

TC-34-159

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TEMPORARY CHANGE APPLICATION

RECEIVED
SEP 03 2015
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 Marshal Todd Perkes Phone _____
Mailing Address 2790 N 3325 W, Moore, ID 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. _____
Because of the drought, the Applicant's surface water right 34-622A is no longer available. The Applicant has entered into an agreement to utilize a portion of Water Right No. 34-2357A to meet his needs.

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
34-2357A	04/01/1979	1.6 cfs	Irrigation	04/01 to 11/01
				to
				to
				to

2. Total amount of water being transferred 1.6 cubic feet per second and/or 280 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
04N	26E	5		SW	SE	SE	Butte	Ground water	Sorensen South Well

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	
04N	25E	25	4		24	38				5.7	3.8				0.4	4.1			80

Total Acres 80

6. General Information:

- a. Who owns the water right to be changed? Ronald and Tekla Staley
- b. Describe the arrangement allowing use of the right. Mitchell Sorensen has entered into a lease agreement with the Staleys for this Water Right. The Applicant has in turn entered into an agreement with Sorensen to use a portion of the right.
- c. Describe the affect on the land now irrigated if the change is approved pursuant to this application. See Attached Agreements
It 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? The right is not currently being utilized.
- f. Describe other water rights used for the same purpose. _____
- g. Remarks: _____

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

September 3, 2015
Date

FOR DEPARTMENT USE ONLY

Received by sc Date 9/3/15 \$50 fee received by sc Receipt No. 8041412
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. TC-34-159, and said application is hereby _____, subject to the following limitations and conditions:

Temporary Change Expiration Date _____

Signed this _____ day of _____, _____.

For the Director

WATER RIGHT & WELL USE AGREEMENT

THIS WATER RIGHT & WELL USE AGREEMENT (this "Agreement") is made and entered into this 31 day of July, 2015 (the "Effective Date"), by and between Mitchell Sorensen and Elaine Sorensen, husband and wife, whose address is 3871 W. 2500 No., Moore, ID 83255 (hereinafter "Sorensen"), and Marshall Todd Perkes and Norma L. Perkes, husband and wife, whose address is 2790 N. 3325 W., Moore, ID 83255 (hereinafter "Perkes"). Sorensens and Perkes are individually a "Party" and together the "Parties".

RECITALS:

A. Perkes is the owner of certain real property located in Sec. 25 of 04N, 25E (the "Perkes Property").

B. Perkes desires to obtain additional supplies of water to irrigate portions of the Perkes Property.

C. Sorensen has entered into a Lease Agreement wherein Sorensen is entitled to use Water Right No. 34-2357A (the "Water Right").

D. Sorensen desires to enter into an agreement with Perkes wherein Perkes would be able to utilize the Water Right on portions of the Perkes Property.

IN CONSIDERATION of the mutual representations, warranties, and covenants contained herein, the Parties, intending to be legally bound hereby, agree as follows:

AGREEMENTS:

1. Use of Water Right. Sorensen hereby agrees to allow Perkes to utilize the Water Right on portions of the Perkes Property as Perkes sees fit.

2. Point of Diversion. Sorensen hereby agrees to allow Perkes to utilize Sorensen's South Well located in the SW1/4SE1/4SE1/4, of Sec. 5, 04N, 26E to divert the Water Right for use on the Perkes Property. Sorensen will have exclusive control over when the South Well may be used for purposes of diverting the Water Right under this agreement. It is understood and agreed that this Agreement does not convey any right, title, or interest in the South Well to Perkes.

3. Water Bank Application. It is understood and agreed that it will be necessary to file applications to lease and rent the Water Right through the Idaho Water Supply Bank (the "Water Bank Applications") to temporarily move the Water Right to the Perkes Property. Sorensen and Perkes will equally share the costs associated with the preparation of the Water Bank Applications.

