

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

IN THE MATTER OF APPLICATION)
FOR TEMPORARY CHANGE OF)
WATER RIGHT NOS.: 34-2477A,)
34-2477B, 34-12363A & 34-12363B)
_____)

**ORDER AUTHORIZING
TEMPORARY CHANGE**

TC-34-186

A drought emergency has been declared for Custer County to allow administrative actions to lessen the severe impacts of the drought conditions in the county; and

Idaho Code §42-222A provides that upon declaration of a drought emergency, the director of the Department of Water Resources is authorized to allow temporary changes in the point of diversion, the place of use, and the purpose of use for valid existing water rights when the director determines that such changes can be accomplished in accordance with the provisions of Idaho Code §42-222A; and

On May 21, 2021, Lewene Clark and Connie Hainline submitted the attached Temporary Change Application to the Department; and

The Department has reviewed the application and has determined the application can be approved with certain conditions;

ORDER

IT IS HEREBY ORDERED that the application is APPROVED subject to the following conditions:

1. Diversion and use of Right No(s). 34-2477A, 34-2477B, 34-12363A, and 34-12363B is authorized only at the points of diversion and place of use described on the application.
2. This temporary change approval does not authorize construction of a new well or diversion works as a new point of diversion.
3. The applicant assumes all risk of curtailment or mitigation should the diversion and use of water under the temporary change approval cause injury to other water rights, constitute an enlargement in use of the original right, be inconsistent with the conservation of water resources within the state of Idaho, or not be in the local public interest.
4. This temporary change approval may only be used to provide a replacement water supply to lands or other uses which normally have a full water supply, except for the drought condition. This temporary change approval may not be used to provide water for new development or to allow expansion of the use of water under existing water rights.

5. Rights 34-2477A and 34-12363A when combined shall not exceed a total diversion rate of 6.01 cfs and a total annual maximum diversion volume of 2103.5 af. Rights 34-2477B and 34-12363B when combined shall not exceed a total diversion rate of 2.00 cfs and a total annual maximum diversion volume of 700 af. Rights 34-198A, 34-317A, 34-331, 34-2477A and 34-12363A when combined shall not exceed the irrigation of 601 acres. Rights 34-198B, 34-2477B and 34-12363B when combined shall not exceed the irrigation of 250 acres.
6. Water diverted under these rights is exchanged by injecting water diverted under these rights into the Big Lost River or the Burnett Ditch, and diverting an equal amount at the upstream point of redirection located at NWSWNE Sec 33 T07N R24E (Darlington Ditch).
7. The amount of water diverted from the Big Lost River shall be reduced where necessary to prevent injury to appropriators of water from the Big Lost River downstream from the points of diversion or redirection.
8. Water may be redirected from the Big Lost River only when there is current demand for the water injected into the Burnett Ditch by users of water from the Burnett ditch with currently deliverable priorities below the point of injection.
9. This temporary approval does not authorize the use of diversion works or a delivery system owned by or managed by a corporation or an irrigation district without the consent of such corporation or irrigation district.
10. The applicant agrees to hold the Director and the State of Idaho harmless from all liability on account of the diversion and use of water under this temporary change approval.
11. This temporary change approval does not grant any right-of-way or easement to use the diversion works or conveyance works of another person or entity.
12. The watermaster of Water District No. 34 is authorized to administer the temporary change approval.
13. This temporary change approval expires on November 1, 2021 unless rescinded or extended by the director. Thereafter, the water right shall revert to the point of diversion, place of use and nature of use existing prior to the temporary change approval.

DATED this 26th day of May, 2021.



James Cefalo
Eastern Region Manager

RECEIVED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

MAY 21 2021

TC-34-186

TEMPORARY CHANGE APPLICATION

Department of Water Resources
Eastern Region(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 Lewene Clark & Connie HainlinePhone 2085882705Mailing Address 3897 W 3700 N, Moore, ID 83255Email lclark@atcnet.net

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. _____

Adding Kitsos exchange well to existing POD to provide an adequate water supply due to Big Lost River rights not being in priority.

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
<u>34-2477A</u>	<u>6/13/1966</u>	<u>6.01 cfs</u>	<u>Irrigation</u>	<u>4/1 to 11/1</u>
<u>34-12363A</u>	<u>5/1/1978</u>	<u>2.89 cfs</u>	<u>Irrigation</u>	<u>4/1 to 10/31</u>
<u>34-2477B</u>	<u>6/13/1966</u>	<u>2.00 cfs</u>	<u>Irrigation</u>	<u>4/1 to 11/1</u>
<u>34-12363B</u>	<u>5/1/1978</u>	<u>0.76 cfs</u>	<u>Irrigation</u>	<u>4/1 to 10/31</u>

