

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

In the Matter of Instream Lease)	DETERMINATION and
Applications IL-716, IL-1095, and IL-1094,)	FINAL ORDER ON PROPOSED
Douglas County)	INSTREAM LEASE

Authority

Oregon Revised Statute (ORS) 537.348 establishes the process in which a water right holder may submit a request to lease an existing water right for instream purposes. Oregon Administrative Rule (OAR) Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

Lessor

International Paper Co.
PO Box 9
Gardiner, OR 97441
Norb.wondra@ipaper.com

Findings of Fact

1. On July 7, 2015, International Paper Company (the Lessor) filed an application to renew instream lease IL-716, involving a portion of Certificate 80656. Certificate 80656 allows the use of live flow from Tahkenitch Lake and Siltcoos Lake and also allows the use of stored water from Tahkenitch Lake Reservoir and Siltcoos Lake Reservoir.
2. International Paper also filed applications with the Department to renew instream leases IL-1095 and IL-1094, involving portions of Certificates 80658 and 80657. Certificates 80658 and 80657 allow the storage of water in Tahkenitch Lake Reservoir and Siltcoos Lake Reservoir, respectively.
3. By rule, the water right to store water or the secondary right to use stored water may be leased to instream use. OAR 690-077-0076 (1)(a)(c)
4. Based on additional conversations with Dave Williams, Oregon Water Resource Department Watermaster, and David Filippi, attorney for International Paper Company, the reservoirs continue to be operated under the terms and conditions described in each of the storage right certificates. A change in the storage and operation of each reservoir requires consultation with the Oregon Department of Fish and Wildlife, public notice and public meetings.
5. When a reservoir right (the right to store water) is leased, all or a portion of the water stored is no longer stored for the duration of the lease. Rather water is left instream as live flow.

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either 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.

Since water continues to be stored in each reservoir consistent with the terms and conditions of Certificates 80658 and 80657, based upon the Department's current understanding of applicable rules and statutes, the Department has determined that Instream Lease Applications IL-1095 and IL-1094 may not be renewed. In addition, the use of stored water from both reservoirs under secondary water right Certificate 80656 has been leased instream as part of Instream Lease IL-716. Since the secondary use of stored water has been leased instream and is requested to continue being leased instream, the rights to store water may not also be leased to instream use. Instead, water may be released from the reservoirs for instream use under Instream Lease IL-716.

6. The secondary right to use water from each of the reservoirs, Certificate 80656, allows the use of water from both live flow and stored water. Specifically, this right allows the use of 6.65 Cubic Feet per Second (CFS), with a priority date of March 16, 1955, and 19.65 CFS, with a priority date of November 9, 1955, to be appropriated from Tahkenitch Lake and Tahkenitch Reservoir, constructed under Permit R-2342 (Certificate 80658), for manufacturing. Certificate 80656 also allows the use of 12.42 CFS, with a priority date of March 16, 1955, from Siltcoos Lake and Siltcoos Reservoir, constructed under permit R-2341 (Certificate 80657), for supplemental manufacturing. The maximum volume that may be diverted under Certificate 80656 is 17,374 Acre-Feet (AF) in a 365 day calendar year and 17,422 AF in a 366 day calendar year.
7. Under IL-716, the Lessor has requested to lease all but a portion of Certificate 80656 to instream use. The Lessor has requested that 4.8 CFS (3475 AF) remain available for use under the March 16, 1955 priority date from Tahkenitch Lake and Tahkenitch Reservoir. The lessor has also requested that 4.8 CFS (3475 AF) remain available for supplemental use from Siltcoos Lake and Siltcoos Reservoir under the March 16, 1955 priority date.
8. The portion of the right to be leased is as follows:

Certificate:	80656 in the name of International Paper Company (perfected under Permit S-26724)
Use:	Manufacturing and Supplemental Manufacturing
Priority Date:	March 16, 1955 and November 9, 1955
Quantity:	Primary - March 16, 1955 Priority Date: Rate: 1.85 CFS Volume: 1196 AF Primary - November 9, 1955 Priority Date: Rate: 19.65 CFS Volume: 12,703 AF Supplemental - March 16, 1955 Priority Date: Rate: 7.62 CFS Volume: 5517 AF
Source:	Primary: Tahkenitch Lake and Tahkenitch Reservoir, constructed under Permit R-2342, tributary to the Pacific Ocean Supplemental: Siltcoos Lake and Siltcoos Reservoir, constructed under Permit R-2341, tributary to the Pacific Ocean

Authorized Points of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Measured Distances
21 S	12 W	WM	4	SE SE	5	TAHKENITCH LAKE DIVERSION: 860 FEET NORTH AND 200 FEET WEST FROM THE SE CORNER OF SECTION 4
20 S	12 W	WM	29	NE NW	2	TAHKENITCH DAM
20 S	12 W	WM	14	NW NE	5	SILTCOOS LAKE DIVERSION: 100 FEET SOUTH AND 2580 FEET WEST FROM THE NE CORNER OF SECTION 14
19 S	12 W	WM	33	SW NE	4	SILTCOOS DAM

