

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 83092**

This is to certify that: LUCILLE GUSTAFSON
PO BOX 209
HAGERMAN, ID 83332-0209

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Changes

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
36-8752	WR/LICENSE	4/17/1996	3.000 cfs	54.0 af	N/A	N/A	LOWER TUCKER SPRINGS, UPPER TUCKER SPRINGS

Purpose of Transfer (Changes Proposed)

<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
36-8752	NO	NO	YES	NO	NO	NO

Summary Of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (Changed Portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
36-8752	36-8752	3.000 cfs	54.0 af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		3.000 cfs	54.0 af	N/A	N/A		N/A	N/A	N/A	N/A

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this 19th day of April, 2017.


Southern Region Manager

Transfer No. 83092

WATER RIGHT NO. 36-8752**As Modified by Transfer No. 83092**

In accordance with the approval of Transfer No. 83092, Water Right No. 36-8752 is now described as follows:

Right Holder: THE RESTATED GUSTAFSON FAMILY TRUST
PO BOX 209
HAGERMAN, ID 83332-0209

Priority Date: 4/17/1996

Source: LOWER TUCKER SPRINGS **Tributary:** RILEY CREEK
Source: UPPER TUCKER SPRINGS **Tributary:** RILEY CREEK

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
DIVERSION TO STORAGE	11/15	to 03/15	3.000 cfs	
WILDLIFE STORAGE	01/01	to 12/31	3.000 cfs	54.0 af
				54.0 af

LOCATION OF POINT(S) OF DIVERSION

LOWER TUCKER SPRINGS SENWSE Sec 36 Twp 07S Rge 13E GOODING County
UPPER TUCKER SPRINGS NWSESE Sec 36 Twp 07S Rge 13E GOODING County

PLACE OF USE: WILDLIFE STORAGE

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07S	13E	27													X	X			

CONDITIONS OF APPROVAL

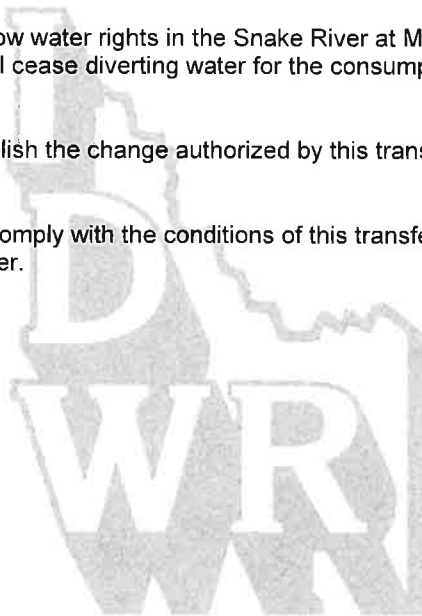
1. Rights 36-8567 and 36-8752 when combined shall not exceed a total diversion rate of 3.00 cfs.
2. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 36A.
3. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
4. Wildlife Storage use is for four ponds.
5. Water is delivered through Big Bend Ditch.
6. The rate of diversion shall not conflict or interfere with the future diversion of water for irrigation or other beneficial uses.

Transfer No. 83092

WATER RIGHT NO. 36-8752
As Modified by Transfer No. 83092

CONDITIONS OF APPROVAL

7. The issuance of this right does not grant any right-of-way or easement across the land of another.
8. This right is for the use of trust water, and it is subject to review 20 years after its initial approval (date of permit approval) to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.
9. When the minimum stream flow water rights in the Snake River at Murphy Gage are not being satisfied, the right holder shall cease diverting water for the consumptive uses authorized by this right.
10. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
11. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.



State of Idaho
Department of Water Resources
Attachment to Transfer # 83092
36-8752

This map depicts the WILDLIFE STORAGE place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.325 0.65 1.3 Miles



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. **83092****RECEIVED****MAR 18 2019**DEPT OF WATER RESOURCES
SOUTHERN REGION

MINIMUM REQUIREMENTS CHECKLIST
TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

An application for transfer must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. Incomplete applications will be returned. The instructions, fee schedule, Part 2A reports and additional Part 2B forms are available from any Department office or on the Department's website at idwr.idaho.gov.

