



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

September 14, 2010

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

GEORGE KELLEY
PO BOX 25
ALBION ID 83311

**RE: APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK and
RELEASE OF WATER RIGHTS 45-4084 AND 45-4236 FROM THE BANK**

Dear Applicant

On January 7, 2008, the Idaho Department of Water Resources (Department) received your application to rent water from the Water Supply Bank (Bank) for irrigation use in Cassia County. In the application, you requested the rental of water for two years in anticipation of filing application for transfer 76333. The Department authorized the transfer on May 25, 2010.

The Department is returning your rental application since it was not processed prior to the end of the proposed rental period and the subsequent transfer has been approved. If you still have a need to rent water from the Bank, please submit a new application.

Water rights 45-4084 and 45-4236 were leased to the bank from 2007 to 2009 and are considered released effective January 1, 2010.

If you have any questions, please contact me at (208) 287-4907.

Sincerely,

Monica Van Bussum
Sr. Water Resource Agent

Enclosure(s)

Cc: Paul Arrington – Barker Rosholt & Simpson LLP
Allen Merritt – IDWR Southern Regional Office

MEMORANDUM

TO: Jeff Peppersack

FROM: Aaron Marshall 

DATE: May 22, 2009

SUBJECT: George Kelley Water Supply Bank Rental Application
Status Update in Response to May 5, 2009 Letter to IDWR Director

In a letter dated May 5, 2009, George Kelley wrote to IDWR Director Dave Tuthill and expressed frustration with delays in processing his Water Supply Bank rental application. The purpose of this memorandum is to provide background information and an update on the status Mr. Kelley's application.

In the rental application, received January 7, 2008, Mr. Kelley requests the use of ground water at a maximum diversion rate of 2.0 cfs for irrigation of 480 acres near the town of Albion for a two year period. The rental application was filed to bridge the time gap while awaiting approval of transfer application no. 73853. The transfer application was filed to comply with a Consent Order and Agreement between IDWR and Mr. Kelley dated October 26, 2001. The transfer proposes creation of a 1,355-acre permissible place of use for rights 45-4084 and 45-4236 and to change the point of diversion under rights currently leased to the Bank, 45-4084 and 45-4236. Rights 45-4084 and 45-4236 authorize irrigation of 57 acres in a single season. The transfer application remains unresolved due to concerns about the size of the proposed place of use.

In June 2007, I discussed Mr. Kelley's rental application and transfer application with Kelly Christensen, Cindy Yenter, and Allen Merritt (see attached email), all of whom expressed concerns about Mr. Kelley's intentions and compliance with a potential rental agreement.

Shelley Keen and I have agreed that when duplicate transfer applications and rental applications are filed, it is most efficient to process the transfer application and avoid duplicating work efforts by also processing the rental application.

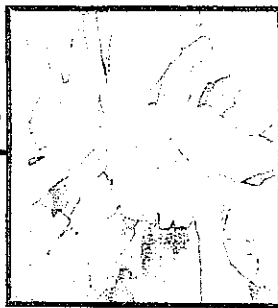
There are adequate water rights leased to the Bank to allow Mr. Kelley to irrigate approximately 450 acres. Due to IDWR staff concerns about the approval of Mr. Kelley's transfer application, it may be appropriate to move forward with a Water Supply Bank rental agreement. Since I have already invested a significant amount of my time in this matter, it would not take much more to prepare a rental agreement. A rental agreement of this size would generate over \$2,500 in fees for IDWR (450 acres x 4 af/acre x \$14/af x 10%). Given IDWR's current fiscal hardships, perhaps the Water Supply Bank should consider this aspect in prioritizing work efforts as it goes hand-in-hand with the obtaining "the highest duty for beneficial use from water", Idaho Code § 42-1761.

Since the transfer application filed by Mr. Kelley may not be approved, and he would like IDWR to process his rental application, my suggestion is to prepare a rental agreement for his signature and payment.

