

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

**IN THE MATTER OF
APPLICATIONS FOR TRANSFER
84488 AND 84490 IN THE NAME OF
LCSC ENTERPRISES LLC**

**PRELIMINARY ORDER
DENYING APPLICATIONS**

BACKGROUND

On October 13, 2020, LCSC Enterprises LLC (“LCSC”) filed Applications for Transfer 84488 and 84490 with the Idaho Department of Water Resources (“Department”). A protest against each application was filed by Idaho Power Company (“IPC”) and a joint protest against each application was filed by A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, Twin Falls Canal Company, American Falls Reservoir District #2 and Minidoka Irrigation District (collectively “the Coalition”). LCSC amended Application 84490 on July 26, 2021. The Department consolidated the contested cases for the purpose of conducting an administrative hearing.

As part of its protest, IPC raised several legal arguments related to trust water rights and the appropriation of water held in trust as described in Idaho Code §§ 42-203B and 42-203C. On October 12, 2021, and pursuant to Rule 564 of the Department’s Rules of Procedure (IDAPA 37.01.01), the hearing officer for the Department asked the parties to file argument briefs addressing the following question of law:

If a transfer of water rights filed pursuant to Idaho Code § 42-222 results in a reduction in the amount of water held in trust by the state of Idaho, as defined in Idaho Code § 42-203B, does that reduction constitute an appropriation of trust water and require a review of the transfer application under the criteria set forth in Idaho Code § 42-203C?

On November 5, 2021, LCSC filed *Applicant’s Argument Brief* and IPC filed *Idaho Power Company’s Opening Brief*. On November 19, 2021, LCSC filed *Applicant’s Response to Idaho Power Company’s Opening Brief* and IPC filed *Idaho Power Company’s Response Brief*. The Coalition did not participate in briefing the question of law. On December 1, 2021, the hearing officer issued an *Interlocutory Order Deciding Question of Law*, concluding: “The changes proposed in Applications 84488 and 84490 are not subject to the public interest review criteria set forth in Idaho Code § 42-203C.”

On May 15, 2025, IPC withdrew its protests against Applications 84488 and 84490 “on the condition that said withdrawal does not create a precedent or otherwise preclude [IPC] from protesting future applications or continuing to contest applications before the Department where

it alleges injury to existing water rights or impact on the intent of the Swan Falls settlement.”
IPC Notice of Withdrawal of Protest at 1.

The Department conducted an administrative hearing for the consolidated contested cases on December 18 and 19, 2025. LCSC was represented by attorney Robert Harris. The Coalition was represented by attorneys Abby Bitzenburg and Garrett Kitamura.

Exhibits 1-25 offered by LCSC and Exhibits 201-204 offered by the Coalition were admitted into the administrative record without objection. The hearing officer took official notice of the daily accounting records from Water District 01 for the 2022-2023 and 2023-2024 water years. LCSC called Jason Helms, Thomas Wood, and Hai Huang as expert witnesses. LCSC also called Jennifer Sukow, a technical engineer for the Department, as a witness. The Coalition called David Colvin as an expert witness.

The contested cases for Applications 84488 and 84490 present questions of fact that can only be answered through technical reports and expert testimony. Therefore, this order first provides an analysis of the technical information provided by the parties through expert reports and expert testimony and then sets forth the resulting findings of fact. The analysis section lists several questions in bold print that must be answered to properly evaluate Applications 84488 and 84490.

After carefully considering the evidence in the record and the arguments of the parties, the hearing officer finds, concludes, and orders as follows:

RELEVANT LEGAL PROVISIONS

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

Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided.

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

Water right 35-14041 bears a priority date of October 16, 1974, and authorizes the diversion of 3.18 cubic feet per second and 1,290 acre-feet per year from ground water for the irrigation of 322.5 acres. Ex. 1 at 8. In Applications 84488 and 84490, LCSC proposes to move water right 35-14041 from a property in Section 12, T01S, R32E to a property in Sections 13 and 24, T09S, R28E and Sections 18 and 19, T09S, R29E. Exs. 1 and 4. For ease of reference, this order refers to the existing place of use for water right 35-14041 as the “Bonanza property”¹ and refers to the proposed place of use as the “Walcott property.” The Bonanza property is located approximately 15 miles northwest of the Snake River as it passes through the City of Blackfoot. Ex. 6. The Walcott property is located approximately 50 miles southwest of the Bonanza property. *Id.* The Walcott property is directly adjacent to a slow water section of the Snake River at the upstream end of Lake Walcott, the onstream reservoir created by Minidoka Dam. Ex. 13 at 6.

The Coalition argues that moving water right 35-14041 from the Bonanza property to the Walcott property will reduce the quantity of water in the Snake River between a river gage near the City of Blackfoot (“Blackfoot”) and Milner Dam (“Milner”). The gains to the Snake River between Blackfoot and Milner are used to satisfy the water rights held by the members of the Coalition. Ex. 203. To properly evaluate the impact of the proposed changes on other water rights, the Department must compare the effects on the Snake River of diverting water right 35-14041 from the existing point of diversion (at the Bonanza property) to the effects on the Snake River of diverting water right 35-14041 from the proposed points of diversion (at the Walcott property).

Who bears the burden of demonstrating that the proposed changes to a water right in a transfer application will not injure other water rights?

The current version of the Department’s Application for Transfer form, revised in November 2024, provides an accurate summary of the burden of proof borne by a transfer applicant.² It states, in pertinent part:

¹ Bonanza Bar Ranch LLC was the owner of record for water right 35-14041 prior to LCSC. Ex. 20 at 1. LCSC purchased the Bonanza property from Bonanza Bar Ranch LLC sometime after August 2020. Ex. 1 at 13-23.

² Applications 84488 and 84490 were filed using a previous version of the Department’s transfer application form, which did not include a statement about an applicant’s burden of proof. Even though the previous version of the application form did not describe the applicant’s burden of proof, the burden of proof existed as a matter of law, nonetheless. The previous version of the transfer application form, used for Applications 84488 and 84490, did include a summary of the requirements for applicants proposing to move ground water rights in the Eastern Snake Plain Aquifer: “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.” *See* Ex. 1 at 1 (Checklist #5).

Section 42-222(1), Idaho Code, establishes the criteria used to evaluate transfer applications. An applicant bears the burden of demonstrating that the water right to be changed is a valid right, that the proposed use is a beneficial use, and that the proposed changes will not injure other water rights, will not enlarge the use of the original rights, are in the local public interest, and are consistent with the conservation of water resources within the state of Idaho. To satisfy this burden, an applicant must provide sufficient data and information for the Department to evaluate the effects of the proposed change. The Department may deny an application if the applicant fails to provide sufficient data and information to determine whether the criteria from Section 42-222(1) are satisfied.

