

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 81985**

This is to certify that: LAURA ANN JOHNSTON
1901 W BRUMBACK ST
BOISE, ID 83702

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>
63-34425	WR/LICENSE	9/14/1988	0.100 cfs	31.5 af	N/A	7.0	GROUND WATER

Purpose of Transfer (Changes Proposed)

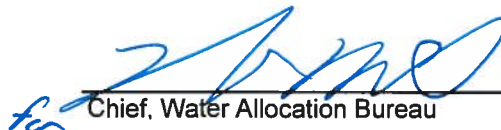
<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
63-34425	NO	YES	NO	NO	NO	NO

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>
63-34425	63-34425	0.100 cfs	31.5 af	N/A	7.0	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		0.100 cfs	N/A	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 11th day of December, 2017.



Chief, Water Allocation Bureau

WATER RIGHT NO. 63-34425
As Modified by Transfer No. 81985

In accordance with the approval of Transfer No. 81985, Water Right No. 63-34425 is now described as follows:

Right Holder: LAURA ANN JOHNSTON
 1901 W BRUMBACK ST
 BOISE, ID 83702

Priority Date: 9/14/1988

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
IRRIGATION	03/15	to 11/15	0.100 cfs	31.5 af
			0.100 cfs	31.5 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER SWSW Sec 4 Twp 04N Rge 02E ADA County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	02E	4											7.0						7.0

POU Total Acres: 7.0

CONDITIONS OF APPROVAL

1. The period of use for the irrigation described in this approval may be extended to a beginning date of 3/1 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 3/15 is subordinate to all water rights having no subordinated early irrigation use and a priority date earlier than the date of this approval.
2. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the place of use.
3. Place of use is located within Lot 1, Block 1, Showy Phlox Estates Subdivision.
4. Point of diversion is located within Lot 1, Block 1, Showy Phlox Estates Subdivision.
5. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
6. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.

Transfer No. 81985

WATER RIGHT NO. 63-34425
As Modified by Transfer No. 81985

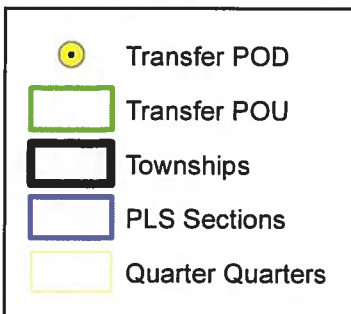
CONDITIONS OF APPROVAL

7. 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 No. 81985
Water Right: 63-34425

This map depicts the IRRIGATION 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.



0 0.02 0.04 0.08 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

December 11, 2017

LAURA ANN JOHNSTON
1901 W BRUMBACK ST
BOISE ID 83702

Re: Transfer No: 81985
Water Right No(s): 63-34425

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) 334-2190.

Sincerely,

 Rachel Neely for!

Nick Miller
Regional Manager

Enclosure

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2017 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.: 81985
Water Right No(s): 63-34425**

**LAURA ANN JOHNSTON
1901 W BRUMBACK ST
BOISE ID 83702**



**Rachel Neely
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

TO: Transfer No. 81985
FROM: Rachel Sommer
DATE: December 7, 2017
RE: Evaluation of Application

Summary of Application Proposal

The following proposal is to be met following a transfer approval in the name of Laura Ann Johnston. On August 14, 2017 an ownership change was completed; right 63-10701 was split creating right 63-34425 to represent the Applicant's portion of the right. Because the point of diversion listed on the rights is located on property associated with right 63-10701, the Applicant intends to construct a new well on her property and have it described as the only point of diversion on right 63-34425.

Location of Application Proposal

The proposal is located near the corner of Cartwright Rd and Scarlet Gilia Ln in Lot 1 Blk 1 of Showy Phlox Estates Sub, less than 1 mile south-east from Hidden Springs Sub in Ada County.

Summary of Information Submitted

Authority to File:

Laura Ann Johnston is the applicant and signee for this transfer and is the current owner of record for right 63-34425.

Water Right Validity/ Historical Beneficial Use:

63-34425 (split from 61-10701): priority date 9/14/1988, licensed 1/11/1992.

