

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

**IN THE MATTER OF APPLICATION) ORDER DENYING MOTION TO STAY
FOR TRANSFER 89232 IN THE NAME) PROCEEDINGS, VACATING HEARING,
OF GOOD TIMBER RANCH LLC) AND DENYING MOTION TO AMEND**

On August 2, 2024, Good Timber Ranch LLC (“Good Timber”) filed Application for Transfer 89232 with the Idaho Department of Water Resources (“Department”), proposing to change the nature of use for certain water rights to store water in a proposed reservoir. Good Timber amended the application on December 31, 2024, and on January 8, 2025. Protests were filed by Georgie Stanley, Susan Miller, Maguire Family Trust, Rafe and Ainsley Rivers, and Gregory Collins (collectively “Neighbors”), Richard Gebhardt, and Fremont-Madison Irrigation District (“FMID”). FMID withdrew its protest on February 5, 2025.

The Department conducted an informal settlement conference on December 4, 2024, and a prehearing conference on January 30, 2025. On February 26, 2025, the hearing officer for the Department issued a *Notice of Hearing and Scheduling Order*, scheduling an administrative hearing for July 22-24, 2025.

On June 3, 2025, the Neighbors filed *The Good Neighbors’ Motion to Stay Proceedings* (“Motion to Stay Proceedings”) and *Brief in Support of the Good Neighbors’ Motion to Stay Proceedings* (“Neighbors’ Brief”). On June 13, 2025, Good Timber filed a timely *Opposition to Motion to Stay Proceedings*. On June 20, 2025, the Neighbors filed a timely *Good Neighbors’ Reply Brief in Further Support of Motion to Stay Proceedings*.

On June 10, 2025, Good Timber filed Application for Permit 22-14667 with the Department, seeking a permit to divert ground water to fill the same proposed reservoir described in Application 89232. The cover letter filed with Application 22-14667 included the following paragraph:

We wish to have the enclosed application advertised as soon as possible to minimize the risk of disrupting the hearing schedule for Transfer No. 89232. If the permit application is protested, we expect it will be by the same individuals and entities that protested Transfer No. 89232, in which case it would make sense to consolidate both proceedings. If the Department will promptly advertise the enclosed permit application, we expect that any protests can be addressed on the same hearing schedule as Transfer No. 89232. Therefore, we kindly request that the Department expedite its review and advertisement of the enclosed application.

The Department published the first notice for Application 22-14667 on June 18, 2025, and will publish the second notice on June 25, 2025. The public notice states that any protests against the application must be filed on or before July 7, 2025.

On June 13, 2025, Good Timber filed a *Motion to Amend Hearing Schedule* (“Motion to Amend”), proposing to re-schedule the administrative hearing for October 27-31, 2025, and to reset all discovery and disclosure deadlines, including some deadlines that have already passed.

ANALYSIS

The *Notice of Hearing and Scheduling Order* are interlocutory orders. Pursuant to Rule 710 of the Department’s Rules of Procedure (IDAPA 37.01.01), “[t]he following orders are always interlocutory: orders joining, consolidating or separating issues, proceedings or parties; orders granting or denying intervention; orders scheduling prehearing conferences, discovery, hearing, oral arguments or deadlines for written submissions; and orders authorizing, compelling or refusing to compel discovery.” Pursuant to Rule 780 of the Department’s Rules of Procedure (IDAPA 37.01.01), “[a]ny party may petition the agency to stay any order, whether interlocutory or final. Interlocutory or final orders may be stayed by the judiciary according to statute. The agency may stay any interlocutory or final order on its own motion.” Therefore, the Neighbors’ *Motion to Stay Proceedings* was properly filed and requested relief that may be granted by the hearing officer. A hearing officer has broad discretion in deciding whether to grant or deny a motion to stay an interlocutory order.

The Neighbors argue that the contested case for Application 89232 should be stayed because there are three legal proceedings that have the potential to render Application 89232 moot. *Neighbors’ Brief* at 5-6. First, the Neighbors have filed a complaint with the U.S. Army Corps of Engineers (“USACE”), asking USACE to revoke a permit issued to Good Timber, because of Good Timber’s failure to comply with the conditions of the permit. *Id.* at 4-5. Second, the Neighbors have notified Good Timber that they intend to file a suit in federal court alleging violations of the Clean Water Act (33 U.S.C. § 1365) and violations of the USACE permit. *Id.* Finally, the neighbors have notified Good Timber that they intend to file a suit in Idaho District Court for trespass and property damage. *Id.* The federal and state suits have not yet been filed and will not be filed until July 27, 2025, at the earliest. *Id.*

USACE Complaint

To construct the proposed reservoir described in Application 89232, Good Timber must obtain a permit from the USACE. On June 21, 2022, USACE issued a permit to Good Timber, which authorized Good Timber to construct a reservoir on its property. On May 28, 2025, the Neighbors filed a complaint with USACE, alleging that Good Timber has violated multiple permit conditions. The Neighbors argue that the contested case for Application 89232 should be stayed to allow USACE time to investigate the allegations in the Neighbors’ complaint and to see if USACE will revoke or significantly alter the permit issued to Good Timber.

