

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

In the Matter of Transfer Application)
T-10979, Deschutes County)
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)

PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A CHANGE
IN POINT OF APPROPRIATION,
ADDITIONAL POINTS OF
APPROPRIATION AND A CHANGE IN
PLACE OF USE

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

ROATS WATER SYSTEM, INC.
ATTN: BILL ROATS
61147 HAMILTON LANE
BEND, OR 97702

Findings of Fact

Background

1. On November 17, 2009, Bill Roats of Roats Water System, Inc. filed an application to change the point of appropriation and place of use under Certificates 81657 and 81672, and submitted the associated application fee on November 19, 2009. The Department assigned the application number T-10979.
2. Supporting documentation needed to complete the Evidence of Use affidavit for Transfer T-10979 was submitted by the applicant on December 30, 2009.
3. On January 21, 2010, the applicant submitted a completed Land Use Information Form from Deschutes County indicating that the changes proposed under Transfer T-10979 are compatible with local comprehensive plans.
4. On January 22, 2010, Certificate 81657 was superseded by Certificate 86042 and Certificate 81672 was superseded by Certificate 86043, as evidenced by Special Order Volume 80, Page 131.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

5. On July 12, 2010, the applicant submitted a written statement clarifying that the place of use change proposed for Certificates 86042 and 86043 is to affect only the Group Domestic portion of the rights. The place of use for the supplemental irrigation under Certificate 86042 and the irrigation under Certificate 86043 is to remain unchanged.
6. Transfer Application T-10979 incorrectly identified that the proposed well (Well #10) was associated with the well construction log labeled as "DESC 55124." On July 12, 2010, the applicant confirmed that the proposed well is actually associated with the well construction log labeled as "DESC 57243."
7. On August 10, 2010, the applicant submitted a revised transfer application, proposing to add Wells #3, #4 and #9 as points of appropriation. Copies of the appropriate well logs were included.
8. The FIRST right to be transferred is as follows:

Certificate: 86042 in the name of ROATS WATER SYSTEM, INC. (perfected under Permit G-1890)

Use: GROUP DOMESTIC and SUPPLEMENTAL IRRIGATION of 13.0 ACRES

Priority Date: MARCH 23, 1961

Rate: 0.66 CUBIC FOOT PER SECOND (CFS); being 0.5 CFS for Group Domestic and 0.16 CFS for Supplemental Irrigation

Limit/Duty: The amount of water used for irrigation under this right, 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) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year. This right is limited to any deficiency in the available supply of any prior right existing for the same land.

Source: WELL NO. 1 in the DESCHUTES BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
18 S	12 E	WM	17	NE NW	320 FEET SOUTH AND 270 FEET WEST FROM THE NORTH 1/4 CORNER OF SECTION 17

Authorized Place of Use:

GROUP DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
18 S	12 E	WM	7	SE SE
18 S	12 E	WM	8	NE NE
18 S	12 E	WM	8	NW NE
18 S	12 E	WM	8	SW NE
18 S	12 E	WM	8	SE NE
18 S	12 E	WM	8	NE NW
18 S	12 E	WM	8	NW NW
18 S	12 E	WM	8	SW NW
18 S	12 E	WM	8	SE NW
18 S	12 E	WM	8	NE SW
18 S	12 E	WM	8	NW SW

GROUP DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
18 S	12 E	WM	8	SW SW
18 S	12 E	WM	8	SE SW
18 S	12 E	WM	8	NE SE
18 S	12 E	WM	8	NW SE
18 S	12 E	WM	8	SW SE
18 S	12 E	WM	8	SE SE
18 S	12 E	WM	9	NE SW
18 S	12 E	WM	9	NW SW
18 S	12 E	WM	9	SW SW
18 S	12 E	WM	9	SE SW
18 S	12 E	WM	17	NE NE
18 S	12 E	WM	17	NW NE
18 S	12 E	WM	17	SW NE
18 S	12 E	WM	17	SE NE
18 S	12 E	WM	17	NE NW
18 S	12 E	WM	17	NW NW
18 S	12 E	WM	17	SW NW
18 S	12 E	WM	17	SE NW
18 S	12 E	WM	18	NE NE

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
18 S	12 E	WM	17	SE NE	2400 (Map 17)	13.0