4. Term. The Term of this Agreement shall be annual from the Effective Date until December 31, 2015. Upon Sorensen's consent, and in Sorensen's sole discretion, Perkes may

renew this agreement annually by providing written notice to Sorensen prior to January 31 of each subsequent year.

5. Price. Perkes shall pay Sorensen [REDACTED] per year for use of the Water Right (the "Annual Cost"). Perkes shall also pay [REDACTED] per day for each day that the Water Right is diverted out of the South Well (the "O&M Cost"). The Annual Cost shall be paid at the signing of this agreement and at any renewal thereof. The O&M Cost shall be paid in advance of any use of the South Well by Perkes. The O&M Cost may be revisited and revised on an annual basis at Sorensen's sole discretion.

6. Cost of Preparation of Agreement. Sorensen and Perkes will share equally the attorney fees and other costs associated with preparation of this Agreement.

7. Contingencies and Conditions Precedent. The Parties expressly acknowledge and agree that performance under this Agreement is fully contingent upon the approval of the Water Bank Applications by the Idaho Department of Water Resources in a manner reasonably satisfactory to both Sorensen and Perkes.

8. Assignment. Perkes may assign this Agreement only upon written consent from Sorensen.

9. Sorensen's Representations and Warranties. Sorensen hereby represents and warrants to Perkes as of the effective date of this Agreement as follows:

(a) Authority. Sorensen has the legal power, right and authority to enter into and perform this Agreement.

(b) No Representation or Warranty Concerning Suitability for Perkes Intended Use. Sorensen has not made, and hereby makes, no representation or warranty to Perkes except as expressly contained in this Agreement.

10. Perkes' Representations and Warranties. Perkes hereby represents and warrants to Sorensen as of the effective date of this Agreement as follows:

(a) Authority. Perkes has the legal power, right and authority to enter into and perform this Agreement.

(b) Perkes' Due Diligence. Perkes has had a full opportunity to review all documents, records and other information made available to Perkes by Sorensen and/or otherwise reasonably available to Perkes through public or other sources, related to the nature and extent of the Water Rights, the laws and rules affecting their transfer and use by Perkes, and the suitability or fitness of the Water Right for Perkes' intended purposes.

11. Miscellaneous.

(a) Attorneys' Fees. If either party commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach hereof), the prevailing party therein shall be entitled to recover from the other, in addition to any

other relief granted, its reasonable attorney's fees, costs and expenses incidental to such legal action.

(b) Notices. Any notice under this Agreement shall be in writing and be delivered in person, by U.S. Mail, by private courier, or by facsimile. Notice shall be provided to the following:

Sorensen

Mitchell and Elaine Sorensen
3871 W. 2500 N.
Moore, ID 83255

Perkes

Todd and Norma Perkes
2790 N. 3325 W.
Moore, ID 83255

Sorensens' Representative

Luke H. Marchant
Holden, Kidwell, Hahn & Crapo,
P.L.L.C.
P.O. Box 50130
Idaho Falls, ID 83405
(208) 523-0620

Perkes' Representative

Luke H. Marchant
Holden, Kidwell, Hahn & Crapo,
P.L.L.C.
P.O. Box 50130
Idaho Falls, ID 83405
(208) 523-0620

(c) Merger. This Agreement supersedes any and all other written or verbal agreements between the Parties hereto. Neither Sorensen nor Perkes shall be bound by any understanding, agreement, promise, representation or stipulation, express or implied, not specifically contained herein.

(d) Remedies Cumulative. Upon any breach, any and all rights and remedies which either Party may have under this Agreement or by operation of law or equity, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other. No such right or remedy, whether exercised by said Party or not, shall be deemed to be in exclusion of any other right or remedy, any two or more of all such rights and remedies may be exercised at the same time or separately as desired.

(e) Further Documents. The Parties hereby agree that they shall sign such other and further documents as may be required to carry into effect the terms and conditions of this Agreement.

