

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED

JUL 23 2021

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Department of Water Resources
Eastern Region

Name of Applicant(s) Franklin & Jeanne Kessler Phone 520-508-4925
Mailing address 2599 S. Marsh Creek RD McCammon, ID 83250-1513 Email FKES291270@gmail.com

- ☐ If applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign or act on behalf of the applicant. Label it **Attachment #1**.
- ☐ Attach water right ownership documentation if Department records do not show the transfer applicant as the current water right owner. Label it **Attachment #2a**.
- ☐ If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Label it **Attachment #2b**.
- ☐ Attach documentation of authority to make the proposed change if the applicant is not the water right owner. Label it **Attachment #3**.

Provide contact information below if a consultant, attorney, or any other person is representing the applicant in this transfer process.

☐ No Representative

Name of Representative _____ Phone _____
Mailing address _____ Email _____

☐ Send all correspondence for this application to the representative and not to the applicant.

OR

☐ Send original correspondence to the applicant and copies to the representative.

☐ The representative may submit information for the applicant but is not authorized to sign for the applicant.

OR

☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4**.

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). 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 rejection of the application or cancellation of an approval.

[Signature]
Signature of Applicant or Authorized Representative

Franklin Kessler
Print Name and Title if applicable

7/18/2021
Date

[Signature]
Signature of Applicant or Authorized Representative

Jeanne Kessler
Print Name and Title if applicable

7/18/2021
Date

A. PURPOSE OF TRANSFER

- ☒ Change point of diversion
☐ Change nature of use
 ☐ Add diversion point(s)
☐ Change period of use
 ☒ Change place of use
☐ Other _____
- Is this a transfer for changes pursuant to Idaho Code § 42-221.O.8?
If yes, ☐ attach an explanation and any supporting documentation labeled as **Part 1A.2**.
- Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.3**.
rearrange irrigated place of use and change point of diversion to reflect current practices.

FOR OFFICE USE ONLY

Page 2

FEES PAID: \$150.00
RECIPT NO.: E047211

DATE: 7/23/21
BY: CH CH

85150

85150

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1 Continued

B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.

1.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
All or Part ☒ ☐	29-4101B	.06 cfs	Irrigation	03/15 to 11/15	Walker Creek
☒ ☐	29-4101B	.02 cfs	Stockwater	01/01 to 12/31	Walker Creek
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 0.06 cfs and/or acre-feet.

2. Total amount of water proposed to be transferred or changed 0.06 cubic feet per second and/or acre-feet per year.

3. Point(s) of Diversion:

- ☐ No changes to point(s) of diversion are proposed - the following chart is therefore not completed. (Proceed to #4.)
- ☐ Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA.
Label it **Attachment #5**.

New ?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
X		NW	NE	SW	15	08S	36E	Bannock	Walker Creek	

4. Place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)

- ☐ No changes to place of use are proposed - the following chart is therefore not completed. (Proceed to #5.)

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
08S	36E	15									3								
Total Acres (for irrigation use)																			3

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

5. General Information:

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:

Instream electric pump Sprinkler lines

- b. Who owns the property at the point(s) of diversion? Applicant

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? **If yes**, ☐ attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: _____

It is the applicant's responsibility to provide notice to lien holder, trustee, mortgagor, or contract holder of the proposed changes that may impact or change the value of the water rights or affected real property. Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.

- d. Are any of the water rights proposed for transfer currently leased to the Water Supply Bank?

If yes, ☐ complete Attachment WSB.

- e. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer:

No physical change to the place of use.

- f. Describe the use of any other water right(s) for the same purpose or land, or the same diversion system as right(s) proposed to be transferred at both the existing and proposed point(s) of diversion and place(s) use:

None

- g. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

- | | | |
|--------------------------|-------------------------------------|---|
| ☐ | ☒ | undergone a period of five or more consecutive years of non-use, |
| ☐ | ☒ | currently leased to the Water Supply Bank, |
| ☐ | ☒ | currently used in a mitigation plan limiting the use of water under the right, or |
| ☐ | ☒ | currently enrolled in a Federal set-aside program limiting the use of water under the rights? |

If yes, describe:

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

7/15/2021

Water Right 29-4101B

Owner Type **Name and Address**
Current Owner FRANKLIN JAMES KESSLER
 2599 S MARSH CREEK RD
 MCCAMMON, ID 83250-1513
 (520) 508-4925

Current Owner JEANNE MICHELE KESSLER
 2599 S MARSH CREEK RD
 MCCAMMON, ID 83250-1513
 (520) 508-4925

Priority Date: 5/5/1916

Basis: Decreed

Status: Active

Source
WALKER CREEK

Tributary
MARSH CREEK

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/15	11/15	0.060 CFS	
STOCKWATER	01/01	12/31	0.020 CFS	
	<u>Total Diversion</u>		0.060 CFS	