Application for Transfer of Water Right (Rev. 11/24) at 5-6 (emphasis added).

A recently adopted internal guidance memo for Department staff (“Transfer Processing Memo No. 31”) provides an accurate summary of the burden of proof borne by an applicant who proposes to change a point of diversion for a water right authorizing the diversion of ground water from the Eastern Snake Plain Aquifer (“ESPA”).³ It states, in pertinent part:

The Department and Idaho courts have consistently recognized that the diversion of ground water from the ESPA affects stream flow in the Snake River. Water in the Snake River and in other sources hydraulically connected to the ESPA is considered fully appropriated during all or much of the year. Consistent with Idaho Code § 42-222(1), a transfer applicant bears the burden of demonstrating that the changes proposed in a transfer application will not injure existing water rights. For a transfer application proposing to change a point of diversion for a ground water right within the ESPA, this burden includes demonstrating that the proposed change in point of diversion will not injure water rights diverted from the Snake River or other sources of water hydraulically connected to the ESPA.

Ex. 25 at 1 (footnotes omitted).

What tools are available to help an applicant evaluate and summarize the anticipated depletions to reaches of the Snake River caused by changing a point of diversion for a ground water right in the ESPA?

Transfer Processing Memo No. 31 provides an accurate summary of some of the tools available to help a transfer applicant evaluate and summarize anticipated depletions to the Snake River. It states, in pertinent part:

In cooperation with water user groups across the ESPA, the Department has developed an Eastern Snake Plain Aquifer Model (“ESPAM”) to simulate changes to the aquifer resulting from precipitation, recharge incidental to surface water

³ Like the Department’s current Application for Transfer form, Transfer Processing Memo No. 31 does not create any burden of proof for transfer applicants. It simply summarizes the burden of proof that exists as a matter of law pursuant to Idaho Code § 42-222(1).

irrigation, and ground water diversions, and to analyze the extent of hydraulic communication between the ESPA and the Snake River. The Department has also developed an ESPA Transfer Tool [(“Transfer Tool” or “ETRAN”)] to help water users quantify the effects of a proposed change to a ground water right on flows in the Snake River. The Transfer Tool is an Excel spreadsheet interface that applies data from the latest version of the ESPAM. The Transfer Tool estimates the effects of a proposed change at transient (short-term) and steady-state (long-term) time steps.

Ex. 25 at 1-2 (footnotes omitted).

One of the expert reports offered into the record by LCSC provides a good description of the Transfer Tool (ETRAN) user interface:

ETRAN was designed for individuals with little or no experience using ground water modeling software. The ETRAN 3.4 spreadsheet acts as a user interface for a [super]position model, i.e., the computational engine of ETRAN, which is a simplified version of the fully populated ESPAM 2.2. The fully populated version of the model represents all components of aquifer stress, including recharge on irrigated and non-irrigated lands, ground water pumping for agricultural and municipal purposes, tributary underflow, perched river/canal seepage, spring discharges, river gains from and/or losses to the ESPA, etc. The superposition version of the model is a simplified version that can be used to predict the response of a single component of the water stress. This approach simplifies analysis and presentation of results for simulations involving managed recharge, curtailment of ground water pumping, transfer of water right diversion locations, and mitigation activities. Essentially, the ETRAN Excel workbook allows the user to quickly review the calculated effects of the transfer proposal on reach gains and losses along the Snake River.

Ex. 13 at 9 (citations omitted).

The analysis tools described above (ESPAM and ETRAN) do not alter or diminish an applicant’s burden to demonstrate that the changes proposed in an application for transfer will not injure other water rights. An applicant bears the burden of showing that a proposed change will not injure other water rights even if the ESPAM and ETRAN tools are incompatible, unavailable, or unreliable.

Transfer applicants are not required to use the Transfer Tool, but if they choose not to provide a Transfer Tool analysis, they must provide other technical information and analyses with estimates of depletion impacts for transient and steady state time series for all hydraulically connected reaches of the Snake River, including reaches replenished from tributary springs, as represented in the Transfer Tool. Applicants may also provide additional technical information to supplement a Transfer Tool analysis.

Ex. 25 at 3 (footnotes omitted).

How does the Department evaluate a transfer application proposing to change a point of diversion for a ground water right in the ESPA?

Transfer Processing Memo No. 31 provides an accurate summary of how Department staff evaluate transfer applications that include a summary of anticipated depletions:

The Department must not approve water right changes which will result in injury to existing water rights. Transfer applications that would otherwise cause injury may be approved when the injury is mitigated. In 2002, the Department adopted certain thresholds ("transfer thresholds") for determining when an applicant must provide mitigation for a proposed change to a ground water right in the ESPA. In 2009, the Department modified the transfer thresholds. . . . Although challenges to the transfer thresholds have previously been raised in contested cases before the Department, the transfer thresholds have never been considered by a District Court or by the Idaho Supreme Court.

Ex. 25 at 2 (footnotes omitted).

The transfer thresholds, also referred to as "mitigation thresholds" in this order, are summarized in Transfer Processing Memo No. 31 as follows:

If, at the steady state or transient state time steps, a proposed change results in an increase in the depletions in a designated reach of the Snake River greater than ten percent when compared to the pre-transfer depletions in the reach caused by pumping under the ground water right, then the increase in depletions to the reach must be fully mitigated unless:

- (a) the increase in the depletions in the reach (at the steady state and transient state time steps) are two acre-feet or less per trimester, or
- (b) the depletions in the reach after the transfer, at steady state conditions, are ten percent or less of the total depletion impacts to all reaches resulting from the water right, or portion thereof, being transferred.

Ex. 25 at 4 (footnotes omitted).

These mitigation thresholds can also be framed as three mitigation checks to be used for each designated reach of the Snake River:

- 1) Does the proposed change increase the depletions in the reach by more than 10%?
- 2) Does the proposed change increase the depletions in the reach by more than two acre-feet per trimester?
- 3) Will the depletions in the reach after the transfer is approved represent more than 10% of the total depletion impacts to all reaches?

Each of the reaches of the Snake River identified in the Transfer Tool are evaluated separately using the three mitigation checks. If the answer to any of these three mitigation checks is “no,” then the applicant does not need to mitigate for the increased depletion in the affected river reach. If the answer to all three mitigation checks is “yes,” then the applicant must fully mitigate the increased depletion in the affected river reach.

