

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING
T-12989, Crook County	)	CHANGES IN POINTS OF DIVERSION
	)	AND 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 to change the points of diversion and the place of use under Certificates 36936, 47486, 47487, and 47488. The Department assigned the application number T-12989.
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 May 13, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-12989 to the applicant. As of that time, the Department proposed that the change in point of diversion under Certificate 36936 in T-12989 could not be effected without injury to instream water right Certificate 75993, which is for flows to be maintained in the Crooked River at the mouth of North Fork Crooked River, River Mile (RM) 114 (NENE, Section 7, T17S, R21E) to Prineville Reservoir, RM 90 (SESE, Section 13, T16S, R17E). The draft Preliminary Determination cover letter identified two alternatives to resolve the issue for denial; being Withdrawal of T-12989, or request that the Department pursue a consent to injury recommendation from

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.

the Oregon Department of Fish and Wildlife (ODFW). The draft Preliminary Determination cover letter also set forth a deadline of June 11, 2019, for the applicant to respond.

4. On May 28, 2019, the applicant responded to the Department, disagreeing with the Department's findings and determinations outlined in the draft Preliminary Determination. Pursuant to ORS 540.530(c), the Water Resources Department may consent to the change only upon a recommendation that the department do so from the agency that requested the instream water right.
5. On June 11, 2019, the applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
6. On July 19, 2019, the Department issued a Preliminary Determination proposing to deny Transfer Application T-12989 due to the issue outlined in Finding of Fact #3 above.
7. Following issuance of the Preliminary Determination described in Finding of Fact #6 above, the Department reevaluated the effect of the transfer, in its entirety, on instream water right Certificate 75993. The proposed upstream change in point of diversion (POD) for 0.79 cfs of water under Certificate 36936 (*priority date January 3, 1961*) will negatively affect instream water right Certificate 75993; however as part of the same transfer, a combined total of 1.4 cfs of water under Certificates 36936, 47486, 47487, and 47488 is proposed to move downstream through the same reach, and beyond, as the proposed upstream POD change. The benefits of transferring a total of 1.4 cfs of water downstream, 0.79 cfs of which is senior in priority<sup>1</sup> to the water right to be moved upstream, outweigh any negative impacts to the instream water right. Based on these considerations, the changes proposed in Transfer Application T-12989 as a whole will not injure instream water right Certificate 75993.
8. On August 7, 2019, after continued evaluation of the proposed transfer, the Department determined that the Preliminary Determination issued on July 17, 2019, proposing to deny Transfer Application T-12989 had erroneously concluded that the proposed transfer would result in injury to instream water right Certificate 75993.
9. On August 16, 2019, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-12989 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 16, 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.
10. On September 12, 2019, the Department issued a revised Preliminary Determination proposing to approve Transfer T-12989 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 September 17, 2019, and in the Central Oregonian newspaper on September 17 and 24, 2019, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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<sup>1</sup> 0.17 cfs under Certificate 47486 has a priority date of May 27, 1916, and 0.62 cfs under Certificate 47487 has a priority date of March 22, 1918.

11. The first right to be transferred is as follows:

**Certificate:** 36936 in the name of MILLER TWEEDT (perfected under Permit S-27190)  
**Use:** IRRIGATION of 66.3 ACRES  
**Priority Date:** JANUARY 3, 1961  
**Rate:** 0.83 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-FORTIETH of one cubic foot per second per acre, 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, a tributary of DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
17 S	20 E	WM	2	NW NW	4	POD 2 - 770 FEET SOUTH AND 1080 FEET EAST FROM THE NW CORNER OF SECTION 2

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
17 S	20 E	WM	2	NW NW	4	8.8
17 S	20 E	WM	2	SW NW		5.0
17 S	20 E	WM	3	NE NE	1	15.2
17 S	20 E	WM	3	NW NE	2	5.1
17 S	20 E	WM	3	SW NE		8.2
17 S	20 E	WM	3	SE NE		24.0
Total						66.3

12. Transfer Application T-12989 proposes to move the authorized point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances	Approximate distance from the original point of diversion in miles (mi)
17 S	20 E	WM	2	NW NE	2	POD 1 - 810 FEET SOUTH AND 1820 FEET WEST FROM THE NE CORNER OF SECTION 2	0.5 mi. upstream
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	2.5 mi. downstream

13. Transfer Application T-12989 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
16 S	20 E	WM	35	SW SW		16.9
16 S	20 E	WM	35	SE SW		19.6
16 S	20 E	WM	35	SW SE		2.9
17 S	20 E	WM	2	NW NE	2	1.3
17 S	20 E	WM	2	NE NW	3	18.0
17 S	20 E	WM	2	NW NW	4	4.1
17 S	20 E	WM	4	SE SW		0.5
17 S	20 E	WM	4	NW SE		2.7
17 S	20 E	WM	4	SW SE		0.3
Total						66.3

14. The second right to be transferred is as follows:

**Certificate:** 47486 in the name of MILLER TWEEDT (perfected under Permit S-2955)

**Use:** IRRIGATION of 14.0 ACRES

**Priority Date:** MAY 27, 1916

**Rate:** 0.17 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 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, a tributary of DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
17 S	20 E	WM	2	NW NE	2	TWEEDT-BOSTON DITCH - 810 FEET SOUTH AND 1820 FEET WEST FROM THE NE CORNER OF SECTION 2

