

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING CHANGES IN
T-13462, Linn County)	POINT OF DIVERSION, PLACE OF USE,
)	AND 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
ATTN: TERRY THOMAS
6400 POPLAR AVENUE, TOWER III
MEMPHIS, TN 38197

Receiving Landowner

MCMINNVILLE WATER AND LIGHT
PO BOX 638
855 NE MARSH LANE
MCMINNVILLE, OR 97128

Findings of Fact

1. On June 8, 2020, INTERNATIONAL PAPER COMPANY, ATTN: CLAY ELLIS filed an application to change the point of diversion, place of use and the character of use under Certificate 94802. The applicant requested 30 years to complete the transfer, in order to accommodate for planning, permitting, and development of the project. The Department assigned the application number T-13462.
2. The McMinnville Water and Light is the receiving landowner who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on June 16, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On April 16, 1986, the Department issued Certificate 54268, authorizing the use of 18.0 cubic feet per second (cfs) of water from the Willamette River for manufacturing.

5. 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 of Fact (FOF) No. 17.
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 November 20, 2017, the applicant 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 for a 2.0 cfs portion of Certificate 54268. The Department assigned the application number T-12773.
8. On July 23, 2018, the applicant filed Instream Lease IL-1704. On September 6, 2018, the Department issued a final order recorded at Special Order Volume 109, Pages 374-376, that approved the lease for a 2.0 cubic foot per second (cfs) portion of Certificate 54268, that is due to terminate on December 31, 2023.
9. 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, that is due to terminate on December 31, 2023.
10. 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.
11. On November 21, 2019, the Department issued a Final Order approving a 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, recorded at Special Order Volume 114, Page 401. The Department subsequently issued superseding remaining right Certificate 94271.
12. On December 31, 2019, the Department issued an order correcting a scrivener's error in remaining right Certificate 94271, and subsequently issued superseding Certificate 94802.
13. On October 14, 2020, the Department contacted the applicant's agent by written correspondence to notify the applicant and the applicant's agent of a deficiency in the application. The application map did not identify the township and range, as is required by OAR 690-380-3100.
14. On October 16, 2020, the agent submitted a revised map, resolving the deficiency.
15. On January 6, 2021, the Department issued a Final Order under transfer application T-13376, approving changes in point of diversion, place of use, and character of use under

Certificate 94802, recorded at Special Order Volume 118, Page 309. The Department subsequently issued superseding remaining right Certificate 95056.

16. On January 29, 2021, the agent submitted a revised application identifying superseding remaining right Certificate 95056, as the water right that would be involved in transfer application T-13462.
17. On February 25, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13462 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 29, 2021, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
18. On May 21, 2021, Instream Lease IL-1704 was terminated to remove 2.0 cfs of Certificate 54268 from the instream lease by request of the applicant. The termination order was recorded at Special Order Volume 120, Page 638.
19. On July 14, 2021, the Department issued a Preliminary Determination proposing to approve Transfer T-13462 and mailed a copy to the applicant.
20. On July 16, 2021, the Department received correspondence from the applicant's agent identifying a scrivener's error in the Preliminary Determination. Under the section Determination and Proposed Action, condition #2 and #3 identified original certificate 94802, which is already cancelled, and should be replaced by superseding Certificate 95056. This revised Preliminary Determination is issued to correctly identify Certificate 95056.
21. On September 8, 2021, the Department issued a revised Preliminary Determination proposing to approve Transfer T-13462 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 September 14, 2021, and in the News Register newspaper on July 16 and 23, 2021 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
22. The portion of the right to be transferred is as follows:

Certificate: 95056 in the name of WILLAMETTE INDUSTRIES INC.; ALBANY PAPER MILL
(perfected under Permit S-23102)

Use: MANUFACTURING

Priority Date: DECEMBER 23, 1954

Rate: 7.525 CUBIC FEET PER SECOND

Source: WILLAMETTE RIVER, a tributary of COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
10 S	3 W	WM	32	NE NE	44	POD 1 - 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	44	NW SE
10 S	3 W	WM	28	47	NW SE
10 S	3 W	WM	28	44	SW SE

23. Transfer Application T-13462 proposes to move the authorized point of diversion approximately 56.8 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	3 W	WM	27	NE NW	POD 2 - 1060 FEET SOUTH AND 2165 FEET EAST FROM THE NW CORNER OF SECTION 27

24. Transfer Application T-13462 also proposes to change the place of use of the right to:

MUNICIPAL USE
WITHIN THE SERVICE AREA BOUNDARIES OF MCMINNVILLE WATER & LIGHT, THE CITY OF LAFAYETTE, AND CITY OF CARLTON

25. Transfer Application T-13462 proposes to change the character of use to municipal use.
26. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new 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)]

27. Water has been used within the last five years 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.

28. A pump, pipeline, and distribution system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-13462.
29. The proposed changes would not result in enlargement of the right.
30. The proposed changes would not result in injury to other water rights.
31. All other application requirements are met.

Conclusions of Law

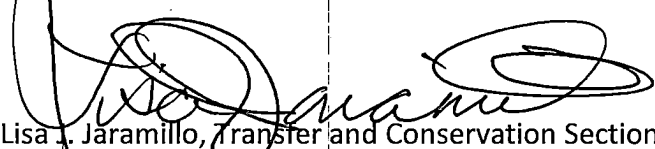
The change in point of diversion, change in place of use, and change in character of use proposed in Transfer Application T-13462 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of diversion, change in place of use, and change in character of use proposed in Transfer Application T-13462 are approved.
2. 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 95056 and any related decree.
3. Water right Certificate 95056 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), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 1).
5. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion 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.
6. The former place of use of the transferred right shall no longer receive water under the right.

7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2052**. 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.
8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on **OCT 18 2021**



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

Mailing date: **OCT 19 2021**

SD, U. 121 pg 8410