



Oregon

Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
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December 2, 2015

VIA E-MAIL

INTERNATIONAL PAPER COMPANY
3251 OLD SALEM RD NE
ALBANY, OR 97321

SUBJECT: Water Right Transfer Application T-12065

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12065. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the News Register newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0886 or Patrick.K.Starnes@ wrd.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application T-12065
Michael Mattick, District 2 Watermaster (*via e-mail*)
Joel Plahn, District 16 Watermaster (*via e-mail*)
Adam Sussman, GSI Water Solutions, Agent for the receiving landowner (*via e-mail*)
Bruce Body-Heine, GSI Water Solutions, CWRE #78208 (*via e-mail*)
Dave Filippi, attorney for the applicant (*via e-mail*)

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

In the Matter of Transfer Application)
T-12065, Linn County)
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**PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A
CHANGE IN POINT OF DIVERSION,
PLACE OF USE, AND CHARACTER
OF USE**

Authority

Oregon Revised Statute (ORS) 540.505 to 540.580 establishes 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 Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

Applicant

**INTERNATIONAL PAPER COMPANY
3251 OLD SALEM RD NE
ALBANY, OR 97321**

Findings of Fact

1. On May 21, 2015, INTERNATIONAL PAPER COMPANY filed an application to change the point of diversion, place of use, and character of use of a 7.75 cubic foot per second portion of Certificate 85736. The Department assigned the application number T-12065.
2. McMinnville Water and Light, P.O. Box 638, McMinnville, OR 97128, is the receiving water user who will be responsible for completion of the changes.
3. On May 8, 2013, the Department received a notice for specific to general industrial use change per ORS 540.520(9). The authorized place of use resulting from this notice is described in Finding No. 9.
4. On June 1, 2015, the receiving water user requested that the Department allow 30 years for the completion of the transfer. The requested date of completion is described in Condition No. 8 of this order.
5. On November 21, 2014, Instream Lease IL-1435, recorded at Special Order Volume 93, page 840, was approved for a 7.75 cfs portion of Certificate 85736.
6. On _____, 2015, Instream Lease IL-1435 was terminated by request of the applicant. The termination order was recorded at Special Order Volume __, page ____.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

7. Notice of the application for transfer was published on June 2, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On September 11, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12065 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 12, 2015, for the applicant to respond. The applicant's attorney requested that the Department amend the draft Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
9. On October 23, 2015, the Department sent a copy of the revised draft Preliminary Determination to approve Transfer Application T-12065 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of November 20, 2015, for the applicant to respond. The applicant's attorney requested that the Department proceed with issuance of a Preliminary Determination.
10. The portion of the right to be transferred 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
Rate: 7.75 CUBIC FEET PER SECOND
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:

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

INDUSTRIAL/MANUFACTURING USE					
Twp	Rng	Mer	Sec	Q-Q	DLC
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	33	NW NW	44

11. Transfer Application T-12065 proposes to move the authorized point of diversion approximately 57.0 river miles downstream to within a reach described as:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	3 W	WM	27	NE NE	LOCATION A (UPSTREAM ENDPOINT OF PROPOSED REACH) - 650 FEET SOUTH AND 550 FEET WEST FROM THE NE CORNER OF SECTION 27
4 S	3 W	WM	22	SW SW	LOCATION B (DOWNSTREAM ENDPOINT OF PROPOSED REACH) - 1300 FEET NORTH AND 1140 FEET EAST FROM THE SW CORNER OF SECTION 22

12. Transfer Application T-12065 proposes to change the place of use of the right to:

MUNICIPAL USE
WITHIN THE SERVICE AREA BOUNDARIES OF McMinnville Water and Light, City of Dayton, City of Lafayette, and City of Carlton.

13. Transfer Application T-12065 also proposes to change the character of use to municipal use.
14. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

15. 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.
16. A pump and pipeline system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-12065.
17. The proposed changes would not result in enlargement of the right.
18. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The change in point of diversion, change in place of use, change in character of use, and timeline for completion proposed in Transfer Application T-12065 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and 690-380-5140. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.


If Transfer Application T-12065 is approved, the final order will include the following:

1. *The change in point of diversion, change in place of use, and change in character of use proposed in Transfer Application T-12065 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 85736 and any related decree.*
3. *Water right Certificate 85736 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 shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at the new point of diversion.*
 - b. *The water user shall maintain the meter or measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
7. *The transferred portion of Certificate 85736 (7.75 cfs) shall no longer be used at the former place of use.*

8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2046**. 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.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 3 day of December, 2015.



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

This Preliminary Determination was prepared by Kelly Starnes. If you have questions about the information in this document, you may reach me at 503-986-0886 or Patrick.K.Starnes@wrđ.state.or.us.

Protests should be addressed to the attention of Water Rights Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.