(f) Enforceability. The validity or enforceability of any term, phrase, clause, paragraph, restriction, covenant, agreement or other provision hereof, shall in no way affect the validity or enforcement of the remaining provisions, or any part hereof.

(g) Counterparts. This Agreement may be executed in any number of counterparts for the convenience of the Parties, all of which, when taken together and after execution by all Parties hereto, shall constitute one and the same Agreement.

(h) Governing Law. This Agreement shall be governed by the laws of the State of Idaho.

(i) Successors. This Agreement is for the benefit only of the Parties hereto and shall inure to the benefit of and bind their respective heirs, agents, personal representatives, successors and assigns subject to Paragraph 8 above.

(j) Essence of Time. Time is of the essence in this Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement effective on the date set forth above.

"SORENSEN"



Mitchell Sorensen

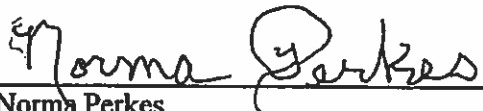


Elaine Sorensen

"PERKES"



Marshall Todd Perkes



Norma Perkes

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WATER RIGHT LEASE AGREEMENT

THIS WATER RIGHT LEASE AGREEMENT (this "Agreement") is made and entered to be effective as of the 1st day of April, 2015 (the "Effective Date"), by and between Ronald Scott Staley and Tekla A. Staley, husband and wife, whose address is 1443 W. 3700 N. Howe, Idaho 83244 (hereinafter "Staley"), and Mitchell and Elaine Sorensen, husband and wife, whose address is 3871 W. 2500 N., Moore, Idaho 83255 (hereinafter "Sorensen"). Buyer and Seller are individually a "Party" and together the "Parties".

AGREEMENTS:

1. Property Leased. Staley hereby agrees to lease to Sorensen Water Right No. 34-2357A (the "Water Right") for the Term described below.
2. Term: The Term of this Agreement shall be from the Effective Date (April 1, 2015) until April 1, 2020.
3. Property Retained. Staley reserves and retains unto Staley all remaining other water rights that may be appurtenant to the currently authorized place of use for the Water Right. No land, easements, or other property interests are included in this Agreement.
4. Lease Price. The lease price paid by Sorensen shall be [REDACTED] per year.
5. Water Bank Application. It is understood and agreed that within thirty (30) days after execution of this Agreement, Sorensen shall file the necessary applications to lease and rent the Water Right through the Idaho Water Supply Bank (the "Water Bank Applications"). Sorensen shall pay the filing fees associated with the Water Bank Applications and the costs associated with preparation of the Water Bank Applications. Staley shall not be obligated to pay any such costs. Sorensen shall make the first lease payment to Staley within thirty (30) days of Sorensen's receipt of approved Water Bank Applications acceptable to Sorensen.
6. Costs of Preparation of Agreement. Sorensen shall pay all attorney fees and other costs associated with preparation of this Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement effective on the date set forth above.

"STALEY"

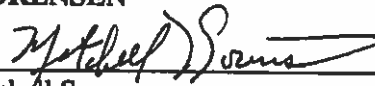

Ronald Scott Staley

4-3-15

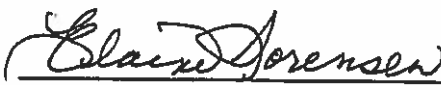

Tekla A. Staley

4/3/15

"SORENSEN"

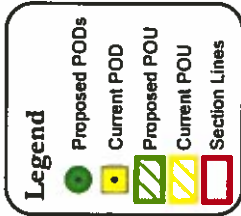


Mitchell Sorensen



Elaine Sorensen

PERKES TEMPORARY CHANGE APPLICATION - WR No. 34-2357A



2013 NAIP Photo



Prepared by:
Luke H. Marchant
08/28/2015

Holliday, Michael

From: Luke Marchant [lmarchant@holdenlegal.com]
Sent: Wednesday, September 30, 2015 4:22 PM
To: Holliday, Michael
Subject: RE: Sorensen and Perkes temp changes

Michael,

After talking with my clients regarding the Temporary Change Applications that we filed, they have decided to withdraw them instead of pursuing them further this year. If you have any questions or need anything else, let me know.

