

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

In the Matter of the Proposed Short-Term)
Lease of Existing Water Rights for Instream)
Use, Certificate 80656, Douglas County)

DETERMINATION and
FINAL ORDER ON PROPOSED
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

International Paper Company
P.O. Box 854
Gardiner, Oregon 97441

Findings of Fact

1. International Paper Company filed an application to lease a portion of Certificate 80656 to instream use. The Department assigned the application number L-716.
2. 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: 80656 in the name of INTERNATIONAL PAPER CO. (perfected under Permit S-26724)

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

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:

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

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.

**Authorized Place of Use:
MANUFACTURING USES**

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

- 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 and the applicant's March 21, 2006 letter in order to prevent injury and enlargement and is as follows:
TAHKENITCH LAKE AND RESERVOIR tributary to Pacific Ocean

Instream Reach: From POD (as described in Finding of Fact #2) to Pacific Ocean

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

- 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 #2) to the Pacific Ocean.
- The Siltcoos Lake and Reservoir portion of Certificate 80656 is supplemental to 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.
- 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.

8. 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.
9. The applicant requested that the lease terminate on December 31, 2012. Instream leases are limited to a maximum of five years, but can be renewed. OAR 690-077-0077. Consequently, the lease will terminate on December 31, 2010.
10. The lessor has requested the option of terminating the lease early with written notice to the Department.

CONCLUSIONS OF LAW

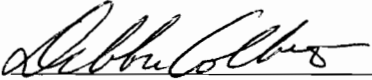
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease agreement conforms to the applicable provisions of OAR 690-077-0015.

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 4.8 CFS, which is the portion of the rights not being leased.
3. The lease shall terminate on December 31, 2010. The lessor shall have the option of terminating the lease each year, with notification to the Department by December 1 of each year.

Dated at Salem, Oregon this 22nd day of May 2006.



P31 Phillip C. Ward, Director

Mailing date: MAY 25 2006