



August 16, 2023

Aaron Lieuallen, *Senior Project Manager*
City of John Day
450 East Main Street
John Day, Oregon 97845

c/o: Casey Myers, *Public Works Director*

RE: REVIEW OF THE PROPOSED INSTREAM WATER RIGHT TRANSFER APPLICATIONS

Dear Mr. Lieuallen,

Attached you will find a water right application for the instream transfer of four water rights. Specifically, this instream transfer application proposes the permanent preservation of Certificates 36368, 85675, 87480, and 25786 in the John Day River as part of the City's Innovation Gateway Project grant. Of the nine water rights originally listed in the grant application, only these four water rights were found to be eligible for instream transfer and located on city-owned properties.

In addition to OWRD's instream transfer application form, this package includes standard attachments such as a transfer map for each water right (Attachments 1-4), an evidence of use affidavit (Attachment 5), and land use notifications for the City and Grant County (Attachment 6). The evidence of use affidavit is accompanied by a memo to OWRD rebutting the presumption of forfeiture due to non-use of the four water rights in the last 5 years.

In order to prepare this instream transfer application for submittal to OWRD, please review the application package and notify CwM of any comments or suggested changes. Once the application content is finalized, the City must complete the following steps:

- Sign and date the application on page 5 as indicated by arrows.
- Sign, date, and notarize the Evidence of Use Affidavit (Attachment 5).
- Prepare a check to Oregon Water Resources Department for the application fee of **\$2,345**.

The City shall then return the signature pages and the OWRD fee check to CwM by mail. CwM will then finalize the application package with the City's original signatures, will stamp the application maps with the CWRE seal, and submit the OWRD with a cover letter. At the same time that the application is mailed to OWRD, CwM will email the land use notices to their respective recipients.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "RL2", is positioned above the name Robert Long.

Robert Long, CWRE

Application for Water Right Instream Transfer

Part 1 of 6 – Minimum Requirements Checklist



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

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

FOR ALL INSTREAM TRANSFER APPLICATIONS

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

- Part 1 – Completed Minimum Requirements Checklist.
 - Part 2 – Completed Map Checklist.
 - Part 3 – Application Fee, payable by check to the Oregon Water Resources Department, and completed Fee Worksheet, page 3. Try the new online fee calculator at: http://apps.wrd.state.or.us/apps/misc/wrd_fee_calculator. If you have questions, call Customer Service at (503) 986-0801.

Note: Instream transfers are considered both a change in place of use and character of use. In addition, an automatic 50% fee waiver applies to all instream transfers.
 - Part 4 – Completed Applicant Information and Signature.
 - Part 5 – Completed Instream Use Information.
 - Part 6 – Information about the Transferred Water Rights: **How many water rights are to be transferred? 4 List them here: Cert. 36368, Cert. 85675, Cert. 87480, Cert. 25786**
Please include a separate Part 6 for each water right. (See instructions on page 8)
- Attachments:**
- Completed Instream Transfer Application Map. **Separate Map for Each Right (Att. 1-4)**
 - Completed Evidence of Use Affidavit and supporting documentation. **(Att. 5)**
 - N/A Affidavit(s) of Consent from Landowner(s) (if the applicant does not own the land the water right is on.)
 - N/A Supplemental Form D – For water rights served by or issued in the name of an irrigation district. Complete when the transfer applicant is not the irrigation district.
 - Land Use Notice - Notice of the intent to file an instream transfer application must be provided to each affected local government along the proposed reach. Copies of the notices must be enclosed with the instream transfer application. **(Att. 6)**

(For Staff Use Only)

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

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

Other/Explanation _____

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

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

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

- N/A Certified Water Right Examiner (CWRE) Stamp and Original Signature. For list of CWREs see http://apps.wrd.state.or.us/apps/wr/cwre_license_view/.
- OR**
- N/A Waiver of requirement that map be prepared by a CWRE. Completed map waiver form is signed by the Department’s Regional Manager and included in the application. The map **must** still meet Department mapping requirements described below.
- N/A If **more than 3** water rights are involved, separate maps are needed for each water right. **A separate map is attached for each of the four water rights.**
- Permanent quality printed with dark ink on good quality paper.
- The size of the map can be 8½ x 11 inches, 8½ x 14 inches, 11 x 17 inches, or up to 30 x 30 inches. For 30 x 30 inch maps, one extra copy is required.
- A north arrow, a legend, and scale.
- The scale of the map must be: **1 inch = 400 feet**, 1 inch = 1,320 feet, the scale of the Final Proof/Claim of Beneficial Use Map (the map used when the permit was certificated), the scale of the county assessor map if the scale is not smaller than 1 inch = 1,320 feet, or a scale that has been pre-approved by the Department.
- Township, Range, Section, quarter-quarter, DLC, Government Lot, and other recognized public land survey lines.
- Tax lot boundaries (property lines) are required. Tax lot numbers are recommended.
- Major physical features including rivers and creeks showing direction of flow, lakes and reservoirs, roads, and railroads.
- Major water delivery system features from the point(s) of diversion/appropriation such as main pipelines, canals, and ditches.
- Existing place of use that includes separate hachuring for each water right, priority date and use including number of acres in each quarter-quarter section, government lot, or in each quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If less than the entirety of the water right is being changed, a separate hachuring is needed for lands left unchanged.
- Existing diversion point(s) with distance and bearing or coordinates from a recognized survey corner. This information can generally be found in your water right certificate or permit.

