

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

In the Matter of Transfer Application	)	FINAL ORDER DENYING A CHANGE
T-13033, Lane County	)	FROM A SURFACE WATER POINT OF
	)	DIVERSION TO A GROUND WATER
	)	POINT OF APPROPRIATION

**Authority**

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

JEFFREY A. LYONS  
PO BOX 229  
LYONS, CO 87540

**Findings of Fact**

1. On September 25, 2018, JEFFREY A. LYONS filed an application to change from a surface water point of diversion to a ground water point of appropriation under Certificate 21006. The Department assigned the application number T-13033.
2. Notice of the application for transfer was published on October 2, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 21, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-13033 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 20, 2018, for the applicant to respond. No response was received.
4. On January 22, 2019, the Department issued a Preliminary Determination proposing to deny Transfer T-13033 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's

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.

weekly notice on January 22, 2019, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

**Certificate:** 21006 in the name of CHRIS S. CHRISTIANSON (perfected under Permit S-20251)  
**Use:** IRRIGATION of 5.65 ACRES  
**Priority Date:** MARCH 12, 1951  
**Rate:** 0.08 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, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, 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 SLOUGH WHICH IS A CHANNEL OF WILLAMETTE RIVER, a tributary of WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC
16 S	4 W	WM	36	SW NW	42

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
16 S	4 W	WM	36	SW NW	42	5.65

6. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 21006 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
16 S	4 W	WM	36	SW NW	994 FEET SOUTH 21° EAST FROM THE NE CORNER OF W1/2 OF THE G. MAUPIN DLC 42

7. Transfer Application T-13033 proposes to change from a surface water point of diversion to a well located approximately 503 feet NW from the original point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
16 S	4 W	WM	36	SW NW	42	619 FEET SOUTH 3° EAST FROM THE NE CORNER OF W1/2 OF THE G. MAUPIN DLC 42

**Transfer Review Criteria [OAR 690-380-4010(2)]**

8. Water has been used within the last five years.
9. 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-13033.

10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.
12. On November 6, 2018, the Department's Groundwater section determined the proposed transfer does not satisfy the criteria for similarity under ORS 540.531(9)(b). The Groundwater Section used the Hunt (1999) analytical stream depletion model to estimate the similarity requirement. Using aquifer parameter values derived from both nearby pumping tests (LANE 8377) and literature values (Conlon and others, 2005; Freeze and Cherry, 1979), estimated depletion of the Willamette River slough after 10 days of continuous pumping was much less than 50%, due largely to the relatively great distance between Well 1 [proposed ground water point of appropriation] and the slough. Thus, LANE 57154 does NOT affect the surface water source similarly.

### Conclusions of Law

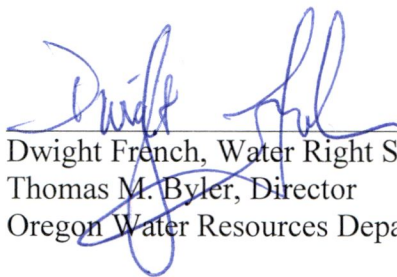
The application to change from a surface water point of diversion to a groundwater point of appropriation proposed in Transfer Application T-13033 is not consistent with the requirements of ORS 540.531(2)(C) and OAR 690-380-2130 (2)(c), because the proposed ground water point of appropriation does not affect the surface water source similarly.

### Now, therefore, it is ORDERED:

1. Transfer Application T-13033 is denied for failure to meet the requirements under ORS 540.531(2)(C) and OAR 690-380-2130 (2)(c).

MAR 12 2019

Dated at Salem, Oregon this \_\_\_\_\_,



Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department