Application 89232 proposes to make changes to existing water rights held by Good Timber. Idaho Code § 42-222(1) sets forth the criteria the Department must consider when evaluating a transfer application. By comparison, Idaho Code § 42-203A(5) sets forth the criteria used to evaluate an application for permit (an application for a new water right). When an applicant proposes to develop a new water right, the applicant must demonstrate that they have obtained or are in the process of obtaining all permits necessary to complete the proposed project. Obtaining necessary permits falls under the good faith element of Idaho Code § 42-203A(5). Rule 45.01.c of the Department's Water Appropriation Rules (IDAPA 37.03.08) provides further direction on the concept of filing an application for permit in good faith:

Good faith criteria. The evaluation of whether an application is not made in good faith or whether it is made for delay or speculative purposes requires an analysis of the applicant's intent to follow application requirements and diligently pursue permit development. Speculation for this rule is an intention to obtain a water right permit without the intention of putting the water to beneficial use with reasonable diligence. Speculation does not prevent an applicant from subsequently selling the project for a profit or from making a profit from the use of the water. An application will be found to have not been made in good faith if:

- i. In the instance the land necessary to construct and operate the proposed project is privately owned and not in the applicant's ownership, the applicant does not have an interest in the land at the time of the application filing or the authority to exercise eminent domain; or
- ii. In the instance of a project diverting water from or conveying water across federally owned land, the applicant has not filed the appropriate form to request access; or
- iii. The applicant is not in the process of obtaining other permits, licenses, and approvals needed to construct and operate the project; or
- iv. There are obvious impediments that prevent the successful completion of the project.

IDAPA 37.03.08.045.01.c.

The prohibition of speculation is meant to prevent an individual from appropriating the limited water resources of the state, with no intent to put the water to beneficial use. If a person obtains a permit for a new water right but has no means or intent to develop the water right, then the water resource becomes locked up, limiting the opportunities of others to use and develop the water resource. This concern about locking up the water resource is not present in the context of a transfer application. A transfer application deals only with existing, already-appropriated water rights, established by decree, license, or through beneficial use.

Rule 45.01.c of the Department's Water Appropriation Rules (IDAPA 37.03.08) defines speculation as "an intention to obtain a water right permit without the intention of putting the water to beneficial use with reasonable diligence." Under this definition, speculation could never apply to a transfer application. First, a transfer application does not propose to "appropriate" water. The existing water rights included in a transfer application have already been appropriated. Second, future development of beneficial use makes no sense in the context of a transfer application. Existing water rights have already been put to beneficial use.

Idaho Code § 42-222(1), which governs applications for transfer, and Idaho Code § 42-203A(5), which governs applications for permit, contain three similar review criteria: a prohibition on injury, a review of water conservation practices, and a review of the local public interest. Although Section 42-203A(5) includes a review criterion related to good faith and speculation, Section 42-222(1) contains no similar criterion. The absence of language related to good faith or speculation is significant. The legislature is aware of the good faith (anti-speculation) criterion but has not chosen to adopt the criterion for transfer applications. The Department should not add review criteria to Section 42-222(1). If the legislature wants good faith (anti-speculation) to be an element of review for transfer applications, the legislature can easily add that provision to Section 42-222(1).

In its review of Application 89232, the Department does not need to confirm that Good Timber is in the process of obtaining other permits needed to construct and operate the proposed project. In other words, it is not relevant whether Good Timber has obtained or will obtain a permit from USACE. If Good Timber makes significant changes to its existing water rights and is then unable to complete the project because of a failure to obtain the necessary permits from state or federal agencies, Good Timber is allowed to take that risk. If USACE revokes its permit or changes the conditions of its permit, that change should have no bearing on the Department's review of Application 89232, because good faith (anti-speculation) is not an element of review under Idaho Code § 42-222(1).

Federal and State Court Suits

The Neighbors assert that they intend to file multiple suits against Good Timber on or after July 27, 2025. One or more of the suits will be in federal court, related to alleged violations of the Clean Water Act and alleged violations of the permit issued by USACE. *Neighbors' Brief* at 5-6. One or more of the suits will be in state court, related to Good Timber's alleged trespass and damage to the properties of the Neighbors. *Id.* at 6.