Name of Applicant(s) Lucille Ellen Gustafson, Trustee of The Restated Gustafson Family Trust, dated April 22, 1998, as amended

Check whether each item below is *attached* (Yes) or *not applicable* (N/A) for the proposed transfer.

Yes N/A * Means the item is always required and must be included with the application.

- ☒ * Completed Application for Transfer of Water Right form, Part 1.
- ☒ * Signature of applicant(s) or applicant's authorized representative on Application for Transfer Part 1. Include evidence of authority labeled Attachment #3 (see below) if signed by representative.
- ☒ * Application for Transfer Part 2A. Attach a Part 2A report describing each water right in the transfer as currently recorded.
- ☐ ☒ Complete and attach an Application for Transfer Part 2B for each water right for which only a portion is proposed to be changed through this transfer application.
- ☒ * Application for Transfer Part 3A is always required (see Attachment #7a below); Parts 3B and 3C must be completed for transfer applications proposing to change the nature of use of the water right(s) or proposing changes to supplemental right(s).
- ☒ * Correct fee submitted with transfer application form. (Fee schedule is on website and instructions for application for transfer.)

Attachments to Application - Label each attachment with the corresponding number shown below as Attachment #1-10.

- ☐ ☒ #1 If the applicant is a business, partnership, organization, or association, and not currently registered in the State of Idaho as a business entity, attach documentation identifying officers authorized to sign or act on behalf of right holder. (See Part 1.)
- ☐ ☒ #2a Water Right ownership documentation if Dept. records do not show the applicant as the current water right owner. **
- ☐ ☒ #2b 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).**
** Additional fee(s) required for water right ownership changes; see fee schedule.
- ☐ ☒ #3 Documentation of authority to make the change if the applicant is not the water right owner.
- ☐ ☒ #4 Power of Attorney or documentation providing authority to sign or act on the applicant's behalf. (See Part 1.)
- ☐ ☒ #5 If the transfer application proposes to change the point of diversion for a water right affecting the Eastern Snake Plain Aquifer (ESPA), attach the results of an ESPA analysis and a detailed mitigation plan to offset any depletions to hydraulically connected reaches of the Snake River. ESPA transfer spreadsheet and model grid labeled cells are available on the Department's website at idwr.idaho.gov/water-rights/transfers/resources.html.
- ☐ ☒ #6 Notarized statement of agreement or a statement on official letterhead signed by an authorized representative from each lien holder or other entity with financial interest in the water right(s) or land affected by the proposed transfer. (See Part 1.5.c.)
- ☒ * #7a Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described on the application. Include legal description labels. If only a portion of the right is proposed to be changed, identify the current location of the part of the existing right(s) proposed to be changed. (See Part 3A.)
- ☐ ☒ #7b 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. If some or all of any right is leased to the Water Supply Bank, you must also show the the specific location and/or acres to be idled at the new, proposed place of use to satisfy lease requirements.
- ☐ ☒ #8a If the transfer application proposes to change the nature of use or period of use for one or more rights, provide documentation describing the extent of historic beneficial use for the water rights proposed to be transferred and document how enlargement will be avoided. (See Part 3B.) Additional fee required for proposed changes to nature of use; see fee schedule.
- ☐ ☒ #8b If the transfer application proposes to change the place of use of a supplemental irrigation right, provide documentation regarding the historic use of the supplemental right(s) and availability or reliability of the primary right(s) being supplemented, both before and after the proposed change. (See Part 3C.)
- ☐ ☒ #9 Water Supply Bank information for all rights proposed for transfer and currently leased to the Bank. (Attachment WSB)
- ☒ ☐ #10 Other. Please describe: Designation of Agent

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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MAR 18 2019

DEPT OF WATER RESOURCES
SOUTHERN REGION

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Trust, dated April 22, 1998, as amended

Name of Applicant(s) Lucille Ellen Gustafson, Trustee of The Restated Gustafson Family Phone (970) 250-8690Mailing address c/o Kirk Gustafson, 595 Ravenwood Lane, Grand Junction, CO 81507 Email kgus122953@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 RepresentativeName of Representative James P. SpeckPhone (208) 726-4421Mailing address Speck & Aanestad, PO Box 987, Ketchum, ID 83340Email jim@speckandaanestad.com☐ 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.

