



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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February 26, 2015

VIA E-MAIL

RARE EARTH RESOURCES LLC
PO BOX 1946 SILVERTON, OR 97381

SUBJECT: Water Right Transfer Application T-11892

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11892. 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 and in the Baker City Herald newspaper, 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 last date of newspaper publication.

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 Lanaya.F.Blakely@wrp.state.or.us or (503) 986-0888, if I may be of assistance.

Sincerely,

Lanaya Blakely
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-11892
Laurie Parry, Anderson Perry & Associates, Agent (via e-mail)
Rick M. Lusk, District 8 Watermaster (via e-mail)
William Earl Ferber, CWRE #416

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11892, Baker County)	PROPOSING APPROVAL OF
)	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

RARE EARTH RESOURCES LLC
PO BOX 1946
SILVERTON, OR 97381

Findings of Fact

1. On September 24, 2014, RARE EARTH RESOURCES LLC, filed an application for additional points of diversion under Certificate 48423. The Department assigned the application number T-11892.
2. Notice of the application for transfer was published on September 30, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 12, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11892 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 11, 2015, for the applicant to respond.
4. On January 7, 2015, the applicant provided ownership information for the area affected by T-11892. The Department determined that consent to transfer was required, from two additional landowners, before a preliminary determination could be issued. The deficiency letter set forth a deadline of February 9, 2015, for the applicant to respond.
5. On February 2, 2015, the applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer, and requested that the Department proceed with issuance of a Preliminary Determination.

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.

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

Certificate: 48423 in the name of DAVID STEINMETZ, ET AL (perfected under Permit S-26604)
Use: MINING
Priority Date: MAY 6, 1953
Limit/Duty: 1.49 cubic foot per second.
Source: PINE CREEK, tributary to the SNAKE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	45 E	WM	15	NW NE	390 FEET SOUTH AND 960 FEET EAST FROM THE N1/4 CORNER OF SECTION 15

Authorized Place of Use:

MINING				
Twp	Rng	Mer	Sec	Q-Q
7 S	45 E	WM	15	SW NE
7 S	45 E	WM	15	NE SE
7 S	45 E	WM	15	NW SE
7 S	45 E	WM	15	SE SE

7. Transfer Application T-11892 proposes additional points of diversion approximately 1 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	45 E	WM	15	SW NE	NORTH POD - 3920 FEET NORTH AND 1340 FEET EAST FROM THE SE CORNER OF SECTION 15
7 S	45 E	WM	15	NE SE	UPSTREAM ENDPOINT OF REACH - 2640 FEET NORTH AND 980 FEET EAST FROM THE SE CORNER OF SECTION 15
7 S	45 E	WM	15	SE SE	DOWNSTREAM ENDPOINT OF REACH - 10 FEET NORTH AND 220 FEET EAST FROM THE SE CORNER OF SECTION 15

8. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

9. 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.

10. A diversion structure and ditch 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-11892.

11. The proposed changes would not result in enlargement of the right.
12. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The additional points of diversion proposed in Transfer Application T-11892 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-11892 is approved, the final order will include the following:

1. *The additional points of diversion proposed in Transfer Application T-11892 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 48423 and any related decree.*
3. *Water right certificate 48423 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the additional points of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a Weir and Parshall Flume, or, with prior approval of the Director, another suitable measuring device at each point of appropriation (new and existing).*
 - b. *The water user shall maintain the measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the measuring devices; provided however, where the measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Prior to diverting water, the water user shall install a headgate, or other acceptable controlling device, at each (new and existing) point of diversion to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.*

7. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. 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.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 26 day of February 2015.



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

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

This Preliminary Determination was prepared by Lanaya Blakely. If you have question about the information in this document, you may reach me at (503) 986-0888 or Lanaya.F.Blakely@wrdd.state.or.us.