The Department regularly reviews the cumulative impacts to the Snake River of all ground water transfers in the ESPA to confirm that the mitigation thresholds are protecting all the designated reaches of the Snake River. Ex. 24 (memo summarizing the Department’s review of transfers approved between January 1, 2012, and September 30, 2024). These regular reviews have confirmed that the mitigation thresholds are currently protecting the designated reaches of the Snake River from impact. If a transfer applicant satisfies the mitigation thresholds for all reaches, then any increased depletions in individual reaches of the Snake River caused by the changes proposed in a transfer application are mitigated through the cumulative effects of all transfer applications, as constrained by the mitigation thresholds.

Should a transfer applicant be required to update the technical analysis submitted with a transfer application if the Department updates the ESPA model or the Transfer Tool while the application is still pending before the Department?

In October 2020, when Applications 84488 and 84490 were originally filed, the then-current version of the ESPA model was ESPAM 2.1 and the associated Transfer Tool was ETRAN 3.2. The ESPA model went through a major recalibration in 2023, and the associated Transfer Tool was updated at that time. The current version of the ESPA model is ESPAM 2.2 and the associated Transfer Tool is ETRAN 3.4.

Fairness demands that an applicant be allowed to rely on the data and tools that were available at the time an application is filed without being required to revise an analysis filed with an application if new data becomes available or tools change. Conducting a technical analysis of anticipated depletions to the Snake River can be expensive, especially if an applicant hires an attorney or consultant to perform the analysis. In the realm of hydrology, very few things are static. Every day, additional data is collected through stream gages and measuring devices. Every day, aquifer levels fluctuate. If applicants were required to constantly incorporate new data into their technical analyses while their applications are pending before the Department, some applicants would be caught in a never-ending loop of amended technical reports. For this reason, the Department should not require an applicant to revise its Transfer Tool analysis when the Department adopts an updated version of the ESPA model. The Department often establishes a grace period where it accepts applications using the superseded version of ETRAN for a few months after a newer version is released. *See* Ex. 23 (describing a grace period for the transition from ETRAN 3.3 to ETRAN 3.4). A grace period recognizes that applicants, or their representatives, may have already invested significant time and resources in preparing analyses under the superseded tool.

The fact that the Department doesn’t require an applicant to revise its technical analysis using updated tools or new data does not preclude protestants from providing up-to-date analysis or advancing arguments using the updated tools. In this case, the updates to ESPAM and ETRAN over the last five years do not render Applications 84488 and 84490 incomplete.

At the same time LCSC and the Coalition are free to provide analysis and argument using the updated versions of ESPAM and ETRAN.

When evaluating an application for transfer using the mitigation thresholds, is it appropriate to combine the Near Blackfoot to Neeley Reach and the Neeley to Minidoka Reach for purposes of evaluating mitigation requirements?

The ESPAM divides the Snake River into discrete segments, commonly referred to as river reaches, for evaluating the impact of ground water diversions on the flows in the Snake River. Similarly, the Transfer Tool divides the Snake River into segments or river reaches for reporting anticipated depletions. Generally, the various river reaches are evaluated individually when determining whether an applicant must mitigate for the anticipated depletions to a river reach. In the past, the Department has allowed applicants to combine two reaches, the Near Blackfoot to Neeley Reach (“NB-N Reach”) and the Neeley to Minidoka Reach (“N-M Reach”) for the purpose of evaluating mitigation requirements. Ex. 31 at 5. This combination of reaches is based on the administration of surface water rights between Blackfoot and Minidoka Dam.

During the hearing, the hearing officer took official notice of two years of accounting records for Water District 01, the state water district responsible for delivering surface water rights at points of diversion in the NB-N Reach and N-M Reach of the Snake River. According to the Water District 01 records, the NB-N Reach and N-M Reach of the Snake River were administered under a common priority date curtailment throughout the two-year period of record. Stated differently, there was not a single day in the period of record where the water rights in the NB-N Reach had a different curtailment level than the N-M Reach. This historical practice of allowing applicants to combine the NB-N Reach and the N-M Reach for the evaluation of mitigation requirements in the Transfer Tool is supported by Water District 01 accounting records and the administration of surface water rights between Blackfoot and Minidoka Dam.

When an applicant enters information about a transfer application into the Transfer Tool, is it appropriate for the data entry to reflect periods of non-use?

The ETRAN interface requires users to input the amount of water used at the existing points of diversion, from the time a water right is first developed to the present day. The ETRAN interface also requires users to input the amount of water projected to be diverted from the proposed point of diversion extending from the present day to seventy-five years into the future. Often, applicants or their representatives use maximum annual consumptive use volumes for ETRAN data entry. For periods of contractual non-use, such as during a Conservation Reserve Program (“CRP”) contract, the maximum consumptive use would be zero. Entering zero volume for these time periods does not equate to a combination of dissimilar data types.

The Coalition argues that a period of non-use cannot count as mitigation for future pumping impacts. Including a period of non-use in the data entry for ETRAN does not “mitigate” for the steady-state depletion effects of future pumping. Instead, periods of non-use help a water user avoid creating transient (short-term) effects and thereby avoid the need for mitigation. Depletion impacts caused by the regular diversion of ground water propagate

through the aquifer at a steady rate. When pumping stops, it takes time, often years, before the depletion impacts in the Snake River drop to zero. If a transfer application proposes to move a ground water right closer to the river, the change can create a transient (short-term) spike in depletions to the Snake River. This is because the impacts of pumping from the original well site are still moving through the aquifer. The impacts of pumping from the new well site can get added on top of the residual impacts from pumping at the original well site, creating a transient spike in impacts.

It is reasonable and appropriate for a transfer applicant to reflect periods of non-use in the ETRAN data entry. These periods of non-use have a positive effect on the Snake River and diminish the likelihood of transient (short-term) depletion impacts. 322.5 acres of water right 35-14041 were enrolled in a CRP contract from February 1, 2007, to September 30, 2021. Ex. 20 at 3. LCSC's inclusion of this period of non-use in its ETRAN analysis was reasonable and appropriate. Ex. 4 at 7 (data entry for Application 84490 reflects a period of non-use).

When an applicant enters information about a transfer application into the Transfer Tool, is it appropriate to distribute the annual pumping data evenly across all trimesters?