Kirk E. Gustafson
Signature of Applicant or Authorized Representative

Lucille Ellen Gustafson, Trustee, by Kirk E. Gustafson, her attorney-in-fact
Print Name and Title if applicable

5/6/19
Date

Signature of Applicant or Authorized Representative

Print Name and Title if applicable

Date

A. PURPOSE OF TRANSFER

- ☐ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period 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**. See A.3, below
- 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**.
Correct an error in the legal description of the place of use in the License issued by IDWR in 2009. See all documents in backfile for 36-8752 and current IDWR map attached as Attachment 7.A.

STATE OF IDAHO
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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 ☒ ☐	36-8752	54AFA	wildlife storage	Jan. 1 to Dec. 31	Lower & Upper Tucker
☐ ☐		3cfs	diversion to storage	Nov. 15 to Mar. 15	Springs/Riley Creek
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 3 cfs and/or 54 acre-feet.

2. Total amount of water proposed to be transferred or changed 3 cubic feet per second and/or 54 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 #

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	
7S	13E	27													W	W			
Total Acres (for irrigation use)																			

W = WILDLIFE STORAGE

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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:

Big Bend Ditch delivers water to four ponds

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

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

Permission from Big Bend Mining & Irrigation Co. to use Big Bend Ditch

- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? **NO**

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? **NO**

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:

N/A

- 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:

36-8567 provides for winter diversions of 3 cfs through the same 4 ponds

- 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:

DESIGNATION OF AGENT

I Lucille E. Gustafson (name of principal) name the following person as my agent:

Name of agent: Kirk E. Gustafson

Agent's address: 595 Ravenwood Lane, Grand Junction, CO, 81507

Agent's telephone number: 970-250-8690

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of successor agent: Kathleen A. Gustafson

Successor agent's address: 595 Ravenwood Lane, Grand Junction, CO, 81507

Successor agent's telephone number: 970-250-8591

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of second successor agent: _____

Second successor agent's address: _____

Second successor agent's telephone number: _____

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the "Uniform Power of Attorney Act", part 7 of article 14 of title 15, Colorado Revised Statutes:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All preceding subjects" instead of initialing each subject.)

- ☐ Real property
- ☐ Tangible personal property
- ☐ Stocks and bonds
- ☐ Commodities and options
- ☐ Banks and other financial institutions
- ☐ Operation of entity or business
- ☐ Insurance and annuities

- ☐ Estates, trusts, and other beneficial interests
- ☐ Claims and litigation
- ☐ Personal and family maintenance
- ☐ Benefits from governmental programs or civil or military service
- ☐ Retirement plans
- ☐ Taxes

☒ All preceding subjects

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

- ☒ Create, amend, revoke, or terminate an inter vivos trust
- ☒ Make a gift, subject to the limitations of the "Uniform Power of Attorney Act" set forth in section 15-14-740, Colorado Revised Statutes, and any special instructions in this power of attorney
- ☒ Create or change rights of survivorship
- ☒ Create or change a beneficiary designation
- ☒ Authorize another person to exercise the authority granted under this power of attorney
- ☒ Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- ☒ Exercise fiduciary powers that the principal has authority to delegate, including powers to participate in the designation or changing of a fiduciary and powers to participate in the direction of a fiduciary in the exercise of the fiduciary's powers
- ☒ Disclaim, refuse, or release an interest in property or a power of appointment
- ☒ Exercise a power of appointment other than: (1) The exercise of a general power of appointment for the benefit of the principal which may, if the subject of estates, trusts, and other beneficial interests is authorized above, be exercised as provided under the subject of estates, trusts, and other beneficial interests; or (2) the exercise of a general power of appointment for the benefit of persons other than the principal which may, if the making of a gift is specifically authorized above, be exercised under the specific authorization to make gifts

 Exercise powers, rights, or authority as a partner, member, or manager of a partnership, limited liability company, or other entity that the principal may exercise on behalf of the entity and has authority to delegate excluding the exercise of such powers, rights, and authority with respect to an entity owned solely by the principal which may, if operation of entity or business is authorized above, be exercised as provided under the subject of operation of the entity or business

LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse, or descendant **MAY NOT** use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the special instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the special instructions.

