BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of Time-Limited Instream Transfer Application T-14346, Grant County	))))	PROPOSED FINAL ORDER PROPOSING APPROVAL OF A CHANGE IN PLACE OF USE AND CHARACTER OF USE FOR A TIME-LIMITED INSTREAM TRANSFER

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establishes 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 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

Applicant
City of John Day
c/o Melissa Bethel, City Manager
450 East Main Street
John Day, Oregon 97845

Agent
Robert Long, CWRE
311 B Avenue, Suite P
Lake Oswego, OR 97034

Findings of Fact

1. On November 1, 2023, the City of John Day filed an application to change the place of use and character of use under Certificates 36368, 85675, 87480, and 25786 to instream use permanently. The Department assigned the application number T-14346.

2. Notice of the application for transfer was published on November 17, 2023, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

3. During the month of December 2023, affidavits asserting non-use for Certificates 36368, 87480 and 85675 were submitted to the Department. On August 21, 2024, cancellation orders were issued. Certificate 36368 was cancelled in its entirety, recorded in Special Order Volume 131, Page 956; Certificate 85675 was cancelled in its entirety, recorded in Special Order Volume 131, Page 966; and Certificate 87480

Under ORS 540.520(8) and (9) and ORS 536.077(1), any person may file a protest of this Proposed Final Order within 30 days after publication of notice of this Proposed Final Order in the Department's weekly notice. Under ORS 540.520(9) and ORS 536.077(2), if a protest is filed, any person who supports this Proposed Final Order may file a request for party status within 30 days after the deadline for filing a protest. Please refer to the end of this document for further information about filing protests and requests for party status.

was partially cancelled, recorded in Special Order Volume 131, Page 961. A remaining right Certificate 98527 was issued July 9, 2025, for the remaining portion not affected by the partial cancellation of Certificate 87480.

4. On July 9, 2025, the Department received an amended application, changing the application to a time-limited instream transfer application from the City of John Day to change the place of use and character of use under Certificates 25786 and 98527 to instream use beginning in 2025 and ending in 2035.

5. Consistent with land use requirements, prior to submitting the application, the applicant provided notification of the intent to file the instream transfer application to the City of John Day Planning Department and the Grant County Planning Department.

6. On June 24, 2026, the Department sent a copy of the Initial Review to the applicant, proposing to approve Time Limited Instream Transfer Application T-14346. The Initial Review cover letter provided a deadline of July 23, 2026, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Proposed Final Order and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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

Certificate: 25786 in the name of W. H. Shank (confirmed by John Day River (F) Decree, Volume 15, at Page 461)
Use: Irrigation of 3.81 acres
Priority Date: 1889
Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/40 cubic foot per second per acre irrigated from April 1 to September 30; further limited to one acre-foot per acre per calendar month to July 1 and 3/4 acre-foot per acre thereafter; total five acre-feet per acre for season, measured at point of diversion.
Period of Use: April 1 to September 30
Source: John Day River

Authorized Point of Diversion: Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	31 E	WM	23	NW SW	3.81

8. Certificate 25786 does not provide a description of the location of the point of diversion (POD). Based upon additional information provided by the Department's Watermaster and the Applicant, for purposes of this Time-Limited Instream Transfer, the point of diversion IS described as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
13 S	31 E	WM	25	NE NE	TROWBRIDGE DITCH: LATITUDE 44.41638750 LONGITUDE - 118.92345861

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

Certificate: 98527 in the name of City of John Day (confirmed by John Day River (F) Decree, Volume 15, at Pate 461)
Use: Industrial Use
Priority Date: 1863
Rate: 0.271 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 0.271 cubic foot per second, or its equivalent in case of rotation, measured at the point of diversion. The use of water is further limited to the irrigation season of each year.
Source: John Day River, tributary to Columbia River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	31 E	WM	22	SW SE	1160 FEET NORTH AND 2525 FEET WEST FROM THE SE CORNER OF SECTION 22

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Additional POU information – Tax Lot
13 S	31 E	WM	22	NW SE	13S31E22D 0300

10. Transfer Application T-14346 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values for a period of 10 years.

11. The applicant requests that the water use begin in 2025 and revert to its authorized use and place of use in 2035.

12. Transfer Application T-14346 proposes to change the place of use of the right to create an instream reach from an upstream point at the confluence of Canyon Creek (approx. Latitude (LAT) 44.42239, Longitude (LONG) -118.95932) to a downstream point approximately at the City's western City Limit boundary where it crosses the John Day River (approx. LAT 44.4227, LONG -118.9850).

