

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-9329, Douglas County) ADDITIONAL POINTS OF DIVERSION

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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

ARDEN DEVELOPMENT
PO BOX D
RIDDLE OR 97469

Findings of Fact

Background

1. On January 24, 2003, Teck Cominco Metals Ltd., filed a transfer application to add additional points of diversion under Certificate 48232. The Department assigned the application number T-9329.
2. On September 1, 2000, prior to submittal of this transfer application, the Department received notification from John M. Schultz, Attorney for Glenbrook Nickel Company, notifying the Department of a change in place of use and change of use from specific industrial uses to general industrial uses under ORS 540.520(9) for Certificates 48232, 24238 and 42621.
3. On December 29, 2000, the Department determined that the change from a specific industrial water use to a general industrial water use on Certificates 48232, 24238 and 42621 was consistent with ORS 540.520(9). Subsequently, the change from specific to general industrial water use was recorded in the records of the Department.
4. On February 12, 2003, an assignment of this transfer application to Arden Development Inc., was recorded in the records of the Department.
5. The portion of the right to be transferred is as follows:

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may either 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.

Certificate: 48232 in the name of HANNA NICKEL SMELTING CO. (perfected under Permit S-21988)

Use: RIDDLE SMELTER (FIRE PROTECTION, DOMESTIC, MILLING AND SMELTING ORE); *USED FOR GENERAL INDUSTRIAL USE AS PER FINDING OF FACT #3*

Priority Date: APRIL 30, 1952

Rate: 3.3 CUBIC FEET PER SECOND (cfs)

Source: RAIL CREEK (also known as RAIL GULCH), tributary to COW CREEK

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
30 S	6 W	WM	17	SW SE	POD #6—520 FEET NORTH AND 1220 FEET EAST FROM THE S1/4 CORNER SECTION 17
30 S	6 W	WM	21	NW NW	POD #5—850 FEET SOUTH AND 880 FEET EAST FROM THE NW CORNER OF SECTION 21
30 S	6 W	WM	29	NW NE	POD #2—349 FEET SOUTH AND 1426 FEET WEST FROM THE NE CORNER OF SECTION 29

Authorized Place of Use:

GENERAL INDUSTRIAL USES

Twp	Rng	Mer	Sec	Q-Q
30 S	6 W	WM	28	NW NW
30 S	6 W	WM	28	SW NW
30 S	6 W	WM	28	NW SW
30 S	6 W	WM	29	NE NE
30 S	6 W	WM	29	SE NE
30 S	6 W	WM	29	NE SE

6. Transfer Application T-9329 proposes to add two points of diversion to the authorized points of diversion approximately 4250 feet and 5200 feet, respectively, upstream from diversion point #2, and between approximately 3500 feet and 500 feet, downstream from diversion points #6 and #5 to points at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
30 S	6 W	WM	21	SW NW	POD #7—1989 FEET SOUTH AND 299 FEET EAST FROM THE NW CORNER OF SECTION 21
30 S	6 W	WM	21	SW NW	POD #9—1353 FEET SOUTH AND 935 FEET EAST FROM THE NW CORNER OF SECTION 21

7. On February 8, 2007, the Department issued a preliminary determination proposing to approve Transfer Application T-9329 and mailed a copy to the applicants. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on February 13, 2007, and in the News Review newspaper on March 27, April 3 and 10, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the Department's weekly notice or to the newspaper notice.

8. The Oregon Department of Fish and Wildlife has determined that a fish screening and/or by-pass device may be required in the future 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.
9. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
10. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
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.

Conclusions of Law

The additional points of diversion proposed in Transfer Application T-9329 are consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.


Now, therefore, it is ORDERED:

1. The additional points of diversion proposed in Transfer Application T-9329 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 48232 and any related decree.
3. Certificate 48232 is cancelled.
4. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. 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.
5. The quantity of water diverted at the additional points 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.
6. When required by the Department, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
7. Within one year after receiving written notification from the Oregon Department of Fish and Wildlife (ODFW) that a fish screening and/or by-pass device is required, the water user shall

install a screening and/or by-pass device, as appropriate, at the new point of diversion. The fish screening and/or by-pass device must meet ODFW's design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screening and/or by-pass device meets ODFW's criteria. Once installed the water user shall maintain and operate the fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.

8. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 11 day of May 2007.



Phillip C. Ward, Director

Mailing date: MAY 16 2007