**NOMINATION OF CONSERVATOR
OR GUARDIAN (OPTIONAL)**

If it becomes necessary for a court to appoint a conservator of my estate or guardian of my person, I nominate the following person(s) for appointment:

Name of nominee for conservator of my estate: _____

Nominee's address: _____

Nominee's telephone number: _____

Name of nominee for guardian of my person: _____

Nominee's address: _____

Nominee's telephone number: _____

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

SIGNATURE AND ACKNOWLEDGMENT

[Signature]
Your signature

11/22/18
Date

LUCILLE E. GUSTAFSON
Your name printed

595 RAVENWOOD Lane
GRAND Junction, CO 81507
Your address

970-2477907
Your telephone number

State of Colorado)
County of Mesa) ss.

MARY ELLEN DAVIS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20024031494
MY COMMISSION EXPIRES SEPT. 27, 2018

RECEIVED

MAR 28 2019 ^{via} email

DEPT OF WATER RESOURCES
SOUTHERN REGION

THE
RESTATED GUSTAFSON
FAMILY
TRUST

U/T/A
Originally on
February 21, 1989
and Restated Entirely on
April __, 1998

Prepared by

GRAHAM LAW OFFICE
104 S. Capitol Boulevard
Boise, Idaho 83702
(208) 344-0375
(208) 344-1510 FAX

b. As to real property which is not in the State of Idaho, unless terminated earlier by the other provisions of this Trust Agreement, each trust's interest in such real property shall terminate twenty-one (21) years after the death of the last survivor of such of the Beneficiaries thereunder as shall be living at the time of the death of the last Grantor to die, and thereupon such real property which is not in the State of Idaho shall be distributed, discharged of Trust, to the persons then entitled to the income of such real property in the proportions to which they are entitled to the income.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.


IVAN JOHN GUSTAFSON
Grantor and Trustee


LUCILLE ELLEN GUSTAFSON
Grantor and Trustee

STATE OF IDAHO)
 : ss.
County of Gooding)

On this 22 day of April, 1998 before me personally appeared **IVAN JOHN GUSTAFSON** and **LUCILLE ELLEN GUSTAFSON**, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate above written.



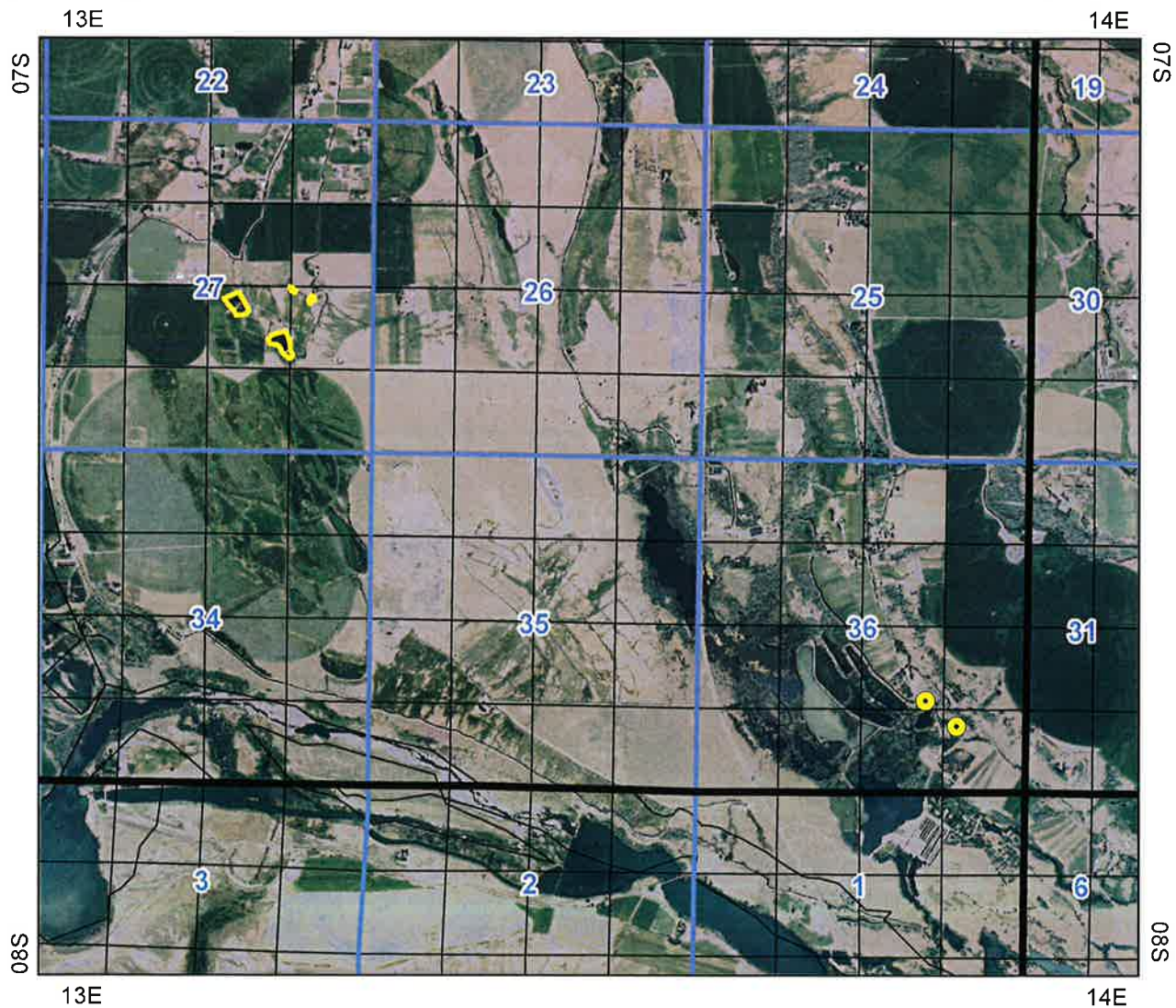
Coletta L. Poynter
Notary Public in and for Idaho
Residing at Gooding, Idaho.
My commission expires 2/23/2004

