



Oregon
Kate Brown, Governor

Water Resources Department

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September 12, 2019

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

SUBJECT: Water Right Transfer Application T-12989

Please find enclosed the revised Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12989. 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 or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-12989
Jeremy T. Giffin, District 11 Watermaster (via e-mail)
Shonee D. Langford, Agent for the applicant (via e-mail)

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

In the Matter of Transfer Application)	REVISED PRELIMINARY
T-12989, Crook County)	DETERMINATION PROPOSING
)	APPROVAL OF 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 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.

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.

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 priority¹ 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. 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-

¹ 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.

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	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

11. 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

12. 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

13. 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	Acres	
16 S	20 E	WM	35	SW SW	10.0	
17 S	20 E	WM	3	NE NE	4.0	
					Total	14.0

14. 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

15. 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

16. 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	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

17. 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

18. 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
17 S	20 E	WM	3	SW NE		5.8
17 S	20 E	WM	3	SE NE		23.8
Total						50.0

19. 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

20. 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	180 FEET SOUTH AND 2230 FEET EAST FROM THE W1/4 CORNER OF SECTION 4

21. 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

22. 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)]

23. 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.
24. 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.

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

Determination and Proposed Action

The changes in points of diversion and changes in places of use as proposed in Transfer Application T-12989 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-12989 is approved, the final order will include the following:

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 at the new points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.*
5. *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.*
6. *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.*

7. *The former places of use of the transferred rights shall no longer receive water under the rights.*
8. *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.*
9. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Issued at Salem, Oregon this SEP 12 2019.



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.

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>