The Transfer Tool interface divides the calendar year into trimesters for entering historical and future use. The trimesters are Spring (Jan-Apr), Summer (May-Aug), and Winter (Sept-Dec). The standard irrigation season for the Upper Snake River Basin (Apr-Oct) extends into all three trimesters. For irrigation water rights, it can be difficult to determine how to divide the annual pumping between the trimesters. For certain crops, the water use may be heavily weighted to the early season, with more volume pumped in Spring and Summer trimesters. For other crops, the water use may be heavily weighted to the late irrigation season, with more volume pumped in Summer and Winter trimesters. Further, an irrigator may alter crops or water use from year to year, changing how much volume is pumped in any single trimester. For this reason, the Department allows applicants to divide pumping evenly between trimesters for data entry in ETRAN. Distributing pumping evenly across trimesters does not change the overall magnitude of depletion impacts at transient or steady state timesteps.

Could Applications 84488 and 84490 be approved if the Department did not recognize mitigation thresholds?

. As noted above, the mitigation thresholds allow an individual transfer application to increase depletions in one or more reaches of the Snake River but still be approved. The small impacts allowed under the mitigation thresholds are mitigated through the cumulative effects of all approved transfers of ground water rights in the ESPA. The Department's cumulative transfer review confirms that the mitigation thresholds are working to prevent significant increases in any of the modeled reaches of the Snake River. In the absence of the mitigation thresholds, supported by the Department's regular confirmation that the mitigation thresholds are working, very few transfers of ESPA ground water rights could be approved. This is because most transfers involving ground water rights in the ESPA result in some increase in depletions to one or more reaches of the Snake River.

As shown in the tables of depletion impacts provided by LCSC, the changes proposed in Applications 84488 and 84490 will increase depletions in all the modeled reaches of the Snake

River downstream of Milner Dam (“below Milner”). Ex. 4 at 10; Ex. 14. The Director of the Department recently denied a transfer application which would have increased depletions in reaches of the Snake River below Milner. See *Final Order Addressing Exceptions and Denying Application for Transfer [87701 in the name of Gardner Farms]* (November 1, 2024) (“Gardner Farms”). The order from the Director states:

Both parties agree that the transfer will increase depletions in the reaches of the Snake River below Milner Dam. . . . [T]he increased depletions, while not necessarily large, impact the trust water rights by increasing the likelihood of future curtailment when the minimum flows at Murphy Gage are unmet. If the water level of the Snake River drops below the minimum stream flows at Murphy Gage, upstream trust water rights with a priority date junior to October 25, 1984, are subject to curtailment. Transfer 87701 would cause the trust water rights to be taken out of priority sooner than they would otherwise. Transfer 87701 constitutes a per se injury because it hastens future priority administration. Therefore, Gardner failed to meet its burden in producing sufficient evidence to support its claim that trust water rights will not be injured by Transfer 87701.

Gardner Farms at 5.

The analysis from *Gardner Farms* is relevant to the evaluation of Applications 84488 and 84490. In *Gardner Farms*, the Department rejected the argument that small increases in depletions in the reaches below Milner are inconsequential.⁴ Even though there was no evidence in the administrative record for Application 87701 that junior ground water rights had ever been curtailed due to a shortage of water in the Snake River below Milner, the Director concluded: “A per se injury exists when approving a transfer application diminishes another water right’s priority date based on the threat of future priority administration.” *Gardner Farms* at 5. In *Gardner Farms*, the Department denied Application 87701 based on the protestant’s allegation that it was possible that water right administration might occur in the Snake River reaches below Milner sometime in the future.

The technical analysis from LCSC shows that the changes proposed in Application 84488 and 84490 will increase depletions in all reaches below Milner. Ex. 4 at 10; Ex. 14. Consistent with *Gardner Farms*, LCSC can’t argue that the increase in depletions in the Snake River reaches below Milner Dam are inconsequential. The only way the Department could approve Applications 84488 and 84490 is if LCSC accurately quantifies the anticipated depletions in the reaches below Milner and demonstrates that the anticipated depletions fall within the mitigation thresholds described above.

What are the modeled impacts to the Snake River caused by diverting water right 35-14041 from the existing point of diversion at the Bonanza property?

⁴ The record for *Gardner Farms* did not include any information about the Department’s review of the cumulative effects of all ESPA transfers. Therefore, the applicant could not rely on the cumulative effects of all transfers to mitigate for the depletion increases in the reaches of the Snake River below Milner.

The experts for LCSC and the Coalition agree that the ESPAM and ETRAN can be used to accurately estimate the depletion impacts to the Snake River caused by diverting ground water from a well located several miles from the river. Therefore, ETRAN 3.2, ETRAN 3.3, or ETRAN 3.4 provide reliable estimates of the impacts of diverting water right 35-14041 from the existing point of diversion for the right at the Bonanza property. The record includes a comparison of the modeled impacts to the Snake River under ETRAN 3.2 and ETRAN 3.4. Ex. 14. The difference in modeled impacts between ETRAN 3.2 and ETRAN 3.4 at the existing point of diversion are very small. If LCSC diverts ground water from the existing point of diversion at the Bonanza property, approximately 65% of the total depletion impacts will propagate to the NB-N Reach, approximately 0.5% of the total depletion impacts will propagate to the N-M Reach, and approximately 4% of the total depletion impacts will propagate to the Snake River reaches below Milner. Ex. 14.

What are the modeled anticipated depletions to the Snake River caused by diverting water right 35-14041 from the proposed points of diversion at the Walcott property?

The following data is taken from tables of anticipated depletions provided by LCSC. The data for Application 84488 is from an analysis using ETRAN 3.2. Ex. 14 at 2. The data for Application 84490 is from an analysis using ETRAN 3.3. Ex. 4 at 10. The table of combined anticipated depletions was created by summing the data from the individual tables for Applications 84488 and 84490. All volumes shown are on a per trimester basis. The following tables include data for two of the six Snake River reaches below Milner designated in the Transfer Tool: The Devil's Washbowl to Buhl Reach ("DW-B Reach") and the Buhl to Thousand Springs Reach ("B-KSpr Reach").

Anticipated Depletions for Application 84488 from ETRAN 3.2
(Total Anticipated Depletions for All Reaches = 62.1 af/tri)

Reach of the Snake River	NB-N	N-M	DW-B	B-KSpr
Historical Depletion (af/tri)	40.28	0.24	0.76	0.87
Anticipated Depletion (af/tri)	23.54	12.74	4.44	5.00
Change in Depletion (af/tri)	-16.74	12.50	3.68	4.13
Percent Change	-41.6%	5,210%	484%	475%
Percent of Total Anticipated Depletions	37.9%	20.5%	7.1%	8.1%

Anticipated Depletions for Application 84490 from ETRAN 3.3
(Total Anticipated Depletions for All Reaches = 367.9 af/tri)

Reach of the Snake River	NB-N	N-M	DW-B	B-KSpr
Historical Depletion (af/tri)	238.47	1.42	4.51	5.13
Anticipated Depletion (af/tri)	139.91	76.38	25.82	29.07
Change in Depletion (af/tri)	-98.56	74.96	21.31	23.94
Percent Change ⁵	-41.3%	5,280%	473%	467%
Percent of Total Anticipated Depletions	38.0%	20.8%	7.0%	7.9%

⁵ There are minor differences between the percentages shown on the table included with Application 84490 and the percentages shown in this table. These differences are due to rounding and have no effect on this order.