9. Transfer Application T-10979 proposes to move the authorized point of appropriation for the entirety of the right to Well #10 approximately 2.5 miles southwest from the existing point of appropriation and to add 3 additional wells as points of appropriation, located approximately 0.75 miles west and north from the existing point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
18 S	12 E	WM	7	SE SE	WELL #9: 160 FEET NORTH AND 630 FEET WEST FROM THE NW CORNER OF SECTION 17
18 S	12 E	WM	18	NE NE	WELL #3: 140 FEET SOUTH AND 820 FEET WEST FROM THE NW CORNER OF SECTION 17
18 S	12 E	WM	18	NE NE	WELL #4: 55 FEET SOUTH AND 835 FEET WEST FROM THE NW CORNER OF SECTION 17
18 S	12 E	WM	30	SW NW	WELL #10: 2445 FEET SOUTH AND 1200 FEET EAST FROM THE NW 1/4 CORNER OF SECTION 30

10. Transfer Application T-10979 also proposes to change the place of use for the Group Domestic portion of the right to:

GROUP DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
18 S	12 E	WM	7	SE SE
18 S	12 E	WM	8	NE NE
18 S	12 E	WM	8	NW NE
18 S	12 E	WM	8	SW NE

GROUP DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
18 S	12 E	WM	8	SE NE
18 S	12 E	WM	8	NE NW
18 S	12 E	WM	8	NW NW
18 S	12 E	WM	8	SW NW
18 S	12 E	WM	8	SE NW
18 S	12 E	WM	8	NE SW
18 S	12 E	WM	8	NW SW
18 S	12 E	WM	8	SW SW
18 S	12 E	WM	8	SE SW
18 S	12 E	WM	8	NE SE
18 S	12 E	WM	8	NW SE
18 S	12 E	WM	8	SW SE
18 S	12 E	WM	8	SE SE
18 S	12 E	WM	9	SW NW
18 S	12 E	WM	16	NW NW
18 S	12 E	WM	16	SW NW
18 S	12 E	WM	17	NE NE
18 S	12 E	WM	17	NW NE
18 S	12 E	WM	17	SW NE
18 S	12 E	WM	17	SE NE
18 S	12 E	WM	17	NE NW
18 S	12 E	WM	17	NW NW
18 S	12 E	WM	17	SW NW
18 S	12 E	WM	17	SE NW
18 S	12 E	WM	17	NE SW
18 S	12 E	WM	17	NW SW
18 S	12 E	WM	17	NE SE
18 S	12 E	WM	18	NE NE

11. The SECOND right to be transferred is as follows:

Certificate: 86043 in the name of ROATS WATER SYSTEM, INC. (perfected under Permit G-3128)

Use: GROUP DOMESTIC and IRRIGATION of 6.0 ACRES

Priority Date: DECEMBER 22, 1965

Rate: 0.56 CUBIC FOOT PER SECOND (CFS); being 0.5 CFS for Group Domestic and 0.06 CFS for Irrigation

Limit/Duty: The amount of water used for irrigation under this right, 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) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

Source: WELL NO. 2 in the DESCHUTES BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
18 S	12 E	WM	17	NE NW	300 FEET SOUTH AND 320 FEET WEST FROM THE NORTH 1/4 CORNER OF SECTION 17

Authorized Place of Use:

GROUP DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
18 S	12 E	WM	7	SE SE
18 S	12 E	WM	8	NE NE
18 S	12 E	WM	8	NW NE
18 S	12 E	WM	8	SW NE
18 S	12 E	WM	8	SE NE
18 S	12 E	WM	8	NE NW
18 S	12 E	WM	8	NW NW
18 S	12 E	WM	8	SW NW
18 S	12 E	WM	8	SE NW
18 S	12 E	WM	8	NE SW
18 S	12 E	WM	8	NW SW
18 S	12 E	WM	8	SW SW
18 S	12 E	WM	8	SE SW
18 S	12 E	WM	8	NE SE
18 S	12 E	WM	8	NW SE
18 S	12 E	WM	8	SW SE
18 S	12 E	WM	8	SE SE
18 S	12 E	WM	9	NE SW
18 S	12 E	WM	9	NW SW
18 S	12 E	WM	9	SW SW
18 S	12 E	WM	9	SE SW
18 S	12 E	WM	17	NE NE
18 S	12 E	WM	17	NW NE
18 S	12 E	WM	17	SW NE
18 S	12 E	WM	17	SE NE
18 S	12 E	WM	17	NE NW
18 S	12 E	WM	17	NW NW
18 S	12 E	WM	17	SW NW
18 S	12 E	WM	17	SE NW
18 S	12 E	WM	18	NE NE

