

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

In the Matter of Transfer Applications)	PRELIMINARY DETERMINATION
T-9286, Douglas County)	PROPOSING APPROVAL OF
)	ADDITIONAL POINTS OF DIVERSION
)	CHANGE IN PLACE OF USE,
)	CHANGE IN CHARACTER OF USE
)	AND PARTIAL CANCELLATION OF
)	SUPPLEMENTAL WATER RIGHTS

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

NICKEL MOUNTAIN LLC
C/O RICK BARNES
3000 STEWART PARKWAY STE 204
ROSEBURG OR 97470

Findings of Fact

1. On December 3, 2002, Nickel Mountain LLC filed a transfer application to change the place of use, add an additional point of diversion and to change the character of use under Certificate 48232. The Department assigned the application number T-9286.
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. 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.
3. On November 13, 2006, an amendment to the application was received. This amendment offered clarification of the information submitted in the Land Use Information Form.

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

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: 0.1 CUBIC FOOT PER SECOND

Source: 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	520 FEET NORTH AND 1220 FEET EAST FROM THE S1/4 CORNER OF SECTION 17
30 S	6 W	WM	21	NW NW	850 FEET SOUTH AND 880 FEET EAST FROM THE NW CORNER OF SECTION 21
30 S	6 W	WM	29	NW NE	349 FEET SOUTH AND 1426 FEET WEST FROM THE NE CORNER OF SECTION 29

Authorized Place of Use:

RIDDLE SMELTER (FIRE PROTECTION, DOMESTIC, MILLING AND SMELTING ORE)				
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

5. Transfer Application T-9286 proposes to add a point of diversion approximately 0.5 mile upstream from the authorized point of diversion located in Section 17, approximately 1000 feet upstream from the authorized point of diversion located in Section 16 and approximately 0.75 mile upstream from the authorized point of diversion located in Section 29 to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
30 S	6 W	WM	16	SW SW	90 FEET NORTH AND 1060 FEET EAST FROM THE SW CORNER OF SECTION 16

6. Transfer Application T-9286 also proposes to change the character of use to general industrial use.
7. Transfer Application T-9286 also proposes to change the place of use of the right to:

INDUSTRIAL USE				
Twp	Rng	Mer	Sec	Q-Q
30 S	6 W	WM	16	NE SW

INDUSTRIAL USE				
Twp	Rng	Mer	Sec	Q-Q
30 S	6 W	WM	16	NW SW
30 S	6 W	WM	16	SW SW
30 S	6 W	WM	16	SE SW
30 S	6 W	WM	17	NE SE
30 S	6 W	WM	17	NW SE
30 S	6 W	WM	17	SW SE
30 S	6 W	WM	17	SE SE
30 S	6 W	WM	21	NW NW

Partial Cancellation of Certificates 24238 and 42621

8. Supplemental water right Certificates 24238 and 42621 are appurtenant to the same lands from which a portion of the primary right under Certificate 48232 is proposed to be transferred. The transfer application and subsequent communication with the applicant and landowner indicates the intent of the applicant to not include modification of the supplemental rights.
9. ORS 540.510(1) and OAR 690-380-2250(5) provide that the order approving the transfer of a primary right shall cancel the portion of a supplemental right(s) appurtenant to the same lands if the supplemental right(s) are not included in the transfer. Portions of supplemental rights described by Certificates 24238 and 42621 are not included in Transfer Application T-9286, and will be cancelled upon issuance of a final order approving T-9286.
10. Consistent with OAR 690-380-2250, the Department notified the landowner and applicant on January 3, 2007, by issuance of a draft of the preliminary determination, of the Department's intent to cancel the portions of the supplemental water rights described below unless within 30 days the applicant modified the application to include the supplemental right or withdrew the application. No objection to the notification was received by the Department.
11. The portion of the first supplemental right proposed to be cancelled:
Certificate: 42621 in the name of HANNA NICKEL SMELTING CO. (perfected under Permit G-4214)
Use: SUPPLEMENTAL FIRE PROTECTION, MILLING AND SMELTING
Priority Date: JULY 1, 1968
Rate: 0.1 CUBIC FOOT PER SECOND (cfs)
Source: A SUMP WELL AND PERFORATED BURIED PIPE, tributary to RAIL CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Govt Lot	Q-Q	Survey Coordinates
30 S	6 W	WM	28	7	SW SW	600 FEET NORTH AND 5390 FEET EAST FROM THE SW CORNER OF SECTION 29

Authorized Place of Use:

SUPPLEMENTAL FIRE PROTECTION, MILLING AND SMELTING				
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

12. The portion of the second supplemental right proposed to be cancelled:
Certificate: 24238 in the name of HANNA NICKEL SMELTING CO. C/O E. S. HOLLARD, GENERAL MANAGER (perfected under Permit S-21987)
Use: RIDDLE SMELTER (SUPPLEMENTAL FIRE PROTECTION, DOMESTIC, MILLING AND SMELTING ORE)
Priority Date: NOVEMBER 28, 1951
Rate: 0.1 CUBIC FOOT PER SECOND (cfs)
Source: COW CREEK, a tributary of SOUTH UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
30 S	6 W	WM	33	NE NW

Authorized Place of Use:

RIDDLE SMELTER (SUPPLEMENTAL FIRE PROTECTION, DOMESTIC, MILLING AND SMELTING ORE)				
Twp	Rng	Mer	Sec	Q-Q
30 S	6 W	WM	28	NW NW

13. Notice of the applications for transfer was published on December 10, 2002, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
14. 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.
15. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
16. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.

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

Determination and Proposed Action

The changes in place of use, addition of a point of diversion and change in character or use proposed in Transfer Application T-9286 appear to be consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000, and will be approved provided that protests are not filed pursuant to OAR 690-380-4030.

The portions of the rights listed in Findings of Fact #11 and #12, will be cancelled upon issuance of a final order for Transfer Application T-9286, pursuant to ORS 540.510(1) and OAR 690-380-2250(5).

If approved, the change and subsequent use of water shall be subject to the following conditions:

1. 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.
2. Upon the issuance of final orders approving Transfer Applications T-9286 and T-9329 water right Certificate 48232 will be cancelled.
3. Certificates 24238 and 42621 are cancelled. New certificates will be issued to describe the portions of these rights not 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 point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
6. The former place of use of the transferred water shall no longer receive water as part of these rights.
7. 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.
8. 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.

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

Dated at Salem, Oregon this 8th day of February 2007.


Phillip C. Ward, Director *FWL*

This Preliminary Determination was prepared by Susan Douthit. If you have questions about the information in this document, you may reach me at 503-986-0858 or Susan.M.Douthit@wrд.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Salem, OR 97301-1271.