

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

In the Matter Instream Lease IL-1095,)	DETERMINATION and
Certificate 80658,)	FINAL ORDER ON PROPOSED
Douglas County)	INSTREAM LEASE

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. OAR Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating short-term instream lease applications.

Lessor

Attention: Norb Wondra
International Paper Company
P.O. Box 854
Gardiner, Oregon 97441

Findings of Fact

1. On August 2, 2010 the International Paper Company filed an application to renew Instream Lease Application L-718. The Department assigned the application number IL-718.
2. The Department's review of the Applicant's request to renew Instream Lease Application IL-717 revealed several scrivener's in the Final Order approving Instream Lease L-718. To avoid any confusion that may have resulted from the scrivener's error, the Department re-designated Instream Lease IL-718 to IL-1095. The Department also published notice of proposed Instream Lease IL-1095 on August 17, 2010.
3. Per the applicant's letter of March 21, 2006, the rights being requested to be leased are set forth below. Note that this summary of the request incorporates duty amounts that are consistent with the applicant's March 21, 2006 letter:

Certificate: 80658 in the name of INTERNATIONAL PAPER CO. (perfected under Permit R-2342)

Use: MANUFACTURING USE

Priority Date: AUGUST 3, 1955, NOVEMBER 9, 1955

Amount: 13,105 ACRE FEET (AF) to be leased being 7,525 AF of 8/3/1955 and 5,580 AF of 11/9/1955; 3,475 AF of 8/3/1955 not being leased (4.8 cfs*365 days = 3,475 AF).

Source: TAHKENITCH CREEK, tributary to PACIFIC OCEAN

<p>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.</p>

The dam is located as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
20 S	12 W	WM	29	NE NW	2	Tahkenitch Dam

- The lease application includes the information required under OAR 690-077-0077(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(6). No comments were received.
- The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

TAHKENITCH CREEK tributary to PACIFIC OCEAN

Instream Point: At the POD, as described in Finding of Fact #3

Certificate	Priority Date	Instream Amount	Period Protected Instream
80658	AUGUST 3, 1955,	7,525 AF	January 1 – December 31
	NOVEMBER 9, 1955	5,580 AF	

- Based upon review of the application, comments received, information provided by the Department’s Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. This finding is made through an abbreviated review recognizing that the 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.
- If a right which has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077-0070 or OAR 690-077-0075 a new injury review shall be required. 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 future leases or transfers.
- The Lessor requested that the lease commence on December 31, 2010 and terminate on December 31, 2015. December 31, 2010 is the last day of the current lease; therefore, the proposed lease will commence January 1, 2011.
- 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 lease will not result in injury or enlargement, OAR 690-077-0077. The lease agreement conforms to the applicable provisions of OAR 690-077-0015.

ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease as described herein is APPROVED.
2. The former place of use shall no longer receive water as part of these rights during the term of the lease, except that the former place of use may continue to receive 3475 AF (4.8 CFS), which is the portion of the rights not being leased.
3. The lessor *shall* have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is not received prior to December 1, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.
4. The lease will commence on January 1, 2011 and terminate on December 31, 2015.

Dated at Salem, Oregon this 13 day of December 2010.


Phillip C. Ward, Director

Mailing date: DEC 15 2010