Anticipated Depletions for Applications 84488 and 84490 from ETRAN 3.2/3.3
(Total Anticipated Depletions for All Reaches = 430 af/tri)

Reach of the Snake River	NB-N	N-M	DW-B	B-KSpr
Historical Depletion (af/tri)	278.75	1.66	5.27	6.00
Anticipated Depletion (af/tri)	163.45	89.12	30.26	34.07
Change in Depletion (af/tri)	-115.30	87.46	24.99	28.07
Percent Change	-41.4%	5,270%	474%	468%
Percent of Total Anticipated Depletions	38.0%	20.7%	7.0%	7.9%

Do the modeled anticipated depletions for Applications 84488 and 84490 pass the mitigation thresholds?

The tables of ETRAN results listed above indicate that the proposed changes under Applications 84488 and 84490 pass at least one of the three mitigation checks for the identified reaches, including the reaches below Milner. “[T]he impact changes calculated for all spring reaches [below Milner] are each less than 10% of the total calculated depletion and therefore fall below IDWR thresholds requiring mitigation.” Ex. 11 at 5. Both applications, however, are very close to the 10% threshold described in Mitigation Check #3 for the DW-B and B-KSpr Reaches below Milner.

Application 84488 does not pass Mitigation Check #1 (the change in depletion exceeds 10%) or Mitigation Check #2 (the change in depletion exceeds 2.0 af/trimester) for the DW-B and B-KSpr Reaches. Application 84488 passes Mitigation Check #3 (the depletion for each reach is less than 10% of the total anticipated depletions for all reaches) for the DW-B and B-KSpr Reaches, but just barely. If the depletion impacts to the B-KSpr Reach were increased by only 1.3 acre-feet per trimester, the proposed change would violate Mitigation Check #3 because the anticipated depletion in the B-KSpr Reach would be more than 10% of the total anticipated depletions for all reaches. Similarly, if the depletion impacts to the DW-B Reach were increased by only 1.8 acre-feet per trimester, the proposed change would also violate Mitigation Check #3.

The analysis for Application 84490 is identical to the analysis for Application 84488. The only reason Application 84490 passes the mitigation thresholds is because the depletion impacts for the DW-B and B-KSpr Reaches fall just below the 10% threshold of Mitigation Check #3. If the depletion impacts to the B-KSpr Reach were increased by only 7.8 acre-feet per trimester, the proposed change would violate Mitigation Check #3 because the anticipated depletion in the B-KSpr Reach would be more than 10% of the total anticipated depletions for all reaches. Similarly, if the depletion impacts to the DW-B Reach were increased by only 11.0 acre-feet per trimester, the proposed change would also violate Mitigation Check #3.

What is the hydraulic connection between the proposed points of diversion at the Walcott property and the Snake River in the immediate area of the proposed points of diversion?

One of the proposed points of diversion in Applications 84488 is an existing well located in the SWSESW of Section 18, T09S, R29E (“Duffin Well”), which is currently used to divert existing water rights 35-7740 and 35-2824. Ex. 2. The Duffin Well diverts water from a deeper

ground water aquifer. Ex. 12 at 19. LCSC provided detailed, persuasive evidence that the deeper ground water aquifer at the Duffin Well is not directly connected with the shallow aquifer near the well or the Snake River one-half mile southeast of the well. LCSC hired Clearwater Geosciences LLP (“Clearwater”) to “describe [the] hydrogeology of the subsurface [near the Duffin Well], and to evaluate how the proposed wells [in Applications 84488 and 84490] might impact water in the Snake River.” *Id.* at 2. LCSC also asked Clearwater to “determine if a well can be constructed in such a way as to pump water that is not directly connected to the Snake River.” *Id.*

The Duffin Well was constructed in 1979 to a depth of 535 feet. Ex. 12 at 3-4, 19. The well driller reported a brown clay layer, 37 feet thick, extending from 173 feet below land surface to 210 feet below land surface. *Id.* The well driller also reported a shallow aquifer less than forty feet below land surface and a deeper aquifer beginning at 275 feet below land surface. *Id.* The two water bearing zones were separated by 235 feet of clay rich soils. *Id.* The areal extent of the thick clay layer is unclear. The driller reports for other ground water wells within one mile of the Duffin Well do not identify a thick clay layer at similar depths. Ex. 12 at 20; Ex. 201 at 10 (The lithology of a nearby well “does not support the theory that a thick, laterally continuous clay layer disconnects the deeper basalt aquifer from the Snake River.”). Clearwater theorizes that the thick clay layer may extend east and west under the Snake River channel but does not provide any additional evidence to support that theory. Ex. 12 at 4 (“[T]he ancestral Snake River may have eroded the Raft Formation and Pleistocene Basalts creating a river channel [which was] filled by alluvium and lake bed deposits forming the clay rich sedimentary sequence.”)

The Duffin Well is cased without perforations to 256 feet below land surface and draws water from the deeper aquifer between the end of the casing and the bottom of the well. As part of a pump test, Clearwater constructed two monitoring wells in the shallow aquifer. One monitoring well was located approximately 90 feet west of the Duffin Well. Ex. 12 at 2. The other was located approximately 2,000 feet southeast of the Duffin Well, near the Snake River. *Id.* at 12. During the pump test, from April 28, 2024, to September 24, 2024, the diversions from the Duffin Well for irrigation had no direct effect on water levels in the monitoring wells. *Id.* at 5. Further, the recovery data for the Duffin Well indicates that the well is under confined or leaky confined conditions, further supporting a hydraulic flow barrier between the shallow aquifer and the deeper aquifer at the Duffin Well. *Id.*

Based on the results of the pump test, Clearwater concluded:

The field study has defined a shallow aquifer extending to about 40 ft, consisting of Bonneville Flood Deposits and Pleistocene Alluvium. The lower basalt aquifer is hydraulically isolated from the shallow aquifer by a thick sequence of clay rich sediments. The isolation of the shallow aquifer by the clay rich sediments is generally representative of perched aquifer conditions. Water level monitoring of the two shallow [monitoring] wells demonstrates hydraulic isolation from the deeper aquifer.

