

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

In the Matter of Instream Lease Application)	DETERMINATION and
IL-1435, Linn County)	FINAL ORDER ON 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

Vaughn Pieschl, Site Manager
International Paper
3521 Old Salem Rd. NE
Albany, OR 97321

Findings of Fact

1. On September 25, 2014, International Paper filed an application to lease a portion of Certificate 85736 for instream use. The Department assigned the application number IL-1435.
2. On May 8, 2013, the Department received a notice for specific to general industrial use change. For purposes of instream leasing, the portion of Certificate 85736 that may be leased to instream use is the water right of record and will be described consistent with the Certificate in this order.
3. On October 6, 2014, the Department requested additional information about the water rights requested to be leased instream under IL-1434 and IL-1435 by International Paper. The additional information requested by the Department was received on October 17, 2014.
4. The portion of the right to be leased is as follows:

Certificate:	85736 in the name of Weyerhaeuser Company (perfected under Permit S-47184)
Use:	Industrial/Manufacturing Use
Priority Date:	October 29, 1982
Quantity:	Rate: 7.75 Cubic Foot per Second (CFS)
Source:	Willamette River, tributary to the Columbia River

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 Point of Diversion (POD):

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 NE	47
10 S	3 W	WM	28	SE NW	47
10 S	3 W	WM	28	NE SW	47
10 S	3 W	WM	28	NE SW	44
10 S	3 W	WM	28	SE SW	44
10 S	3 W	WM	28	NW SE	44
10 S	3 W	WM	28	NW SE	47
10 S	3 W	WM	28	SW SE	44
10 S	3 W	WM	33	NE NW	44

5. Certificate 85736 allows the diversion of up to 12 CFS. The remaining 4.25 CFS is being leased instream under IL-1434.
6. Certificate 85736 does not specify an authorized period of use. However, the use is for industrial/manufacturing, which is considered a year round use unless otherwise specified in the Certificate.
7. There is another industrial right (Certificate 54268) appurtenant to the same place of use as described in Certificate 85736. The entirety of Certificate 54268 is proposed to be leased to instream use under IL-1434.
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) On September 30, 2014. This notice, however, identified the wrong certificate number. The lease application was re noticed with the correct certificate on October 7, 2014. No comments were received.
9. The instream use is as follows:
Willamette River, tributary to the Columbia River

Instream Reach: At the POD (as described in Finding of Fact No. 4)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
85736	10/29/1982	7.75	5610.74	January 1 – December 31

10. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
11. The protection of flows at the authorized point of diversion is appropriate, considering:
 - a. The instream water use is located at the recorded point of diversion;
 - b. The location of confluences with other streams downstream of the point of diversion.

- c. There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - d. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the point of the instream water right.
12. The total monthly quantities of water to be protected under existing and the proposed instream rights at the point 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 point 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 instream lease application was originally submitted as part of IL-1434. On September 25, 2014, the Lessor requested that a portion of Certificate 85736 be included in a separate lease application. The application materials associated with Certificate 85736 did not clearly describe the requested term of the lease. However, materials associated with IL-1434 requested that the instream lease begin in 2014 and terminate on December 31, 2019, a six year period. The term of an instream lease may not exceed five years. Therefore, the lease may terminate on December 31, 2018. The lease may commence on 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

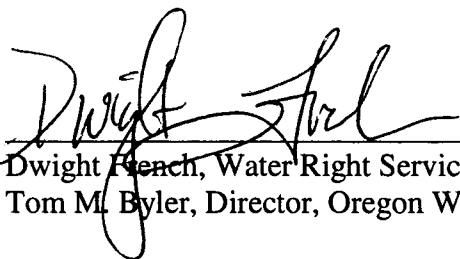
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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 from the portion of Certificate 85736 leased to instream use.
3. The term of the lease will commence upon approval of the instream lease and terminate on December 31, 2018. 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 21 day of November, 2014.


Dwight French, Water Right Services Division Administrator, for
Tom M. Byler, Director, Oregon Water Resources Department

*This document was prepared by Laura
Wilke and if you have any questions,
please call 503-986-0884.*

Mailing date: NOV 24 2014