

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

In the Matter of Transfer Application) FINAL ORDER APPROVING AN
T-10118, Marion County) ADDITIONAL POINT OF
) APPROPRIATION

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

Applicant

EDER BROTHERS INC.
11690 HOOK RD NE
MOUNT ANGEL OR 97362

Findings of Fact

1. On March 16, 2006, Eder Brothers Inc. filed an application to add an additional point of appropriation under Certificates 72436 and 80586. Both the old and new points of appropriation are proposed to be used for both water rights affected by the transfer. The Department assigned the application number T-10118.

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

Certificate: 80586 in the name of EDER BROTHERS INC. (perfected under Permit G-6667)

Use: IRRIGATION of 145.55 ACRES

Priority Date: JULY 1, 1974

Rate: 0.64 CUBIC FOOT PER SECOND (IF AVAILABLE AT THE ORIGINAL POINT OF APPROPRIATION BEING LOCATED WITHIN THE SW ¼ NE ¼, AS PROJECTED WITHIN W. RUSSELL DLC 41, SECTION 30, TOWNSHIP 6 SOUTH, RANGE 1 WEST, W.M.; 1870 FEET SOUTH AND 1460 FEET WEST FROM THE NE CORNER OF W. RUSSELL DLC 41)

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: A WELL in the PUDDING RIVER BASIN

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an 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 either 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.

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	1 W	WM	30	SE NE	42	1710 FEET SOUTH & 600 FEET EAST FROM NE CORNER OF W. RUSSELL DLC 41

Authorized Place of Use:

IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 W	WM	29	SW NW	42	19.30
6 S	1 W	WM	29	NW SW	42	20.20
6 S	1 W	WM	30	SW NE	41	27.80
6 S	1 W	WM	30	SE NE	42	22.50
6 S	1 W	WM	30	SE NE	41	6.90
6 S	1 W	WM	30	SE NW	41	0.80
6 S	1 W	WM	30	NE SW	41	4.90
6 S	1 W	WM	30	NE SE	41	2.10
6 S	1 W	WM	30	NE SE	42	21.75
6 S	1 W	WM	30	NW SE	41	19.30

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

Certificate: 72436 in the name of ALBERT E AND DOROTHY M SCHARER; JOSEPH H. EDER, ET AL (perfected under Permit G-4219)

Use: SUPPLEMENTAL IRRIGATION of 145.55 ACRES

Priority Date: JULY 3, 1968

Rate: 0.8 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: A WELL in the PUDDING RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	1 W	WM	30	SE NE	42	1710 FEET SOUTH & 600 FEET EAST FROM NE CORNER, RUSSELL DLC 41

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 W	WM	29	SW NW	42	19.30
6 S	1 W	WM	29	NW SW	42	20.20
6 S	1 W	WM	30	SW NE	41	27.80
6 S	1 W	WM	30	SE NE	42	22.50
6 S	1 W	WM	30	SE NE	41	6.90
6 S	1 W	WM	30	SE NW	41	0.80
6 S	1 W	WM	30	NE SW	41	4.90
6 S	1 W	WM	30	NE SE	41	2.10
6 S	1 W	WM	30	NE SE	42	21.75
6 S	1 W	WM	30	NW SE	41	19.30

- Application T-10118 proposes to add an additional point of appropriation to both rights, so both the authorized and proposed wells may be used under both rights. The proposed well is approximately 2,000 feet to the southwest from the existing point of appropriation, located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	1 W	WM	30	NW SE	41	2410 FEET SOUTH & 1110 FEET WEST FROM NE CORNER OF W. RUSSELL DLC 41

- Notice of the application for transfer was published on March 21, 2006 pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
- On June 16, 2006, the Department issued a preliminary determination proposing to approve Transfer T-10118 and mailed a copy to the applicants. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on June 27, 2006, and in The Silverton Appeal newspaper on July 12, 19 and 26, 2006 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
- Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
- A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights is present.
- The proposed change would not result in enlargement of the rights.
- The proposed change would not result in injury to other water rights, as long as the proposed point of appropriation obtains water from the alluvial aquifer only.

Conclusions of Law

The addition of an additional point of appropriation proposed in application T-10118 is consistent with the requirements of ORS 537.705, 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

- The addition of a point of appropriation to two water rights proposed in application T-10118 is approved.
- Water right certificates 72436 and 80586 are cancelled.
- The right to 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 72436 and 80586 and any related decree.

4. Water shall be acquired from the same aquifer (water source) as the original point of appropriation, being the alluvial aquifer only. Water may not be acquired from any basalt aquifers.
5. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2007**. A Claim of Beneficial Use prepared by a Certified Water Rights 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.
6. The quantity of water diverted at the additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.
7. Prior to diverting water at the new point of appropriation, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
8. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 7th day of September 2006.

Phillip C. Ward
 Phillip C. Ward, Director *Pcw*

Mailing date: SEP 14 2006

Resent: SEP 18 2006