Id. at 5 (emphasis added).

The non-responsive behavior of water levels in the shallow aquifer from pumping [the Duffin Well] from the aquifer below 245 ft demonstrates that it is possible to construct a well in this location that is not directly connected to the Snake River.

Id. at 6 (emphasis added).

Unlike the deeper aquifer at the Duffin Well, water levels in the shallow aquifer are closely tied to water levels in Lake Walcott. Ex. 11 at 3. The pump test data summarized in the expert reports from Clearwater confirms that the deeper aquifer at the Duffin Well is not directly connected to the shallow aquifer. “Aquifer transmissivities and river conductivity [for the deeper aquifer] are considered somewhat lower in this area with only partial connection between the river and [the deeper, regional] aquifer which limits the extent of water table impacts.” *Id.*

The N-M Reach is approximately thirty miles long and is a mixed reach in terms of reach gains and losses. Ex. 24 at 11; Sukow Test. The N-M Reach is a gaining reach at the upstream end and has a transition zone in the middle. *Id.* At the downstream end of the N-M Reach, the Snake River becomes perched above the regional aquifer, with little or no direct communication between the regional aquifer and the Snake River. *Id.* The Walcott property is in the middle section of the N-M Reach. Ex. 6; Ex. 24 at 2. “If the Snake River is perched in this area [near the proposed points of diversion], then pumping of the regional aquifer will have no impact locally on the adjacent Snake River.” Ex. 13 at 14. Depletion impacts will propagate upstream and downstream from the proposed points of diversion and will be realized in areas where the ESPA and the Snake River are connected.

Are the modeled anticipated depletions an accurate estimate of the impacts of diverting water right 35-14041 from the proposed points of diversion at the Walcott property?

ESPAM and ETRAN are good tools for evaluating the impacts of ground water diversions on the Snake River on a regional scale. Huang Test; Ex. 12 at 2. They are not good tools for evaluating the impacts of ground water diversions on a local scale or at well sites near the Snake River. Huang Test. “As the area of consideration becomes smaller, local characteristics must be considered by any simulation of ground water flow.” Ex. 13 at 12. “ESPAM is not capable of the refinement necessary to understand ground water behavior at the local scale.” *Id.* “[C]autious is needed when applying the ETRAN model for assessing the effects of ground water pumping at locations near the Snake River.” *Id.* at 10. “[N]either ESPAM 2.1 nor ESPAM 2.2 are very reliable for evaluating impacts from the transfer applications along the [N-M] Reach.” *Id.* “[T]he ESPAM models (one-mile by one-mile grid resolution) are too coarse to provide reliable evaluation of the impact of near-river pumping.” *Id.* at 13. “The resolution of the ESPAM . . . is insufficient to evaluate stream depletion timing from wells located very close to the river, such as the wells involved in the proposed transfers.” Ex. 202 at 21. ESPAM relies on a “regional conceptualization that does not fully capture site-specific features such as perched aquifers, discontinuous impermeable layers, or preferential flow paths associated with basalt flow boundaries.” Ex. 201 at 6. “Due to the short distance between the proposed points of diversion (PODs) and the Snake River, and the complex hydrogeology in the areas of the proposed PODs, the [ESPAM and ETRAN] are inappropriate

for evaluating these transfers and the impact of flows on specific reaches of the Snake River.” *Id.* at 6.

The experts for LCSC and the Coalition agree that the ESPAM 2.1 and 2.2 and ETRAN 3.2, 3.3, and 3.4 cannot be used to accurately predict the impacts to the Snake River caused by diverting ground water from the proposed points of diversion because the proposed points of diversion are located so close to the Snake River in complex, heterogeneous aquifer layers. “Other analysis methods other than ESPAM/ETRAN can be used to appropriately evaluate these [applications].” Ex. 202 at 21. “Increasing the resolution of the ESPAM model near the Snake River, methods used to downscale the model, or local models may provide acceptable methods to estimate timing effects from the proposed transfer.” *Id.* Except for the tables of ETRAN results, LCSC did not provide any other analysis of anticipated depletions.

If the proposed points of diversion are not in direct communication with the Snake River at the Walcott property, where do the modeled anticipated depletions for the N-M Reach actually appear?

This is the critical question for the contested case. The ETRAN analysis provided by LCSC shows that the changes proposed in Applications 84488 and 84490 (diverting water right 35-14041 from the proposed points of diversion), in combination, will increase depletions in the N-M Reach of the Snake River by approximately 87 acre-feet per trimester. Persuasive evidence from LCSC, however, shows that the deeper aquifer at the proposed points of diversion is not in direct communication with the Snake River at the Walcott property. Ex. 13 at 13 (“[P]umping of the deep aquifer near the river does not [] change ongoing local reach-gain relationships near the LCSC farmland.”). The experts from LCSC and the Coalition agree that ETRAN cannot be used to accurately predict the interaction between the aquifer and the Snake River on a local scale. Further, the Snake River is perched and disconnected from the regional aquifer in the lower portion of the N-M Reach and remains disconnected from the aquifer until the spring reaches below Milner.

Depletion analysis is a zero-sum exercise. All the water to be pumped from the proposed points of diversion at the Walcott property must be represented as a depletion to the modeled reaches of the Snake River. Stated differently, the total depletions to all reaches of the Snake River must add up to the total volume of water to be diverted at the proposed points of diversion. Therefore, the hearing officer cannot simply ignore the 87 acre-feet per trimester of depletion associated with the N-M Reach. The evidence provided by LCSC creates substantial doubt that the 87 acre-feet per trimester should be counted as a depletion to the N-M Reach. Because the deeper aquifer (the proposed source of water) is disconnected from the Snake River at the Walcott property and that disconnection likely continues to Milner, it is logical to infer that much of the 87 acre-feet will appear as depletions to the Snake River reaches below Milner.

Although the detailed and persuasive technical evidence provided by LCSC shows that the proposed changes will not have a direct impact on the Snake River at the Walcott property, the evidence also casts substantial doubt on whether the proposed changes will result in any increase in depletions to the N-M Reach. The Snake River becomes perched and disconnected from the aquifer in the downstream end of the N-M Reach. Sukow Test. If anything, the evidence suggests that the depletions predicted for the N-M Reach may propagate downstream,

increasing the depletions in Snake River reaches below Milner. As noted above, the modeled anticipated depletions for some of the reaches below Milner are already very close to the mitigation threshold limits. Increasing the depletions below Milner by even a small amount will cause the applications to exceed the mitigation thresholds for certain reaches below Milner. LCSC has not satisfied its burden of proof to show that the proposed changes will not exceed the mitigation thresholds in reaches below Milner. This is because LCSC has not provided a reliable analysis of how diversions at the proposed points of diversion will translate to depletion impacts to the Snake River.

