

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

In the Matter of Transfer Application        )  
T-10411, Linn County                         )  
  )  
  )       FINAL ORDER APPROVING AN  
  )       ADDITIONAL POINT OF  
  )       APPROPRIATION AND PARTIAL  
  )       DIMINUTION OF A WATER RIGHT

**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.  
D. JUSTIN MEDURI  
P.O. BOX 636  
DALLAS, OR 97338

**Findings of Fact**

**Background**

1. On June 20, 2007, D. Justin Meduri of Meduri Farms filed an application to add an additional point of appropriation under Certificates 28351, 30688, 33450, and 65496. The Department assigned the application number T-10411.
2. The first right to be transferred is as follows:
  - Certificate:** 28351 in the name of WILLIAM UPPSTAD (perfected under Permit G-651)
  - Use:** IRRIGATION of 33.2 ACRES
  - Priority Date:** SEPTEMBER 5, 1957
  - Rate:** 0.43 CUBIC FEET 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-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.

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.

**Source:** UPPSTAD WELL #3 within the NORTH SANTIAM RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	GLot	Measured Distances
10 S	2 W	WM	8	SW SW	5	925 FEET NORTH and 950 FEET EAST from the SW CORNER of SECTION 8

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	GLot	Acres
10 S	2 W	WM	8	NW SW	5	1.8
10 S	2 W	WM	8	SW SW	5	31.2
10 S	2 W	WM	8	SE SW	6	0.2

3. Transfer Application T-10411 proposes an additional point of appropriation approximately 3500 feet east to Well#8 located:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
10 S	2 W	WM	8	SE SE	62	950 FEET NORTH and 4425 FEET EAST from the SW CORNER of SECTION 8

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

**Certificate:** 30688 in the name of WILLIAM UPPSTAD (perfected under Permit G-1501)

**Use:** IRRIGATION of 34.0 ACRES

**Priority Date:** DECEMBER 16, 1959

**Rate:** 0.43 CUBIC FEET 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-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:** UPPSTAD WELL No.4 within the NORTH SANTIAM RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	GLot	Measured Distances
10 S	2 W	WM	8	SE SE	10	625 FEET NORTH and 4325 FEET EAST from the SW CORNER of SECTION 8

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	GLot	Acres
10 S	2 W	WM	8	NE SE	9	10.4
10 S	2 W	WM	8	NW SE	8	6.0
10 S	2 W	WM	8	SW SE	7	8.4
10 S	2 W	WM	8	SE SE	10	9.2

5. Transfer Application T-10411 proposes an additional point of appropriation approximately 400 feet north to Well#8 located:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
10 S	2 W	WM	8	SE SE	62	950 FEET NORTH and 4425 FEET EAST from the SW CORNER of SECTION 8

6. The third right to be transferred is as follows:

**Certificate:** 33450 in the name of WILLIAM UPPSTAD (perfected under Permit G-2113)

**Use:** IRRIGATION of 50.7 ACRES

**Priority Date:** APRIL 10, 1962

**Rate:** 0.63 CUBIC FEET 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-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:** UPPSTAD WELL No. 5 within the NORTH SANTIAM RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	GLot	Measured Distances
10 S	2 W	WM	8	SW SE	7	1010 FEET NORTH and 3110 FEET EAST FROM the SW CORNER of SECTION 8

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	GLot	Acres
10 S	2 W	WM	8	SW SW	5	2.4
10 S	2 W	WM	8	SE SW	6	12.4
10 S	2 W	WM	8	NW SE	8	8.4
10 S	2 W	WM	8	SW SE	7	27.5

7. Transfer Application T-10411 proposes an additional point of appropriation approximately 1350 feet east to Well#8 located:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
10 S	2 W	WM	8	SE SE	62	950 FEET NORTH and 4425 FEET EAST from the SW CORNER of SECTION 8

8. The portion of the fourth right to be transferred is as follows:

**Certificate:** 65496 in the name of KENNETH E. CUNNINGHAM (perfected under Permit G-10727)

**Use:** IRRIGATION of 47.0 ACRES

**Priority Date:** MAY 12, 1987

**Rate:** 0.59 CUBIC FEET 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-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:** WELL 6 within the NORTH SANTIAM RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	GLot	Measured Distances
10 S	2 W	WM	8	SE SW	3	850 FEET NORTH and 2050 FEET EAST FROM SW CORNER of SECTION 8

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	GLot	Acres
10 S	2 W	WM	8	NE SW	3	6.8
10 S	2 W	WM	8	NE SW	5	3.4
10 S	2 W	WM	8	NW SW	5	1.08
10 S	2 W	WM	8	SW SW	5	2.92
10 S	2 W	WM	8	SW SW	3	1.7
10 S	2 W	WM	8	SE SW	6	2.3
10 S	2 W	WM	8	SE SW	3	20.1
10 S	2 W	WM	8	SE SW	5	1.9
10 S	2 W	WM	8	NW SE	8	4.1
10 S	2 W	WM	8	NW SE	3	1.3
10 S	2 W	WM	8	SW SE	7	1.4
<b>TOTAL:</b>						<b>47.0</b>

