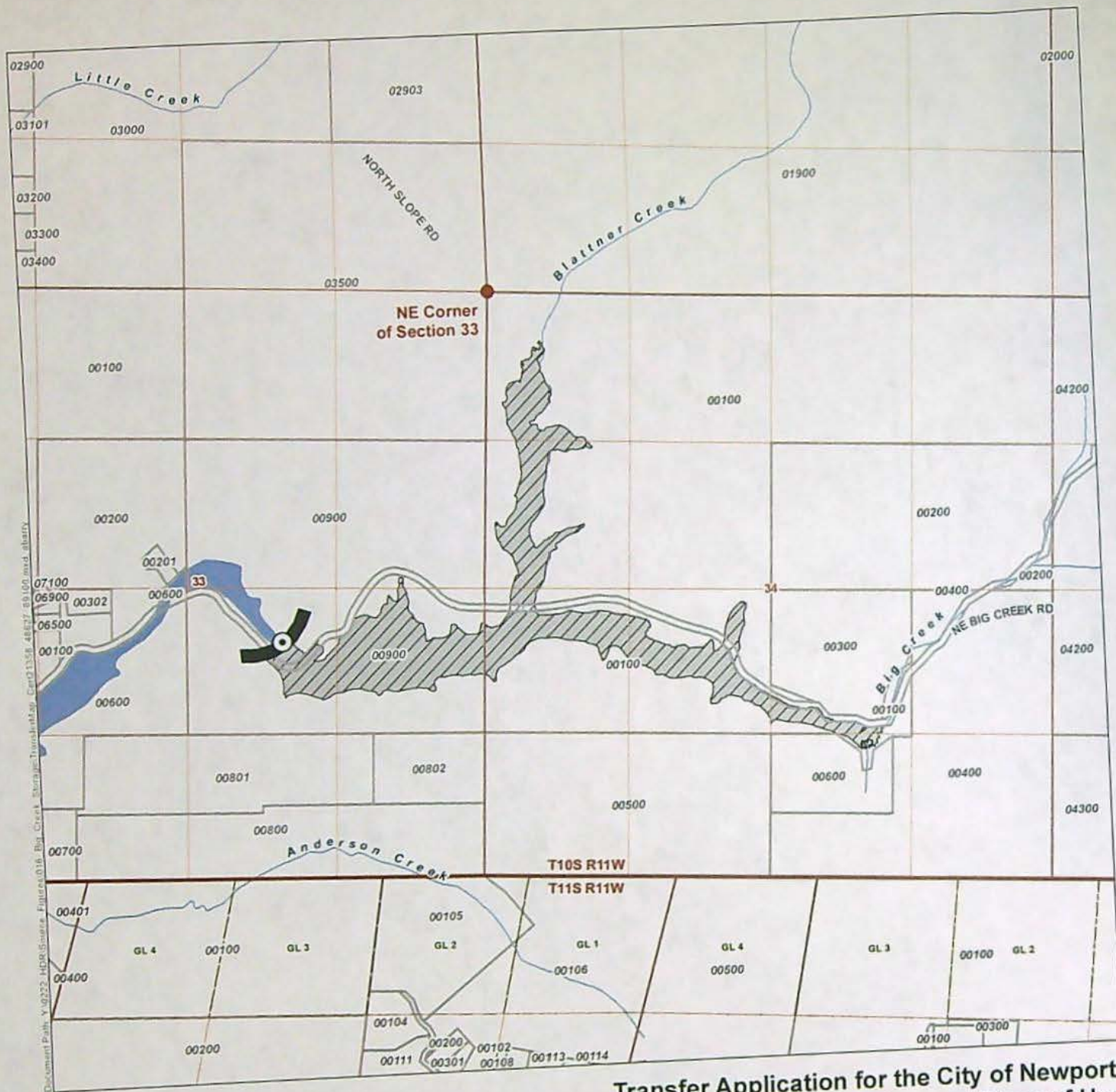
Date: February 13, 2023
Data Sources: BLM, ESRI, OWRD, USGS,
Lincoln County, HDR (2022)

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





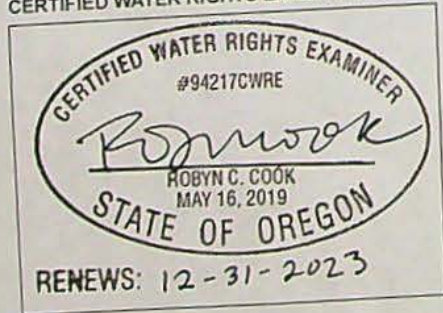
LEGEND

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

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

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

CERTIFIED WATER RIGHTS EXAMINER STAMP



RECEIVED

MAR 13 2023

OWRD

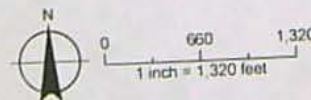
LOCATION DESCRIPTION

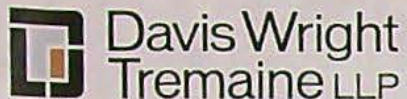
Proposed Point of Diversion
Located 3110 feet South and 1790 feet West from the NE corner
of Section 33, Township 10 South, Range 11 West (W.M.)

DISCLAIMER

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

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





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

Olivier Jamin
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MAR 13 2023

OWRD

March 7, 2023

SENT VIA US MAIL

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

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

Dear Dwight:

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

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

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

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

DWT.COM

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Dwight French
Oregon Water Resources Department
March 7, 2023
Page 2

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MAR 13 2023

OWRD

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

Best regards,

Davis Wright Tremaine LLP



Olivier Jamin

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