13. The applicant proposes the quantities of water to be transferred instream be protected follows:

Certificate	Rate (cfs)	Volume (acre-feet)	Period
25786	0.271	98.04	April 1 – September 30
98527	0.095	34.37	

Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)

14. Water was not used within the last five years according to the terms and conditions of the rights, however, there is information in the record that would demonstrate that the right is not subject to forfeiture under ORS 540.610 (2)(a) (b) and (d). The applicant submitted the information to rebut forfeiture.

15. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Application T-14346.

16. 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 submitting Transfer Application T-14346.

17. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100.

18. The John Day River between the authorized point of diversion for Certificate 25786 to the point of diversion for Certificate 98527 experiences loss. This section of the river experiences loss dependent on annual ground moisture and precipitation and can vary year to year. Calculating the protections after the decree limitations and the river loss would result in a figure that is immeasurable in the John Day River. Therefore, the instream protection will be amended to be protected at the authorized points of diversion only and with the decree limitations allowed.

19. The quantities to be transferred and protected instream have been modified and are as follows:
    John Day River, tributary to the Columbia River

    CERTIFICATE 25786 - Instream Point No. 1: At the POD (as described below)

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
13 S	31 E	WM	25	NE NE	TROWBRIDGE DITCH: LATITUDE 44.41638750 LONGITUDE - 118.92345861

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
25786	1889	0.04	19.05	April 1 – September 30

CERTIFICATE 98527 - Instream Point 2: At the POD (as described below)

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	31 E	WM	22	SW SE	1160 FEET NORTH AND 2525 FEET WEST FROM THE SE CORNER OF SECTION 22

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
98527	1863	0.13	6.95	April 1 – September 30

20. The proposed change, as conditioned, would not result in enlargement of the rights.

21. The proposed change, as conditioned, would not result in injury to other water rights.

22. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.

23. The protection of flows at the authorized points of diversion is appropriate, considering:

    a) The instream water right begins at the recorded points of diversion;

    b) The location of confluences with other streams downstream of the points of diversion;

    c) There are known areas of natural loss of streamflow to the riverbed downstream from the points of diversion; and

    d) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the points of the instream water right.

24. All other application requirements are met.

Determination and Proposed Action

The changes in character of use and place of use to instream use proposed in application T-14346 appear to be consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-14346 is approved, the final order will include the following:

1. *The changes in character of use and place of use to instream use proposed in application T-14346 are approved.*

2. *The instream water rights shall provide for the protection of streamflows as follows:*

CERTIFICATE 25786 - Instream Point No. 1: *At the POD (as described below)*

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
13 S	31 E	WM	25	NE NE	TROWBRIDGE DITCH: LATITUDE 44.41638750 LONGITUDE - 118.92345861

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
25786	1889	0.04	19.05	April 1 – September 30

CERTIFICATE 98527 - Instream Point 2: *At the POD (as described below)*

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	31 E	WM	22	SW SE	1160 FEET NORTH AND 2525 FEET WEST FROM THE SE CORNER OF SECTION 22

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
98527	1863	0.13	6.95	April 1 – September 30

3. *Water rights upstream of the original points of diversion shall not be subject to regulation for flows in excess of the quantities to which these instream water rights are entitled at the original points of diversion.*

4. *The right to the use of water is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in Certificates 25786 and 98527 and any related decree.*

5. *The exercise of the right evidenced by Certificate 25786 for irrigation and Certificate 98527 for industrial use at the former place of use shall be SUSPENDED, without loss of priority, for the term of the transfer authorized herein.*

