



IDAHO DEPARTMENT OF
WATER RESOURCES

322 E Front Street, Suite 648, Boise ID 83702 • PO Box 83720, Boise ID 83720-0098
Phone: 208-287-4800 • Fax: 208-287-6700 • Email: idwrinfo@idwr.idaho.gov • Website: idwr.idaho.gov

Governor Brad Little

Director Gary Spackman

July 8, 2022

GEORGE KELLEY AND BILL KELLEY
PO BOX 25
ALBION IDAHO 83311

RE: Temporary Change of Water Rights 45-7153, 45-7176, 45-7260, and 45-7498.

Dear Sirs:

The Idaho Department of Water Resources ("Department") received your application for temporary change of water rights 45-7153, 45-7176, 45-7260, and 45-7498. For our records, we gave this temporary change application the number of TC-45-03. I am returning this application for temporary change for the reasons discussed below.

An application for temporary change of a water right is not the proper process for moving these water rights to lands without an existing water supply that is subject drought conditions. Idaho Code §42-222A(6) states in part the following:

Temporary changes shall only be approved for the purpose of providing a replacement water supply to lands or other uses which normally have a full water supply except for a drought condition. Temporary changes may not be approved to provide water for new projects or to allow expansion of the use of water under existing water rights....

As you can see from the quotation above, the only reason we can approve a temporary change of a water right is to replace an existing water supply that is or will be undeliverable due to drought conditions. A temporary change cannot be filed on lands without an existing water right on the property that are being or will be affected by drought conditions.

A review of this property shows that there are only two water rights, 45-4084 and 45-4236, that supplies a full annual water supply for this property. The lands associated with water right 45-4084 and 45-4236 appear to be the only lands that can be considered for replacement water due to drought conditions. Water rights 45-4084 and 45-4236 when combined authorize the Department's standard of a full inch per acre (0.02 cubic feet per second) and a full 4.0-acre feet per acre for the 57 acres authorized to be irrigated under these water rights.

Water right 45-4084 and 45-4236 also have senior priority dates, 1958 and 1961, to the water rights included in the temporary change application, so the water rights included in the temporary change have junior priority dates to water rights 45-4084 and 45-4236. The water rights involved in the Temporary Change have priority dates ranging from 1973 to 1995. Any drought related curtailment would be accomplished by priority date, so the water rights in the temporary change would be curtailed long before water rights 45-4084 and 45-4236.

Water Supply Bank Rental number 555 is authorized for 1.04 cubic feet per second and 180.8 acre-feet for the irrigation of 70.5 acres. This rental is based on water rights 45-13998 and 45-14000 that have been rented from the Water Supply Bank by you. These water rights have 1970 and 1975 priority dates.

Once again, three of the water rights associated with the temporary change have priority dates of 1973 to 1976, and one of the rights has a priority date of 1995, so there doesn't appear to be any significant benefit if the Water Supply Bank lease rights were curtailed due to drought conditions. The Water Supply Bank lease isn't a permanent water supply for these acres, so there is also a strong argument that these acres couldn't be considered in temporary change application.

Since the water rights included in the temporary change do not have the priority dates to properly supply the lands with existing water supply due to drought conditions, we cannot even consider this application for a temporary change. We also cannot approve a temporary change application to move these water rights onto lands that do not already have a normal supply of water.

The proper means to accomplish the movement of water rights to lands without a water right are a water right transfer for permanent changes and Water Supply Bank lease/rental packages for temporary changes. You have submitted a Water Supply Bank lease for these water rights for the same number of acres that are included in this temporary change. It appears the lease/rental package is the best avenue for a temporary movement of these rights to lands without an existing water right or Water Supply Bank rental. The Temporary Change process cannot provide any benefit that cannot be achieved in the Water Supply Bank lease/rental process.

In my research, I discovered that you have been renting water for these lands since 2016 due to a Notice of Violation for irrigation of these lands without a water right. I believe that it would be in your best interests to file a water right transfer on these rights to ensure these lands are properly covered for the long term. The Water Supply Bank package can cover you for this year once it is processed and approved.

If you have any questions on this matter, please don't hesitate to contact me.

Respectfully,

A handwritten signature in black ink, appearing to read "Daniel Nelson", with a long horizontal flourish extending to the right.

Daniel Nelson

Water Right Analyst 3

Idaho Department of Water Resources

Email dan.nelson@idwr.idaho.gov

Telephone (208) 287-4856

Fax (208) 287-6700 (attn: Dan Nelson)

Enclosures : Temporary Change Application for George and Bill Kelley

CC Barker, Rosholt, and Simpson LLP.

Attn Sarah W. Higer

PO Box 2139

Boise ID 83701-2139

ORIGINAL

7C-45-03

RECEIVED

JUL 05 2022

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESDEPARTMENT OF
WATER RESOURCES

TEMPORARY CHANGE APPLICATION

*(To change point of diversion, place of use, or purpose of use of a water right upon declaration of a drought emergency in accordance with Section 42-222A, Idaho Code.)*Name of Applicant George Kelley and Bill Kelley Phone (208) 312-0087Mailing Address P.O. Box 25, Albion, Idaho 83311 Email _____

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change purpose of use ☐ Other

2. Describe the proposed change(s) and explain the reason(s) they are needed. _____

Applicant proposes to change the point of diversion and place of use for 4 water rights to irrigate land under an emergence drought declaration.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
45-7153	9-19-1973	3.0	Irrigation	3-15 to 11-15
45-7176	5-20-1974	3.0	Irrigation	3-15 to 11-15
45-7260	2-25-1976	1.17	Irrigation	3-15 to 11-15
45-7498	6-16-1995	4.53	Irrigation	3-15 to 11-15

2. Total amount of water being transferred 4.53 cubic feet per second and/or _____ acre-feet per annum.

3. Source of water ground water tributary to _____

4. Point(s) of diversion:

Twp	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag number
11S	24E	35	0	NE	NE		Cassia	ground water	

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11S	24E	25									11.3	11.3	11.3	11.3					45.3
11S	24E	36					11.3	11.3	11.3	11.3									45.3
11S	24E	36									11.3	11.3	11.3	11.3					45.3

Total Acres 136

6. General Information:

- a. Who owns the water right to be changed? Applicant
- b. Describe the arrangement allowing use of the right. Applicant owns the water rights to be transferred and the land at the proposed place of use. Applicant desires to move water from fallowed acres to irrigated acres.
- c. Describe the affect on the land now irrigated if the change is approved pursuant to this application:
The land will not be irrigated.
- d. Has the water right sought to be transferred been used this year? ☐ Yes ☒ No If yes, explain. _____
- e. Absent the changes, how would the right be used for the remainder of the year? Water rights would not be used.
- f. Describe other water rights used for the same purpose. 45-4084, 45-4236, 45-13998, 45-14000
- g. Remarks: Due to the emergency drought declaration Applicant proposes to move water rights that have been in CRP for 10 years to a different place of use. Water rights are no longer enrolled in CRP. Applicant has pending companion lease and rental applications before the water bank.

I hereby assume all risk in accordance with Section 42-222A, Idaho Code, and assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in voiding its approval.

[Signature]
Signature of Applicant

7-5-22
Date

FOR DEPARTMENT USE ONLY

Received by Ku Date 7.5.22 \$50 fee receipted by Ku Receipt No. C113378
Recommend: ☐ approve ☐ deny Watermaster recommendation _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Temporary Change Application No. _____, and said application is hereby _____, subject to the following limitations and conditions:

Temporary Change Expiration Date _____

Signed this _____ day of _____, _____.

For the Director