



Oregon

Kate Brown, Governor

August 8, 2022

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

VIA CERTIFIED MAIL AND E-MAIL

Applicant

JEFFREY A. LYONS

PO BOX 146

EAST BURKE, VT 05832

SUBJECT: Water Right Transfer Application T-13844

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13844. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order 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 contact me at scott.a.grew@water.oregon.gov or 503-986-0890 if I may be of assistance.

Sincerely,

Scott Grew

Transfer Specialist

Transfer and Conservation Section

cc: Transfer Application file T-13844
Lanaya F. Blakely, District 2 Watermaster (*via e-mail*)
Sarah R. Liljefelt, Agent for the applicant (*via e-mail*)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13844, Lane County)	PROPOSING APPROVAL OF CHANGE
)	FROM A SURFACE WATER POINT OF
)	DIVERSION TO A GROUNDWATER 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. Additional findings and conditions are required for surface water point of diversion to groundwater point of appropriation transfers pursuant to ORS 540.531 and OAR 690-380-2130.

Applicant

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Findings of Fact

1. On October 14, 2021, JEFFREY A. LYONS filed an application to change from a surface water point of diversion to a groundwater point of appropriation under Certificate 95393. The Department assigned the application number T-13844.
2. Notice of the application for transfer was published on October 19, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 24, 2022, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13844 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 24, 2022, 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.

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.

4. On July 11, 2022, the agent for the applicant requested the completion date of October 1, 2025 because of equipment supply chain issues, recent medical procedures, residing out of state, and the costs to complete the change. The Department granted the longer time for completion per OAR 690-380-5140 (3).

5. The right to be transferred is as follows:

Certificate: 95393 in the name of CHRIS S. CHRISTIANSON (perfected under Permit S-20251)
Use: IRRIGATION of 5.7 ACRES
Priority Date: MARCH 12, 1951
Rate: 0.076 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:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
16 S	4 W	WM	36	SW NW	42	5.7

6. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 95393 as follows:

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

7. Transfer Application T-13844 proposes to change from a surface water point of diversion to a well located approximately 500 feet NW of 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 THE W1/2 OF G. MAUPIN DLC 42

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

8. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
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-13844.
10. The proposed well meets the requirements of ORS 540.531. Estimated stream depletion to the Willamette River, using a range of aquifer parameter values likely representative of the aquifer material the proposed groundwater POD is producing from, is likely to be greater than 50% of the pumping rate after 10 days of pumping. Therefore, there is a preponderance of evidence that the proposed change will affect surface water similarly, as defined in OAR 690-380-2130
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

Determination and Proposed Action

The change from a surface water point of diversion to a groundwater point of appropriation proposed in Transfer Application T-13844 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-2130 and 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-13844 is approved, the final order will include the following:

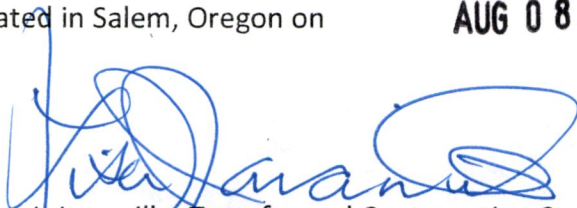
1. *The change from a surface water point of diversion to a groundwater point of appropriation proposed in Transfer Application T-13844 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 95393 and any related decree.*
3. *Water right Certificate 95393 is cancelled.*
4. *The quantity of water diverted at the new point of appropriation, shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *The well from which water is taken under the right shall be constructed so that the use of the well will affect the surface water source similarly to the use of the original authorized point of diversion.*

6. *The use of water under this right shall be subject to regulation consistent with other water rights from the surface water source and to all other applicable conditions and restrictions that existed at the original point of diversion.*
7. *If, within five years after approval of the transfer, the Department finds that the transfer results in substantial or undue interference with an existing groundwater right due to use of the well, that would not have occurred in the absence of the transfer, the new point of appropriation shall be subordinate to the existing right injured by the transfer.*
8. *The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion under the transferred portion of the right. However, if within five years after approval of the transfer, the Department receives a transfer application to return to the last authorized surface water point of diversion, the application shall be approved.*
9. *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 point of appropriation.*
 - 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.*
10. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2025**. 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 change and full beneficial use of the water.*

11. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on

AUG 08 2022



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Scott Grew. If you have questions about the information in this document, you may reach him at scott.a.grew@water.oregon.gov or 503-986-0890.

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 servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.