Analysis Summary

A transfer applicant bears the burden of demonstrating that the changes proposed in an application for transfer will not injure existing water rights. For an application proposing to change a point of diversion for a ground water right in the ESPA, an applicant may provide a technical analysis using the Transfer Tool (ETRAN). If an applicant asserts that the ETRAN results are unreliable because of site specific information, the applicant must provide evidence supporting the assertion that the ETRAN results are unreliable and must provide a substitute technical analysis showing how the diversion of ground water at the proposed points of diversion will affect the designated reaches of the Snake River.

In this case, LCSC and the Coalition assert that ESPAM and ETRAN are not reliable tools for predicting depletion impacts from the proposed points of diversion at the Walcott property. LCSC demonstrated that one of the proposed wells, the Duffin Well, is locally disconnected from the Snake River by a thick layer of clay soils. Despite providing compelling evidence that ETRAN is not a reliable tool for evaluating pumping impacts at the proposed points of diversion, LCSC asks the hearing officer to rely on the tables of ETRAN results provided with Applications 84488 and 84490 for evaluating pumping impacts at the proposed points of diversion. LCSC's proposal is illogical and not consistent with the evidence in the record. Because the ETRAN results are not reliable, and LCSC did not provide any substitute analysis of how pumping from the proposed points of diversion will propagate to the Snake River, LCSC has not satisfied its burden of proof to demonstrate that the changes proposed in Application 84488 and 84490 will not injure existing water rights. Therefore, Applications 84488 and 84490 should be denied.

The mitigation thresholds established by the Department are essential to allow the movement of ground water rights in the ESPA. In the absence of the mitigation thresholds, very few transfer applications proposing to change the points of diversion for ground water rights in the ESPA could be approved. Preserving and upholding the mitigation thresholds is in the local public interest, as long as the mitigation thresholds continue to protect the designated reaches of the Snake River from impact. It is not in the local public interest to approve a transfer application when there is substantial doubt about whether a proposed change satisfies the mitigation thresholds. Therefore, Applications 84488 and 84490 should be denied.

FINDINGS OF FACT

1. In cooperation with various water user groups, the Department has developed a model, commonly referred to as the ESPA model or ESPAM, to evaluate the impacts to the Snake River resulting from the diversion of ground water from the ESPA. Ex. 25 at 1-2. The ESPA model has been revised and updated several times. The current version of the model is ESPAM 2.2.

2. The Department has developed a model interface, commonly referred to as the Transfer Tool or ETRAN, that allows a user to evaluate the impacts to the Snake River of changing the authorized point of diversion for a ground water right in the ESPA. Ex. 25 at 1-2. The Transfer Tool has been revised and updated several times. The current version of the Transfer Tool is ETRAN 3.4.

3. “The [Transfer Tool] was designed for individuals with little experience using ground water modeling software.” Ex. 9 at 1. “This spreadsheet acts as a user interface for the actual ESPA model in groundwater modeling software.” *Id.* “[The Transfer Tool] allows the user to view data and graphical outputs in Excel.” *Id.* “Essentially, this Excel workbook allows the user to review the calculated effects of the transfer proposal on the ESPA.” *Id.*

4. The Transfer Tool (ETRAN) divides the Snake River into reaches for the purpose of evaluating pumping impacts on the Snake River. Some of the reaches that are relevant to this contested case are the NB-N Reach, the N-M Reach, the DW-B Reach, and the B-KSpr Reach.

5. “The [N-M Reach] represents the downstream end of the upper Snake River-ESPA aquifer connection and [the Snake River] becomes perched to the west beyond Minidoka Dam, eventually falling below the aquifer level and later reconnecting in the spring reaches [below Milner].” Ex. 10 at 3.

6. The DW-B and B-KSpr Reaches of the Snake River are spring reaches located downstream of Milner Dam. Ex. 24 at 2.

7. In concert with the development of the ETRAN interface, the Department has developed thresholds, commonly referred to as transfer thresholds or mitigation thresholds, to determine when a transfer applicant must mitigate for impacts to a Snake River reach. Ex. 25 at 3. The mitigation thresholds are summarized as follows:

If, at the steady state or transient state time steps, a proposed change results in an increase in the depletions in a designated reach of the Snake River greater than ten percent when compared to the pre-transfer depletions in the reach caused by pumping under the ground water right, then the increase in depletions to the reach must be fully mitigated unless:

(a) the increase in the depletions in the reach (at the steady state and transient state time steps) are two acre-feet or less per trimester, or

(b) the depletions in the reach after the transfer, at steady state conditions, are ten percent or less of the total depletion impacts to all reaches resulting from the water right, or portion thereof, being transferred.

Ex. 25 at 4.

8. The mitigation thresholds can also be framed as three mitigation checks:

- 1) Does the proposed change increase the depletions in the reach by more than 10%?
- 2) Does the proposed change increase the depletions in the reach by more than two acre-feet per trimester?
- 3) Will the depletions in the reach after the transfer is approved represent more than 10% of the total depletion impacts to all reaches?

9. Each of the reaches of the Snake River identified in the Transfer Tool are evaluated separately using the three mitigation checks. If the answer to any of these three mitigation checks is “no,” then the applicant does not need to mitigate for the increased depletion in the affected river reach. If the answer to all three mitigation checks is “yes,” then the applicant must fully mitigate the increased depletion in the affected river reach.

10. The Department regularly reviews the cumulative impacts of all approved transfers of ground water rights in the ESPA to ensure that the mitigation thresholds are adequately protecting all the modeled reaches of the Snake River and the surface water rights that are diverted from the Snake River in those reaches. *See Ex. 24 (Cumulative Review of ESPA Transfers between 2012 and 2024 (December 5, 2024)).*

11. The Department allows transfer applicants to combine the anticipated depletions for the NB-N and N-M Reaches of the Snake River when answering the mitigation check questions. This is because the surface water rights in the NB-N reach and N-M Reaches are administered as a single reach under a common priority date by Water District 01.

12. The existing place of use for water right 35-14041, referred to as the Bonanza property in this order, is in Section 12, T01S, R32E. Exs. 1 and 4. The Bonanza property is located approximately 15 miles northwest of the Snake River as it passes through the City of Blackfoot. Ex. 6.