George Kelley

Box 25

Albion Idaho 83311



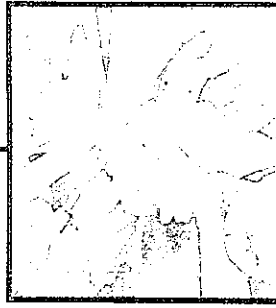
5 May 2009

Dear Sir,

My name is George Kelley. I am a 73 year-old farmer from Albion Idaho. I am writing this letter beseeching your assistance in a matter that has already cost me a great deal financially and am concerned that, without intervention, will cost me a great deal again.

I am currently awaiting a transfer of a point of diversion from a well that caved in to another well approximately $\frac{1}{2}$ mile away. During the time I have awaited this transfer I have had water being placed in the water bank. In 2007 I leased water from the water bank (I ended up leasing more than what I am diverting into the bank).

Things went fine in 2007 so in January of 2008 I applied to lease water from the bank. Because everything had gone well in 2007 I went ahead and planted a crop in 2008 in anticipation of getting water as in 2007. Unfortunately through Paul Arrington of the firm Barker, Raskelt & Simpson LLP. corresponded with Aaron Marshall several times prior to the 2008 irrigation season in an attempt to



insure that all necessary paperwork and requirements had been met, I received no water. Upon speaking with water Resources, Mr Arrington was told that "they were swamped" I lost my crop in 2008.

I again applied in February of 2009 for the water bank lease. Since that time the water has not been turned on and, when calling regarding this matter, I am again being told that again everyone is just too busy to process the paperwork for me to leave water.

I am at a loss on what to do in this situation. I am sure that I do not need to tell you of the devastating this will have on my livelihood if my crops again fail for lack of water. My sincere hope is that you may be able to offer me advice in this matter. I understand that you are very busy and I do not wish to be an imposition upon you.

I apologize if this note is an inconvenience but, as I mentioned, I am at a loss:

I thank you in advance for any advice or help you might be able to offer me and sincerely hope that this letter finds you well.

Very Truly Yours
George Kelley

© 2009 Panacea • Made in China

Before the Idaho Water Resource Board

RECEIVED**APPLICATION TO RENT WATER
FROM THE WATER SUPPLY BANK**

JAN 07 2008

DEPARTMENT OF
WATER RESOURCESApplicant GEORGE KELLEY Phone 208-673-5364Address P.O. BOX 25City ALBION State ID Zip Code 83311**A. DESCRIPTION OF WATER SOUGHT TO RENT**

1. Source of water: GROUNDWATER
tributary to _____.
2. Maximum volume of water _____ AF.
3. Maximum rate of diversion: 2.0 cfs.

B. DESCRIPTION OF USE PROPOSED

1. Nature of intended use: IRRIGATION
2. Location of point of diversion NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 35, Township 11S, Range 24E, B.M. CASSIA County.
3. Season of use: From 4/01 to 10/31.
4. Description of diverting works:
Pump HP 350 Lift 150 ft Pump type Diesel.
Canal name, if appropriate _____.
5. Place of use:
 - a. If water is for irrigation, describe the number of acres to be irrigated by 40-acre tract, section, township and range.
SW S25, T11S, R24E – Applicant will sprinkler once on this field
NW & SW S36, T11S, R24E – After sprinkling other fields, Applicant will
use the water on these fields. Application will not use water on these fields
at the same time.

- b. If water is not for irrigation, describe the nature of the intended use and the place of use.

N/A

6. Describe any other water rights used for the same purposes as rental water sought under this application.

7. Who owns the property at the point of diversion?

Applicant

8. Who owns the property at the place of use?

Applicant

9. Are you seeking a rental for more than one (1) year? YES (yes or no)
If yes, for how many years? 2

10. Remarks: Applicant has filed a transfer application for a permissible place of use and change in point of diversion for water right 45-4084 and 45-4236. Pursuant to a Consent Order & Agreement, Applicant was required to cap the current point of diversion and file a transfer application. Until that application is approved, the water under those rights cannot be used unless this Companion Application is approved.

