

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12773, Linn and Polk Counties	)	PROPOSING APPROVAL OF A
	)	CHANGE FROM A SURFACE WATER
	)	POINT OF DIVERSION TO
	)	GROUNDWATER POINTS OF
	)	APPROPRIATION, A CHANGE IN
	)	POINT OF DIVERSION, A CHANGE IN
	)	PLACE OF USE, AND A CHANGE IN
	)	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  
6400 POPLAR AVE  
MEMPHIS, TN 38197

**Receiving Water User**

CITY OF INDEPENDENCE  
P.O. BOX 7  
INDEPENDENCE, OR 97351

**Findings of Fact**

1. On November 20, 2017, INTERNATIONAL PAPER COMPANY 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 under Certificate 54268. The Department assigned the application number T-12773.
2. The City of Independence, PO Box 7, Independence, OR 97351 is the receiving water user who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on November 28, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. 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 No. 10.
5. On September 14, 2018, the applicant submitted an amended application page, geologist report and map to correct the locations of the requested wells.

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.
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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 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.
8. On \_\_\_\_\_, 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 \_\_\_\_\_, Page \_\_\_\_\_.
9. On February 11, 2019, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12773 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 12, 2019, for the applicant to respond.
10. On March 5, 2019, the applicant's agent requested that the Department amend the draft Preliminary Determination. The applicant requested clarification of the description of previous transfer application amendments, correction of the instream lease number, modifying the draft Preliminary Determination to reflect International Paper's specific to general industrial use notice authorized under ORS 540.520(9), and to correctly describe the applicant's proposed transfer completion date.
11. On March 26, 2019, the Department sent a copy of the revised draft Preliminary Determination to approve Transfer Application T-12773 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of April 25, 2019 for the application to respond. The applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer and requested that the Department proceed with issuance of a Preliminary Determination.

12. The portion of the right to be transferred is as follows:

**Certificate:** 54268 in the name of WILLAMETTE INDUSTRIES, INC. (perfected under Permit S-23102)

**Use:** INDUSTRIAL/MANUFACTURING

**Priority Date:** DECEMBER 23, 1954

**Rate:** 2.0 CUBIC FEET PER SECOND

**Source:** WILLAMETTE RIVER, tributary of 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	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	47	NE 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
10 S	3 W	WM	28	47	SW SE

13. Transfer Application T-12773 proposes to change the point of diversion approximately 13.5 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	4 W	WM	28	SW SE	260 FEET NORTH AND 3400 FEET EAST FROM THE SW CORNER OF SECTION 28

14. Transfer Application T-12773 proposes to change from a surface water point of diversion to groundwater points of appropriation (wells) with approximate distances in miles from the existing point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance in miles
8 S	4 W	WM	33	NW NE	WILLAMETTE WELL 1 - 260 FEET SOUTH AND 1915 FEET WEST FROM THE NE CORNER OF SECTION 33	13.5
8 S	4 W	WM	28	SW SE	WILLAMETTE WELL 2 - 350 FEET NORTH AND 1910 FEET WEST FROM THE SE CORNER OF SECTION 28	13.2
8 S	4 W	WM	28	SW SE	WILLAMETTE WELL 3 - 800 FEET NORTH AND 2000 FEET WEST FROM THE SE CORNER OF SECTION 28	14.0

15. Transfer Application T-12773 proposes to change the character of use to municipal.

16. Transfer Application T-12773 proposes to change the place of use of the right to:

MUNICIPAL
WITHIN THE SERVICE BOUNDARY OF THE CITY OF INDEPENDENCE

17. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new surface water 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)]***

18. Water has been used within the five-year period prior to submittal of the transfer application 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.
19. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right was present with the five year period prior to submittal of Transfer Application T-12773.
20. The proposed points of appropriation meet the requirements of ORS 540.531 and OAR 690-380-2130(2).
21. The proposed changes would not result in enlargement of the right.
22. The proposed changes would not result in injury to other water rights.
23. All other application requirements are met.

## **Determination and Proposed Action**

The change in point of diversion, change from a surface water point of diversion to groundwater points of appropriation, change in place of use, and change in character of use proposed in Transfer Application T-12773 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-12773 is approved, the final order will include the following:*

- 1. The change in point of diversion, change from a surface water point of diversion to groundwater points of appropriation, change in place of use, and change in character of use proposed in Transfer Application T-12773 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 54268 and any related decree.*
- 3. Water right Certificate 54268 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), and new points of appropriation (Willamette Wells 1, 2, and 3), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 1).*
- 5. The wells from which the water is taken under this right shall be constructed so that the use of the wells will affect the surface water similarly to the use of the original authorized point of diversion.*
- 6. The use of water under this right shall be subject to regulation consistent with other water rights from the surface water source and to all other applicable conditions and restrictions that existed at the original point of diversion.*
- 7. The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion under the transferred portion of the right. However, if within five years after approval of the transfer, the Department receives a transfer application to return to the last authorized surface water point of diversion, the application shall be approved.*
- 8. All applicable restrictions that existed at the original point of diversion shall apply to the proposed wells.*
- 9. The original date of priority shall be retained. However, if within five years after approving the transfer, the Department finds the transfer results in substantial interference with existing groundwater rights that would not have occurred in the absence of the transfer, the proposed wells shall be subordinate to any existing right injured by the transferred water right.*

10. *Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the proposed surface water point of diversion (POD-2) 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.*
11. *The transferred portion of Certificate 54268 (2.0 cfs) shall no longer be used at the former place of use.*
12. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2049**. 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.*
13. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on **JUL 19 2019**



Lisa J. Jaramillo, Transfer and Conservation Section Manager, 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@oregon.gov](mailto:Patrick.K.Starnes@oregon.gov).

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

**Regarding Service Members:** Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.



# Oregon

Kate Brown, Governor

**Water Resources Department**  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
Fax (503) 986-0904

July 17, 2019

**VIA E-MAIL**

**Applicant**

INTERNATIONAL PAPER COMPANY  
6400 POPLAR AVENUE  
MEMPHIS TN 38197  
e-mail [Jim.Kirkpatrick@IPAPER.com](mailto:Jim.Kirkpatrick@IPAPER.com)

**Receiving Landowner**

CITY OF INDEPENDENCE  
PO BOX 7  
INDEPENDENCE OR 97351

**SUBJECT:** Water Right Transfer Application T-12773

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12773. 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 Polk County Itemizer Observer 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@oregon.gov](mailto:Patrick.K.Starnes@oregon.gov) if I may be of assistance.

Sincerely,

Kelly Starnes  
Transfer Program Analyst  
Transfer and Conservation Section

cc: Transfer Application file T-12773  
Lanaya Blakely, 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)**  
Theodore R. Ressler, GSI Water Solutions, CWRE #78815 **(via e-mail)**

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