

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

In the Matter of Transfer Application                    )     FINAL ORDER APPROVING A  
T-11049, Washington County                            )     CHANGE IN CHARACTER OF USE

**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**

STUART HOLDINGS, LLC  
B.T.G. LLC  
525 N TOMAHAWK DRIVE  
PORTLAND, OR 97217

**Findings of Fact**

**Background**

1. On March 31, 2010, DON MALTASE on behalf of STUART HOLDINGS, LLC and BTG, LLC filed an application to change the character of use under Certificate 26960. The Department assigned the application number T-11049.
2. On March 2, 2011, the applicants submitted amended Evidence of Use Affidavits to address all of the lands covered under Certificate 26960.
3. The portion of the first right to be transferred is as follows:

**Certificate:** 26960 in the name of GLENN F KOENNECKE (perfected under Permit R-1917)  
**Use:** MILL POND under Reservoir Permit R-1917  
**Priority Date:** OCTOBER 13, 1955  
**Quantity:** 40.0 ACRE FEET  
**Source:** MCKAY CREEK, APPROPRIATED UNDER PERMIT S-24434, tributary to DAIRY CREEK

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may 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.

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Lot	Q-Q
1 N	2 W	WM	7	3	SE NW

**Authorized Place of Use:**

MILL POND					
Twp	Rng	Mer	Sec	Q-Q	
1 N	2 W	WM	7	NE NW	
1 N	2 W	WM	7	NW NW	
1 N	2 W	WM	7	SE NW	

4. Transfer Application T-11049 proposes to change the character of use to storage for general industrial use.
5. Notice of the application for transfer was published on April 6, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On March 4, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11049 to the applicants. The draft preliminary Determination cover letter set forth a deadline of April 4, 2011, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
7. On May 8, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11049 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 April 12, 2011, and in The Hillsboro Argus newspaper on April 19 and 26, and May 3, 2011, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

***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 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-11049.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

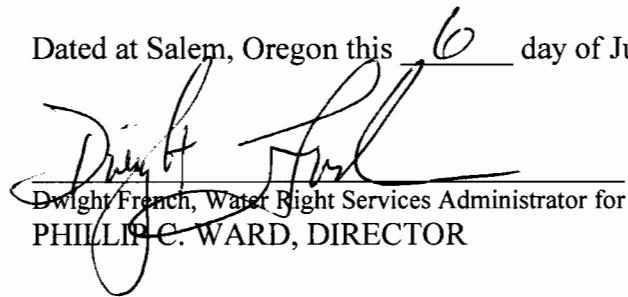
**Conclusions of Law**

The change in character of use proposed in Transfer Application T-11049 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The change in character of use proposed in Transfer Application T-11049 is 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 26960 and any related decree.
3. Water right certificate 26960 is cancelled.
4. The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.
5. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicants to the Department within one year after the deadline for completion of the change and full beneficial use of the water.
6. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 6 day of June 2011.

  
Dwight French, Water Right Services Administrator for  
PHILLIP C. WARD, DIRECTOR

Mailing date: JUN 07 2011