

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

In the Matter of Transfer Application)
T-13033, Lane County)
)
)
)
)

PRELIMINARY DETERMINATION
PROPOSING DENIAL OF A CHANGE
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. 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

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.

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

5. 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

6. 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)]

7. Water has been used within the last five years.
8. 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.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.
11. 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 appears to be 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).

Dated at Salem, Oregon this JAN 22 2019,



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

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or corey.a.courchane@oregon.gov

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

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

January ____, 2019

JEFFREY A. LYONS
PO BOX 229
LYONS, CO 87540

SUBJECT: Water Right Transfer Application T-13033

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to deny application T-13033. This document is an intermediate step in the denial process; water may not be used legally as proposed in the transfer application until a Final Order to approve the transfer has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the Department's notice.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me, at corey.a.courchane@oregon.gov or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-13033
Lanaya F. Blakely, District 2 Watermaster (*via e-mail*)
Steven I. Recca, Agent for the applicant (*via e-mail*)

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