

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

In the Matter of Transfer Application) FINAL ORDER
T-12773, Linn and Polk Counties) APPROVING A CHANGE FROM A
) SURFACE WATER POINT OF
) DIVERSION TO GROUNDWATER
) POINTS OF APPROPRIATION, A
) CHANGE IN POINT OF DIVERSION, A
) CHANGE IN PLACE OF USE, AND A
) CHANGE IN CHARACTER OF USE

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

Applicant

INTERNATIONAL PAPER COMPANY
6400 POPLAR AVE
MEMPHIS, TN 38197

Receiving Water User

CITY OF INDEPENDENCE
P.O. BOX 7
INDEPENDENCE, OR 97351

Findings of Fact

1. On November 20, 2017, INTERNATIONAL PAPER COMPANY filed an application to change from a surface water point of diversion to groundwater points of appropriation, a change in point of diversion, to change the place of use, and to change the character of use under Certificate 54268. The Department assigned the application number T-12773.
2. The City of Independence, PO Box 7, Independence, OR 97351 is the receiving water user who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on November 28, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On May 9, 2013, the Department received a notice for specific to general industrial use change under Certificate 54268 per ORS 540.520(9). The authorized place of use resulting from this notice is described in Finding No. 10.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may 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.

5. On September 14, 2018, the applicant submitted an amended application page, geologist report and map to correct the locations of the requested wells.
6. On September 17, 2014, the applicant filed Instream Lease IL-1434. On December 5, 2014, the Department issued a final order recorded at Special Order Volume 93, Pages 900-906, that approved the lease for a 15.0 cubic foot per second (cfs) portion of Certificate 54268.
7. On March 13, 2019, the applicant filed an application to renew Instream Lease IL-1434. On March 29, 2019, the Department issued a final order recorded at Special Order Volume 112, pages 839-844, that approved the renewal of Instream Lease IL-1434.
8. On November 4, 2019, Instream Lease IL-1434 was partially terminated to remove 2.0 cubic feet per second (cfs) portion of Certificate 54268 from the instream lease by request of the applicant. The termination order was recorded at Special Order Volume 114, Page 326.
9. On February 11, 2019, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12773 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 12, 2019, for the applicant to respond.
10. On March 5, 2019, the applicant's agent requested that the Department amend the draft Preliminary Determination. The applicant requested clarification of the description of previous transfer application amendments, correction of the instream lease number, modifying the draft Preliminary Determination to reflect International Paper's specific to general industrial use notice authorized under ORS 540.520(9), and to correctly describe the applicant's proposed transfer completion date.
11. On March 26, 2019, the Department sent a copy of the revised draft Preliminary Determination to approve Transfer Application T-12773 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of April 25, 2019 for the application to respond. The applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer and requested that the Department proceed with issuance of a Preliminary Determination.
12. On July 19, 2019, the Department issued a Preliminary Determination proposing to approve Transfer T-12773 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on July 23, 2019 and in the Polk County Itemizer-Observer newspaper on July 24 and 31, 2019, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

13. The portion of the right to be transferred is as follows:

Certificate: 54268 in the name of WILLAMETTE INDUSTRIES, INC. (perfected under Permit S-23102)

Use: INDUSTRIAL/MANUFACTURING

Priority Date: DECEMBER 23, 1954

Rate: 2.0 CUBIC FEET PER SECOND

Source: WILLAMETTE RIVER, tributary of the COLUMBIA RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|------|-----|-----|-----|-------|-----|---|
| 10 S | 3 W | WM | 32 | NE NE | 44 | 1260 FEET SOUTH AND 1220 FEET WEST FROM THE NE CORNER OF SECTION 32 |

Authorized Place of Use:

| INDUSTRIAL/MANUFACTURING | | | | | |
|--------------------------|-----|-----|-----|-----|-------|
| Twp | Rng | Mer | Sec | DLC | Q-Q |
| 10 S | 3 W | WM | 21 | 47 | SW SE |
| 10 S | 3 W | WM | 21 | 47 | SE SE |
| 10 S | 3 W | WM | 28 | 47 | NE NE |
| 10 S | 3 W | WM | 28 | 47 | NW NE |
| 10 S | 3 W | WM | 28 | 47 | SW NE |
| 10 S | 3 W | WM | 28 | 47 | NE NW |
| 10 S | 3 W | WM | 28 | 47 | SE NW |
| 10 S | 3 W | WM | 28 | 44 | NE SW |
| 10 S | 3 W | WM | 28 | 47 | NE SW |
| 10 S | 3 W | WM | 28 | 44 | SE SW |
| 10 S | 3 W | WM | 28 | 47 | NE SW |
| 10 S | 3 W | WM | 28 | 44 | NW SE |
| 10 S | 3 W | WM | 28 | 47 | NW SE |
| 10 S | 3 W | WM | 28 | 44 | SW SE |
| 10 S | 3 W | WM | 28 | 47 | SW SE |