1-3-08
Date

George Kelley
Signature of Applicant

277
RECEIVED

JAN 07 2008

**DEPARTMENT OF
WATER RESOURCES**

*Albert P. Barker
John A. Rosholt
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington*

**BARKER
ROSHOLT
&
SIMPSON
LLP**

113 Main Avenue West, Suite 303
Post Office Box 485
Twin Falls, Idaho 83303-0485
(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

1010 W. Jefferson St., Suite 102
Post Office Box 2139
Boise, Idaho 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

January 3, 2008

Diana L. Ball
Water Allocation Bureau
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

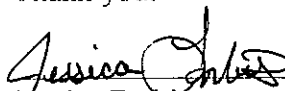
Re: Application to Rent Water from the Water Supply Bank for Water Rights 45-4048
and 45-4236

Dear Ms. Ball:

As indicated on our letter to you dated December 28, 2007, enclosed please find, the original executed copy of the *Application to Rent Water from the Water supply Bank* regarding the above water rights in the name of George Kelley.

Should you have any questions please contact our office.

Thank you.


Jessica Forbis

Assistant for Paul L. Arrington

Enclosure

PLA/jf

Marshall, Aaron

From: Marshall, Aaron
Sent: Monday, May 05, 2008 8:01 AM
To: 'Paul Arrington'
Subject: RE: Kelley Water Bank Renewal App.

Paul,

Thank you for the clarification, that's all we need.

Aaron

From: Paul Arrington [mailto:pla@idahowaters.com]
Sent: Friday, May 02, 2008 8:47 AM
To: Marshall, Aaron
Subject: RE: Kelley Water Bank Renewal App.

I'm kind of confused about your statement below. Section 5 lists 3 40-acre quarter sections that will be irrigation (1 rotation) with the water. They are going to irrigate the entire quarter-section. What else do we need to put there?

Paul L. Arrington
Barker Rosholt & Simpson LLP
(208) 733-0700 - telephone
(208) 404-9436 - mobile

CONFIDENTIALITY NOTICE: This e-mail and its attachments are confidential and may be privileged. If you believe this e-mail has been sent to you in error, please notify the sender immediately and delete this email. Do not deliver, distribute or copy this transmission.

From: Marshall, Aaron [mailto:Aaron.Marshall@idwr.idaho.gov]
Sent: Thursday, May 01, 2008 3:36 PM
To: Paul Arrington
Subject: RE: Kelley Water Bank Renewal App.

Paul,

Mr. Kelley may amend his rental application. As soon as I receive the amended application, I will request comment from the watermaster and proceed with processing. The amended application must reflect the number of acres proposed for irrigation in each quarter-quarter. The current application is deficient in that respect. Mr. Kelley should initial the changes and return to my attention. Please call or email with any questions.

Aaron Marshall
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098
(208) 287-4943
aaron.marshall@idwr.idaho.gov

From: Paul Arrington [mailto:pla@idahowaters.com]
Sent: Monday, April 28, 2008 2:46 PM
To: Marshall, Aaron
Subject: RE: Kelley Water Bank Renewal App.

Aaron:

5/5/2008

Marshall, Aaron

From: Yenter, Cindy
Sent: Friday, May 22, 2009 2:28 PM
To: Marshall, Aaron
Cc: Christensen, Kelly
Subject: George Kelley

Attachments: img-522134831.pdf

Aaron -

Attached is a consent order signed in 2001 in response to a NOV sent to George earlier that year. All terms of the consent order appear to be satisfied except possibly term #3, and I will have to check on that one. There are no other pending NOV's that we are aware of, but we need to confirm ongoing compliance with the consent order.