Thanks.



Luke H. Marchant
Holden, Kidwell, Hahn & Crapo, P.L.L.C.
1000 Riverwalk Drive, Suite 200
P.O. Box 50130
Idaho Falls, Idaho 83405
Phone: (208) 523-0620
Fax: (208) 523-9518
Email: lmarchant@holdenlegal.com

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From: Holliday, Michael [<mailto:Michael.Holliday@idwr.idaho.gov>]
Sent: Friday, September 04, 2015 10:58 AM
To: Luke Marchant
Subject: Sorensen and Perkes temp changes

Hi Luke.

Yesterday we received the temporary change applications you submitted on behalf of Perkes and Sorensen. After my initial review, I have some forfeiture concerns. Based on a quick review of aerial photography, it did not appear that the place of use had been watered for many years. I also looked at the WMIS data for 34-2357A, which showed no use since 2007.

Also, 42-222A says in part that, "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." The 80 acres sought to be covered by the Perkes application does not appear to have a full water supply in a normal year, as that land is covered only by 34-622A, which is not available for delivery past spring in most years.

In order to move forward with processing, we need additional information to address these concerns. Feel free to contact me if you have questions.

Michael Holliday
Water Rights Supervisor
Phone: 208-525-7161



Holden Kidwell
Hahn & Crapo P.L.L.C.
L A W O F F I C E S

1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, Idaho 83405

Tel: (208) 523-0620
Fax: (208) 523-9518
www.holdenlegal.com

Email: lmarchant@holdenlegal.com

September 3, 2015

Michael Holliday
Idaho Department of Water Resources
900 S. Skyline Drive, Suite A
Idaho Falls, ID 83402-1717

RECEIVED
SEP 03 2015
Department of Water Resources
Eastern Region

RE: *Temporary Change Applications for Water Right No. 34-2357A*

Dear Michael:

Enclosed for processing are two Temporary Change Applications for Water Right No. 34-2357A that we are filing for Mitchell and Elaine Sorensen and Todd Perkes. These applications seek to change the point of diversion and place of use for this water right. Water Right No. 34-2357A is owned by Ronald and Tekla Staley. Mitchell and Elaine Sorensen have entered into a lease agreement with the Staleys to utilize this right. In turn, the Sorensens have entered into an agreement with Todd Perkes to utilize a portion of the right. As you can see from the applications, 80 acres of this water right will be used on the Perkes property and 23 acres will be used on the Sorensen property.

Along with the applications, you will find the necessary filing fees as well as the associated agreements between Staleys and Sorensens and between Sorensens and Perkes. You will also find GIS maps showing the current and proposed points of diversion as well as the current and proposed places of use.

If you have any questions, do not hesitate to contact me.

Best Regards,

Luke H. Marchant
Holden, Kidwell, Hahn & Crapo, P.L.L.C.

Enclosures

G:\WPDATA\RLH\7151 SORENSEN, MITCH\020. Staley water right\2015-09-03, Holliday.docx

Established in 1896

Cox, Sharla

From: Cox, Sharla
Sent: Friday, October 02, 2015 11:11 AM
To: Carlos, Rhea
Subject: Refund Please

Please refund the following:

Receipt # E041412
Amount to be refunded: \$100.00
Payable to:
Holden Kidwell Hahn & Crapo
PO Box 50130
Idaho Falls ID 83405-0130

Reason: Applicant withdrew applications for temporary change,

Sharla

*Sharla Cox
Administrative Assistant
Idaho Dept of Water Resources
900 N Skyline Dr. Ste A.
Idaho Falls ID 83402
sharla.cox@idwr.idaho.gov
208-525-7161 phone
208-525-7177 fax*