# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A
T-11739, Linn County	)	CHANGE IN POINT OF
·	)	APPROPRIATION

# **Authority**

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**

MEDURI FARMS INC. PO BOX 636 DALLAS, OR 97338

## **Receiving Landowners**

KENNETH AND MARY CUNNINGHAM 36307 JEFFERSON-SCIO DR JEFFERSON, OR 97352

# **Findings of Fact**

- 1. On February 10, 2014, MEDURI FARMS INC. filed an application to change the point of appropriation under Certificate 83829. The Department assigned the application number T-11739.
- 2. Notice of the application for transfer was published on February 18, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. On September 25, 2014, the Department contacted James Schuette, the agent, by email to notify the applicant's agent of a deficiency in the application. Table 2, the listing of land affected by the transfer, needed correcting. The Department requested that the deficiency be resolved by October 24, 2014. On September 29, 2014, the agent submitted an amended Table 2, resolving the deficiency.
- 4. On October 1, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11739 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 1, 2014, for the applicant to respond, the deadline was later extended to December 1, 2014.

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.

- 5. 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 December 8, 2014, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11739 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on December 16, 2014, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
- 7. The right to be transferred is as follows:

Certificate:

83829 in the name of KENNETH CUNNINGHAM (perfected under Permit

G-11163)

Use:

**IRRIGATION of 30.0 ACRES** 

Priority Date: OCTOBER 29, 1990

Rate: Limit/Duty: 0.37 CUBIC FOOT PER SECOND

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:

A WELL in the NORTH SANTIAM BASIN

# Authorized Point of Appropriation:

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Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
10 S	2 W	WM	8	SE SE	62	1125 FEET NORTH AND 260 FEET WEST FROM THE SE CORNER OF SECTION 8

### **Authorized Place of Use:**

	IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres		
10 S	2 W	WM	8	SE SE	62	9.1		
10 S	2 W	WM	9	SW SW	62	11.6		
10 S	2 W	WM	16	NW NW	62	3.1		
10 S	2 W	WM	17	NE NE	62	6.2		

8. Transfer Application T-11739 proposes to move the authorized point of appropriation approximately 130 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
10 S	2 W	WM	8	SE SE	62	NEW WELL - 995 FEET NORTH AND 260 FEET WEST FROM THE SE CORNER OF SECTION 8

9. Certificate 83829 describes the lands appurtenant to the right as being in Marion County, Oregon. Based on the State of Oregon map, the lands appurtenant to the right are actually located in Linn County, Oregon.

# Transfer Review Criteria (OAR 690-380-4010)

- 10. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- 11. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-11739.
- 12. The proposed change would not result in enlargement of the right.
- 13. The proposed change would not result in injury to other water rights.
- 14. All other application requirements are met.

### Conclusion of Law

The change in point of appropriation proposed in Transfer Application T-11739 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

# Now, therefore, it is ORDERED:

- 1. The change in point of appropriation proposed in Transfer Application T-11739 is 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 Certificate 83829 and any related decree.
- 3. Water Right Certificate 83829 is cancelled.
- 4. The quantity of water diverted at the new point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.
- 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 appropriation at each new point of appropriation.
  - b. The water user shall maintain the meter or measuring device in good working order.
  - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
- 6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.

- 7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. 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 change and full beneficial use of the water.
- 8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

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Dated at Salem,	Oregon	thic	$\omega$	day	Ωf	Ignugry	2015
Dated at Salem,	Orcgon	uns		uay	OI	January,	2015.

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Thomas M. Byler, Director

Oregon Water Resources Department

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Mailing Date:	JAN 28 2015	