

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING AN
T-10928, Douglas County	)	ADDITIONAL POINT OF DIVERSION,
	)	A CHANGE IN PLACE OF USE,
	)	CLARIFICATION OF A WATER
	)	RIGHT AND PARTIAL
	)	CANCELLATION OF A WATER
	)	RIGHT

**Authority**

ORS 540.505 to 540.580 establishes 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 and establishes the process by which the Department may clarify the description of a water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicant**

M. C. OTIS  
PO BOX 489  
2200 LONE ROCK RD  
GLIDE OR 97443

**Findings of Fact**

**Background**

1. On June 30, 2009, M. C. OTIS filed an application for an additional point of diversion and to change the place of use under Certificate 43956. The Department assigned the application number T-10928.
2. The Department sent letters to the applicant on October 14 and November 18, 2009 and received responses with revised maps and acreages on November 4 and December 7, 2009.

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.

3. On January 21, and 22, 2010, statements were received by mail and fax, clarifying what portion of the right was proposed to have an additional point of diversion.
4. The portion of the right to be transferred is as follows:

**Certificate:** 43956 in the name of NORMAN GOULD (perfected under Permit S-9538)

**Use:** DOMESTIC AND IRRIGATION OF 8.1 ACRES

**Priority Date:** FEBRUARY 27, 1930

**Rate:** 0.101 CUBIC FOOT PER SECOND, if available at the original point of diversion in SW¼ SE¼, Section 10, T26S, R3W, W.M.

**Limit/Duty:** ONE-EIGHTIETH cfs per acre

**Source:** BRITT CREEK, tributary to NORTH UMPQUA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	3 W	WM	10	SW SE	670 FEET NORTH AND 140 FEET EAST FROM THE SOUTH 1/4 CORNER OF SECTION 10
26 S	3 W	WM	10	SW SE	400 FEET NORTH AND 50 FEET EAST FROM THE SOUTH 1/4 CORNER OF SECTION 10

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres	Proposed Changes
26 S	3 W	WM	10	NE SW	1.4	APOD and POU
26 S	3 W	WM	10	NE SW	6.7	APOD only

5. Transfer Application T-10928 proposes an additional point of diversion approximately 1/4 mile downstream for all of the transfer acres, located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	3 W	WM	10	NE SW	1690 FEET NORTH AND 60 FEET WEST FROM THE SOUTH ¼ CORNER OF SECTION 10

6. Application T-10928 also proposes to change the place of use of 1.4 acres under the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	3 W	WM	10	SE SW	1.4

7. Notice of the application for transfer was published on July 14, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On December 21, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10928 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 21, 2010, for the applicant to respond. The applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer. By letter received January 21, 2010, the applicant indicated intent to voluntarily cancel 1.9 acres due to over five years of non-use

and indicated that the additional point of diversion would be used for 8.1 acres of irrigation. The original draft Preliminary Determination had been issued based on an assumption that the additional point of diversion was proposed to affect only the 1.4 acres having the change in place of use.

9. On January 22, 2010, the Department contacted the applicant's agent for clarification of what portion of the place of use the applicant wished to irrigate from the additional point of diversion. On January 22, 2010, Janette Leroue, the applicant's agent, faxed a reply, confirming that 8.1 acres under the right are to be irrigated from the additional point of diversion and acknowledging the diversion rate to be 1/80 cfs per acre. Therefore, 6.7 acres are to have an additional point of diversion only, while 1.4 acres are to have a change in place of use and additional point of diversion.
10. On January 26, 2010, the Department mailed a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-10928 to the applicant. On February 4, 2010, the applicant requested that the Department proceed with issuance of a Preliminary Determination and provided an affidavit of partial cancellation for 1.9 acres of water right that had not been exercised for more than five consecutive years due to construction of road and buildings after the right was originally established.
11. On February 5, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10928 and mailed a copy to the applicant and to owners of adjacent properties to the west, due to the proposed clarification of the place of use. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on February 9, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice and no comments were received from adjacent landowners.
12. 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)]***

13. Water has been used on the place of use proposed for transfer within the last five years according to the terms and conditions of the right.
14. A diversion structure, 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-10928.
15. The proposed changes would not result in enlargement of the right.
16. The proposed changes would not result in injury to other water rights.