State of Idaho
Department of Water Resources

Water Right 36-8752

WILDLIFE STORAGE

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.325 0.65 1.3 Miles

GUSTAFSON FAMILY TRUST
APPLICATION FOR TRANSFER
36-8752
ATTACHMENT 7.A





State of Idaho

DEPARTMENT OF WATER RESOURCES

SOUTHERN REGION • 650 ADDISON AVE W STE 500 • TWIN FALLS ID 83301-5858

Phone: (208) 736-3033 • Fax: (208) 736-3037

Website: www.idwr.idaho.gov • Email: southerninfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

April 19, 2019

LUCILLE GUSTAFSON
PO BOX 209
HAGERMAN ID 83332-0209

Re: Transfer No: 83092
Water Right No(s): 36-8752

Transfer Approval Notice

Dear Water Right Holder:

The Department of Water Resources has issued the enclosed approved Transfer of Water Right(s). Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Transfer of Water Right(s) is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

If the transfer approval includes a condition requiring measuring and recording devices, such devices shall comply with specifications established by the Department. Detailed specifications are available on the Department's home page on the Internet, or you can request a copy by contacting any office of the Department. Please be sure to thoroughly review the specifications to avoid unnecessary costs for reinstallation or modification due to non-conforming or improperly installed devices.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at (208) 736-3033.

Sincerely,

A handwritten signature in blue ink, appearing to read "Corey Skinner". The signature is fluid and cursive, with the first name "Corey" being more prominent than the last name "Skinner".

Corey Skinner
Southern Regional Manager

Enclosure

c:

JAMES P SPECK
SPECK & AANESTAD
PO BOX 987
KETCHUM ID 83340-0998

THE RESTATED GUSTAFSON FAMILY TRUST
PO BOX 209
HAGERMAN ID 83332-0209

WATER DISTRICT 36A
FRANK ERWIN
711 EAST AVE N
HAGERMAN ID 83332

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2019 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved Transfer) to the person(s) listed below:

Re: Transfer No.: 83092
Water Right No(s): 36-8752

LUCILLE GUSTAFSON
PO BOX 209
HAGERMAN ID 83332-0209

THE RESTATED GUSTAFSON FAMILY TRUST
PO BOX 209
HAGERMAN ID 83332-0209

KIRK GUSTAFSON
595 RAVENWOOD LN
GRAND JUNCTION CO 81507

JAMES P SPECK
SPECK & AANESTAD
PO BOX 987
KETCHUM ID 83340-0998

WATER DISTRICT 36A
FRANK ERWIN
711 EAST AVE N
HAGERMAN ID 83332

A handwritten signature in blue ink, reading "Denise Maline", is written over a horizontal line.

Denise Maline
Administrative Assistant

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

MEMORANDUM

Date: April 16, 2019
To: Transfer 83092
From: Allison Inouye
Re: Evaluation of Sufficiency of Information Submitted

Application for transfer proposes to change the place of use (POU) for water right 36-8752, which authorizes 54 acre feet for year-round wildlife storage and 3.0 cfs from 11/15 – 3/15 for diversion to storage out of Upper and Lower Tucker Springs. The application does not propose a physical change; rather, it seeks to update the recorded location of the POU. It appears there is an inconsistency between the legal description of the POU on the right and the physical location where it has been historically used. The original Application for Permit filed in 1996 identified the POU in the NESE and NWSE of **Section 27**, Township 7S, Range 13E, which was then listed on the Permit. However, the water right license issued in 2009 reflects the POU in the NESE and NWSE of **Section 36**, Township 7S, Range 13E. The POU shapefile identified in Department records shows the POU in Section 27, which also corresponds with aerial imagery. The water right is located in Water District 36A and watermaster comments were solicited.

- **Authority to File**

The application is filed in the name of Lucille Ellen Gustafson, Trustee of The Restated Gustafson Family Trust, dated April 22, 1998 as amended. Per IDWR records, the owner of the water right being transferred is Gustafson Family Trust. A warranty deed in IDWR's backfile for water right 36-8567 indicates that the property to which the water right is appurtenant is owned by "Ivan John Gustafson and Lucille Ellen Gustafson, co-trustees, or their successors in trust, of the Gustafson Family Trust, under trust agreement dated the 21st day of February, 1989, and any amendments thereto." The applicant's attorney clarified that The Restated Gustafson Family Trust is an amendment of the original trust and thus constitutes a change in the name of the entity but is otherwise not a change in ownership. Documentation was provided for The Restated Gustafson Family Trust indicating that Lucille Ellen Gustafson is a trustee. The applicant's attorney requested that the entity name be changed for all water rights in IDWR's records. The application was signed by Kirk Gustafson, the attorney-in-fact for Lucille Ellen Gustafson. Documents submitted with the application indicate Kirk Gustafson is authorized to act for Lucille E Gustafson on matters involving real property.

- **Water Right Validity**

Water right 36-8752 was licensed in 2009. Four ponds are visible in recent aerial imagery.

- **Injury to Other Water Rights**

None anticipated. This transfer does not propose a physical change.

- **Enlargement of Use**

None anticipated. This transfer does not propose a physical change.

- **Local Public Interest**

No issues anticipated. This transfer does not propose a physical change; therefore, advertising was not deemed to be necessary. Watermaster comments were solicited. The watermaster did not oppose approval of the transfer.

- **Beneficial Use/Conservation of Water Resources**

Proposed use is recognized as a beneficial use of water.

- **Effect on the Economy of the Local Area**

None anticipated.

- **Effect on the Agricultural Base of the Local Area**

None anticipated.

Review of the application finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.

State of Idaho
Department of Water Resources
Transfer of Water Right(s)
RECOMMENDATION FORM

RECEIVED
APR 01 2019
DEPT OF WATER RESOURCES
SOUTHERN REGION

Transfer Application No.: 83092

Water Right No(s): 36-8752

Transfer Applicant's Name: GUSTAFSON FAMILY TRUST
LUCILLE ELLEN GUSTAFSON, TRUSTEE
C/O KIRK GUSTAFSON
595 RAVENWOOD LN
GRAND JUNCTION CO 81507

Watermaster's Recommendation:

- a) ✓ 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 comments:

Dated this 29th day of March, 2019

Water District No. 36A

Frank Erwin

Watermaster's Signature

Frank Erwin

Printed Name

Inouye, Allison

From: Inouye, Allison
Sent: Thursday, March 28, 2019 12:23 PM
To: 'James Speck'
Cc: Kirk Gustafson
Subject: RE: Water Right Transfer Application No. 83092 - Lucille Gustafson

Hi Jim – that seems like sufficient and reasonable documentation to me. Thanks for sending it. When the transfer gets to Corey for final review, if he has any concerns that I haven't thought of, we will get in touch with you.