Kelly C. has the referenced application for transfer no 73853, filed in response to the consent. It has not been processed, mostly due to the same concerns as with the water bank application. The proposed ppu in the transfer was 1300 acres or something. When Kelly asked Dave T what he thought about that, Dave responded that the PPU shouldn't be more than 4 or 5 times the authorized acres. I have no idea if that's documented anywhere or if that was just Dave's initial reaction.

I suspect that Shelley will not want to process the water bank apps if we could just process the transfer instead. I agree with that. If we can pin down administration on the ppu size issue, I would propose that respond to George and tell him that in order for us to move ahead with the transfer he needs to limit his ppu and designate his 55 or so irrigated acres within the ppu (ala Ernie's large ppu condition), or we will return ALL the applications and he can start over.

Oh, and I meant to include in the Dalley WSB memo that is coming to you, that the pending transfers on those water rights were going to be withdrawn. We received the withdrawal form today and Allen has forwarded it to Pam if you need to see a copy.

Cindy

From: Christensen, Kelly
Sent: Friday, May 22, 2009 1:48 PM
To: Yenter, Cindy
Subject: George



img-522134831.pdf
(67 KB)

Here you go. Good luck

Kelly K Christensen
Sr Water Resource Agt
Boise, Western Region
(208)-334-2190

COPY

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO
CONSENT ORDER AND AGREEMENT**

In the matter of Notice of Violation and Cease and Desist Order dated September 18, 2001, issued to George Kelley pursuant to Section 42-1701B, Idaho Code. As agreed between the Department and George Kelley during the compliance conference held on October 26, 2001, it is hereby ordered and agreed that:

Terms of Agreement

- 1) Term No. 1 No further diversion of water from the irrigation well in the NENE S35, T11S, R24E, B.M. will be made until a valid water right is approved for use of the well by the Department.
- 2) Term No. 2 A transfer shall be filed with the Department within 60 days to seek approval for use of the well in NENE S35, T11S, R24E, B.M.
- 3) Term No. 3 A well log shall be prepared and submitted to the Department by George Kelley or other responsible parties to document the construction of the well in the NENE S35, T11S, R24E within 60 days.
- 4) Term No. 4 Within 7 days a steel plate shall be welded on the casing to seal the top of the well located in NENW S1, T12S, R24E. The steel plate may be removed when the well is modified for use as a domestic source. *Per Jana Jones, the well was capped. She visited the site in June of 2007.*
- 5) Term No. 5 No wells on the George Kelley property or property under control of George Kelley shall be drilled or modified unless said well construction complies with Section 42-235 of the IDAHO CODE.
- 6) Term No. 6 Payment of an agreed civil penalty by George Kelley in the amount of \$400.00 payable to the Idaho Department of Water Resources within 7 days of the execution of this agreement by George Kelley for the violation identified in said Notice of Violation dated September 18, 2001.
- 7) Term No. 7 Payment of \$17,600 civil penalty is suspended by the Idaho Department of Water Resources. This penalty or any portion may be re-imposed if the transfer to

Marshall, Aaron

From: Yenter, Cindy
Sent: Wednesday, June 11, 2008 11:08 AM
To: Marshall, Aaron; Merritt, Allen; Christensen, Kelly
Subject: RE: 45-4084, 45-4236, and 45-2505

And I'm sure this is not at all what George is expecting. However, I think it only right that he obtain full water right coverage.

From: Marshall, Aaron
Sent: Wednesday, June 11, 2008 11:01 AM
To: Merritt, Allen; Yenter, Cindy; Christensen, Kelly
Subject: RE: 45-4084, 45-4236, and 45-2505

To provide some clarification, water right nos. 45-4084 and 45-4236 are limited to the irrigation of 57 acres. Water right nos. 45-2505, 45-7008, and 45-13619 are limited to the irrigation of 392.6 acres. If combined into a rental agreement, the total acres authorized for irrigation in a season would be 449.6. The volume limitation would be 1,798.4 acre-feet. The total cost of the rental to George Kelley would be \$22,304.80.

