

## Municipal Water Right Transfer – Land Ownership Confirmation

**To:** Casey Myers, *Public Works Director*  
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**From:** Robert Long, *RG, LHG, CWRE*

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**Subject:** Response to Concerns of Water Right Ownership and Transfer

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Regarding the potential transfer of water rights from lands formerly known as the Oregon Pine Products site (Certificate 85675 for Industrial and Manufacturing use). The City reports that there is some citizen concern that recent transfer applications completed by the City may include water rights on land not owned by the City but within the boundary that identifies the place of use in Certificate 85675. In this situation the City cannot transfer water rights from any property that it does not own without the owners' written and notarized consent. City land ownership must be documented by an independent title insurance company that will issue a title report during the transfer process.

The final land ownership information, i.e., a current title (less than 90 days old) is required by Oregon Water Resources Department (OWRD), but not until the transfer application is conditionally approved and a *Draft Preliminary Decision* is issued by OWRD. The processing time between the submittal of the transfer application and the *Draft Preliminary Determination* can be a year or years apart, which is why the agency waits for the final land ownership confirmation. After the *Draft Preliminary Determination* is issued the ownership must be confirmed and any changes amended in the transfer application. This ensures that the final due diligence on land ownership occurs just before any change in the water right is made.

OWRD requirements include the following before completing a water right transfer:

***REQUIRED: You must submit a Report of Ownership for the lands where the water right(s) are currently located (i.e., the FROM lands). This report: a) Must be prepared by a title company; b) Shall include a "prepared by" statement and the date the title company prepared the report printed on the cover sheet; c) Must: i. Be prepared no earlier than 3 months prior to the date of issuance of the Draft Preliminary Determination showing***

**current ownership; OR ii. Be prepared within 3 months of the date the water right conveyance agreement was recorded; OR iii. Show ownership for the FROM land at the time a water right conveyance agreement was recorded. If water right conveyance agreements are involved, it is helpful to provide copies of those agreements along with the Report of Ownership.**

**IMPORTANT: In order for the Department to clearly understand the date that the title company prepared the Report of Ownership, the title company must indicate/state the date that they prepared the report on the coversheet and/or first page of the report. d) Must include a list of owners at the time the report was generated; AND e) Must include a legal description of the property where the water right to be transferred is currently located (i.e., the FROM lands). 5. You must provide a notarized statement of consent signed by any landowner listed in the Report of Ownership who is not already included in the transfer application. The Department's statement of consent form (Consent By Deeded Landowner) is available at:  
[https://www.oregon.gov/OWRD/WRDFormsPDF/consent\\_to\\_transfer\\_form.pdf](https://www.oregon.gov/OWRD/WRDFormsPDF/consent_to_transfer_form.pdf)**

Please note that CwM H2O (CwM) has relied on the City to provide the property descriptions for the transfers and on the Grant County website for tax lot descriptions as the best available information. It is possible that there have been changes in ownership information from the time that the City provided the information, and the transfer applications were submitted. CwM will amend any documented changes in ownership if the *Draft Preliminary Determination* finds that the transfer is likely to be approved. All changes must be documented in the final title report.

CwM reviewed the Grant County website in the past week and noted that tax lots on Oregon Pine site are different than depicted in the transfer map prepared. A revision of tax lot boundaries might be required for the transfer application maps if it is found that some private lands overlap the boundaries claimed by the City in the water right transfer maps. CwM will amend the transfer map based on the final title report if a favorable *Draft Preliminary Determination* is issued by OWRD.

Unfortunately for private land owners claiming a portion of the water right (Certificate 85675) contained in the transfer applications, the water right is presumed cancelled for non-use and the municipal interest is only for the lands the City owns. The private owners making a partial claim will have to prove continuous beneficial use, and that the use is in compliance with the terms and conditions of Certificate 85675. To meet the beneficial use criteria, they may have to show beneficial use of the water right on their property for the past 15 years without an interruption of more than five years in order to maintain their portion of the water right, otherwise it will likely remain cancelled, and the owner will not have access to the water right previously held by Oregon Pine Products.

If parts of the Oregon Pine water right are now on private third-party property, the water right is still presumed cancelled. That private owner is obligated to show that their use has been continuous and without a gap of more than five years and that their use is in compliance with the original certificate which includes the type of use, place of use, point of diversion, rate of use, and duty (total volume allowed under the right if any). Otherwise OWRD will issue a notice of

cancellation to the property owner with a timeline for final cancellation. The notification will provide some time for the property owner to rebut the cancellation in the manner discussed previously.

Most residential properties do not bother with all of the red tape required to maintain older subdivided water rights because under current state rules they can get an automatic exempt water right with the installation of a residential well that provides 15,000 gallons per day of residential use (non-irrigation), 5,000 gallons per day of commercial use (non-irrigation) and the ability to irrigate up to one ½ acre of garden or lawn (non-commercial).

In summary, OWRD presumes that Certificate 85675 at the Oregon Pine site is canceled due to non-use. The City has filed for transfer to permanent instream use based on the requirements of a grant the City seeks to use for municipal infrastructure. In doing so the City is rebutting the presumed cancellation of the water right due to non-use on the basis of municipal interest in the future use of the water, which is a privilege allowed to Cities based on state law and rules. The City cannot transfer water rights from properties that it does not own and has to show a current title report proving ownership of any water rights transferred before the water right is reissued for a new use, in this case permanent instream transfer.

Private properties that may be within the boundary of the Oregon Pine Products water right based on the original water right map for Certificate 85675, if any, will be removed from the City's transfer application based on the final title report. Private owners with claims to portions of the Oregon Pine water right should seek legal counsel as to how they might clarify their claim and confirm their water rights. Owners should also check the certificate number of their water rights as there might be other water rights in addition to Certificate 85675 with different uses on the same lands. Private land owners are also advised to request assistance from the regional Oregon Watermaster to identify the place of use, type of use, point of diversion and other conditions that might be required for continuous use of their water right.