Source and Point(s) of Diversion

WALKER CREEK NENWSW Sec. 15, Twp 08S, Rge 36E, BANNOCK County

Place Of Use

IRRIGATION within BANNOCK County

T08S R36E S15 NESW 3.0
POU Total Acres: 3.0

STOCKWATER within BANNOCK County

T08S R36E S15 NESW

Conditions of Approval:

1. C05 RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
2. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

7/15/2021

Dates and Other Information

Decreed Date: 11/3/2004
Civil Case Number: 39576
Judicial District: FIFTH
State or Federal: S
Owner Name Connector: AND
Water District Number: 29H
Mitigation Plan: False

Combined Use Limits

N/A

SubCase:

SubCaseNumber: 29-4101B
Class: 1
SF5 Filed Date:
Special Master Recom Signed Date:
Attorney Assigned:
Adjudication Agent:
Basis of Claim: Beneficial Use
Date Filed: 11/14/2003
Objection Status: Active

Water Supply Bank:

N/A

Idaho Department of Water Resources

Water Right Transfer

RECEIVED

JUL 15 2021

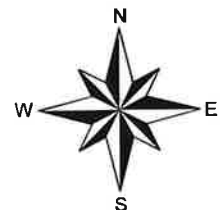
Department of Water Resources
Eastern Region



Legend

-  Kessler POU
-  Kessler POD
-  Township/Range
-  Sections
- QQ

0.01 0.025 0.05 0.075 0.1 Miles



85150

AMENDED

APPLICATION FOR TRANSFER OF WATER RIGHT PART 3

A. PLAT MAP (See Part 3A of Instructions for application for transfer for complete requirements.)

- ☒ Attach a map of the diversion, measurement, control, and distribution system. Label it **Attachment #7a**.
- ☐ If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (GIS) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. Label it **Attachment #7b**.

If the place of use currently consists of a permissible place of use, then the attachment is not required if the application contains a clear statement that the boundaries for the place of use are not proposed to be changed by the transfer and the total number of irrigated acres within the place of use before and after the transfer is clearly stated.

If any part of the irrigation water right is leased to the Water Supply Bank, you must also specify the location and number of acres that will remain idled for the duration of the lease contract at the new, proposed place of use.

B. CHANGES IN NATURE OF USE (Water Balance)

- ☐ If you propose to change the nature of use or period of use of all or part of the right(s) listed in this application, attach documentation describing the extent of historic beneficial use of the portion of the right(s) proposed to be changed. Also attach documentation showing that the portion of the right(s) to be changed will not be enlarged in rate, volume, or consumptive use through the proposed change. Label it **Attachment #8a**.

C. PLACE OF USE CHANGES TO SUPPLEMENTAL IRRIGATION RIGHTS

- ☐ If you propose to change the place of use of a supplemental irrigation right, answer below and attach supporting documentation. Label it **Attachment #8b**.

Describe how the supplemental water rights have been used historically in conjunction with other water rights at the existing place of use. Describe the time during the irrigation season that the supplemental rights have been used. Include information about the availability or reliability of the primary right(s) being supplemented, both before and after the change. If the applicant is proposing to change a supplemental irrigation right to a primary right, provide the information required on Part 3B above:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page.

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments.

Received by _____ Date _____ Preliminary check by _____ Date _____

Fee paid \$50.00 Date 6/14/21 Received by CH Receipt # EO47085

Add'l fee paid _____ Date _____ Received by _____ Receipt # _____

Check all that apply: Attachment WSB ☐ (copy sent to state office) Lessor Designation form ☐ &/or W-9 ☐ (originals to state office)

RECEIVED
JUN 14 2021

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Department of Water Resources
Eastern Region

APPLICATION FOR TRANSFER OF WATER RIGHT – POINT(S) OF DIVERSION

This form may be used to apply to change and/or add points of diversion for existing water rights and to report an ownership change for a water right(s) in connection with the proposed point of diversion change(s). Do not use this form to apply for changes to other elements of a water right. See the Application for Transfer Instructions for help completing this form and for mailing addresses of Department offices where your application can be submitted.

SUPERCEDED

Check all that apply:

- ☒ Change diversion point(s) ☐ Add diversion point(s) ☐ Ownership change ☐ Ownership split
☐ Transfer is for changes pursuant to Idaho Code § 42-221.0.8. Attach an explanation and any supporting documentation.

