

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING
T-13127, Marion County	)	TEMPORARY CHANGES IN PLACE
	)	OF USE AND POINTS OF DIVERSION

**Authority**

Oregon Revised Statute (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to temporarily transfer the place of use and, if necessary to convey the water to the temporary place of use, the point of diversion authorized under an existing water right.

Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

EDER BROS. INC.  
10725 MOHAWK RD NE  
SILVERTON, OR 97381

**Findings of Fact**

1. On February 19, 2019, EDER BROS. INC. filed an application to temporarily change the place of use and change the points of diversion to serve the proposed place of use under Certificates 87118, 87119, and 87122 for a period of 5 years. The Department assigned the application number T-13127.
2. Notice of the application for transfer was published on February 26, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The first right to be temporarily transferred is as follows:

**Certificate:** 87118 in the name of MALLORIES DAIRY INC. (perfected under Permit S-19930)  
**Use:** IRRIGATION of 43.3 ACRES  
**Priority Date:** JUNE 5, 1950  
**Rate:** 0.54 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

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, 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.

ONE-EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** PUDDING RIVER, tributary to WILLAMETTE RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	32	NE NW	POD A (FORMERLY POD G) - 726 FEET SOUTH AND 3750 FEET WEST FROM THE NE CORNER OF SECTION 32
6 S	1 W	WM	32	NW SW	POD B - 2666 FEET SOUTH AND 3975 FEET WEST FROM NE CORNER, SECTION 32

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
6 S	1 W	WM	29	NE SW	2	1.3
6 S	1 W	WM	29	SE SW		19.2
6 S	1 W	WM	32	NE NW		22.8
Total						43.3

4. Temporary Transfer Application T-13127 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	POD
6 S	1 W	WM	16	SW SW	16.3	4
6 S	1 W	WM	17	SE SE	15.8	4
6 S	1 W	WM	20	NE NE	3.9	4
6 S	1 W	WM	21	NW NW	4.0	4
6 S	1 W	WM	31	NE NW	3.3	3
Total					43.3	

5. A change in points of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13127 proposes to move the authorized points of diversion downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original points of diversion in miles (mi.)	
6 S	1 W	WM	17	NE SE	POD 4 - 250 FEET NORTH AND 50 FEET WEST FROM THE SE CORNER OF THE NESE OF SECTION 17	POD A	POD B
						4.3 mi.	4.9 mi.
6 S	1 W	WM	29	SE SW	POD 3 - 2980 FEET NORTH AND 3680 FEET EAST FROM THE SW CORNER OF SMITH DLC 42	0.6 mi.	1.2 mi.

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

**Certificate:** 87119 in the name of MALLORIES DAIRY INC. (perfected under Permit S-14448)  
**Use:** IRRIGATION of 29.5 ACRES  
**Priority Date:** JUNE 24, 1940  
**Rate:** 0.37 CUBIC FOOT PER SECOND (CFS), BEING 0.15 CFS FROM SILVER CREEK AND 0.22 CFS FROM PUDDING RIVER, if available at the original point of diversion  
**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-EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** SILVER CREEK, tributary to the PUDDING RIVER, and the PUDDING RIVER, tributary to the MOLALLA RIVER, tributary to the WILLAMETTE RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	32	NE NW	POD A: 726 FEET SOUTH AND 3750 FEET WEST FROM THE NE CORNER OF SECTION 32
6 S	1 W	WM	32	NW SW	POD B: 2666 FEET SOUTH AND 3975 FEET WEST FROM THE NE CORNER OF SECTION 32

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	32	SW NE	8.3
6 S	1 W	WM	32	NE NW	1.2
6 S	1 W	WM	32	SE NW	9.5
6 S	1 W	WM	32	NE SW	6.5
6 S	1 W	WM	32	NW SE	4.0
Total					29.5

7. Temporary Transfer Application T-13127 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	31	NW NE	27.0
6 S	1 W	WM	31	NE NW	2.5
Total					29.5



8. A change in points of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13127 proposes to move the authorized points of diversion downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original points of diversion in miles (mi.)	
6 S	1 W	WM	29	SE SW	POD 3 - 2980 FEET NORTH AND 3680 FEET EAST FROM THE SW CORNER OF SMITH DLC 42	POD A	POD B
						0.6 mi.	1.2 mi.