If the suits are filed, moving forward with this contested case will not lead to inconsistent rulings. The hearing officer does not have the authority to address trespass or property damage. Further, the hearing officer does not have the authority to revoke or modify the USACE permit. Similarly, the state and federal courts do not have the authority to approve or deny the proposed changes to the Good Timber water rights or to issue decisions on the review criteria set forth in Idaho Code § 42-222(1) that would bind a hearing officer for the Department. The Department has exclusive jurisdiction to conduct an initial evaluation of whether proposed changes to water rights satisfy the criteria set forth in Idaho Code § 42-222(1).

The Neighbors assert that the federal and state suits will provide critical information that will be essential to evaluating Application 89232. The Neighbors, however, do not provide any examples of the type of critical information that can only be generated through federal or state suits. Further, the Neighbors suggest that the hearing officer would be bound by factual determinations made by federal and state courts. A hearing officer for the Department is not bound by the facts from separate proceedings and is required to make factual determinations based on the evidence in the administrative record. *See* IDAPA 37.01.01.650. Further, the Neighbors seem to be conflating the local public interest review under Idaho Code § 42-222(1) with the alleged existing damage to the Little Warm Creek watershed. The hearing officer must determine whether the proposed water right changes are in the local public interest, not whether Good Timber's past actions or the results of those actions are in the local public interest. In summary, the hearing officer is not persuaded that the contested case for Application 89232 should be stayed to allow the three legal matters cited by the Neighbors to reach a conclusion.

July 2025 Hearing

Based on the *Motion to Stay Proceedings* and *Motion to Amend*, neither Good Timber nor the Neighbors, which constitute five of the six active protests in this contested case, are interested in holding an administrative hearing for Application 89232 on July 22-24, 2025. Because Application 22-14667 proposes to develop a ground water right for the same proposed reservoir described in Application 89232, the two cases will likely be consolidated for hearing. In fact, Good Timber specifically requests a consolidation of the cases. If the cases are consolidated, it would be impossible to move forward with the hearing as scheduled. Therefore, the hearing scheduled for July 22-24, 2025, must be vacated.

Good Timber's *Motion to Amend* cannot be granted, because anyone who protests Application 22-14667 would not be able to participate in the briefing about the rescheduled hearing or Good Timber's proposed discovery and disclosure dates. Pursuant to Rule 220.02.b, response briefs to the *Motion to Amend* are due on or before June 27, 2025. The protest period for Application 22-14667 does not end until July 7, 2025. If a protest is filed against Application 22-14667, it would create a new contested case before the Department. Even though the Department may decide to consolidate the contested cases for Applications 89232 and 22-14667, that does not mean that the protestants to Application 22-14667 become subject to previous orders and notices issued in the contested case for Application 89232. Stated differently, the protestants to Application 22-14667 are not treated as intervenors to the contested case for Application 89232. *See* IDAPA 37.01.01.353.03. Rather, any person protesting Application 22-14667 has the right to fully participate in that contested case, including the right to participate in discussions about potential hearing dates and prehearing disclosure deadlines.

Because the hearing must be rescheduled, the most efficient way to reschedule the hearing and to establish discovery and disclosure deadlines is through a prehearing conference, where all affected parties are free to participate, including any protestants to Application 22-14667. Therefore, the hearing officer should issue an order consolidating proceedings and schedule a prehearing conference for the consolidated proceedings after the protest deadline for Application 22-14667 has passed.

ORDER

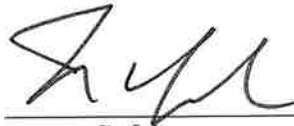
IT IS HEREBY ORDERED that the Neighbors' *Motion to Stay Proceedings* is DENIED.

IT IS FURTHER ORDERED that the administrative hearing scheduled for July 22-24, 2025, is VACATED. The Department will reschedule the administrative hearing during a future prehearing conference.

Because the administrative hearing has been vacated, Good Timber's *Motion to Amend* is moot. Therefore, Good Timber's *Motion to Amend* is DENIED.

This order is an interlocutory order, issued pursuant to Rule 710 of the Department's Rules of Procedure (IDAPA 37.01.01).

Dated this 24th day of June 2025

A handwritten signature in black ink, appearing to read 'J. Cefalo', is written over a horizontal line.

James Cefalo
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of June 2025, true and correct copies of the documents described below were served upon the following people and entities by the method indicated:

Documents Served: Order Denying Motion to Stay Proceedings, Vacating Hearing, and Denying Motion to Amend

GOOD TIMBER RANCH LLC C/O NATHAN GODFREY 1300 GOOD TIMBER RANCH RD VICTOR, ID 83455 nathan@coldwaterpaint.com <i>Applicant</i>	☒ Email
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