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
16 S	20 E	WM	35	SW SW		10.0
17 S	20 E	WM	3	NE NE		4.0
Total						14.0

15. Transfer Application T-12989 proposes to move the authorized point of diversion approximately 0.5 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
17 S	20 E	WM	2	NW NW	4	POD 2 - 770 FEET SOUTH AND 1120 FEET EAST FROM THE NW CORNER OF SECTION 2

16. Transfer Application T-12989 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
17 S	20 E	WM	2	NW NW	4	9.1
17 S	20 E	WM	2	SW NW		0.8
17 S	20 E	WM	3	NE NE	1	4.1
Total						14.0

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

**Certificate:** 47487 in the name of MILLER TWEEDT (perfected under Permit S-3736)  
**Use:** IRRIGATION of 50.0 ACRES  
**Priority Date:** MARCH 22, 1918  
**Rate:** 0.63 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 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, a tributary of DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	20 E	WM	2	NW NE	TWEEDT-BOSTON DITCH - 810 FEET SOUTH AND 1820 FEET WEST FROM THE NE CORNER OF SECTION 2

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
17 S	20 E	WM	2	NW NE		20.0
17 S	20 E	WM	2	NE NW		20.0
17 S	20 E	WM	2	NW NW		10.0
Total						50.0

18. Transfer Application T-12989 proposes to move the authorized point of diversion approximately 0.5 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
17 S	20 E	WM	2	NW NW	4	POD 2 - 770 FEET SOUTH AND 1120 FEET EAST FROM THE NW CORNER OF SECTION 2

19. Transfer Application T-12989 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
17 S	20 E	WM	2	NW NE	2	0.6
17 S	20 E	WM	2	NW NW	4	0.1
17 S	20 E	WM	2	SW NW		4.0
17 S	20 E	WM	3	NE NE	1	11.3
17 S	20 E	WM	3	NW NE	2	4.4

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
17 S	20 E	WM	3	SW NE		5.8
17 S	20 E	WM	3	SE NE		23.8
Total						50.0

20. The fourth right to be transferred is as follows:

**Certificate:** 47488 in the name of MILLER TWEEDT (perfected under Permit S-27191)

**Use:** IRRIGATION of 32.7 ACRES

**Priority Date:** MARCH 16, 1961

**Rate:** 0.57 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-FORTIETH of one cubic foot per second per acre, 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, a tributary of DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	20 E	WM	2	NW NE	TWEEDT-BOSTON DITCH - 810 FEET SOUTH AND 1820 FEET WEST FROM THE NE CORNER OF SECTION 2

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
16 S	20 E	WM	35	SW SW		13.2
16 S	20 E	WM	35	SE SW		17.2
16 S	20 E	WM	35	SW SE		2.0
17 S	20 E	WM	2	NW NE	2	0.2
17 S	20 E	WM	2	NE NW	3	0.1
Total						32.7

21. Transfer Application T-12989 proposes to move the authorized point of diversion approximately 3.0 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

22. Transfer Application T-12989 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	4	SE SW	4.3
17 S	20 E	WM	4	SW SE	27.0
17 S	20 E	WM	9	NW NE	1.4
Total					32.7

23. 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)]***

24. 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.
25. 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-12989.
26. The proposed changes, as conditioned, would not result in enlargement of the rights.
27. As outlined in Finding of Fact #7 above, the proposed changes would not result in injury to any other existing water rights.
28. All other application requirements are met.

**Conclusions of Law**

The changes in points of diversion and changes in places of use as proposed in Transfer Application T-12989 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

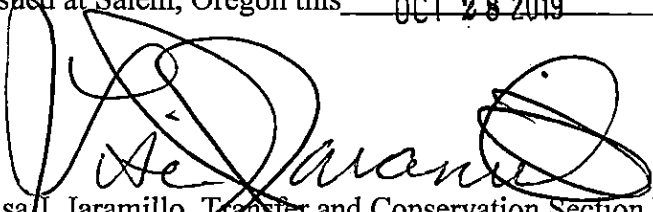
1. The changes in points of diversion and places of use proposed in Transfer Application T-12989 are approved.
2. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 36936, 47486, 47487, and 47488 and any related decree.
3. Water right Certificates 36936, 47486, 47487, and 47488 are cancelled.
4. The quantity of water diverted under the right described by Certificate 36936 at the new points of diversion (POD 1 and POD 3), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 2).
5. The quantity of water diverted under the right described by Certificate 47486 at the new point of diversion (POD 2), shall not exceed the quantity of water lawfully available at the original point of diversion (Tweedt-Boston Ditch).

6. The quantity of water diverted under the right described by Certificate 47487 at the new point of diversion (POD 2), shall not exceed the quantity of water lawfully available at the original point of diversion (Tweedt-Boston Ditch).
7. The quantity of water diverted under the right described by Certificate 47488 at the new point of diversion (POD 3), shall not exceed the quantity of water lawfully available at the original point of diversion (Tweedt-Boston Ditch).
8. 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 each point of diversion (new and existing).
  - 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.
9. 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.
10. The former places of use of the transferred rights shall no longer receive water under the rights.
11. 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.



12. 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