Part 3 of 6 – Fee Worksheet

FEE WORKSHEET for INSTREAM TRANSFER			
1	Base Fee (includes Place of Use and Character of Use to Instream changes to one water right for up to 1 cfs)	1	\$2,450
2	Number of water rights included in transfer 4 (2a) Subtract 1 from the number in 2a above: 3 (2b) <i>If only one water right, this will be 0</i> Multiply line 2b by \$610 and enter » » » » » » » » » » » » » » » »	2	\$1,830
3	Enter the cfs for the portions of the rights to be transferred (see example below*): $0.5 + 0.15 + 0.375 + 0.099 = 1.124 \text{ cfs (3a)}$ Subtract 1.0 from the number in 3a above: 0.124 cfs (3b) If 3b is 0, enter 0 on line 3 » » » » » » » » » » » » » » » » If 3b is greater than 0, round up to the nearest whole number: 1 (3c) and multiply 3c by \$410, then enter on line 3 » » » » » » » » » »	3	\$410
4	Add entries on lines 1 through 3 above » » » » » » » » » » Subtotal:	4	\$4,690
5	Multiply line 4 by 0.5 and enter on line 5 » » » » » » » » » » » » » » » »	5	\$2,345
6	Subtract line 5 from line 4 » » » » » » » » » » » » » » » » Transfer Fee:	6	\$2,345

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

1. For irrigation calculate cfs for each water right involved as follows:
 - a. Divide total authorized cfs by total acres in the water right (*for C12345, $1.25 \text{ cfs} \div 100 \text{ ac}$*); 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 3a would be only 0.56 cfs, since both rights serve the same 45.0 acres. Blank 3b would be 0 and Line 3 would then also become 0*).

Part 4 of 6 – Applicant Information and Signature

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

Applicant Information

APPLICANT/BUSINESS NAME City of John Day		PHONE NO.	ADDITIONAL CONTACT NO.
ADDRESS 450 East Main Street			FAX NO.
CITY John Day	STATE OR	ZIP 97845	E-MAIL
BY PROVIDING AN E-MAIL ADDRESS, CONSENT IS GIVEN TO RECEIVE ALL CORRESPONDENCE FROM THE DEPARTMENT ELECTRONICALLY. COPIES OF THE FINAL ORDER DOCUMENTS WILL ALSO BE MAILED.			

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

AGENT/BUSINESS NAME BOB LONG, CWRE (CWM-H2O, LLC)		PHONE NO. (503) 954 – 1326	ADDITIONAL CONTACT NO.
ADDRESS 1319 SE MLK Jr Blvd, Suite 204			FAX NO.
CITY Portland	STATE OR	ZIP 97214	E-MAIL bob.long@cwmh2o.com
BY PROVIDING AN E-MAIL ADDRESS, CONSENT IS GIVEN TO RECEIVE ALL CORRESPONDENCE FROM THE DEPARTMENT ELECTRONICALLY. COPIES OF THE FINAL ORDER DOCUMENTS WILL ALSO BE MAILED.			

Explain in your own words what you propose to accomplish with this transfer application, and why:

In 2021, the City of John Day obtained a funding grant from OWRD for the City’s Innovation Gateway Adaptive Water Reuse project. The project involves a number of improvements to the downtown area, including new green spaces and a purple pipe system to reuse treated wastewater for various irrigation and industrial uses. As a part of this grant, the City proposed investigating the feasibility of transferring a set of nine water rights instream in the John Day River for flow conservation. The nine water rights considered and included in the application are rights associated with properties the City has purchased over the last few years. Transferring the water rights that are eligible is a condition of the grant.

The City investigated the nine water rights originally listed in the grant application and determined that four of them are eligible for instream transfer. The remaining rights were deemed ineligible due to their source type (groundwater or storage) or their place of use in relation to City property boundaries.

This instream transfer application is intended to satisfy the condition of the grant by placing the four eligible water rights from the City’s grant application permanently instream in the John Day River.

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

Check one box

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

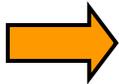
Check the following boxes that apply:

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

IRRIGATION DISTRICT NAME _____	ADDRESS _____	
CITY _____	STATE _____	ZIP _____

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

ENTITY NAME _____	ADDRESS _____	
CITY _____	STATE _____	ZIP _____



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

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

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

Part 5 of 6 – Proposed Instream Use Information

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

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

Instream use proposed to be created by the instream transfer:

Originating Water Right Number	Priority Date	Source	Proposed Instream Period	Rate (cfs)*	Volume (ac-ft)**
Cert. 36368	7/23/1963	John Day River, Pond along John Day River	Year-round	0.5	362.20
Cert. 85675	10/10/1986			0.15	108.66
Cert. 87480	12/31/1863	John Day River	Irrigation Season (Apr 1 – Sep 30)	0.375	135.83
Cert. 25786	12/31/1889			0.095	19.75
TOTAL VOLUME					626.44 AF

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

Identify the location of the proposed instream water right.

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

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

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

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

No Yes (identify other instream water rights):

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

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

Yes No. If no, please explain your intent:

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

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

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

For a Time Limited Instream Transfer, please answer the following: **N/A**

~~The time limited instream transfer is for a specific number of years:~~

~~_____ Begin Year to _____ End Year~~

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

~~Conditions: _____.~~

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

CERTIFICATE # 36368 (1 of 4)

Name on Certificate: San Juan Lumber Co., Inc.

The City of John Day City Council passed Resolution 17-768-04 to appropriate funds for the purchase of the former Oregon Pine property (TL 0300), on which this water right is located, on **May 23, 2017. The City acquired the property later in 2017.*

Date(s) of Priority: 07/23/1963

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

Description of Water Delivery System

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

N/A gallons per minute (gpm)

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

- *There currently is not a water delivery system in place to divert and utilize water in the manner of the original water right. However, the City is capable of installing and operating a diversion pump at the designated POD to divert water to the place of use in a short timeframe.*
- *The original water delivery system consisted of a low diversion dam on the John Day River which pushed water into a buried 24" corrugated metal pipe. This pipe fed water into two log ponds (storage under Certificate 36367) also located on the former Oregon Pipe property, owned by the City (**Attachment 1**).*
- *The diversion dam is no longer in place and the location of the distribution pipeline has been redeveloped for the City Public Works shop and the City public greenhouses. The Evidence of Use Affidavit includes more information on the site and history of water use.*

Other Water Rights

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

If YES, list the certificate, water use permit, or ground water registration numbers: **Certificate 36367 for storage in the log ponds listed as one of two PODs under Certificate 36368.**

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

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

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

POD Name	Priority Date	Twp		Rng		Sec	¼ ¼		Tax Lot, DLC or Gov't Lot	Measured Distances (from a recognized survey corner)
POD 1	07/23/1963	13	S	31	E	22	NE	SE	0100 or 0200*	1,570 ft N and 1,420 ft E from S1/4 Corner, Sec 22
POD 2		13	S	31	E	22	NE	SE		1,570 ft N and 1,420 ft E from S1/4 Corner, Sec 22

*The mapped location of the original PODs in the channel of the John Day River is on the boundary of Taxlot 0200 (City property) and 0100. The same coordinate is listed for the two PODs. The 2nd POD is understood to be the log ponds themselves.