2. Total amount of water being transferred 8.01 cubic feet per second and/or _____ acre-feet per annum.

3. Source of water Ground water tributary to _____

4. Point(s) of diversion: _____

Twtp	Rge	Sec	Govt Lot	¼	¼	¼	County	Source	Local name or tag number
6N	24E	2		NE	NW	SE	Custer	Ground water	OSmith exchange well
7N	25E	31		NW	NE	SW	Custer	Ground water	Kitsos exchange well

5. Lands irrigated or place of use: NO CHANGE TO PLACE OF USE

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	

Total Acres _____

6. General Information:

- a. Who owns the water right to be changed? Jennie & Orville Smith
- b. Describe the arrangement allowing use of the right. Current owners are deceased. Applicants are heirs, and will demonstrate ownership. Will also provide agreement from well owner granting access.
- c. Describe the affect on the land now irrigated if the change is approved pursuant to this application:
No change in place of use.
- 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? _____
Would continue use, but would have to idle some ground.
- f. Describe other water rights used for the same purpose. Several Big Lost rights that will not be in priority for long.
- g. Remarks: Water will be delivered via Darlington Ditch through an exchange.

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.

Lawrence M. Clark
Signature of Applicant

5/18/2021
Date

Connie E. Hainline

FOR DEPARTMENT USE ONLY

Received by _____ Date 5/18/21 \$50 fee received by CAH Receipt No. E046963
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

1.

I Shane Rosenkrance give Lewene Clark
Permission to Temporarily transfer to pump
water from the Kitsos Exchange well.

Shane Rosenkrance 5.21-21

ASSIGNMENT AND ASSUMPTION OF PARTNERSHIP UNITS

This Assignment and Assumption of Partnership Unites (this "Assignment") is made and entered into as of January 15, 2021, by and among Brenda Johnston, Teresa Duke and Leisa Bowhay, and Mike Duke as trustee of the Orville Smith Family Trust (each an "Assignor" and together the "Assignors"), and Lewene Clark ("Assignee").

RECITALS

A. WHEREAS, Brenda Johnston, Teresa Duke and Leisa Bowhay each own 42 limited partnership units (4.2%) of the Orville and Jennie Marie Smith Family Limited Partnership ("FLP") representing 12.6% of the issued and outstanding units of the FLP.

B. WHEREAS, Mike Duke, as trustee of the Orville Smith Family Trust, holds all general partnership units and 643 limited partnership units of the FLP.

C. WHEREAS, the Parties entered into that certain Settlement Agreement dated January 12, 2021 wherein, among other things, Assignors agreed to assign all their interests in the in the FLP to Assignee.

D. WHEREAS, Assignors desire to assign and transfer to Assignee all of Assignors' partnership units in the FLP (the "Partnership Units") pursuant to the terms of the Settlement Agreement.

E. WHEREAS, Jennie Marie Smith owned 139 limited partnership units of the FLP at the time of her death which limited partnership units were assigned to Assignee pursuant to *Last Will and Testament of Jennie Marie Smith*, dated June 24, 2014.

F. WHEREAS, upon the assignment of the Partnership Units as provided herein, Assignors shall have no interests in the FLP and Lewene shall hold all 50 of the general partnership units and 908 of the 950 limited partnership units of the FLP.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, warranties and mutual covenants set forth herein, the parties hereto agree as follows:

1. Assignment of Membership Interests. Assignors hereby assign to Assignee the Partnership Units, including, but not limited to, the right, title and interest of each Assignor in and to the properties (real and personal), capital, profits, losses, and cash flow allocable to the Partnership Units.
2. Effective Date. The assignment herein made is effective as of the date of this Assignment.
3. Acceptance by Assignee. Assignee: (a) accepts the assignment of all of Assignors' right, title, and interest in and to the Partnership Units; and (b) agrees to be bound by all of the terms, covenants, and conditions of this Agreement and of the partnership agreement. Assignee hereby

indemnifies and holds Assignors and agents harmless against any and all taxes, fees, surcharges, and other assessments, as well as losses, costs, and expenses (including reasonable attorneys' fees) arising out of any obligations of Assignee relating to the Partnership Units.

4. Representations of Assignor. Assignors warrant and represent to Assignee that (a) Assignors are the owners of the Partnership Units, (b) Assignors have not pledged, assigned, hypothecated, or otherwise encumbered all or any part of the Partnership Units, and (c) Assignors have the power and authority to rightfully assign the Partnership Units in accordance with this Assignment.

5. Successors and Assigns. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, legal representatives, successors and assigns.

6. Survival of Representations. The representations, warranties, covenants and agreements of the parties contained in this Assignment shall survive the consummation of the transactions contemplated hereby.

7. Applicable Laws. This Assignment shall be governed by and construed in accordance with the laws of the State of Idaho.

IN WITNESS WHEREOF, this Assignment is executed as of the day and year first above written.