Thanks,
Allison

From: James Speck [mailto:jim@speckandaanestad.com]
Sent: Thursday, March 28, 2019 12:04 PM
To: Inouye, Allison <Allison.Inouye@idwr.idaho.gov>
Cc: Kirk Gustafson <kgus122953@gmail.com>
Subject: RE: Water Right Transfer Application No. 83092 - Lucille Gustafson

Allison,

The attached should be sufficient – you don't need rest of the trust agreement. Please confirm.

Jim

From: Inouye, Allison <Allison.Inouye@idwr.idaho.gov>
Sent: Thursday, March 28, 2019 9:44 AM
To: James Speck <jim@speckandaanestad.com>
Cc: Kirk Gustafson <kgus122953@gmail.com>
Subject: RE: Water Right Transfer Application No. 83092 - Lucille Gustafson

Good morning Jim,

Thank you for the clarification. I just looked in our water rights database and I see 5 additional water rights held in the name of "Gustafson Family Trust." As you noted, it is simply a change in the name of the entity so is not a change in ownership and thus would not require a filing fee to update water right records; however, our internal guidance requires documentation in order to make the change. If documentation could be provided showing the amendment from "Gustafson Family Trust" to "The Restated Gustafson Family Trust," I could update all of the records, including the water right involved in the transfer application, at the same time to reflect the correct name.

Thank you,
Allison

From: James Speck [mailto:jim@speckandaanestad.com]
Sent: Tuesday, March 26, 2019 2:44 PM
To: Inouye, Allison <Allison.Inouye@idwr.idaho.gov>
Cc: Kirk Gustafson <kgus122953@gmail.com>
Subject: RE: Water Right Transfer Application No. 83092 - Lucille Gustafson

Allison,

It is the same Trust regardless of the term "Restated". Note that the Warranty Deed you reference includes the phrase "and any amendments thereto." Thus, merely amending or restating the terms of the Trust is NOT a change in ownership of the land or appurtenant water rights. The application was filed under the now correct name for the Trust and the approval should thus be issued in that same name. Finally, Ivan John Gustafson passed away several years ago so that Lucille Ellen Gustafson is now the sole Trustee.

Please call me if you have further questions.

Jim

From: Inouye, Allison <Allison.Inouye@idwr.idaho.gov>
Sent: Tuesday, March 26, 2019 2:33 PM
To: Kirk Gustafson <kgus122953@gmail.com>
Cc: James Speck <jim@speckandaanestad.com>
Subject: Water Right Transfer Application No. 83092 - Lucille Gustafson

Hello,

I am processing the recently filed Application for Transfer 83092 for water right 36-8752. The transfer will not be advertised and is currently awaiting comments from the watermaster. I am hoping you can clarify a couple questions I have about the language used to describe the trust.

The application is filed in the name of "Lucille Ellen Gustafson, Trustee of The Restated Gustafson Family Trust, dated April 22, 1998 as amended". Per IDWR records, the owner of the water right being transferred is "Gustafson Family Trust". A warranty deed in IDWR's backfile for water right 36-8567 indicates that the property to which the water right is appurtenant is owned by "Ivan John Gustafson and Lucille Ellen Gustafson, co-trustees, or their successors in trust, of the Gustafson Family Trust, under trust agreement dated the 21st day of February, 1989, and any amendments thereto."

Can you please clarify:

1. Is "The Restated Gustafson Family Trust, dated April 22, 1998 as amended" an amendment to the "Gustafson Family Trust, under trust agreement dated the 21st day of February, 1989"?
2. The application for transfer did not indicate that a change in ownership of the water right is intended; thus, if the transfer is approved the water right will still be in the name of Gustafson Family Trust *not* The Restated Gustafson Family Trust. Will that be ok?