Will the proposed instream transfer affect the entire water right?

- Yes Then Table 2 on Page 10 does not need to be completed.
- No Then complete all of Table 2 to describe the portion of the water right to be changed.

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

Table 2. Description of Change to Water Right Certificate # 36368

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

Twp		Rng		Sec	¼ ¼		Tax Lot	Gov't Lot or DLC	Acreage if Applicable	Type of USE listed on Certificate	Priority Date	POD(s) (name or number from Table 1)
13	S	31	E	22	SW	SE	0300	N/A	~2.07	Industrial/ Manufacturing	07/23/1963	POD 1 & 2
13	S	31	E	22	SE	SW	0300	N/A	~0.66			
TOTAL ACRES									~2.73*	*No acreage specified for this industrial right.		

Additional remarks: The water right lists two PODs, one at the diversion point on the John Day River and one at the log ponds that the diversion flowed to. However, both PODs are recorded with the coordinates of the river diversion (**Attachment 1**). The log ponds are permitted under storage right Certificate 36367, which is not eligible for instream transfer. It is understood that the storage right will be subject to cancellation once the diversion right Certificate 36368 is placed instream.

The entire 0.5 cfs (224 gpm) of industrial use under this right is proposed for instream transfer.

Part 6 of 6 – Water Right Information

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

CERTIFICATE # 85675 (2 of 4)

Name on Certificate: Oregon Pine

**The City of John Day City Council passed Resolution 17-768-04 to appropriate funds for the purchase of the former Oregon Pine property (TL 0300), on which this water right is located, on May 23, 2017. The City acquired the property later in 2017.*

Date(s) of Priority: 10/10/1986

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

Description of Water Delivery System

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

N/A gallons per minute (gpm)

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

- *There currently is not a water delivery system in place to divert and utilize water in the manner of the original water right. However, the City is capable of installing and operating a diversion pump at the designated POD to divert water to the place of use in a short timeframe.*
- *The original water delivery system consisted of a portable pump installed at the designated POD which diverted water through a 3" mainline to the place of use (Attachment 2). The pump was a 7.5 HP Fairbanks-Morse pump with a 6" intake.*
- *The Evidence of Use Affidavit includes more information on the site and history of water use.*

Other Water Rights

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

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

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

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

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

POD Name	Priority Date	Twp		Rng		Sec	¼ ¼		Tax Lot, DLC or Gov't Lot	Measured Distances (from a recognized survey corner)
POD 1	10/10/1986	13	S	31	E	22	SW	SE	0300	1,160 ft N & 2,525 ft W from SE Corner, Sec 22

(see **Attachment 2**)

Will the proposed instream transfer affect the entire water right?

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

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

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

Table 2. Description of Change to Water Right Certificate # 85675

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

Twp		Rng		Sec	¼ ¼		Tax Lot	Gov't Lot or DLC	Acres if Applicable	Type of USE listed on Certificate	Priority Date	POD(s) (name or number from Table 1)
13	S	31	E	22	SE	SW	0300/1900	N/A	0.5	Industrial/Manufacturing	10/10/1986	POD 1
TOTAL ACRES									0.5			

Additional remarks: *The entire water right, which includes 0.15 cfs (67 gpm) for industrial uses, specifically 0.5 acres of log deck watering (**Attachment 2**), is proposed for transfer instream.*

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

CERTIFICATE # 87480 (3 of 4)

Name on Certificate: Prairie Pine Products

The City of John Day City Council passed Resolution 20-850-23 to approve loans for the purchase of a portion of the Iron Triangle Property (TL 2700), on which a portion of this water right is located, on **December 8, 2020. The City acquired the Oregon Pine Property (TL 0300), containing the remainder of the water right, earlier in 2017 (**Attachment 3**).*

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

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

Description of Water Delivery System

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

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

- *There currently is not a water delivery system in place to divert and utilize water in the manner of the original water right. However, the City is capable of installing and operating a diversion pump at the designated POD to divert water to the place of use in a short timeframe.*
- *The original water delivery system consisted of a pump station installed at the designated POD, the same location as the POD for Cert. 85675 (above), which diverted water from the John Day River through a mainline to the place of use (**Attachment 3**).*
- *The Evidence of Use Affidavit includes more information on the site and history of water use.*

Other Water Rights

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

If YES, list the certificate, water use permit, or ground water registration numbers: **Certificate 48135** has a place of use over roughly the same area. The source for Certificate 48135 is a shallow groundwater point of appropriation. The right is not supplemental to Certificate 87480.

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

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

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

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

(see Attachment 3)

Will the proposed instream transfer affect the entire water right?

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

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

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

Table 2. Description of Change to Water Right Certificate # 87480

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

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

Additional remarks: The entire water right, which includes 0.375 cfs (168 gpm) for industrial uses limited to the irrigation season, specifically 2.1 acres of log deck watering (Attachment 3), is proposed for transfer instream.

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

CERTIFICATE # 25786 (4 of 4)

Name on Certificate: W. Shank

**The place of use of Certificate 25786 is split between City property and private landowner property. The portion of the water right proposed for transfer in this application is located on the City’s Wastewater Treatment Plant facility grounds (TL 1402 and 0700), which has been City property since prior to the facility’s construction in 1978 (Attachment 4).*

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

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

Description of Water Delivery System

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

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

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

Other Water Rights

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

If YES, list the certificate, water use permit, or ground water registration numbers: Certificate 48135 has a place of use over roughly the same area. The source for Certificate 48135 is a shallow groundwater point of appropriation. The right is not supplemental to Certificate 87480.