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	DLC
21 S	12 W	WM	15	S ½ NW ¼		
21 S	12 W	WM	15	NE ¼ SW ¼	3	
21 S	12 W	WM	15	NW ¼ SW ¼	2	
21 S	12 W	WM	15	SW ¼		37
21 S	12 W	WM	15	SW ¼ SE ¼		37

9. Certificate 80656 does not specify the period of allowed use. However, the use of water for manufacturing is assumed to be a year-round use.
10. The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.
11. At the primary rates requested, water may not be leased instream without exceeding the volume limitations and enlarging the water right. To prevent any injury or enlargement, the primary instream rates have been reduced to protect the full volumes year-round.
12. The instream use has been modified from the original lease application, submitted to the Department on March 23, 2006, to prevent injury and enlargement and is as follows:

Primary Instream Use

Tahkenitch Lake and Tahkenitch Reservoir, constructed under permit R-2342, tributary to the Pacific Ocean

Instream Reach: From Tahkenitch Dam (as described in Finding of Fact No. 8) to the mouth of Tahkenitch Creek at the Pacific Ocean

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
80656	3/16/1955	1.65	1196	January 1 through December 31
	11/9/1955	17.55	12703	

Supplemental Instream Use

Siltcoos Lake and Siltcoos Reservoir, constructed under permit R-2341, tributary to the Pacific Ocean

Instream Reach: From Siltcoos Dam (as described in Finding of Fact No. 8) to the mouth of Siltcoos River at the Pacific Ocean

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
80656	3/16/1955	7.62	5517	January 1 through December 31

13. Other conditions to prevent injury and enlargement are:

All or a portion of water leased to instream use may come from water stored in Tahkenitch Lake Reservoir under Certificate 80658 or from water stored in Siltcoos Lake Reservoir under Certificate 80657.

Use of water from Siltcoos Lake and Siltcoos Lake Reservoir is supplemental to Tahkenitch Lake and Tahkenitch Lake Reservoir. The portion of Certificate 80656 leased to instream use from Siltcoos Lake and Siltcoos Lake Reservoir may only be protected instream if the full instream rates and volumes from Tahkenitch Lake and Tahkenitch Lake Reservoir are not available anytime during the instream period.

14. The amount and timing of the proposed instream flow is allowable within the limits and use of Certificate 80656.

15. The protection of flows within the proposed reach is appropriate, considering:

- a. The instream water use begins at the recorded points of diversion;
- b. The location of confluences with other streams downstream of the points of diversion;
- c. There are no known areas of natural loss of streamflow to the river bed 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 reach of the instream water right.

16. The total monthly quantities of water to be protected under any existing and the proposed instream rights in the reach will provide for a beneficial purpose.

17. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.

18. If approved, this instream lease is not reasonably expected to significantly affect land use as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.

19. Based upon review of the application, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not

result in injury or enlargement. The order approving this instream lease may be modified or revoked under OAR 690-077-0077 if the Department later finds that the lease is causing injury to any existing water right or enlargement of the original right.

20. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed under an allocation of conserved water, a new injury review shall be required. For example, instream transfers will be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380 and Division 077. Approval of this lease does not establish a precedent for approval of any future transactions.
21. The Lessor has requested that the lease terminate on December 31, 2020. The lease may commence on the date this final order is signed.
22. The Lessor has requested the option of terminating the lease early with written notice to the Department.

Conclusions of Law

The Department concludes that the renewal of Instream Lease IL-716 will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

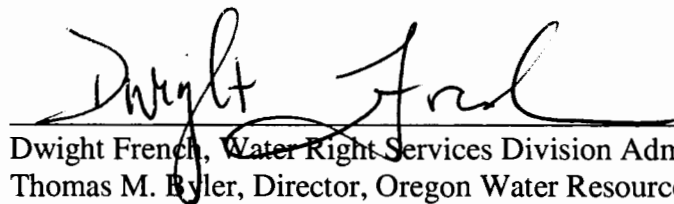
Pursuant to the Department's current interpretation of applicable statutes and rules, the Department concludes that request to renew Instream Lease Applications IL-1095 and IL-1094 does not meet the requirements to suspend use (appropriation of water for storage) and would result in enlargement and, therefore, may not be renewed. OAR 690-077-0077

Now, therefore it is ORDERED:

1. Instream Lease IL-716 as described herein is APPROVED.
2. The renewal of Instream Lease IL-1094 and IL-1095 may not be approved as described in Finding of Fact Nos. 4 and 5.
3. During each year of the term of the lease, the former place of use may continue to receive up to 4.8 CFS (4375 AF) under Certificate 80656.

4. The term of the lease will commence upon approval of the instream lease and terminate on December 31, 2020. For multiyear leases, the lessor *shall* have the option of terminating the lease any time each year with written notice to the Department. However, if the termination request is received less than 30-days prior to the instream use period (January 1 through December 31) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 2 day of June, 2016.


Dwight French, Water Right Services Division Administrator, for
Thomas M. Buler, Director, Oregon Water Resources Department

Mailing date: _____

This document was prepared by Laura Wilke and if you have any questions, please call 503-986-0884.