13. The proposed place of use in Applications 84488 and 84490, referred to as the Walcott property in this order, is in Sections 13 and 24, T09S, R28E and Sections 18 and 19, T09S, R29E. Exs. 1 and 4. The Walcott property is located approximately 50 miles southwest of the Bonanza property. Ex. 6. The Walcott property is adjacent to a slow water section of the Snake River at the upstream end of Lake Walcott, the reservoir created by Minidoka Dam. Ex. 13 at 6.

14. Water right 35-14041 bears the following elements.

Priority Date: 10/16/1974
Beneficial Use: Irrigation
Diversion Rate: 3.18 cfs
Volume: 1,290 af/year
Point of Diversion: NWSE, Section 12, T01S, R32E
Place of Use: 322.5 acres in Section 12, T01S, R32E

15. LCSC filed Application for Transfer 84488 on October 13, 2020.

16. In Application 84488, LCSC proposes to add points of diversion, change the point of diversion, and change the place of use for a 46.6-acre portion of water right 35-14041. Ex. 1 at 2-3. A 46.6-acre portion of water right 35-14041 equates to a diversion rate of 0.46 cfs and an annual diversion volume of 186.4 acre-feet. *Id.* LCSC proposes combining the 46.6-acre portion of water right 35-14041 with water rights 35-7740 and 35-2824 to irrigate a 345.6-acre combined place of use. *Id.*

17. The proposed place of use in Application 84488 is in Sections 13 and 24, T09S, R28E and Sections 18 and 19, T09S, R29E. The proposed points of diversion are two existing wells. One well is in the NENWNE, Section 24, T09S, R28E. Ex. 2. The other well (“Duffin Well”) is in the SWSESW, Section 18, T09S, R29E. *Id.* Both wells are located approximately one-quarter mile north of the Snake River. *Id.*

18. Application 84488 included a copy of the data entry page for ETRAN 3.2, suggesting that LCSC or its consultant used ETRAN 3.2 to evaluate the impacts of changing the authorized point of diversion for a 46.6-acre portion of water right 35-14041 from the Bonanza property to the Walcott property. Ex. 1 at 19.

19. Application 84488 did not include a table summary of the results of the ETRAN 3.2 analysis. Nor did Application 84488 include any summary of anticipated depletions for the reaches of the Snake River below Milner Dam. LCSC provided these documents as exhibits at hearing. Ex. 14.

20. The following table lists the anticipated depletion effects for Application 84488 for the reaches of the Snake River relevant to this order:

Anticipated Depletions for Application 84488 from ETRAN 3.2
(Total Anticipated Depletions for All Reaches = 62.1 af/tri)

Reach of the Snake River	NB-N	N-M	DW-B	B-KSpr
Historical Depletion (af/tri)	40.28	0.24	0.76	0.87
Anticipated Depletion (af/tri)	23.54	12.74	4.44	5.00
Change in Depletion (af/tri)	-16.74	12.50	3.68	4.13
Percent Change	-41.6%	5,210%	484%	475%
Percent of Total Anticipated Depletions	37.9%	20.5%	7.1%	8.1%

21. LCSC filed Application for Transfer 84490 on October 13, 2020. LCSC filed an amended application on July 26, 2021.

22. In Application 84490, LCSC proposes to add points of diversion, change the point of diversion, and change the place of use for a 275.9-acre portion of water right 35-14041. Ex. 4 at 2-3. A 275.9-acre portion of water right 35-14041 equates to a diversion rate of 2.72 cfs and an annual diversion volume of 1,103.6 acre-feet. *Id.*

23. The proposed place of use in Application 84490 is in Section 17, 18, 19, and 20, T09S, R29E at LCSC's Walcott property. Ex. 4 at 3. The proposed points of diversion are two proposed wells. One well is in the SESE of Section 18, T09S, R29E. *Id.* The other proposed well is in the SESW of Section 17, T09S, R29E. *Id.* Both proposed well sites are located approximately one-quarter mile north of the Snake River. Ex. 5.

24. Application 84490 included a table summary of an analysis of the changes proposed in the application using ETRAN 3.3. Ex. 4 at 10. 19. The following table lists the anticipated depletion effects for Application 84490 for the reaches of the Snake River relevant to this order:

Anticipated Depletions for Application 84490 from ETRAN 3.3
(Total Anticipated Depletions for All Reaches = 367.9 af/tri)

Reach of the Snake River	NB-N	N-M	DW-B	B-KSpr
Historical Depletion (af/tri)	238.47	1.42	4.51	5.13
Anticipated Depletion (af/tri)	139.91	76.38	25.82	29.07
Change in Depletion (af/tri)	-98.56	74.96	21.31	23.94
Percent Change ⁶	-41.3%	5,280%	473%	467%
Percent of Total Anticipated Depletions	38.0%	20.8%	7.0%	7.9%

25. The DW-B and B-KSpr Reaches do not pass Mitigation Check #1 for either transfer application because the depletions in each reach increase by more than 10%. The DW-B and B-KSpr Reaches do not pass Mitigation Check #2 for either transfer application because the depletion increase in each reach exceeds 2.0 acre-feet per trimester.

26. The DW-B and B-KSpr Reaches pass Mitigation Check #3 for both applications because the anticipated depletion for each reach is less than 10% of the total depletions for all reaches. Ex. 4 at 11 (LCSC asserts that "mitigation is not required for Snake River reaches below Milner because . . . [each] river reach is impacted less than 10% of the total diversion volume."). Small increases in the anticipated depletions for the DW-B and B-KSpr Reaches would cause Applications 84488 and 84490 to fail Mitigation Check #3.

27. LCSC hired Clearwater to perform a pump test at the Duffin Well. The pump test confirms that the Duffin Well diverts water from a deeper regional aquifer and not the local shallow aquifer that is in direct hydraulic communication with the Snake River. The pump test also confirms that the Duffin Well is not in direct communication with the shallow aquifer or the Snake River near the Walcott property.

⁶ There are minor differences between the percentages shown on the table included with Application 84490 and the percentages shown in this table. These differences are due to rounding and have no effect on this order.

28. LCSC provided persuasive evidence that the cumulative change in anticipated depletion calculated by ETRAN for the N-M Reach, estimated to be 87 acre-feet per trimester, is not reliable. If the 87 acre-feet per trimester of depletion is realized in reaches below Milner, it would cause the DW-B and B-KSpr reaches to fail Mitigation Check #3.

29. ESPAM and ETRAN cannot be used to accurately predict the impacts of diverting ground water from the proposed points of diversion. “As the area of consideration becomes smaller, local characteristics must be considered by any simulation of ground water flow.” