

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

IN THE MATTER OF APPLICATION)	
FOR TRANSFER NO. 89484)	PRELIMINARY ORDER
IN THE NAME OF GREG)	DENYING APPLICATION
<u>GOLIGHTLY AND E&M TRUST)</u>	

PROCEDURAL HISTORY

On October 31, 2024, Greg Golightly and E & M Trust (“Applicants”) filed Application for Transfer 89484 with the Idaho Department of Water Resources (“Department”). The Department published notice of the application on January 8 and 15, 2025. No protests were filed against the application.

After carefully considering the application and the information available to the Department at this time, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Application 89484 proposes to change the place of use and point of diversion for a 57-acre portion of water right 13-311.

2. Water right 13-311 bears the following elements:

Current Owner:	Samuel Nash Hull
Priority Date:	February 4, 1893
Source:	Spring Creek tributary to Cub River
Diversion Rate:	1.34 cfs for Irrigation 0.15 cfs for Stockwater
Total Rate:	1.34 cfs
Diversion Volume:	235 af/yr for Irrigation 7.9 af/yr for Stockwater
Total Volume:	242.9 af/yr
Point of Diversion:	SENE, Section 36, T15S, R39E (“Hull Ditch”)
Place of Use:	67.0 acres

3. Water right 13-311 is a senior water right on Spring Creek. The Spring Creek water rights senior to water right 13-311 authorize a total combined diversion rate of 0.58 cfs. The Spring Creek water rights junior to water right 13-311 authorize a total combined diversion rate of 7.22 cfs.

4. The proposed point of diversion for water right 13-311 (“Golightly Ditch”) is on Spring Creek approximately 0.75 miles downstream from the Hull Ditch.

5. Diversions from Spring Creek are regulated by Water District 13A. Kirk Iverson is the current watermaster for Water District 13A.

6. The watermaster reports that the Spring Creek channel between the Hull Ditch and the Golightly Ditch is a losing stream, with no significant inflows. In that section of Spring Creek water is lost to evaporation, seepage and vegetation growing along the stream channel.

7. The watermaster reports that approximately six years ago CRIC extended a pressurized pipeline past the existing place of use for water right 13-311. Since that time, the existing place of use has been primarily irrigated with water from the CRIC pipeline.

8. Diversion records from Water District 13A corroborate the watermaster’s statement. Prior to 2017, at least 160 acre-feet per year were diverted through the Hull Ditch. In 2017, the annual diversion volume dropped to 82.2 AF. From 2018 to 2024, the annual diversion volume continued to decline, averaging 23.1 AF annually based on five years of available data.

9. CRIC shares are appurtenant to at least 22 acres of the 57 acres proposed to be changed in Application 89484. Water from CRIC is available throughout the irrigation season. The CRIC shares are associated with acres south of Highway 91. CRIC shares are appurtenant to the portion of water right 13-311 proposed to remain at the existing place of use. Application 89484 states that the existing place of use will continue to be irrigated with water from CRIC.

10. According to Consolidated Irrigation Company (“Consolidated”), at least 58 shares are associated with the 57 acres proposed to be moved in Application 89484. Consolidated shares are often used at a rate of three shares per acre. Therefore, at least 19.3 acres of the 57 acres proposed to be changed are fully covered by Consolidated shares. Consolidated shares may be spread beyond the standard rate (e.g., used at two shares per acre), a common practice in the Consolidated system. The Consolidated shares are associated with acres north of Highway 91 and are separate from the CRIC shares. Water from Consolidated is available throughout the irrigation season.

11. The following water rights are appurtenant to the proposed place of use:

Right No.	Source	Priority Date	Rate (cfs)	Volume (afa)	Acres
13-217	Unnamed Stream	4/1/1872	0.43	184	57
13-62	Spring Creek	5/15/1902	0.20	36	57
13-7792	Spring Creek	8/31/1903	0.20	36	57
		Combined	1.14	218	57

12. CRIC shares are appurtenant to 20 acres of the 57 acres at the proposed place of use. The remaining 37 acres of the proposed place of use are not covered by CRIC shares and are outside of the digital service boundary for CRIC. The proposed place of use is outside of the digital service boundary for Consolidated.