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

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

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

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

**This water right derived from the 1930 John Day River Decree. The exact location of the POD is not defined and is only described to the quarter-quarter. However, the POD appears to be related to one of multiple diversions for Trowbridge Ditch, which passes along the north edge of the POU. The 1930 decree lists the POD on an unnamed ditch on the John Day River (Attachment 4).*

Will the proposed instream transfer affect the entire water right?

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

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

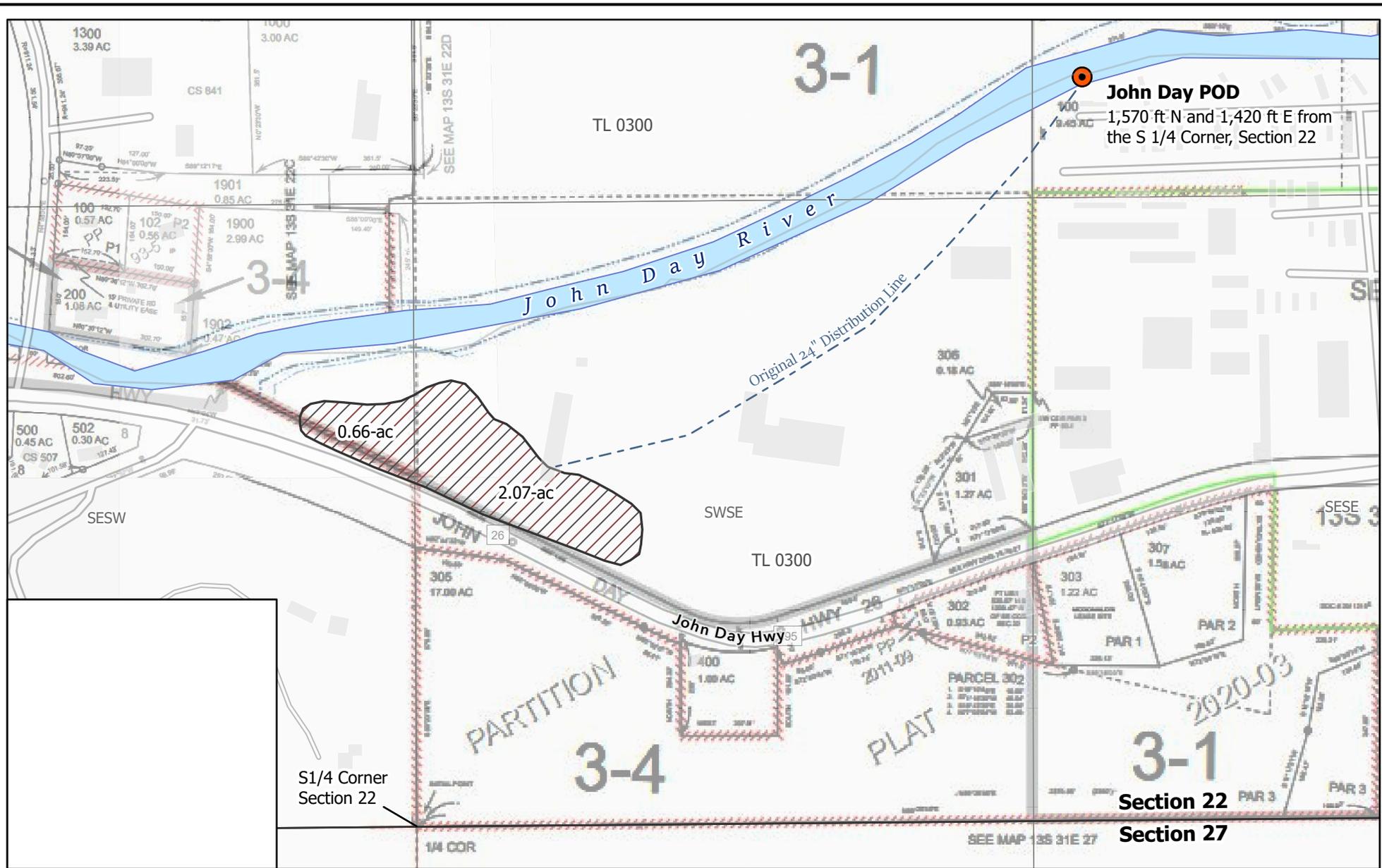
Please use additional pages of Table 2 as needed. See page 8 for instructions. If you have further questions about how to fill out the tables, contact the Department at 503-986-0900 and ask for Transfer Staff.

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

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

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

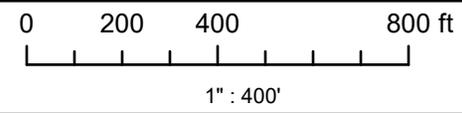
Additional remarks: *The water right includes 6.5 acres of irrigation in the NWSW quarter-quarter of Section 25. Of the 6.5 acres, 3.81 acres are located on City property (TLs 0700 and 1402) and are proposed for instream transfer (Attachment 4). The 3.81 acres proposed for transfer accounts for 0.095 cfs (about 43 gpm).*



1319 SE MLK Jr. Blvd, Suite 204
 Portland, Oregon 97214
 (503) 954-1326

Attachment 1
Instream Transfer Map
Certificate 36368, T13S, R31E, Sec 22

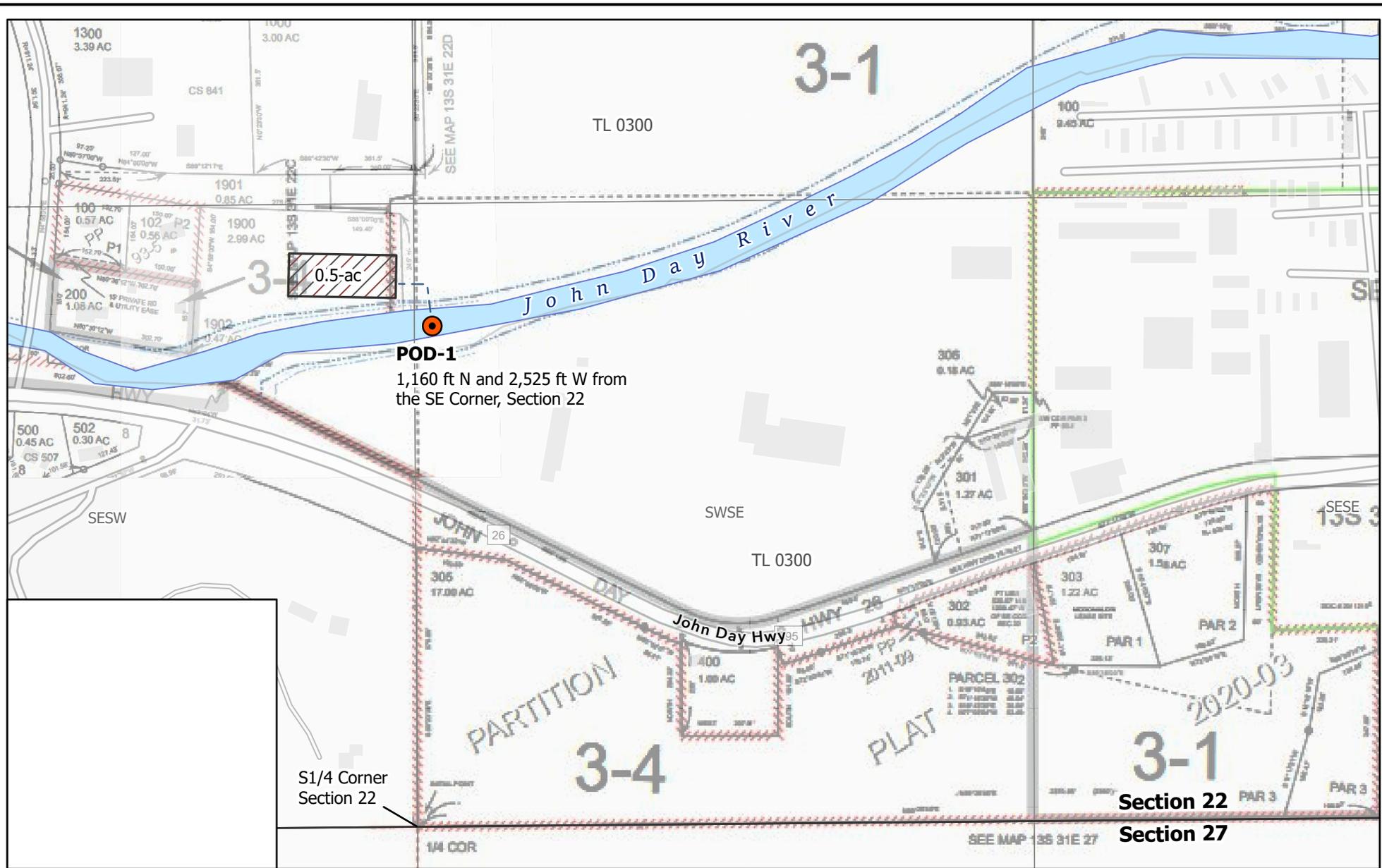
1	DATE	AUTH	DRAFT
No.	Date	By	Revisions



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



-  Cert 36368 POD
-  Cert. 36368 POU



POD-1
 1,160 ft N and 2,525 ft W from
 the SE Corner, Section 22

0.5-ac

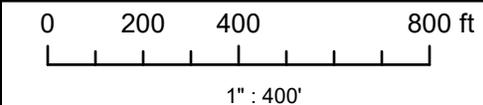
S1/4 Corner
 Section 22



Complete Water Management
 1319 SE MLK Jr. Blvd, Suite 204
 Portland, Oregon 97214
 (503) 954-1326

