

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-1895, Linn County) PROPOSED 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

International Paper Company
Clay Ellis, Senior V.P.
6400 Poplar Avenue, Tower III
Memphis, TN 38197
Clay.Ellis@ipaper.com

Findings of Fact

1. On February 4, 2022, International Paper Company filed an application to lease the entirety of Certificates 89604, 89606, and 91193 for instream use. The Department assigned the application number IL-1895.

2. The first right to be leased is as follows:

Certificate: 91193 in the name of Weyerhaeuser Company (perfected under Permit S-47184)
Use: Industrial/Manufacturing Use
Priority Date: October 29, 1982
Quantity: **Rate:** 4.25 CFS
Source: Willamette River, tributary to 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	1180 FEET SOUTH AND 1220 FEET WEST FROM THE NE CORNER OF SECTION 32

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC
10 S	3 W	WM	29	NW NE	46

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.

Twp	Rng	Mer	Sec	Q-Q	DLC
10 S	3 W	WM	29	NW NE	55
10 S	3 W	WM	29	SW NE	46
10 S	3 W	WM	29	NE NW	46
10 S	3 W	WM	29	NE NW	55
10 S	3 W	WM	29	NW NW	55
10 S	3 W	WM	29	SW NW	46
10 S	3 W	WM	29	SW NW	55
10 S	3 W	WM	29	SE NW	46
10 S	3 W	WM	29	SE NW	55
10 S	3 W	WM	29	NE SW	46
10 S	3 W	WM	29	SE SW	46
10 S	3 W	WM	29	SE SW	44
10 S	3 W	WM	29	NE SE	46
10 S	3 W	WM	29	NW SE	46
10 S	3 W	WM	29	SW SE	44
10 S	3 W	WM	29	SW SE	46
10 S	3 W	WM	29	SE SE	44
10 S	3 W	WM	29	SE SE	46
10 S	3 W	WM	32	NE NE	44
10 S	3 W	WM	32	NW NE	44
10 S	3 W	WM	32	NW NW	44

3. The second right to be leased is as follows:

Certificate: 89604 in the name of International Paper Co. (perfected under Permit S-20469)

Use: Industrial Uses

Priority Date: June 11, 1943

Quantity: Rate: 2.0 CFS

Limit: The quantity of water diverted at the new point of diversion shall not exceed the quantity of water available from the original points of diversion described as follows:

Twp	Rng	Mer	Sec	Q-Q	Source
21 S	1 W	WM	31	NE SE	Culp Creek
21 S	1 W	WM	32	NW SW	Row River

Source: Willamette River, tributary to 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	1180 FEET SOUTH AND 1220 FEET WEST FROM THE NE CORNER OF SECTION 32

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC
10 S	3 W	WM	28	SW NW	46
10 S	3 W	WM	28	N ½ SW ¼	46

Twp	Rng	Mer	Sec	Q-Q	DLC
10 S	3 W	WM	28	NE SW	47
10 S	3 W	WM	29	NW NE	46
10 S	3 W	WM	29	NW NE	55
10 S	3 W	WM	29	S ½ NE ¼	46
10 S	3 W	WM	29	E ½ NW ¼	46
10 S	3 W	WM	29	NW ¼	55
10 S	3 W	WM	29	SE NW	
10 S	3 W	WM	29	E ½ SW ¼	46
10 S	3 W	WM	29	E ½ SW ¼	
10 S	3 W	WM	29	SE SW	44
10 S	3 W	WM	29	SE ¼	46
10 S	3 W	WM	29	S ½ SE ¼	44
10 S	3 W	WM	29	S ½ SE ¼	
10 S	3 W	WM	32	N ½ NE ¼	44
10 S	3 W	WM	32	NW NE	
10 S	3 W	WM	32	SE NE	44
10 S	3 W	WM	32	SE NE	
10 S	3 W	WM	33	W ½ NW ¼	44

4. Certificate 89604 identifies the source for diversion as the Willamette River and identifies the actual source of water as Culp Creek and Row River. Culp Creek is tributary to the Row River and the Row River is tributary to the Coast Fork Willamette River. The Coast Fork Willamette River is tributary to the Willamette River. Water is conveyed from the original points of diversion through the Row River and the Coast Fork Willamette River to the point of diversion on the Willamette River. Instream water rights begin at the authorized point of diversion. The authorized point of diversion for Certificate 89604 is on the Willamette River. For purposes of this lease, the source for the instream use shall be the Willamette River and limited to the quantities available from Culp Creek and Row River.