Historical use

Right 63-34425 authorizes 0.1 cfs and 31.5 af for the irrigation of 7.0 acres. I was unable to confirm any irrigation occurred on the property within the previous, consecutive, five-year period. On October 31, 2017 I emailed Johnston stating the validity of the right was in question and requested she provide written documentation demonstrating the right had been used within the last five years, a defense to forfeiture, or a withdrawal of application for transfer. On November 2, 2017 I met with Johnston and she explained her defense to forfeiture and on November 3, 2017 she submitted her defense in writing. Johnston purchased a portion of land from Minnick in 2006 and had planned to drill a well on her lot but was unable to due to financial reasons. Johnston was unable to use the current well listed as a POD on 63-34425 because it's located on the Minnick's property and they would not grant her access. Also, Johnston was unaware that the right could potentially be forfeited if not used. The new POD proposed in this Transfer would allow Johnston the opportunity to irrigate ground historically irrigated by the original owners. The defense to forfeiture appears to be in line with Idaho Code 42-223. The application was advertised and protests were not received, therefore, transfer processing will continue.

Water Supply Bank:

The water right within this transfer is not leased into the Water Supply Bank.

Overlapping POU/POD:

POU/POD overlap: None. Right 63-5207 authorizes Cartwright Ranch LLC irrigation and stockwater from Dry creek near Johnston's property.

Associated Rights:

None.

Injury to Other Water Rights:

There should be no injury to other water rights under this transfer as long as the right holder abides by the amount of water that is appurtenant to this property.

The property in this transfer is within the basin 63 Ground Water Restricted Area. The well historically used (305860 / 63-88-W-174) appropriates water from depths above 200 ft deep. If approved, this transfer will not be conditioned requiring Johnston to construct a well that will not appropriate waters from above 200 ft.

Enlargement of Use:

No enlargement should occur under the proposed transfer application. The proposal is to change the point of diversion from one existing well to a new well within the same subdivision on the applicant's property. No new irrigation water is sought under this proposal.

Local Public Interest:

It is within the local public interest to allow property owners to develop their property as long as the application is processed without issues.

Beneficial Use/Conservation of Water Resources:

The application proposes beneficial use consistent with conservation of water resources in Idaho.

Legal Notice:

Pursuant to Section 42-222, Idaho Code, the Department has discretion to provide public notice as deemed appropriate. The water right changes proposed through this transfer application do not appear to change the effect on the original or hydraulically connected water source or affect other water rights. Forfeiture of the right within this transfer was questioned, therefore, public notice is required.

Summary of Application Approval / Denial

The application is consistent with criteria of I. C. § 42-222 and should be processed. Protests were not filed and other information does not contradict the above analysis, the application can be approved as reflected by the draft approval.

LEGAL PROOF OF PUBLICATION

Account #	Ad Number	Identification	PO	Amount	Cols	Lines
263978	0003384428	LEGAL NOTICE The following application has be	Johnston	\$105.50	1	60

Attention: RACHEL NEELYIDAHO DEPT OF WATER RESOURCES / WEST
2735 AIRPORT WAY
BOISE, ID 837055082**LEGAL NOTICE**

The following application has been filed to appropriate the public waters of the State of Idaho:

**NOTICE OF PROPOSED
CHANGE OF WATER RIGHT
TRANSFER NO. 81985**

✓OK RD
12/6/14

LAURA ANN JOHNSTON, 1901 W BRUMBACK ST, BOISE, ID 83702, filed application No. 81985 to transfer Water Right 63-34425 affecting 0.1 cfs and 31.5 af. The right has a priority date of 9/14/1988 and a source of ground water. The purpose of this transfer is to change the diversion point by constructing a new well on the applicant's property and have it described as the only point of diversion on right. The proposed well will be located near the corner of Cartwright Rd and Scarlet Gilia Ln in Lot 1 Bk 1 of Showy Phlox Estates Sub, less than 1 mile south-east from Hidden Springs Sub in Ada County.

For additional information concerning the property location, contact Western Region office at (208) 334-2190; or for a full description of the right(s) or proposed transfer(s), please see ww.w.idwr.idaho.gov. Protests may be submitted based on the criteria of Idaho Code § 42-222. Any protest against the proposed change(s) must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise, ID 83705 together with a protest fee of \$25.00 for each application on or before 12/4/2017. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Pub. Nov. 16, 23, 2017
0003384428-01**RECEIVED****NOV 29 2017****WATER RESOURCES
WESTERN REGION**

JANICE HILDRETH, being duly sworn, deposes and says: That she is the Principal Clerk of The Idaho Statesman, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in The Idaho Statesman, in conformity with Section 60-108, Idaho Code, as amended, for:

2 InsertionsBeginning issue of: 11/16/2017Ending issue of: 11/23/2017

Janice Hildreth
(Legals Clerk)

STATE OF IDAHO)

.SS

COUNTY OF ADA)

On this 24th day of November in the year of 2017 before me, a Notary Public, personally appeared before me Janice Hildreth known or identified to me to be the person whose name subscribed to the within instrument, and being by first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Anna Gomm
Notary Public FOR Idaho
Residing at: Boise, Idaho

My Commission expires: 08/17/2022