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
18 S	12 E	WM	8	NE SW	703 (Map 8D)	0.25
18 S	12 E	WM	8	NE SW	1502 (Map 8C)	0.25
18 S	12 E	WM	8	SE SW	1000 (Map 8C)	2.00
18 S	12 E	WM	8	NW SE	900 (Map 8D)	1.25
18 S	12 E	WM	17	NE NW	100 (Map 17BA)	0.75
18 S	12 E	WM	17	NE NW	200 (Map 17BA)	0.25
18 S	12 E	WM	17	NE NW	300 (Map 17BA)	1.00
18 S	12 E	WM	17	NE NW	704 (Map 17BA)	0.25

12. Transfer Application T-10979 proposes to move the authorized point of appropriation for the entirety of the right to Well #10 approximately 2.5 miles southwest from the existing point of

appropriation and to add 3 additional wells as points of appropriation, located approximately 0.75 miles west and north from the existing point of appropriation:

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18 S	12 E	WM	18	NE NE	WELL #3: 140 FEET SOUTH AND 820 FEET WEST FROM THE NW CORNER OF SECTION 17
18 S	12 E	WM	18	NE NE	WELL #4: 55 FEET SOUTH AND 835 FEET WEST FROM THE NW CORNER OF SECTION 17
18 S	12 E	WM	30	SW NW	WELL #10: 2445 FEET SOUTH AND 1200 FEET EAST FROM THE NW 1/4 CORNER OF SECTION 30

13. Transfer Application T-10979 also proposes to change the place of use for the Group Domestic portion of the right to:

GROUP DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
18 S	12 E	WM	7	SE SE
18 S	12 E	WM	8	NE NE
18 S	12 E	WM	8	NW NE
18 S	12 E	WM	8	SW NE
18 S	12 E	WM	8	SE NE
18 S	12 E	WM	8	NE NW
18 S	12 E	WM	8	NW NW
18 S	12 E	WM	8	SW NW
18 S	12 E	WM	8	SE NW
18 S	12 E	WM	8	NE SW
18 S	12 E	WM	8	NW SW
18 S	12 E	WM	8	SW SW
18 S	12 E	WM	8	SE SW
18 S	12 E	WM	8	NE SE
18 S	12 E	WM	8	NW SE
18 S	12 E	WM	8	SW SE
18 S	12 E	WM	8	SE SE
18 S	12 E	WM	9	SW NW
18 S	12 E	WM	16	NW NW
18 S	12 E	WM	16	SW NW
18 S	12 E	WM	17	NE NE
18 S	12 E	WM	17	NW NE
18 S	12 E	WM	17	SW NE
18 S	12 E	WM	17	SE NE
18 S	12 E	WM	17	NE NW
18 S	12 E	WM	17	NW NW
18 S	12 E	WM	17	SW NW
18 S	12 E	WM	17	SE NW
18 S	12 E	WM	17	NE SW
18 S	12 E	WM	17	NW SW
18 S	12 E	WM	17	NE SE
18 S	12 E	WM	18	NE NE

14. Notice of the application for transfer was published on December 1, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
15. On July 14, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10979 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 13, 2010, for the applicant to respond. The applicant requested to modify the transfer application to add three additional points of appropriation, as indicated above.
16. On November 16, 2010, the Department mailed a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-10979 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of December 16, 2010, for the applicant to respond. The applicant indicated agreement with the provisions of the revised draft and requested that the Department proceed with issuance of a Preliminary Determination.

Transfer Review Criteria (OAR 690-380-4010)

17. Water has been used within the last five years prior to the submittal of Transfer Application T-10979 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.
18. Pumps, pipeline, and a distribution system 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-10979.
19. The proposed changes would not result in enlargement of the rights.
20. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

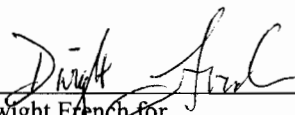
The changes in point of appropriation and place of use proposed in Transfer Application T-10979 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-10979 is approved, the final order will include the following:

1. *The changes in point of appropriation and place of use proposed in Transfer Application T-10979 are 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 Certificates 86042 and 86043 and any related decree.*
3. *Water right Certificates 86042 and 86043 are cancelled.*

4. *The quantity of water diverted at the new points of appropriation shall not exceed the quantity of water lawfully available at the original points 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 additional point of appropriation (Wells #3, #4 and #9).*
 - 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.*
6. *The water user shall maintain and operate the existing measurement device at Well #10 and shall make such improvements as may be required by the Department.*
7. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
8. *The former place of use of the transferred rights shall no longer receive water under the right, except as may be provided under the Roats Water System, Inc. domestic water supply system for Group Domestic purposes.*
9. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. 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.*
10. *When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 6 day of December 2010.



Dwight French for
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Dorothy Pedersen. If you have questions about the information in this document, you may reach me at 503-986-0890 or Dorothy.I.Pedersen@wrdd.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.