

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13376, Linn County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN 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  
MEMPHIS, TN 38197

**Receiving Landowner**

CITY OF CORNELIUS  
ATTN: ROB DRAKE, CITY MANAGER  
1355 N. BARLOW STREET  
CORNELIUS, OR 97113

**Findings of Fact**

1. On February 26, 2020, INTERNATIONAL PAPER COMPANY, ATTN: TERRY THOMAS, filed an application to change the point of diversion, place of use, and character of use under Certificate 94802. The Department assigned the application number T-13376.
2. The City of Cornelius, Attn: Rob Drake, City Manager, 1355 N. Barlow Street, Cornelius, OR, 97113, is the receiving landowner who will be responsible for completion of the changes.
3. On May 9, 2013, the Department received a notice for specific to general industrial use change under Certificate 54268 per ORS 540.520(9). A portion of the authorized place of use resulting from this notice is described in Finding No. 13.
4. 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 2.0 cubic feet per second (cfs) portion of Certificate 54268.

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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5. 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 of 2.0 cfs under Certificate 54268. The Department assigned the application number T-12773.
6. On October 14, 2019, the Department received a request from Terry Thomas, of applicant International Paper, to remove 2.0 cfs of Certificate 54268 from Instream Lease IL-1434, prior to the 2020 instream use period.
7. On November 4, 2019, Instream Lease IL-1434 was partially terminated by the removal of 2.0 cfs from Certificate 54268. The termination order was recorded at Special Order Volume 114, Page 326.
8. On November 21, 2019, application T-12773 was approved and Certificate 54268 was cancelled by an order recorded at Volume 114, Page 401. Certificate 54268 was superseded by remaining right Certificate 94271.
9. On December 31, 2019, Certificate 94271 was cancelled by an order recorded at Volume 114, Page 618, correcting a scrivener's error in remaining right Certificate 94271. Certificate 94271 was superseded by Certificate 94802.
10. Notice of the application for transfer was published on March 3, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
11. On April 2, 2020, the Department contacted the agent, requesting some corrections to the application. On April 20, 2020, the agent responded with the corrections.
12. On June 29, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13376 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 1, 2020, 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.

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

**Certificate:** 94802 in the name of WILLAMETTE INDUSTRIES INC. / ALBANY PAPER MILL (perfected under Permit S-23102)  
**Use:** MANUFACTURING  
**Priority Date:** DECEMBER 23, 1954  
**Rate:** 7.475 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	1260 FEET SOUTH AND 1220 FEET WEST FROM THE NE CORNER OF SECTION 32

**Authorized Place of Use:**

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

14. Transfer Application T-13376 proposes to move the authorized point of diversion approximately 77.1 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	G Lot	Measured Distances
3 S	1 W	WM	23	NW SW	46	3390 FEET SOUTH AND 495 FEET EAST FROM THE NW CORNER OF SECTION 23

15. Transfer Application T-13376 also proposes to change the place of use of the right to:

MUNICIPAL USE
WITHIN THE SERVICE AREA OF THE CITY OF CORNELIUS

16. Transfer Application T-13376 proposes to change the character of use to municipal uses.
17. 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)]***

18. Water has been used within the last five years.
19. A pump and pipeline 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-13376.
20. The Principal Planner for Washington County, Tom Harry, states in the Land Use Form: "Special Use Approval Development Review, CDC Section 430-105 Public Utility" and "Flood Plain Alteration, Section 421 Flood Plain Alteration" are "Being Pursued". Further noted is the following: "There are multiple parts to this development involving multiple Code Sections, Community Plans and Other County Regulations. No Applications have been submitted to date, but the Applicant has had multiple Pre-Application Conferences for the different parts of the Application." Applicant must obtain all permits required by Washington County before moving forward with Transfer T-13376.

21. On August 27, 2020, the applicant's agent submitted a letter from Tom Harry, Principal Planner for Washington County, dated August 7, 2018, explaining the pending permits on the Land Use Form, including a timeline for finishing each portion of the project. It appears that the required land use approvals will be issued, but, because the pipeline project spans over a decent length through the county, not all land use permit applications had yet been submitted at time of application.
22. As of October 5, 2020, the Department has not received the required land use information described above in Finding of Fact No. 21.
23. The proposed changes would not result in enlargement of the right.
24. The proposed changes would not result in injury to other water rights.
25. All other application requirements are met.

### **Determination and Proposed Action**

The change in point of diversion, place of use, and character of use proposed in Transfer Application T-13376 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.

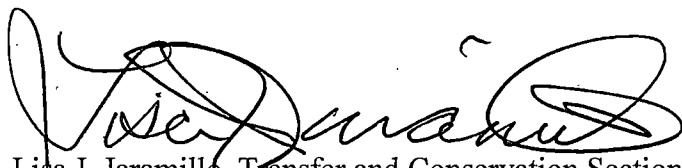
*If Transfer Application T-13376 is approved, the final order will include the following:*

1. *The changes in point of diversion, place of use, and character of use proposed in Transfer Application T-13376 are approved.*
2. *Before water use may begin under this order, land use approval from all affected land use jurisdictions must be obtained and evidence of such approval shall be submitted to the Department.*
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 94802 and any related decree.*
4. *Water right Certificate 94802 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
5. *The quantity of water diverted at the new point of diversion, (Proposed POD), shall not exceed the quantity of water lawfully available at the original point of diversion (IP POD).*
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.*
7. *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.*

8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2051**. 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 in Salem, Oregon on OCT 21 2020



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

This Preliminary Determination was prepared by: Tamera Smith. If you have any questions about the information in this document, you may reach me at 503-986-0864 or [tamera.l.smith@oregon.gov](mailto:tamera.l.smith@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.*

**IMPORTANT:** Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

**Notice Regarding Service Members:** Active Duty Service Members have a right to stay these proceedings under the Federal Service Members 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

OCTOBER 21, 2020

VIA E-MAIL

INTERNATIONAL PAPER COMPANY  
TERRY THOMAS  
16504 COUNTY ROAD 150  
COURTLAND, AL 35618

SUBJECT: Water Right Transfer Application T-13376

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13376. 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 Oregonian 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.

**IMPORTANT:** Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

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 [tamera.l.smith@oregon.gov](mailto:tamera.l.smith@oregon.gov) or via phone at 503-986-0864, if I may be of assistance.

Kindest regards,

Transfer Caseworker  
Transfer and Conservation Section

cc: T-13376 transfer application file  
Joel Plahn, District 22 Watermaster (via e-mail)  
Peter D. Mohr, Agent for the applicant (via e-mail)