Attachment 2
Instream Transfer Map
Certificate 85675, T13S, R31E, Sec 22

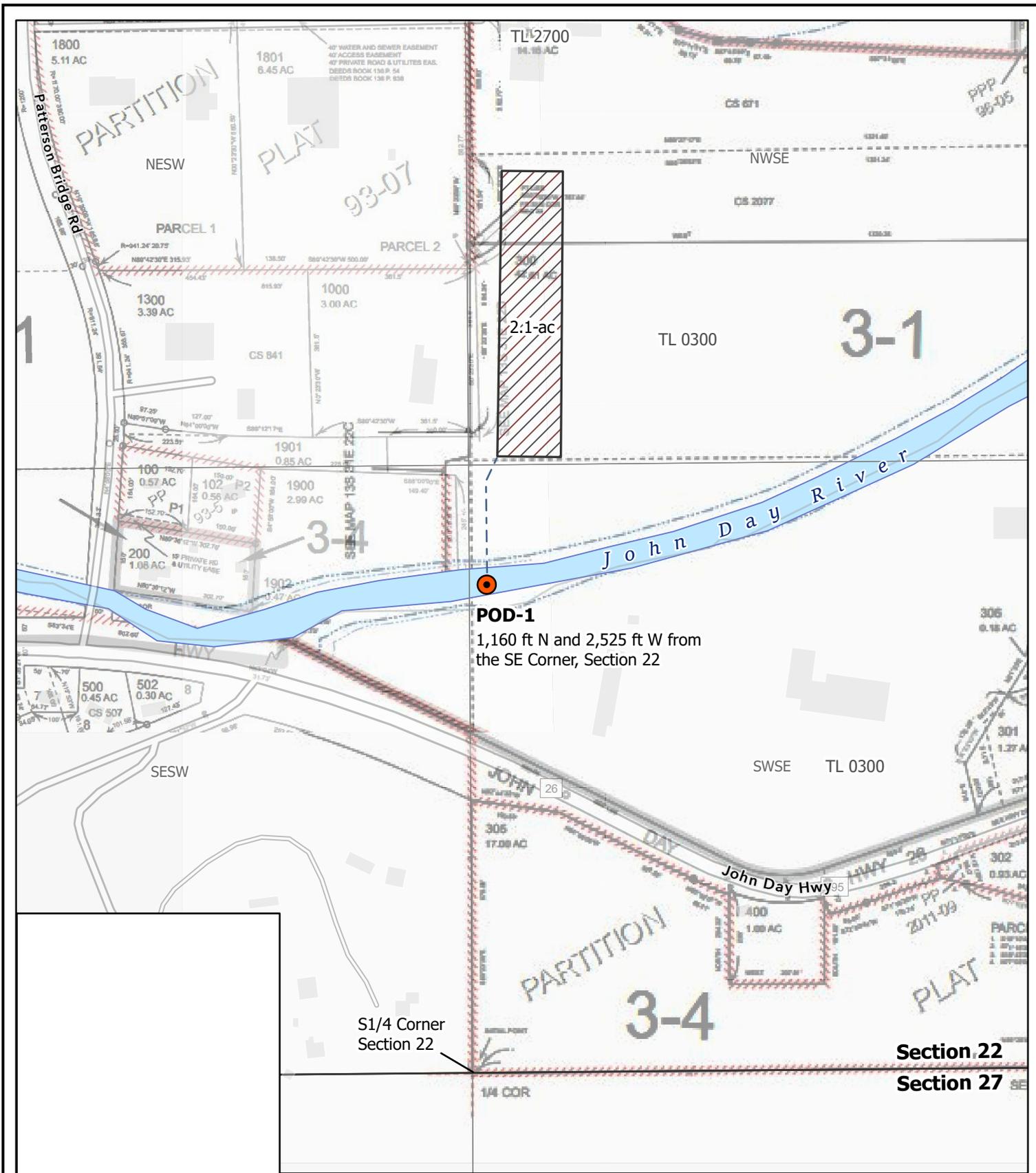
1	DATE	AUTH	DRAFT
No.	Date	By	Revisions



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



-  Cert. 85675 POD
-  Cert. 85675 POU



POD-1
 1,160 ft N and 2,525 ft W from
 the SE Corner, Section 22

S1/4 Corner
 Section 22

Section 22
Section 27

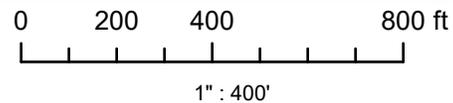
CWM-H2O
 Complete Water Management



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 Portland, Oregon 97214
 (503) 954-1326

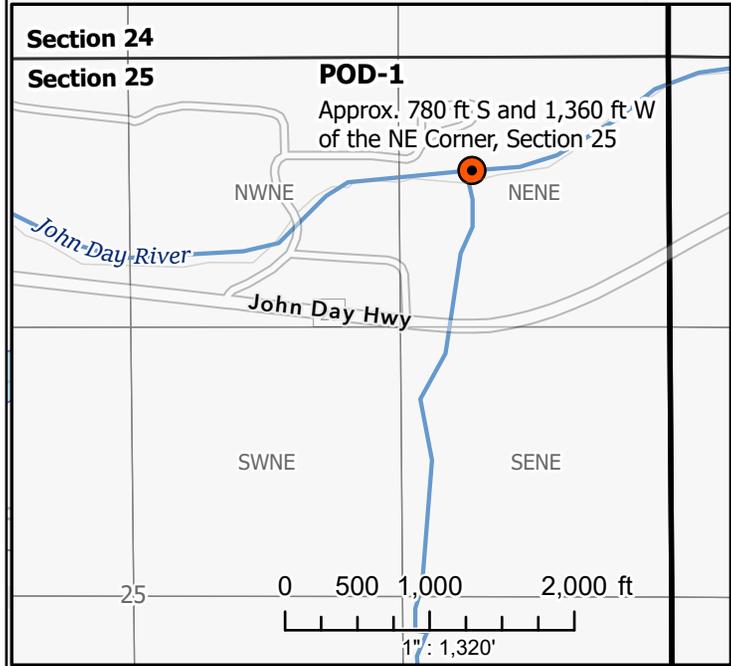
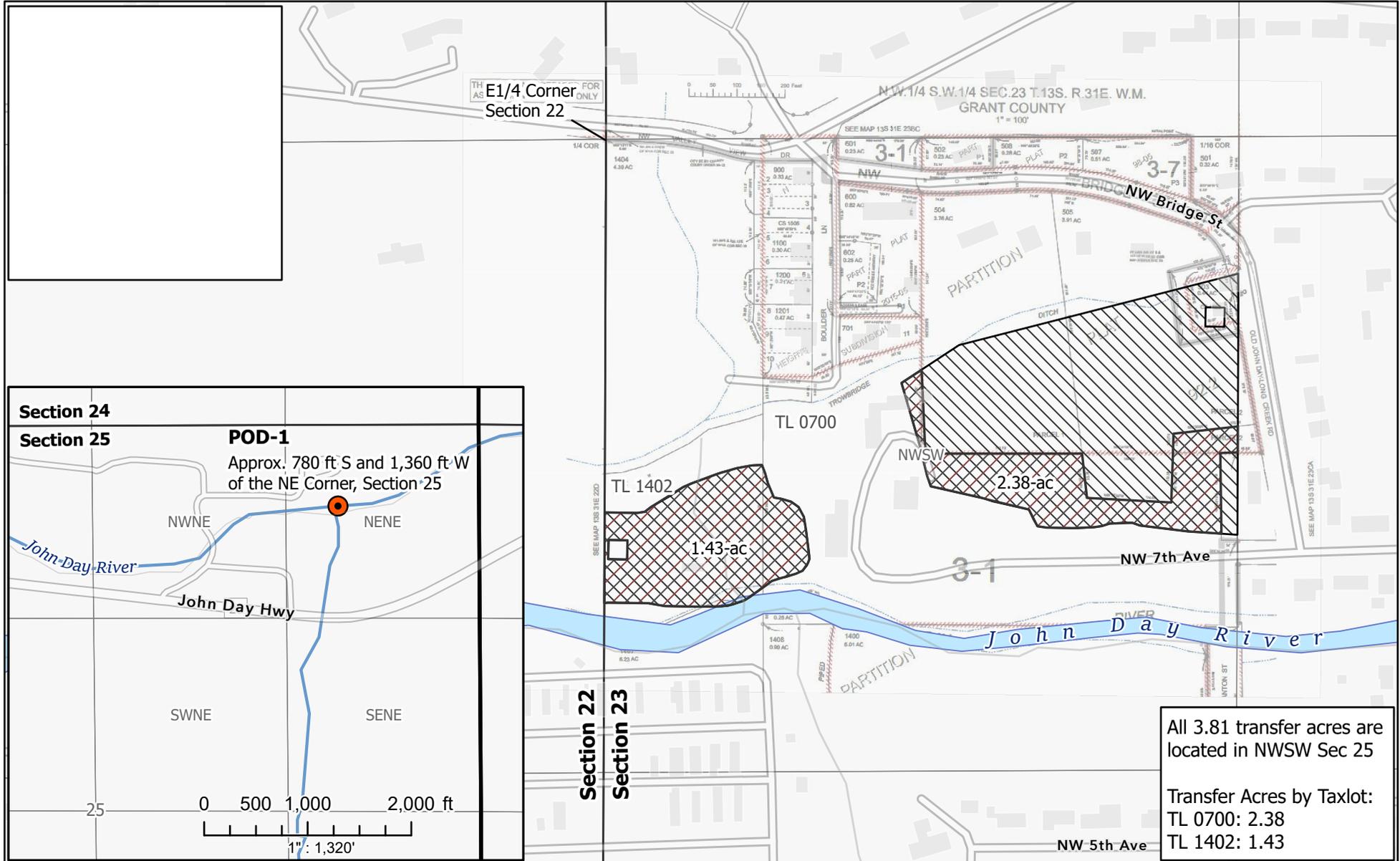
Attachment 3
Instream Transfer Map
Certificate 84780, T13S, R31E, Sec 22