9. Transfer Application T-10411 proposes an additional point of appropriation approximately 2400 feet east to Well#8 located:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
10 S	2 W	WM	8	SE SE	62	950 FEET NORTH and 4425 FEET EAST from the SW CORNER of SECTION 8

10. There is an apparent scrivener's error in the description of the county listed on Certificate 65496. The county listed on the certificate as Marion County is in error. Based on the final proof maps and other water rights appurtenant to the same property, the name of the county should be listed as **Linn** County, consistent with the legal description attached to these lands, being south of the North Santiam River.
11. Notice of the application for transfer was published on June 26, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice
12. Upon review of the application and map, the Department finds that two of the four existing water rights overlap each other within the authorized place of use lands. A portion of water right Certificate 65496 overlaps approximately 4.3 acres of lands identified in Certificate 28351. On November 5, 2009, pursuant to OAR 690-380-2240, the Department mailed out a letter identifying the layered water rights and asked the applicant to either cancel a portion of one right or diminish a portion of the other water right to supplemental irrigation.

13. On January 21, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10411 to the applicant. The draft Preliminary Determination set forth a deadline of February 20, 2010, 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.
14. On March 5, 2010, the Department issued a preliminary determination proposing to approve Transfer T-10411 and mailed a copy to the applicant. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on March 9, 2010, and in the Jefferson Review newspaper on April 1, 8, and 15, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

***Partial Diminution of a Certain Water Right***

15. On January 12, 2010, Kenneth E. and Mary M. Cunningham, owners of lands under which a portion of water right Certificate 65496 is appurtenant to, have voluntarily submitted an affidavit for the partial diminution of the water right.

The portion of the water right to be diminished from primary irrigation to supplemental irrigation is described as follows:

**Certificate:** 65496 in the name of KENNETH E. CUNNINGHAM (perfected under Permit G-10727)  
**Use:** IRRIGATION of 4.30 ACRES  
**Priority Date:** MAY 12, 1987  
**Rate:** 0.05 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-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:** WELL 6 within the NORTH SANTIAM RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	GLot	Survey Coordinates
10 S	2 W	WM	8	SE SW	3	850 FEET NORTH and 2050 FEET EAST FROM the SW CORNER of SECTION 8

Place of Use to be Diminished to Supplemental Irrigation						
Twp	Rng	Mer	Sec	Q - Q	GLot	Acres
10 S	2 W	WM	8	NW SW	5	0.62
10 S	2 W	WM	8	SW SW	5	3.48
10 S	2 W	WM	8	SE SW	6	0.2
<b>TOTAL:</b>						<b>4.3</b>

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

13. Water has been used within the last five years prior to the submittal of Transfer Application T-10411 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.
14. Wells, pumps, buried mainline, and sprinkler systems 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-10411.
15. The Department has determined that the proposed point of appropriation (POA), if properly conditioned, will develop the same source of water as the authorized existing wells:

Uppstad Well #3	[LINN 4086]	Uppstad Well #4	[LINN 4083]
Uppstad Well #5	[LINN 4087]	Well #6	[LINN 3137]

The existing wells produce water from an unconfined alluvial aquifer composed of Quaternary sands and gravels. The proposed new well shall be constructed to produce ground water from the alluvial ground water reservoir only which occurs at depths less than about 120 feet below land surface.
16. The proposed changes would not result in enlargement of the rights.
17. The proposed change would not result in injury to other water rights.

**Conclusions of Law**

The additional point of appropriation proposed in Transfer Application T-10411 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the diminished right will be diminished to supplemental irrigation.

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

1. The additional point of appropriation proposed in Transfer Application T-10411 is approved.
2. The water right for the irrigation of 4.3 acres under Certificate 65496 as described in Findings No. 12 & 13 is diminished from primary irrigation to supplemental irrigation.
3. 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 28351, 30688, 33450, and 65496 and any related decree.
4. Water right Certificates 28351, 30688, 33450, and 65496 are cancelled.
5. The quantity of water diverted at the new additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.
6. Water shall be acquired from the same aquifer (water source) as the original points of appropriation (Uppstad Well #3, LINN 4086, Uppstad Well #4, LINN 4083, Uppstad Well

#5, LINN 4087, Well #6, LINN 3137). The Department has determined that groundwater production from the new proposed well shall be limited to the equivalent water-bearing zone encountered in the original authorized wells, primarily from an unconfined alluvial aquifer composed of Quaternary sands and gravels. The proposed new well shall be constructed to produce ground water from the alluvial ground water reservoir only which occurs at depths less than about 120 feet below land surface.

7. 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. The water user shall maintain the meter or measuring device in good working order. The water user shall allow the Watermaster access to the meter or measuring devices; provided however, where the meter or measuring device are located within a private structure, the Watermaster shall request access upon reasonable notice.
8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. 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. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 18 day of May 2010.

  
Philip C. Ward, Director

Mailing Date: MAY 20 2010