1. APPLICANT(S) Franklin James Kessler, Liane Michele Kessler Phone 520-508-4925

2. MAILING ADDRESS 2599 S. Marsh Creek RD City McCammon

State ID Zip 83250 Email FKES291270@gmail.com

- ☐ If the applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign for the applicant.
☐ If the applicant is not the current water right(s) owner, attach documentation of authority to file the application.
☐ If the application includes a change in ownership of water right(s), attach a copy of the conveyance document, such as a warranty deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property conveyed or description of the water right if no land is conveyed. Additional fee(s) are required for water right ownership changes; see Item 9 for the fee schedule.

If the ownership change resulted in the water right(s) being split, how did the division occur? Mark one:

- ☐ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
☐ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.

- ☐ If the application is not signed by the applicant, attach a Power of Attorney or other documentation providing authority to sign for the applicant.

3. LIST WATER RIGHT NUMBER(S) 29-4101b

- ☒ Attach a copy of the water right(s) as recorded, available at idwr.idaho.gov, Water Right Transfers, Step 1, or by contacting any Department office.

4. TOTAL AMOUNT OF WATER transferred is .06 cubic feet per second and/or _____ acre-feet per annum.
(diversion rate) (storage volume)

5. POINT OF DIVERSION – Describe all the point(s) of diversion to be included on the water right(s) after the proposed change.

- ☐ Attach Eastern Snake Plain Aquifer (ESPA) analysis if this transfer proposes to change a point of diversion affecting the ESPA. ESPA analysis information is available at idwr.idaho.gov, Water Rights, Water Right Transfers, Modeling Resources.

New?	Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Source	Local name or tag #
		NE	NW	SW	15	08S	36E	Bannock	Walker Creek	

SUPERCEDED

6. GENERAL INFORMATION

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:

Instream Electric Pump

- b. Who owns the property at the point(s) of diversion? applicant (Franklin Kessler)

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

- c. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

- ☐ ☒ undergone a period of five or more consecutive years of non-use,
☐ ☒ currently used in a mitigation plan limiting the use of water under the right(s), or
☐ ☒ currently enrolled in a Federal set-aside program limiting the use of water under the right(s)?

If yes, describe:

- d. Is any portion of the water right(s) proposed to be changed currently leased to the Water Supply Bank? ☐ Yes ☒ No

- ☐ If yes and there are multiple owners, attach a Lessor Designation form.
☐ If yes, the individual owner or designated lessor must complete, sign and attach an IRS Form W-9.
(Disregard if these items are on file and ownership has not changed.)

7. **MAP** - ☒ Attach a map of the diversion, measurement, control and distribution system. Include the place of use if a split of the water right occurred. Clearly label the map with township, range, section and $\frac{1}{4}$ $\frac{1}{4}$ of section information. You may create a map at idwr.idaho.gov, Water Rights, Water Right Transfers, File a Transfer Application, Step 2C.

8. **SIGNATURE** - The information in this application is true to the best of my knowledge. I understand any willful misrepresentations in this application may result in rejection of the application or cancellation of an approval.

[Signature]
Signature of applicant or authorized agent

Franklin James Kessler (applicant)
Print name and title if applicable
9 June 21
Date

[Signature]
Signature of applicant or authorized agent

Jeanne Michele Kessler
Print name and title if applicable
6/9/2021
Date

9. **FEE** - ☒ The application filing fee provided in Idaho Code § 42-221.0, must be submitted with the application for transfer. Applications for changes pursuant to Idaho Code § 42-221.0.8. require a filing fee of \$50 per water right. All other application fees are based on the total amount of water proposed for transfer in Item 4: the larger fee for either cubic feet per second (diversion rate) or acre-feet per annum (storage volume). The Fee Schedule is available at www.idwr.idaho.gov, Water Right Transfers, Step 4 and in the Application for Transfer Instructions.

FOR DEPARTMENT USE ONLY

Transfer includes _____ pages of attachments. Received by _____ Date _____

Fee paid \$50.00 Date 6/14/21 Received by Cx kh Receipt # E047085

Preliminary review by _____ Date _____ Active in the Water Supply Bank? Yes ☐ No ☐

W-9 received? Yes ☐ No ☐ Name on W-9 _____ W-9 forwarded to fiscal? Yes ☐ No ☐

(Do NOT scan the W-9 – confidential information is held by fiscal only)

Nebeker, Jake

From: fkes291270 <fkes291270@gmail.com>
Sent: Friday, July 16, 2021 8:57 AM
To: Nebeker, Jake
Subject: RE: Water Right Amendments.

Jake this looks correct. We are out of town but will get the signed page 1 and check in the mail 1st thing Monday morning. We will still be out of town but will be able to print and sign Monday. Also I don't have the mailing address with me, can you send me the address so I can get the envelope correctly addressed. Thank you for helping to get this accomplished.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Nebeker, Jake" <Jake.Nebeker@idwr.idaho.gov>
Date: 7/16/21 10:26 (GMT-05:00)
To: fkes291270 <fkes291270@gmail.com>
Subject: RE: Water Right Amendments.