1	DATE	AUTH	DRAFT
No.	Date	By	Revisions



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





All 3.81 transfer acres are located in NWSW Sec 25

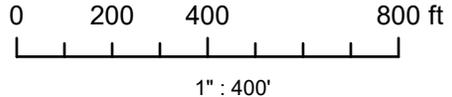
Transfer Acres by Taxlot:
 TL 0700: 2.38
 TL 1402: 1.43



1319 SE MLK Jr. Blvd, Suite 204
 Portland, Oregon 97214
 (503) 954-1326

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

1	DATE	AUTH	DRAFT
No.	Date	By	Revisions



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



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

Application for Water Right Transfer

Evidence of Use Affidavit

ATTACHMENT 5
INSTREAM TRANSFER APPLICATION FOR
CERTIFICATES 36368, 85675, 87480, & 25786

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

State of Oregon)
) ss
 County of WASHINGTON)

I, AARON LIEUALLEN, in my capacity as PROJECT MANAGER OF THE CITY OF JOHN DAY (APPLICANT),

mailing address 450 EAST MAIN STREET

telephone number (541) 575-0028, being first duly sworn depose and say:

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

- Personal observation Professional expertise

2. I attest that:

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

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

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

OR

- Confirming Certificate # has been issued within the past five years; **OR**
- Part or all of the water right was leased instream at some time within the last five years. The instream lease number is: _____ (Note: If the entire right proposed for transfer was not leased, additional evidence of use is needed for the portion not leased instream.); **OR**
- The water right is not subject to forfeiture and documentation that a presumption of forfeiture for non-use would be rebutted under ORS 540.610(2) is attached for **Certificates 36368, 85675, 87480, & 25786**
- Water has been used at the actual current point of diversion or appropriation for more than 10 years for Certificate # _____ (For Historic POD/POA Transfers)
3. The water rights were used for: (e.g., crops, pasture, etc.): **industrial uses for lumber industry (Certs. 36368, 85677, & 87480) and for crop irrigation (Cert. 25786).**

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

Signature of Affiant

Date

Signed and sworn to (or affirmed) before me this ____ day of _____, 20____.

Notary Public for Oregon

My Commission Expires: _____

Supporting Documents	Examples
<input type="checkbox"/> Copy of a water right certificate that has been issued within the last five years.	Copy of confirming water right certificate that shows issue date
<input type="checkbox"/> Copies of receipts from sales of irrigated crops or for expenditures related to use of water	<ul style="list-style-type: none"> ● Power use records for pumps associated with irrigation use ● Fertilizer or seed bills related to irrigated crops ● Farmers Co-op sales receipt
<input type="checkbox"/> Records such as FSA crop reports, irrigation district records, NRCS farm management plan, or records of other water suppliers	<ul style="list-style-type: none"> ● District assessment records for water delivered ● Crop reports submitted under a federal loan agreement ● Beneficial use reports from district ● IRS Farm Usage Deduction Report ● Agricultural Stabilization Plan ● CREP Report
<input type="checkbox"/> Aerial photos containing sufficient detail to establish location and date of photograph	<p>Multiple photos can be submitted to resolve different areas of a water right. If the photograph does not print with a “date stamp” or without the source being identified, the date of the photograph and source should be added.</p> <p>OSU – www.oregonexplorer.info/imagery OWRD – www.wrd.state.or.us Google Earth – earth.google.com TerraServer – www.terra-server.com</p>
<input type="checkbox"/> Approved Lease establishing beneficial use within the last 5 years	Copy of instream lease or lease number
<input checked="" type="checkbox"/> Rebuttal of Presumption Forfeiture for Period of Non-use	Rebuttal of Forfeiture Letter

August 16, 2023

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

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

Dear OWRD Staff,

This letter is intended to act as a supporting document for the Evidence of Use Affidavit for the City of John Day's (City) instream transfer application. Specifically, the City intends to rebut the presumption of cancellation of the rights proposed for transfer due to non-use. The City's application proposes the permanent transfer of four water rights instream in the John Day River. The four water rights included in this application are Certificates 36368, 85675, 87480 (all industrial use), and 25786 (irrigation), all with points of diversion (PODs) on the John Day River.

