

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING AN
T-12990, Crook County)	ADDITIONAL POINT OF DIVERSION,
)	A CHANGE IN POINT OF DIVERSION
)	AND A CHANGE IN PLACES 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

CROOKED RIVER EAST LLC
ATTN: JOE PAPINEAU
40791 SE SHOTGUN RANCH RD
POST, OR 97752

Findings of Fact

1. On July 26, 2018, CROOKED RIVER EAST LLC, ATTN: JOE PAPINEAU filed an application for a change in place of use under Certificate 89789, an additional point of diversion and change in place of use under Certificate 89790, and a change in point of diversion and change in place of use under Certificate 89791. The Department assigned the application number T-12990.
2. Notice of the application for transfer was published on July 31, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 12, 2018, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of a deficiency in the application. The applicant identified an overlap of 8.8 acres under Certificate 89791, which they requested to diminish to supplemental irrigation. The Department requested that the deficiency be resolved by October 11, 2018.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

4. On October 12, 2018, the applicant's agent submitted a revised Table 2 and map, resolving the deficiency.
5. On May 13, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12990 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 11, 2019, 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.
6. On May 22, 2019, the Department determined a totalizing flow meter is required only for the new points of diversion (POD), being POD 3 and POD 6.
7. On June 19, 2019, the Department received an Application for Water Right Transfer Consent by Deeded Landowner, for tax lot 800, Township 17 North, Range 20 East, Willamette Meridian.
8. On July 17, 2019, the Department issued a Preliminary Determination proposing to approve Transfer T-12990 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 July 23, 2019, and in the Central Oregonian newspaper on July 19 and 26, 2019, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
9. The first right to be transferred is as follows:

Certificate: 89789 in the name of C. L. REAM (perfected under Permit S-3356)
Use: IRRIGATION of 9.0 ACRES
Priority Date: APRIL 9, 1917
Rate: 0.11 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent in case of rotation.
Source: DRAKE CREEK AND REAM'S RESERVOIR, TO BE CONSTRUCTED UNDER PERMIT NO. R-398, a tributary of CROOKED RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
17 S	20 E	WM	10	NW SW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	20 E	WM	4	SE SW	9.0

10. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 89789 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	20 E	WM	10	NW SW	POD 7 - 220 FEET SOUTH AND 260 FEET EAST FROM THE W1/4 CORNER OF SECTION 10

11. Transfer Application T-12990 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	20 E	WM	3	SW SW	6.9
17 S	20 E	WM	10	NW NW	2.1
Total					9.0

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

Certificate: 89790 in the name of SHOTGUN RANCH LLC (confirmed by decree of the Circuit Court of the State of Oregon for Crook County. The decree is of record at Salem, in the Order Record of the Water Resources Director in Volume 1, at Page 449.)

Use: IRRIGATION of 10.0 ACRES

Priority Date: 1889

Rate: 0.115 CUBIC FOOT PER SECOND

Period of use: FEBRUARY 1 THROUGH DECEMBER 1 OF EACH YEAR

Source: SHOTGUN CREEK, a tributary of CROOKED RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	20 E	WM	9	SE NW	SHOTGUN CREEK - POD 5 - 1940 FEET SOUTH AND 100 FEET WEST FROM THE N1/4 CORNER OF SECTION 9

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	20 E	WM	4	SW SE	10.0

13. Transfer Application T-12990 proposes an additional point of diversion approximately 0.7 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	20 E	WM	9	SW SW	POD 6 - 2040 FEET SOUTH AND 920 FEET EAST FROM THE W1/4 CORNER OF SECTION 9

14. Transfer Application T-12990 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	20 E	WM	7	NE NE	4.3
17 S	20 E	WM	8	NW NW	5.7
Total					10.0

15. The third right to be transferred is as follows:

Certificate: 89791 in the name of CLYDE WAYLAND (perfected under Permit S-27410)
Use: IRRIGATION of 17.6 ACRES and SUPPLEMENTAL IRRIGATION of 10.0 ACRES
Priority Date: MAY 23, 1961
Rate: 0.36 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: CROOKED RIVER, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	20 E	WM	4	NW SE	POD 4 - 2480 FEET NORTH AND 950 FEET WEST FROM THE SE CORNER OF THE SWSE OF SECTION 4

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	20 E	WM	4	NE SW	1.2
17 S	20 E	WM	4	SE SW	8.8
17 S	20 E	WM	4	SW SE	7.6
Total					17.6

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	20 E	WM	4	SW SE	10.0

16. Transfer Application T-12990 proposes to move the authorized point of diversion approximately 0.3 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	20 E	WM	4	NE SW	POD 3 - 180 FEET SOUTH AND 2230 FEET EAST FROM THE W1/4 CORNER OF SECTION 4

17. Transfer Application T-12990 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	20 E	WM	3	SW SW	6.8
17 S	20 E	WM	4	NE SW	0.7
17 S	20 E	WM	4	SE SW	1.1
17 S	20 E	WM	4	NW SE	2.4
17 S	20 E	WM	4	SW SE	4.0
17 S	20 E	WM	9	NW NE	0.6

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	20 E	WM	10	NW NW	2.0
Total					17.6

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	20 E	WM	7	NE NE	4.3
17 S	20 E	WM	8	NW NW	5.7
Total					10.0

18. 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)]

19. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
20. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-12990.
21. The proposed changes would not result in enlargement of the rights.
22. The proposed changes would not result in injury to other water rights.
23. All other application requirements are met.

Conclusions of Law

The additional point of diversion, change in point of diversion, and change in places of use proposed in Transfer Application T-12990 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

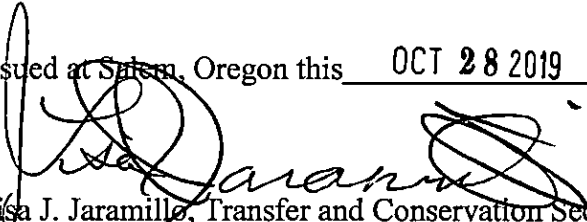
Now, therefore, it is ORDERED:

1. The additional point of diversion, change in point of diversion, and change in places of use proposed in Transfer Application T-12990 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 Certificates 89789, 89790, and 89791, and any related decree.

3. Water right Certificates 89789, 89790, and 89791 are cancelled. A new certificate will be issued describing that portion of Certificate 89790 not affected by this transfer.
4. The quantity of water diverted under the right described by Certificate 89790 at the additional point of diversion (POD 6), together with that diverted at the original point of diversion (POD 5), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 5).
5. The quantity of water diverted under the right described by Certificate 89791 at the new point of diversion (POD 3), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 4).
6. 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 points of diversion (POD 3 and POD 6).
 - b. The water user shall maintain the meters or measuring devices in good working order.
 - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
7. 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.
8. The former place of use of the transferred rights shall no longer receive water under the rights.
9. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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.

10. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Issued at Salem, Oregon this OCT 28 2019.


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

Mailing date: OCT 28 2019