5. The fourth right to be leased is as follows:

Certificate: 89606 in the name of International Paper Company (perfected under Permit S-14106)

Use: Industrial Use

Priority Date: November 2, 1939

Quantity: **Rate:** 1.93 CFS

Limit: The quantity of water diverted at the new point of diversion shall not exceed the quantity of water available from the original point of diversion described as follows:

Twp	Rng	Mer	Sec	Q-Q	Source	Measured Distances
21 S	1 W	WM	30	NW SW	Row River	30 FEET SOUTH AND 30 FEET WEST FROM THE SW CORNER OF LOT 3 (SE NW), SECTION 30

Source: Willamette River, tributary to the Columbia River

Authorized Point of Diversion (POD) on the Willamette River:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
10 S	3 W	WM	32	NE NE	44	1180 FEET SOUTH AND 1220 FEET WEST FROM THE NE CORNER OF SECTION 32

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC
10 S	3 W	WM	28	SW NW	46
10 S	3 W	WM	28	N ½ SW ¼	46
10 S	3 W	WM	28	NE SW	47
10 S	3 W	WM	29	NW NE	46
10 S	3 W	WM	29	NW NE	55
10 S	3 W	WM	29	S ½ NE ¼	46
10 S	3 W	WM	29	E ½ NW ¼	46
10 S	3 W	WM	29	NW ¼	55
10 S	3 W	WM	29	SE NW	
10 S	3 W	WM	29	E ½ SW ¼	46
10 S	3 W	WM	29	E ½ SW ¼	
10 S	3 W	WM	29	SE SW	44
10 S	3 W	WM	29	SE ¼	46
10 S	3 W	WM	29	S ½ SE ¼	44
10 S	3 W	WM	29	S ½ SE ¼	
10 S	3 W	WM	32	N ½ NE ¼	44
10 S	3 W	WM	32	NW NE	
10 S	3 W	WM	32	SE NE	44
10 S	3 W	WM	32	SE NE	
10 S	3 W	WM	33	W ½ NW ¼	44

6. Certificate 89606 identifies the source for diversion as the Willamette River and identifies the actual source of water as the Row River. Row River is tributary to the Coast Fork Willamette River and the Coast Fork Willamette River is tributary to the Willamette River. Water is conveyed from the original point of diversion through the Row River and the Coast Fork Willamette River to the point of diversion on the Willamette River. Instream water rights begin at the authorized point of diversion. The authorized point of diversion for Certificate 89606 is on the Willamette River. For purposes of this lease, the source for the instream use shall be the Willamette River and limited to the quantities available from the Row River.
7. Certificates 91193, 89604, and 89606 do not specify an authorized period of use. However, the use is for manufacturing and/or industrial, which are considered year round uses unless otherwise specified in the Certificate.
8. 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.

9. The instream use is as follows:
Willamette River, tributary to the Columbia River

Instream Point: At the POD (as described in Findings of Fact No. 2, 3 and 5)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
91193	10/29/1982	4.25	3076.86	January 1 – December 31
89604	6/11/1943	2.00	1447.93	
89606	11/2/1939	1.93	1397.26	
Totals		8.18	5922.05	

10. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
11. The protection of flows at the authorized points of diversion is appropriate, considering:
- The instream water use is located at the recorded points of diversion;
 - The location of confluences with other streams downstream of the points of diversion.
 - There are no known areas of natural loss of streamflow to the river bed downstream from the points of diversion; and
 - Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the points of the instream water right.
12. The total monthly quantities of water to be protected under existing and proposed instream rights at the points will provide for a beneficial purpose.
13. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the points do not exceed the estimated average natural flow.
14. 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.
15. 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.
16. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed for 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.

17. The Lessor requested that the lease terminate on December 31, 2026. The lease may commence upon the date this final order is signed.

18. The Lessor has requested the option of terminating the lease early with written notice to the Department.

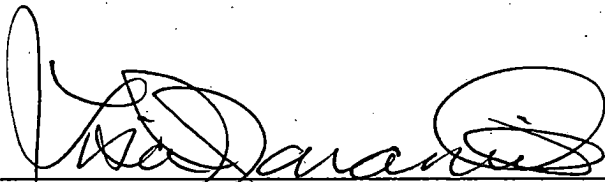
Conclusions of Law

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.

Now, therefore it is ORDERED:

1. The Lease as described herein is APPROVED.
2. During each year of the term of the lease, the former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered irrigation water rights, including ground water registrations and permits.
3. The term of the lease will commence upon approval of the instream lease and terminate on December 31, 2026. 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 day MAR 21 2022.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date: MAR 22 2022

This document was prepared by Sarah Henderson. If you have any questions, please call 503-979-9872.