

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

In the Matter of the Renewal of Instream        )     DETERMINATION and  
Lease Application IL-716, Certificate            )     FINAL ORDER ON PROPOSED  
80656, Douglas County                            )     INSTREAM LEASE

**Authority**

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 instream lease applications.

**Lessor #1**

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 L-716, involving a portion of Certificate 80656 for instream use. The Department assigned the application number IL-716.
2. On March 21, 2006 the Applicant requested that the Department modify the lease application to leave 4.8 CFS available to maintain the Applicant's effluent drainage system. The requested changes were approved in the prior lease, L-716, and are incorporated in the rate and duty as described below.
3. The portion of the first right to be leased is as follows:

**Certificate:** 80656 in the name of International Paper Company

**Limit:** The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 26.30 CFS and not exceed a maximum duty of 17,374 acre-feet in a 365-day calendar year and 17,422 acre-feet in a 366-day calendar year, or its equivalent in case of rotation, measured at the point of diversion from the source.

**Source, Use, Rate and Priority Date:**

TAHKENITCH LAKE AND RESERVOIR: MANUFACTURING;

Being leased: 1.85 CFS and 1,196 ACRE FEET (AF), MARCH 16, 1955; 19.65 CFS and 12,703 AF, NOVEMBER 9, 1955

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.

Not being leased: 4.8 CFS and 3,475 AF, MARCH 16, 1955  
 SILTCOOS LAKE AND RESERVOIR: SUPPLEMENTAL MANUFACTURING  
 Being leased: 7.62 CFS and 5,517 AF, MARCH 16, 1955  
 Not being leased: 4.8 CFS and 3,475 AF, MARCH 16, 1955

**Authorized Point of Diversion (POD):**

| Twp  | Rng  | Mer | Sec | Q-Q   | GLot | Survey Coordinates |
|------|------|-----|-----|-------|------|--------------------|
| 19 S | 12 W | WM  | 33  | SW NE | 4    | Siltcoos Dam       |
| 20 S | 12 W | WM  | 29  | NE NW | 2    | Tahkenitch Dam     |

**Authorized Place of Use:**

| Twp  | Rng  | Mer | Sec | Q-Q      | GLot | DLC |
|------|------|-----|-----|----------|------|-----|
| 21 S | 12 W | WM  | 15  | S ½ NW ¼ |      | 37  |
| 21 S | 12 W | WM  | 15  | NE SW    | 3    | 37  |
| 21 S | 12 W | WM  | 15  | NW SW    | 2    | 37  |
| 21 S | 12 W | WM  | 15  | SW ¼     |      | 37  |
| 21 S | 12 W | WM  | 15  | SW SE    |      | 37  |

- Certificate 80656 does not specify the irrigation season. However, the season of use for Industrial water rights is January 1 through December 31.
- 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.
- The instream use has been modified from the lease application according the Applicant's request and is as follows:

TAHKENITCH LAKE AND RESERVOIR tributary to Pacific Ocean

**Instream Reach:** From the POD, as described in Finding of Fact #3, to the confluence with the Pacific Ocean

| Certificate | Priority Date    | Instream Rate (cfs) | Period Protected Instream |
|-------------|------------------|---------------------|---------------------------|
| 80656       | MARCH 16, 1955   | 1.65                | January 1 – December 31   |
| 80656       | NOVEMBER 9, 1955 | 17.55               | January 1 – December 31   |

- Other conditions to prevent injury and enlargement are:

The maximum allowable rate of the Tahkenitch Lake and Reservoir portion of Certificate 80656 to be leased has been reduced so that the duty is not exceeded. In other words, taking into account the 4.8 CFS (3,475 AF) that is not being leased, the maximum allowable rate of the Tahkenitch Lake and Reservoir portion of Certificate 80656 to be leased was reduced from a total of 21.5 CFS to a total of 19.2 CFS (13,899 AF) so that the maximum duty authorized in Certificate 80656 (17,374 AF) is not exceeded. Any deficiency in the Tahkenitch Lake and Reservoir portion of Certificate 80656 shall be made up by protecting up to 7.62 cfs from Siltcoos Lake and Reservoir from POD (as described in Finding of Fact #3) to the Pacific Ocean.

- The Siltcoos Lake and Reservoir portion of Certificate 80656 is supplemental to the Tahkenitch Lake and Reservoir portion of Certificate 80656. The Siltcoos Lake and Reservoir portion of Certificate 80656 being leased instream shall only be protected instream

if the full rate and duty under the Tahkenitch Lake and Reservoir portion of Certificate 80656 are not available during the period for which water is being leased instream.

9. 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.
10. 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.
11. 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.
12. 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.
13. 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 conforms to the applicable provisions of OAR 690-077-0015.

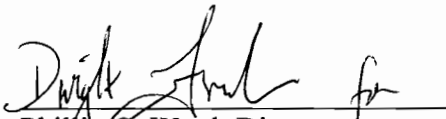
### **ORDER**

Therefore, it is ORDERED:

1. That the 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 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

The order approving this lease was prepared by Kody Thurgood. If you have any questions about the information in this document, you may reach me at 503-986-0892 or [Kody.J.Thurgood@wrд.state.or.us](mailto:Kody.J.Thurgood@wrд.state.or.us)