I made the edits you requested on the map, let me know what you think. Also let me know when you mail the signature page and fee back to me, so I can prepare your application for the next phase. Thanks

From: fkes291270 [mailto:fkes291270@gmail.com]
Sent: Thursday, July 15, 2021 1:08 PM
To: Nebeker, Jake <Jake.Nebeker@idwr.idaho.gov>
Subject: RE: Water Right Amendments.

Jake,

Thank you for giving me the opportunity to review the map...I clearly drew my lines off the wrong building edge. The little chunk out of the bottom right corner should be a little smaller as the pasture is fenced a little further East. Where the number "15" is at just left of there you can see the fenceline. That should be the north south edge for the little portion removed from the rectangle. I am out of town and using my phone to try and show what I mean in the attached photo. Does this make sense?

If the POU can look like that we will be perfectly pleased.

V/r

Frank

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Nebeker, Jake" <Jake.Nebeker@idwr.idaho.gov>

Date: 7/15/21 14:58 (GMT-05:00)

To: fkes291270@gmail.com

Subject: Water Right Amendments.

Franklin,

I have attached the amended application with the map. Please review the document and let me know if you approve, if it looks good I will need the signature page back signed, and the additional fee we spoke about over the phone of \$150.00. Thanks

-Jake

S. Jake Nebeker

Water Resource Agent

Idaho Department of Water Resources



State of Idaho

DEPARTMENT OF WATER RESOURCES

EASTERN Region • 900 N SKYLINE DR STE A • IDAHO FALLS, ID 83402-1718
Phone: (208)525-7161 • Fax: (208)525-7177 • Website: www.idwr.idaho.gov

Brad Little
Governor

Gary Spackman
Director

July 28, 2021

FRANKLIN JAMES KESSLER
JEANNE MICHELE KESSLER
2599 S MARSH CREEK RD
MCCAMMON, ID 83250-1513

RE: Transfer No. 85150
Water Right No(s). 29-4101B

Dear Applicants:

The Department of Water Resources has received your water right transfer application. Please refer to the transfer number referenced above in all future correspondence regarding this transfer.

A legal notice of the application has been prepared and is scheduled for publication in the IDAHO STATE JOURNAL on 8/4/2021 and 8/11/2021. Protests to this application may be submitted for a period ending ten (10) days after the second publication.

If the application is protested, you will be sent a copy of each protest. All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the application is not protested, the Department will process your application and notify you of any action taken on the application. If your application is approved, the Department will send you a copy of the approval document.

Please contact this office if you have any questions regarding the application.

Sincerely,

Christina Henman
Administrative Assistant

Henman, Christina

From: Henman, Christina
Sent: Wednesday, July 28, 2021 3:33 PM
To: 'legalnotices@postregister.com'
Subject: Legal Notice for Idaho State Journal
Attachments: 85150 Idaho State Journal.docx

LEGAL NOTICE DEPARTMENT
IDAHO STATE JOURNAL
PO BOX 431
POCATELLO, ID 83204-0431

RE: Transfer No. 85150
Water Right No(s). 29-4101B

Dear Legal Notice Department:

Please publish the enclosed legal notice on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 8/23/2021. Your cooperation is appreciated.

Thank You,

Christina Henman
Administrative Assistant
Idaho Dept. of Water Resources, Eastern Region
900 N Skyline Ste. A
Idaho Falls, ID 83402
Phone: (208) 497-3793

**NOTICE OF PROPOSED CHANGE OF WATER RIGHT
TRANSFER NO. 85150**

FRANKLIN JAMES KESSLER and JEANNE MICHELE KESSLER, 2599 S MARSH CREEK RD, MCCAMMON, ID 83250-1513 has filed Application No. 85150 for changes to the following water rights within BANNOCK County(s): Right No(s). 29-4101B; to see a full description of these rights and the proposed transfer, please see <https://research.idwr.idaho.gov/apps/waterrights/querynewtransfers>. The purpose of the transfer is to change a portion of the above rights as follows: change point of diversion. The proposed point of diversion is in NWNESW Sec 15 T08S R36E for 0.06 cfs from Walker Creek.

For additional information concerning the property location, contact Eastern Region office at (208)525-7161. Protests may be submitted based on the criteria of Idaho Code Sec. 42-222. Any protest against the proposed change must be filed with the Department of Water Resources, Eastern Region, 900 N SKYLINE DR STE A, IDAHO FALLS ID 83402-1718 together with a protest fee of \$25.00 for each application on or before 8/23/2021. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published on 8/4/2021 and 8/11/2021