13. Transfer 82573, approved in October 2018, changed the point of diversion and place of use for water right 13-217. Based on Transfer 82573, Applicants are authorized to divert water from an Unnamed Stream, inject the water into Spring Creek, and redivert it from Spring Creek at the Golightly Ditch. Applicants have not yet constructed the pipeline to convey water from the Unnamed Stream to Spring Creek. Therefore, water right 13-217 is not currently available to the Applicants. It is unclear whether the pipeline from the Unnamed Stream to Spring Creek will ever be constructed.

14. Currently, the existing place of use is irrigated with 20 shares from CRIC and junior water rights 13-62 and 13-7792, when those rights are available.

RELEVANT LEGAL PROVISIONS

Idaho Code § 42-222(1) sets forth the criteria used to evaluate transfer applications and states, in pertinent part:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter.

ANALYSIS

Injury

Application 89484 proposes to move a senior water right on Spring Creek approximately 0.75 miles downstream on a losing stream channel. The proposed change will require more water from Spring Creek to satisfy senior water right 13-311. Stated differently, it will take a greater amount of water to satisfy senior water right 13-311 because water must be conveyed an additional 0.75 miles down the Spring Creek channel through a section with channel losses. This places a greater burden on the junior water rights on Spring Creek. Application 89484 did not quantify the additional losses associated with the proposed change and did not include a plan to

mitigate for the impacts of the additional losses. Applicants have not demonstrated that the proposed changes will not injure existing water rights.

Enlargement

In a recent decision, the Idaho Supreme Court provided additional guidance on the enlargement review for a transfer application proposing to unstack overlapping water rights. *See 3G Ag LLC v. Idaho Dep't of Water Res.*, 509 P.3d 1180 (Idaho 2022). In that case, the applicant proposed to unstack a ground water irrigation right from canal company shares to double the number of acres irrigated by the combined rights.

The existing place of use for water right 13-311 has multiple reliable water supplies: CRIC shares, Consolidated shares, senior water right 13-311. Application 89484 proposes to unstack a portion of water right 13-311 from shares in CRIC and Consolidated. At least 40.3 acres of the existing place of use for water right 13-311 are covered by canal company shares.

The proposed place of use does not have a full water supply. Only 20 acres of the 57-acre proposed place of use has appurtenant CRIC shares. Even though water right 13-217 bears a senior priority date, it is not deliverable because there is no infrastructure connecting the Unnamed Stream to the proposed place of use. Finally, water rights 13-62 and 13-7792 are junior water rights on Spring Creek and only provide 0.40 cfs for the irrigation of 57 acres. The fact that Application 89484 was filed is an indication that water rights 13-62, 13-217, and 13-7792 are unreliable. If those water rights constituted a full water supply, there would be no need to move additional water rights from Spring Creek to the proposed place of use.

Application 89484 states that the existing 57-acre place of use will remain irrigated by CRIC. Because the water supplies at the proposed place of use are not as reliable as the water supplies at the existing place, the changes proposed in Application 89484 will enlarge the use under water right 13-311 and the canal company shares at the existing place of use.

Application 89484 included an analysis comparing the priority dates of the water rights held by CRIC with the water rights at the proposed place of use. This analysis is not persuasive, however, because the CRIC rights are diverted from sources other than Spring Creek. These other sources are regulated under separate priority dates making a priority date comparison unreliable. The analysis also assumes that water right 13-217 is available. As noted above, Applicants have not completed the pipeline required to make water right 13-217 available. Applicants have not demonstrated that the proposed changes do not constitute an enlargement in use of the original right.

CONCLUSIONS OF LAW

Applicants have not demonstrated that the changes proposed in Application 89484 will not injure other water rights or that the proposed changes will not result in an enlargement in use of water right 13-311. Therefore, Application 89484 should be denied.

ORDER

IT IS HEREBY ORDERED that Application for Transfer 89484 in the name of Greg Golightly and E&M Trust is DENIED.

Dated this 27th day of February, 2025.



James Cefalo
Regional Manager

CERTIFICATE OF SERVICE

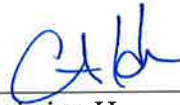
I hereby certify that on the 27th day of February 2025, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER DENYING APPLICATION, with the United States Postal Service, certified mail with return receipt requested, postage prepaid and properly addressed to the person(s) listed below:

US MAIL - CERTIFIED

RE: APPLICATION FOR TRANSFER 89484

**Greg Golightly
E & M Trust
2378 South 1600 East
Preston, ID 83263**

**Rocky Mountain Environmental Associates, Inc.
c/o Kristin Moore
482 Constitution Way
Suite # 303
Idaho Falls, ID 83402**



Christina Henman
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.