6. *The term of this Final Order shall begin on April 1, 2025, and end September 30, 2035.*

7. *Upon expiration of this transfer, the use of water shall revert to its original use and place of use as described by Certificates 25786 and 98527. The use shall revert to the authorized use and place of use on September 30, 2035, following the end of the irrigation season, 2035.*

8. *This order may be terminated prior to the end date of September 30, 2035, and revert to the authorized uses and places of use upon submission of a termination request from the City of John Day.*

Dated at Salem, Oregon this day 10/1/2026.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Ivan Gall, Director, Oregon Water Resources Department

This proposed final order was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-979-9872 or Sarah.A.Henderson@water.oregon.gov

Pursuant to ORS 536.077(4) and (5), if no protest of this Proposed Final Order is received by November 5, 2026, and the Department does not withdraw this Proposed Final Order on or before December 8, 2026, this Proposed Final Order is a final order without any further action by the Department on December 8, 2026.

Protests and Requests for Party Status

The following sections explain how to: (1) file a protest in opposition to this Proposed Final Order to request a contested case hearing on this Proposed Final Order; and (2) file a request for party status to request to participate in any contested case proceeding in support of this Proposed Final Order.

Protests: Under the provisions of ORS 540.520(8) and (9) and ORS 536.077(1), any person may protest this Proposed Final Order. Protests may be mailed or hand delivered to the Oregon Water Resources Department at 725 Summer Street NE, Suite A, Salem, OR 97301. If you submit a protest by U.S. mail, please consider mailing early to ensure the Department receives the protest by the deadline. Protests may be emailed to will.d.davidson@water.oregon.gov, but payment of Protest fees cannot be accepted electronically and must be received by the Department by mail or hand delivery prior to the deadline. Protests and protest fees must be received by the Water Resources Department no later than **November 5, 2026**.

Protests must meet the following requirements:

- Be in writing;
- Include the protestant's name, address, telephone number, and email address, if the protestant has an email address;

- Include the name, address, telephone number, and email address of the protestant's attorney, if the protestant is represented by an attorney;
- Include a description of the protestant's interest in the Proposed Final Order, and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;
- Include a detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to the protestant's interest and/or the claimed public interest;
- Identify which of the Proposed Final Order's recommended findings of fact, conclusions of law or conditions of approval the protestant objects to;
- Raise all reasonably ascertainable issues and include all reasonably available arguments that support the protestant's position;
- Include any citation of legal authority to support the protest, if known;
- Explain how the issues raised in the protest are within the Department's jurisdiction;
- If the protestant is the applicant, include a protest fee of $720 required by ORS 536.050; and
- If the protestant is not the applicant, include a protest fee of $1,425 required by ORS 536.050.

Requests for Party Status: Under the provisions of ORS 540.520(9) and ORS 536.077(2), if this Proposed Final Order is protested, any person who supports this Proposed Final Order may file a request for party status to request to participate in any contested case proceeding on the Proposed Final Order or for judicial review of a final order resulting from the Proposed Final Order. There is no need for the applicant to file a request for party status. The applicant will automatically be a party to any contested case proceeding on this Proposed Final Order. Requests for party status may be mailed or hand delivered to the Oregon Water Resources Department at 725 Summer Street NE, Suite A, Salem, OR 97301. If you submit a request for party status by U.S. mail, please consider mailing early to ensure the Department receives the request by the deadline. Requests for party status may be emailed to will.d.davidson@water.oregon.gov, but payment of request for party status fees cannot be accepted electronically and must be received by the Department by mail or hand delivery prior to the deadline. Requests for party status and request for party status fees must be received by the Water Resources Department no later than **December 7, 2026**.

Requests for party status must be in writing and include the following:

- Names, addresses, and email addresses (if any) of the requester and any organization the requester represents;

- Name, address, and email address of the requestor's attorney, if any;
- A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;
- If the requestor seeks to protect a personal interest in the outcome of any contested case hearing on the Proposed Final Order, a detailed statement of the requestor's interest, economic or otherwise, and how such interest may be affected by the results of the hearing;
- If the requestor seeks to represent a public interest in the results of any contested case hearing on the Proposed Final Order, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the hearing, and the requestor's qualifications to represent such public interest;
- A statement of the reasons why existing parties to the proceeding cannot adequately represent the private and/or public interest(s) the requestor seeks to represent; and
- The request for party status fee of $1,425 required by ORS 536.077(2)(b)(C) and ORS 536.050.