Thank you,
Allison

Allison Inouye
Water Resource Agent
Southern Regional Office | Idaho Dept. of Water Resources
p (208) 736-3033 | f (208) 736-3037
Allison.Inouye@idwr.idaho.gov



State of Idaho

DEPARTMENT OF WATER RESOURCES

SOUTHERN REGION • 650 ADDISON AVE W STE 500 • TWIN FALLS ID 83301-5858

Phone: (208) 736-3033 • Fax: (208) 736-3037 • Website: www.idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

March 26, 2019

WATER DISTRICT #36A
FRANK ERWIN
711 EAST AVE N
HAGERMAN ID 83332

RE: Application For Transfer No.(s): 83092 (Gustafson Family Trust)
Water Right No: 36-8752

Dear Frank:

A copy of the above referenced application is enclosed. Please review the application, complete the enclosed recommendation form as necessary, and return it to this office within 21 days of the date of this letter.

If the application is approved, IDWR will include appropriate standard conditions of approval for a water right located within a water district, such as regulation by the water master, lockable controlling works, and/or measuring devices. Any special conditions or other concerns you have related to this application should be specifically addressed in your recommendation.

IDWR's regional offices can finish reviewing an unprotested application as soon as the protest period has past. Your prompt response to this request will ensure that your recommendation can be considered. If IDWR has not received your written recommendation within 21 days from the date of this letter, IDWR will presume that you do not oppose approval of the application and that you have no comments for IDWR to consider.

Sincerely,

Allison Inouye
Water Resource Agent

Enclosure(s)

MEMORANDUM

Date: March 26, 2019

To: Transfer 83092

From: Allison Inouye

Re: Legal Notice Not Required

Pursuant to Section 42-222, Idaho Code, the Department has discretion to provide public notice as deemed appropriate. The change proposed in this transfer application aims to correct the legal description of the place of use on the water right record. The proposed modification does not appear to change the effect on the original or any other hydraulically connected water source or to affect other water rights because no physical change is involved. Therefore, staff review of the transfer application found no cause to require public notice. This application will continue processing without advertisement and be forwarded for approval consideration.

MEMORANDUM

Date: March 26, 2019

To: Transfer 83092

From: Allison Inouye

Re: Filing Fee

This transfer proposes to change only the legal description for the place of use to the location where the right has been historically used; no physical change is proposed. Pursuant to Idaho Code § 42-221.O.8, the filing fee for this transfer is \$50. (Receipt No. S037217).

JAMES P. SPECK
jim@speckandaanestad.com

DOUGLAS J. AANESTAD
(retired)

SPECK & AANESTAD
A PROFESSIONAL CORPORATION
ATTORNEYS

120 EAST AVENUE NORTH
P. O. BOX 987
KETCHUM, IDAHO 83340

RECEIVED
MAR 18 2019
DEPT. OF WATER RESOURCES
SOUTHERN REGION

TELEPHONE
(208)726-4421
FACSIMILE
(208)726-0752

March 13, 2019

Cory Skinner
Idaho Department of Water Resources
650 Addison Street, Suite 500
Twin Falls, ID 83301-5858

Re: Application for Transfer of Water Right No. 36-8752 to the Water Supply Bank

Dear Cory:

Enclosed you will find the original and a copy of the above-referenced Application for Transfer of Water Right owned by my client, The Restated Gustafson Family Trust. The sole purpose for this Application is to correct an error in the legal description of the place of use in the license issued in 2009. The error was never noticed until prospective buyers for my client's property looked at the water rights and came across the discrepancy. I understand that you, or someone else at Southern, discussed the need for this Application with Clay Webster and determined it does not warrant advertising. Hopefully, this will speed up the process as the sale of the property is scheduled to occur in June. That the closing of the sale of the property is expected to occur in June and approval of this correction is a condition of that closing.

Please call me right away if you have any questions or concerns about the application. If not, kindly receipt date -stamp the copy and return it to me in the postage prepaid self-addressed envelope I have included for that purpose.

Last, I have also included my firm's check payable to the Department for the \$50 filing fee.

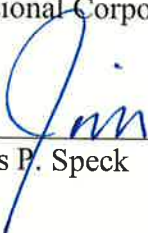
Cory Skinner
March 13, 2019
Page Two

RECEIVED
MAR 18 2019
DEPT OF WATER RESOURCES
SOUTH CENT REGION

Thank you.

Most sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: 
James P. Speck

Enclosures

cc: Client (w/enclosure)