14. Transfer Application T-12773 proposes to change the point of diversion approximately 13.5 miles downstream to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|--|
| 8 S | 4 W | WM | 28 | SW SE | 260 FEET NORTH AND 3400 FEET EAST FROM THE SW CORNER OF SECTION 28 |

15. Transfer Application T-12773 proposes to change from a surface water point of diversion to groundwater points of appropriation (wells) with approximate distances in miles from the existing point of diversion to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances | Approximate distance in miles |
|-----|-----|-----|-----|-------|--|-------------------------------|
| 8 S | 4 W | WM | 33 | NW NE | WILLAMETTE WELL 1 - 260 FEET SOUTH AND 1915 FEET WEST FROM THE NE CORNER OF SECTION 33 | 13.5 |
| 8 S | 4 W | WM | 28 | SW SE | WILLAMETTE WELL 2 - 350 FEET NORTH AND 1910 FEET WEST FROM THE SE CORNER OF SECTION 28 | 13.2 |
| 8 S | 4 W | WM | 28 | SW SE | WILLAMETTE WELL 3 - 800 FEET NORTH AND 2000 FEET WEST FROM THE SE CORNER OF SECTION 28 | 14.0 |

16. Transfer Application T-12773 proposes to change the character of use to municipal.
17. Transfer Application T-12773 proposes to change the place of use of the right to:

| |
|---|
| MUNICIPAL |
| WITHIN THE SERVICE BOUNDARY OF THE CITY OF INDEPENDENCE |

18. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new surface water point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

Transfer Review Criteria [OAR 690-380-4010(2)]

19. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
20. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right was present with the five year period prior to submittal of Transfer Application T-12773.
21. The proposed points of appropriation meet the requirements of ORS 540.531 and OAR 690-380-2130(2).
22. The proposed changes would not result in enlargement of the right.
23. The proposed changes would not result in injury to other water rights.
24. All other application requirements are met.

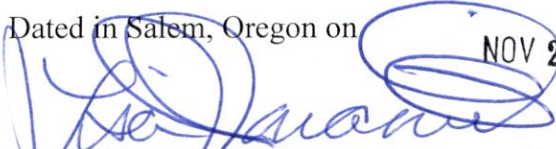
Conclusions of Law

The change in point of diversion, change from a surface water point of diversion to groundwater points of appropriation, change in place of use, and change in character of use proposed in Transfer Application T-12773 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of diversion, change from a surface water point of diversion to groundwater points of appropriation, change in place of use, and change in character of use proposed in Transfer Application T-12773 are approved.
2. Except as provided in ORS 540.510(3), the right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 54268 and any related decree.
3. Water right Certificate 54268 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. The quantity of water diverted at the new point of diversion (POD 2), and new points of appropriation (Willamette Wells 1, 2, and 3), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 1).
5. The wells from which the water is taken under this right shall be constructed so that the use of the wells will affect the surface water similarly to the use of the original authorized point of diversion.
6. The use of water under this right shall be subject to regulation consistent with other water rights from the surface water source and to all other applicable conditions and restrictions that existed at the original point of diversion.
7. The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion under the transferred portion of the right. However, if within five years after approval of the transfer, the Department receives a transfer application to return to the last authorized surface water point of diversion, the application shall be approved.
8. All applicable restrictions that existed at the original point of diversion shall apply to the proposed wells.
9. The original date of priority shall be retained. However, if within five years after approving the transfer, the Department finds the transfer results in substantial interference with existing groundwater rights that would not have occurred in the absence of the transfer, the proposed wells shall be subordinate to any existing right injured by the transferred water right.

10. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the proposed surface water point of diversion (POD-2) consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
11. The transferred portion of Certificate 54268 (2.0 cfs) shall no longer be used at the former place of use.
12. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2050**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
13. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on  NOV 21 2019

Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

Mailing Date NOV 22 2019