9. The third right to be temporarily transferred is as follows:

**Certificate:** 87122 in the name of MALLORIES DAIRY INC. (perfected under Permit S-14483)  
**Use:** IRRIGATION of 23.2 ACRES  
**Priority Date:** JULY 11, 1940  
**Rate:** 0.29 CUBIC FOOT PER SECOND (CFS), BEING 0.22 CFS FROM SILVER CREEK AND 0.07 CFS FROM PUDDING RIVER, if available at the authorized points of diversion.  
**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-EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** SILVER CREEK, tributary to the PUDDING RIVER, and PUDDING RIVER, tributary to the WILLAMETTE RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	32	NE NW	POD A: 726 FEET SOUTH AND 3750 FEET WEST FROM THE NE CORNER OF SECTION 32
6 S	1 W	WM	32	NW SW	POD B: 2666 FEET SOUTH AND 3975 FEET WEST FROM THE NE CORNER OF SECTION 32

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	32	NE SW	15.6
6 S	1 W	WM	32	NW SW	2.0
6 S	1 W	WM	32	NW SE	5.6
Total					23.2

10. Temporary Transfer Application T-13127 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	30	SE SW	2.9
6 S	1 W	WM	30	SW SE	19.5

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	30	SE SE	0.8
Total					23.2

11. A change in points of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13127 proposes to move the authorized points of diversion downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original points of diversion in miles (mi.)	
6 S	1 W	WM	29	SE SW	2980 FEET NORTH AND 3680 FEET EAST FROM THE SW CORNER OF SMITH DLC 42	POD A	POD B
						0.6 mi.	1.2 mi.

**Temporary Transfer Review Criteria**

12. Water has been used within the last five years according to the terms and conditions of the rights. There is no evidence available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
13. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
14. The proposed changes would not result in enlargement of the rights.
15. The proposed changes would not result in injury to other water rights. This finding is made through an abbreviated review recognizing that the transfer may be revoked under ORS 540.523(5) if the Department later finds that the transfer is causing injury to any existing water right.
16. The proposed place of use under Certificate 87118 will be layered with Certificate 35883, which is also for irrigation. The rights shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, being not to exceed 0.89 cfs under Certificate 35883, and 0.54 cfs under Certificate 87118.

**Conclusions of Law**

The temporary changes in place of use and points of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-13127 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

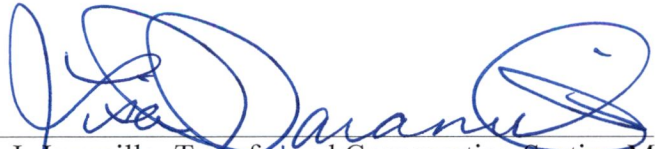
**Now, therefore, it is ORDERED:**

1. The temporary changes in place of use and change in points of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-13127 are approved.



2. The former place of use **shall not** be irrigated as part of these water rights during the 2019, 2020, 2021, 2022, and 2023 irrigation seasons.
3. The use shall revert to the authorized places of use at the end of the 2023 irrigation season. The authorization to use the new points of diversion shall be terminated concurrently.
4. The approval of this temporary transfer may be revoked or modified if the Department finds the changes cause injury to any existing water right.
5. A subsequent application for permanent transfer of Certificates 87118, 87119, and 87122 shall be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380. Approval of this temporary transfer does not establish a precedent for approval of a subsequent application filed for a permanent transfer.
6. The use of water at the temporary place of use authorized by this transfer shall be in accordance with the terms and conditions of Certificates 87118, 87119, and 87122.
7. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
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. The use of the remaining water right described by Certificate 87119 shall continue to be in accordance with the terms and conditions of Certificate 87119.

Dated at Salem, Oregon this APR 26 2019.

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

APR 29 2019

Mailing Date: \_\_\_\_\_