After the deadline for requests for party status, the Department will provide copies of any timely requests for party status, accept responses to requests for party status, and consider and rule on timely requests for party status as provided in OAR 690-002-0225.

Additional Notices

Notice of requirement to provide updated contact information: Parties must timely provide the Department with updated contact information, including any change of address or primary means of electronic communication. The contact information provided in the protest or request for party status, as applicable, is presumed to be valid for the purposes of service and notification of upcoming referral to the Office of Administrative Hearings unless timely updated by the party. OAR 690-002-0081.

Notice of the circumstances under which this Proposed Final Order will become a final order: If no protest of this Proposed Final Order is timely received and the Department does not withdraw this Proposed Final Order for reconsideration within 33 days after the close of the period for submitting a protest, this Proposed Final Order will become a final order on the date that is 33 days after the close of the period for submitting a protest, with no further action required by the Department. If a protest or protests are timely received, but later: (1) all timely-filed protests are withdrawn and the withdrawals are not based on a settlement agreement requiring changes to this Proposed Final Order; (2) all protestants fail to appear at a scheduled hearing; or (3) all protestants notify the Department or the administrative law judge that the protestants will not appear at a scheduled hearing, the protestants will have waived any right to a hearing, and the

Department or the administrative law judge will issue an order dismissing the protests and notifying the parties that this Proposed Final Order has become a final order. OAR 690-002-0235; OAR 137-003-0672. The Department designates the relevant portions of its file on this matter, including all materials that you have submitted relating to this matter, as the record for the purpose of proving a prima facie case upon default. OAR 137-003-0672.

Notice of Right to Pursue Approval of Transfer through Consent to Injury Process after Contested Case Hearing: If after a contested case hearing on this Proposed Final Order the Department issues a proposed 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 OAR 690-002-0175, if the applicant files a notification of intent to pursue approval of the transfer under OAR 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 OAR 690-380-5030 to 690-380-5050.

Notice of right to be represented by an attorney: You may be represented by an attorney at any contested case hearing on this Proposed Final Order. 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 137-003-0555, an "authorized representative" as defined at OAR 137-003-0555(1)(b) may represent a partnership, corporation, association, governmental subdivision or public or private organization 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 to active duty servicemembers: Active-duty service members have a right to stay proceedings under the federal Service Members 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 a request for party status, or if you have previously filed a protest or a request for party status 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 OR 97301-1266.

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

DATE: October 1, 2026

VIA CERTIFIED MAIL AND E-MAIL

Applicant
City of John Day
c/o Melissa Bethel, City Manager
450 East Main Street
John Day, Oregon 97845

Agent
Robert Long, CWRE
311 B Avenue, Suite P
Lake Oswego, OR 97034

SUBJECT: Water Right Time-Limited Instream Transfer Application T-14346

Please find enclosed the Proposed Final Order indicating that, based on the information available, the Department intends to approve application T-14346. 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 East Oregonian newspaper, simultaneously with issuance of the Proposed Final Order. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Proposed Final Order or a request for party status supporting the Department's decision. The protest period will end 30 days after the Department's notice.

The Proposed Final Order will become a Final Order 33 days after the protest period ends without any further action by the Department, as a matter of law, if no protest is filed.

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 Proposed Final Order to present information and arguments supporting their position in a quasi-judicial proceeding.

Please don't hesitate to contact me at 503-979-9872 or sarah.a.henderson@water.oregon.gov, if I may be of assistance.

Sincerely,

Sarah Henderson

Sarah Henderson
Flow Restoration Program Coordinator
Transfer and Conservation Section

cc: Transfer Application file T-14346
Eric Julsrud, District Watermaster *(via e-mail)*