



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

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September 8, 2021

INTERNATIONAL PAPER COMPANY

ATTN: CLAY ELLIS

6400 POPLAR AVENUE, TOWER III

MEMPHIS, TN 38197

SUBJECT: Water Right Transfer Application T-13462

Please find enclosed the revised Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13462. 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, simultaneously with issuance of the revised 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 revised 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.

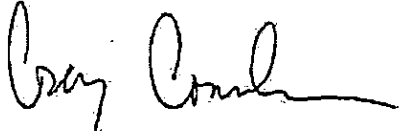
If no protest is filed, the Department will issue a Final Order consistent with the revised Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

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 revised Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

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.

Please do not hesitate to contact me, at corey.a.courchane@oregon.gov or (503) 979-3917, if I may be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Corey Courchane". The signature is fluid and cursive, with a long horizontal stroke at the end.

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-13462
Gregory J. Wacker, District 16 Watermaster (*via e-mail*)
Kim Grigsby, Agent for the applicant (*via e-mail*)
McMinnville Water and Light, Receiving Landowner

encs

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

In the Matter of Transfer Application)	REVISED PRELIMINARY
T-13462, Linn-County)	DETERMINATION PROPOSING APPROVAL
)	OF CHANGES 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: CLAY ELLIS
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.

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.

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. 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

22. 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

23. 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

24. Transfer Application T-13462 proposes to change the character of use to municipal use.

25. 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)]

26. 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.
27. 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.

28. The proposed changes would not result in enlargement of the right.
29. The proposed changes would not result in injury to other water rights.
30. All other application requirements are met.

Determination and Proposed Action

The change in point of diversion, change in place of use, and change in character of use proposed in Transfer Application T-13462 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-13462 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-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 SEP 08 2021


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

This revised Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or corey.a.courchane@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 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.