ASSIGNORS:

ASSIGNEE:

Brenda Johnston 1-18-2021
Brenda Johnston

Lewene Clark 2-1-2021
Lewene Clark

Teresa Duke 1-18-2021
Teresa Duke

Leisa Bowhay 1-18-2021
Leisa Bowhay

Orville Smith Family Trust

Mike Duke 1-18-21
Mike Duke, Trustee

**CONSENT OF ORVILLE AND JENNIE MARIE SMITH FAMILY LIMITED
PARTNERSHIP**

The following acknowledge and consent to this Assignment and Assumption of Partnership Units:

**Orville and Jennie Marie Smith Family
Limited Partnership**

By: 
Name: Lewene Clark, Partner

ASSIGNMENT AND ASSUMPTION OF PARTNERSHIP UNITS

This Assignment and Assumption of Partnership Units (this "Assignment") is made and entered into as of January 14, 2021, by and between Lewene Clark, as personal representative of the Estate of Jennie Marie Smith ("Assignor"), and Lewene Clark ("Assignee").

RECITALS

A. WHEREAS, Jennie Marie Smith owned 139 limited partnership units of the Orville and Jennie Marie Smith Family Limited Partnership ("FLP") representing 13.9% of the issued and outstanding units of the FLP.

B. WHEREAS, Jennie Marie Smith died on July 26, 2015.

C. WHEREAS, Lewene Clark is the duly appointed co-personal representative of the Estate of Jennie Marie Smith, Idaho District Court, County of Custer, Case No. CV-2015-094.

D. WHEREAS, Assignor desires to assign and transfer to Assignee all of Assignor's partnership units in the FLP (the "Partnership Units") pursuant to Article 6 of the *Last Will and Testament of Jennie Marie Smith*, dated June 24, 2014.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, warranties and mutual covenants set forth herein, the parties hereto agree as follows:

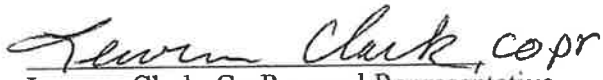
1. Assignment of Membership Interests. Assignor hereby assigns to Assignee the Partnership Units, including, but not limited to, the right, title and interest of Assignor in and to the properties (real and personal), capital, profits, losses, and cash flow of the allocable to the Partnership Units.
2. Effective Date. The assignment herein made is effective as of the date of this Assignment.
3. Representations of Assignor. Assignor warrants and represents to Assignee that (a) Assignor is the owner of the Partnership Units, (b) Assignor has not pledged, assigned, hypothecated, or otherwise encumbered all or any part of the Partnership Units, and (c) Assignor has the power and authority rightfully to assign the Partnership Units in accordance with this Assignment.
4. Successors and Assigns. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, legal representatives, successors and assigns.
5. Survival of Representations. The representations, warranties, covenants and agreements of the parties contained in this Assignment shall survive the consummation of the transactions contemplated hereby.

6. Applicable Laws. This Assignment shall be governed by and construed in accordance with the laws of the State of Idaho.

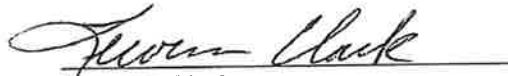
IN WITNESS WHEREOF, this Assignment is executed as of the day and year first above written.

ASSIGNOR:

Estate of Jennie Marie Smith


Lewene Clark, Co-Personal Representative

ASSIGNEE:


Lewene Clark

**CONSENT OF ORVILLE AND JENNIE MARIE SMITH FAMILY LIMITED
PARTNERSHIP**

The following acknowledge and consent to this Assignment and Assumption of Partnership Units:

**Orville and Jennie Marie Smith Family
Limited Partnership**

By: Lewene Clark, Partner
Name: Lewene Clark, Partner

12/99

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECOMMENDATION OF WATERMASTER

Application No: TC-34-186Applicant's Name: LEWENE CLARK + CONNIE HAINLINE

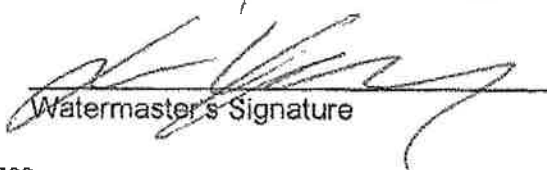
Watermaster's Recommendation:

a) LY I do not oppose approval of this application.

b) _____ I do not oppose approval of this application if it is conditioned as follows: _____

c) _____ I oppose approval of this application for the following reasons: _____

d) _____ Additional Comment: _____

Dated this 25 day of May, 2021.Water District No: 34
Watermaster's Signature

Use reverse side of page if you need more space.

Holliday, Michael

From: General Manager <blridgm@atcnet.net>
Sent: Tuesday, May 25, 2021 10:41 AM
To: Holliday, Michael
Subject: WD 34 Temp Transfers

Michael,

The BLRID does not oppose the following transfers:

34-184

34-185

34-186

Thanks

*Lucas Yockey
General Manager
Big Lost River Irrigation District
P.O. Box 205
Mackay ID 83251*

208-588-2231 – office

208-390-1447 - cell

www.blrid.com