

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-9329, Douglas 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

ARDEN DEVELOPMENT
PO BOX D
RIDDLE OR 97469

Findings of Fact

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

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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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 Point 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 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:

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	1989 FEET SOUTH AND 299 FEET EAST FROM THE NW CORNER OF SECTION 21
30 S	6 W	WM	21	SW NW	1353 FEET SOUTH AND 935 FEET EAST FROM THE NW CORNER OF SECTION 21

7. Notice of the application for transfer was published on February 18, 2003, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the 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 no evidence is available 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.

Determination and Proposed Action

The additional points of diversion proposed in Transfer Application T-9329 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.

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-9329 and T-9286, Certificate 48232 will be cancelled.
3. 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.
4. 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.
5. 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.
6. 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.

7. When satisfactory proof of the completed change 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 *FW*

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@wrdd.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.