The City acquired the properties on which these water rights are located through multiple purchases between about 2017 and 2020. Certificates 36368 and 85675 are both located fully within the former Oregon Pine Products property (Taxlot 0300), while a portion of Certificate 87480 is located there. The City passed a resolution to appropriate funds to purchase the Oregon Pine property (Resolution 17-768-04) and did so in 2017. The remainder of Certificate 87480 is located on the former Iron Triangle property (Taxlot 2700), which was purchased by the City in 2020 (Resolution 20-850-23). In the case of Certificate 25786, the City already owned a portion of the place of use as part of the City's wastewater treatment plant.

The City acquired the properties described above in preparation for several major land improvement projects, including the City's Innovation Gateway Adaptive Water Reuse program (Gateway). As part of a 2021 grant application to OWRD for funding related to the Gateway project, the City proposed transferring the water rights associated with these properties instream. When the grant was approved, the OWRD added a condition (#17) to transfer the proposed rights instream if eligible.

In order to fulfil condition #17 of the funding grant, the City must demonstrate evidence of use of the water rights or rebut the presumption of cancellation due to non-use. Three of the certificates proposed for instream transfer are industrial use related to former lumber mills and staging sites. The lumber industry at the properties in question was inactive for some time before the City purchased the land and acquired the water rights. Similarly, the irrigation right associated with the City's wastewater treatment plant area has not been applicable due to land use changes in the place of use, as well as between the upstream POD and place of use.

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

“Upon a showing of failure to use beneficially for five successive years, the appropriator has the burden of rebutting the presumption of forfeiture by showing that the water right

is for use of water, or rights of use, acquired by cities and towns in this state, by appropriation or by purchase, for all reasonable and usual municipal purposes.”

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

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

Cancellation of the water rights in this instream transfer application would hinder the City’s ability to meet the conditions of its Gateway project funding grant and would therefore impair the City’s ability to use the water for proposed conservation efforts and land improvements along the John Day River riparian area.

In the case of industrial use Certificates 36368, 85675, 87480, non-use of the water prior to the City’s acquisition of the associated lands was due to economic hardship. The City is therefore also able to rebut cancellation under ORS 540.610(2)(d):

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

The industrial use certificates are under several different holder names: San Juan Lumber, Prairie Wood Products, and Oregon Pine Products. However, these companies represent various ownership phases of what most recently became the D.R. Johnson Lumber facility. The lumber industry has been struggling in the John Day area for decades due to market shifts and forestry changes. Grant County lumber mills produced 290-300 million board-feet per year in the late 1980s. Production dropped to less than 100 million board-feet by the late 1990s and to only 20 million board-feet by the 2008 financial crisis (Blue Mountain Eagle, June 17, 2019). This dramatic decline in the lumber industry led to the closure of Prairie Wood Products mill in 2008, though some activity has recently been resumed by D.R. Johnson (Oregon Public Broadcasting, July 21, 2022; Blue Mountain Eagle, December 21, 2022). Two of the three major lumber mills in John Day closed due to the downturn in 2008 (Blue Mountain Eagle, December 20, 2018; Forest Policy, April 11, 2021), with the third, Malheur Lumber, only narrowly escaping the same result (Timber West, September 2017).

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

The City's proposed instream transfers will conserve flow in the John Day River and provide an ecological benefit. The cancellation of these water rights through forfeiture would make that water subject to appropriation once again (ORS 540.610(5)). Approving the instream transfer with the above rebuttal of cancellation will therefore provide a greater benefit to the river.

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

Sincerely,

CwM H2O, L.L.C.



Robert Long, CWRE

Timber West, September 2017

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

Blue Mountain Eagle, December 20, 2018

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

Blue Mountain Eagle, June 17, 2019

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

Forest Policy, April 11, 2021

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

Oregon Public Broadcasting, July 21, 2022

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

Blue Mountain Eagle, December 21, 2022

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



August 16, 2023

City of John Day
Attn: *Planning Department*
450 East Main Street
John Day, OR 97845

RE: LAND USE NOTIFICATION FOR OWRD INSTREAM TRANSFER APPLICATION

Dear City of John Day Planning Department staff,

As part of various water rights processes, the Oregon Water Resources Department (OWRD) requires applicants to provide written notification to local land use jurisdictions. These notifications ensure that local governments can confirm that the proposed water use or change to water use is compatible with area land uses and comprehensive plans.

As such, the City of John Day is providing this notification of their intent to file an application to transfer several water rights to instream purposes in the John Day River. The water rights proposed for instream transfer are all located on City-owned properties and include:

- The entirety of industrial use Certificate 36368 for 0.50 cfs
- The entirety of industrial use Certificate 85675 for 0.15 cfs
- The entirety of industrial use Certificate 87480 for 0.375 cfs
- A portion of irrigation use Certificate 25786 for 0.095 cfs

The proposed instream transfers are permanent and include the entire water right periods of use. The City intends for the instream transfers to improve ecological flows in a reach of the John Day River from its confluence with Canyon Creek to the western edge of the city limits (T13S, R31E, Section 22, SW-SW).

Please let us know if you have any questions regarding the proposed application or are interested in receiving additional information from the City.

Sincerely,

CwM H2O, L.L.C.

A handwritten signature in blue ink, appearing to read "RL2", is positioned above the name Robert Long.

Robert Long, CWRE



August 16, 2023

Grant County
Attn: *Planning Department*
201 South Humbolt Street
Suite 208
Canyon City, OR 97820

RE: LAND USE NOTIFICATION FOR OWRD INSTREAM TRANSFER APPLICATION

Dear Grant County Planning Department staff,

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Please let us know if you have any questions regarding the proposed application or are interested in receiving additional information from the City.

Sincerely,

CwM H2O, L.L.C.

A handwritten signature in blue ink, appearing to read "RL2", is placed over a faint, light blue rectangular background.

Robert Long, CWRE