### ***Clarification of a Water Right***

17. The T-10928 transfer map portrays the place of use for the entire 10 acres under Certificate 43956 as being within the boundaries of current Tax Lot 2300 in T26S, R3W, NE SE of Section 10. However, the original hand-drawn Application S-13295 map for the right indicated the 10 acres as extending farther west into areas that are currently within Tax Lots 2000 and 2100 in the NE SE of Section 10. No Final Proof Map was generated when Permit S-9538 was perfected and the original Certificate 9861 was issued for the right.
18. The map submitted October 27, 1955 for new Water Right Application S-29435 shows a proposed place of use for irrigation from the North Umpqua River on the lands in the NE SE of Section 10 that are in current Tax Lots 2000 and 2100. If those lands were at that time irrigated under the Britt Creek right, that portion of the place of use of the North Umpqua right would have been designated as supplemental when a permit was issued. This was not the case. Permit S-23671/Certificate 28821 list this part of the water right as primary.
19. The map submitted November 14, 1974 for Transfer Application T-3146, proposing a point of diversion change, also shows the 10 acres as extending to the west edge of NE SE. However, notes from a site visit by Department field staff person R.G. Mucken on September 17, 1975 indicate that the westernmost 400 feet of that area was owned by neighbor Oren Nordhagen and was irrigated with water from the North Umpqua River, rather than from Britt Creek. Andy Smith, a longtime neighbor to the east indicated that to his knowledge the western land area had never been irrigated from Britt Creek.
20. Based on Findings of Fact #17-#19, as well as historic aerial photos that show what appears to be a southwest-to-northeast fence line separating the irrigated area in the NE SE of Section 10 into fields, the Department concludes that the 10 acres of irrigation developed under the right evidenced by Certificate 43956 has always been on the land that is currently in Tax Lot 2300, and did not include the portions of the NE SE now lying within Tax Lots 2000 and 2100. Therefore, the water right record should be clarified to more accurately show the place of use for the right, as shown in the T-10928 transfer map.
21. Buildings and a road now cover a portion of the original 10-acre place of use.

### ***Partial Cancellation of a Water Right***

22. On February 4, 2010, the applicant submitted an Affidavit for Partial Cancellation of a Water Right Certificate requesting to voluntarily cancel 1.9 acres of irrigation use appurtenant to tax lot 2300, in the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 10, T 26S, R 3W. The right to be cancelled is as follows:

**Certificate:** 43956 in the name of NORMAN GOULD (perfected under Permit S-9538)

**Use:** IRRIGATION OF 1.9 ACRES

**Priority Date:** FEBRUARY 27, 1930

**Rate:** 0.024 CUBIC FOOT PER SECOND, if available at the original point of diversion in SW $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 10, T26S, R3W, W.M.

**Limit/Duty:** ONE-EIGHTIETH cfs per acre  
**Source:** BRITT CREEK, tributary to NORTH UMPQUA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	3 W	WM	10	SW SE	670 FEET NORTH AND 140 FEET EAST FROM THE SOUTH 1/4 CORNER OF SECTION 10
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**Authorized Place of Use to be Cancelled:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	3 W	WM	10	NE SW	1.9

**Conclusions of Law**

The additional point of diversion and change in place of use proposed in Transfer Application T-10928 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000, the location of the place of use should be clarified and the abandoned portion of the right should be cancelled.

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

1. The historic place of use of the right is clarified. The additional point of diversion and change in place of use proposed in application T-10928 are approved. The portion of the right that has been abandoned is cancelled.
2. Water right certificate 43956 is cancelled.
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 Certificate 43956 and any related decree.
4. The quantity of water diverted at the additional point of diversion, together with that diverted at the original 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 the new additional point of diversion.
  - 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. 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 place of use of the transferred right shall no longer receive water under the right.
  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 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.
  9. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 12<sup>th</sup> day of March 2010.



PC Phillip C. Ward, Director

Mailing date: MAR 17 2010