

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

In the Matter of Transfer Application)
T-7067, to Change the Character of Use) FINAL ORDER APPROVING A
and Place of Use of Water) TRANSFER
Tillamook County, Oregon)

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

Steven F. Kellow
92967 Ritter Rd.
Astoria, OR 97103

Findings of Fact

1. Steven F. Kellow for Kellow Fur Farm filed an application to transfer the place of use and character of use under Certificate 80170. The Department assigned the application number T-7067.
2. The right to be transferred is as follows (as listed on the certificate):

Certificate: 80170 in the name of Steven F. Kellow

Use: Livestock

Priority Date: July 18, 1988

Quantity: 500 gallons per day

Acres: N/A

Source: A spring, tributary to Lawrence Creek

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Location
4	S	9	W	W.M.	33	NW SW			915.35' N and 491.96' E from the SW corner, NW¼ SW¼, Section 33

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Description
4	S	9	W	W.M.	32	NE SE			Animal facilities

This is a final order in other than 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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

3. Application T-7067 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Description
4	S	9	W	W.M.	32	NE SE			House #1: N 8° W, 420' from the SE corner of the NE¼ SE¼ of Section 32
4	S	9	W	W.M.	32	NE SE			House #2: N 28° W, 294' from the SE corner of the NE¼ SE¼ of Section 32

4. Application T-7067 proposes to change the character of use to domestic use for two households.
5. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
6. Water has been used within the last five years prior to the filing of the transfer application 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.
7. A water delivery system sufficient to use the full amount of water allowed under the existing right are present.
8. The proposed change would not result in enlargement of the right.
9. The proposed change would not result in injury to other water rights.
10. The locations of the point of diversion and place of use on the original map submitted with the transfer application are not in agreement with Certificate 80170 or the final proof map. However, evidence and a revised map submitted 7/28/04 indicate that the locations of the point of diversion on the Final Proof map and Certificate 80170 were based on a surveying error, and that the correct locations of the point of diversion and livestock use are as follows:

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Location
4	S	9	W	W.M.	33	SW SW			491.96' S and 915.35' E from the S1/16 corner common to Sections 32 and 33

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Description
4	S	9	W	W.M.	32	NE SE			Animal facilities: N 14° 30' W, 455' from the SE corner of the NE¼ SE¼ of Section 32

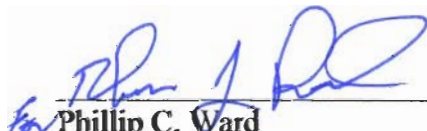
Conclusions of Law

The changes in place of use, and character of use proposed in application T-7067 and the locations shown on the revised map submitted 7/28/04, are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in place of use and character of use proposed in application T-7067 are approved.
2. Water right certificate 80170 is cancelled.
3. Water will continue to be diverted from the spring, the correct location of which is as described in finding #10 above.
4. The right to the use of the water is restricted to domestic use at the place of use described above (Houses #1 and #2), and is subject to all other conditions and limitations contained in Certificate 80170.
5. The proposed change shall be completed on or before October 1, 2006.
6. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner, together with a map meeting current mapping standards, shall be submitted by the applicant to the Department by October 1, 2007.
7. When required by the Department, the water user shall install and maintain 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 measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
8. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 25th day of October, 2004.



Phillip C. Ward
Acting Director

Mailing date _____