Aaron

From: Merritt, Allen
Sent: Wednesday, June 11, 2008 9:36 AM
To: Marshall, Aaron; Yenter, Cindy; Christensen, Kelly
Subject: RE: 45-4084, 45-4236, and 45-2505

Seems to me he should be limited to 57 acres if that is all they are worth in any one year. Seems the water bank attempts to expand the rights.

Allen

From: Marshall, Aaron
Sent: Wednesday, June 11, 2008 9:19 AM
To: Yenter, Cindy; Christensen, Kelly
Cc: Merritt, Allen
Subject: RE: 45-4084, 45-4236, and 45-2505

Thanks for the additional information. Attached is the current rental application from George. You will notice that three quarters have been identified for irrigation for a total of approximately 480 acres. If I combine all of 45-4084, 45-4236, 45-2505, 45-7008, and 45-13619 into a rental agreement, George would be authorized to irrigate 449.6 acres. Cindy, as watermaster, what are thoughts on that idea? Do you have any comments regarding the application? Thanks.

Aaron

<< File: img-611081657.pdf >>

From: Yenter, Cindy
Sent: Wednesday, June 11, 2008 9:07 AM
To: Christensen, Kelly
Cc: Marshall, Aaron; Merritt, Allen
Subject: RE: 45-4084, 45-4236, and 45-2505

Thanks Kelly. We talked about this a little at the meeting this morning. George is still on my list of bad boys in 140 to investigate. I will go pull the NOV file and take a look at these three rights ASAP so I can get back to Aaron regarding the water bank rental. The transfer you and I have already discussed. I will need to provide watermaster comments so please keep me in the loop as you continue review -- will you send that back here for advertising?

cindy

From: Christensen, Kelly

Before the Idaho Water Resource Board

RECEIVED**APPLICATION TO RENT WATER
FROM THE WATER SUPPLY BANK**

JAN 07 2008

DEPARTMENT OF
WATER RESOURCESApplicant GEORGE KELLEY Phone 208-673-5364Address P.O. BOX 25City ALBION State ID Zip Code 83311**A. DESCRIPTION OF WATER SOUGHT TO RENT**

1. Source of water: GROUNDWATER
tributary to _____.
2. Maximum volume of water _____ AF.
3. Maximum rate of diversion: 2.0 cfs.

B. DESCRIPTION OF USE PROPOSED

1. Nature of intended use: IRRIGATION
2. Location of point of diversion NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 35, Township 11S, Range 24E, B.M. CASSIA County.
3. Season of use: From 4/01 to 10/31.
4. Description of diverting works:
Pump HP 350 Lift 150 ft Pump type Diesel.
Canal name, if appropriate _____.
5. Place of use:
 - a. If water is for irrigation, describe the number of acres to be irrigated by
40-acre tract, section, township and range.
SW S25, T11S, R24E – Applicant will sprinkler once on this field
NW & SW S36, T11S, R24E – After sprinkling other fields, Applicant will
use the water on these fields. Application will not use water on these fields
at the same time.

- b. If water is not for irrigation, describe the nature of the intended use and the place of use.

N/A

6. Describe any other water rights used for the same purposes as rental water sought under this application.

7. Who owns the property at the point of diversion?

Applicant

8. Who owns the property at the place of use?

Applicant

9. Are you seeking a rental for more than one (1) year? YES (yes or no)
If yes, for how many years? 2

10. Remarks: Applicant has filed a transfer application for a permissible place of use and change in point of diversion for water right 45-4084 and 45-4236. Pursuant to a Consent Order & Agreement, Applicant was required to cap the current point of diversion and file a transfer application. Until that application is approved, the water under those rights cannot be used unless this Companion Application is approved.

1-3-08
Date

George Kelley
Signature of Applicant