

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12990, Crook County	)	PROPOSING APPROVAL OF AN
	)	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.
4. On October 12, 2018, the applicant's agent submitted a revised Table 2 and map, resolving the deficiency.

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 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. 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

9. 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

10. 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

11. 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

12. 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

13. 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

14. 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

15. 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

16. 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
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

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 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 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.
19. 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.
20. The proposed changes would not result in enlargement of the rights.
21. The proposed changes would not result in injury to other water rights.
22. All other application requirements are met.

**Determination and Proposed Action**

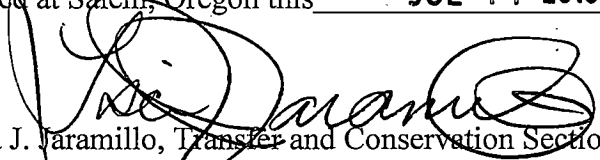
The additional point of diversion, change in point of diversion, and change in places of use proposed in Transfer Application T-12990 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-12990 is approved, the final order will include the following:*

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 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 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, 2020**. 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 JUL 17 2019

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

This 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](mailto: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.*

**Notice Regarding Service Members:** Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>



**Oregon**  
Kate Brown, Governor

**Water Resources Department**  
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(503) 986-0900  
Fax (503) 986-0904

July 17, 2019

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

SUBJECT: Water Right Transfer Application T-12990

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12990. 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 Central 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.

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 [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@oregon.gov) or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane  
Transfer Specialist  
Transfer and Conservation Section

cc: T-12990  
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)  
Shonee D. Langford, Agent for the applicant (*via e-mail*)

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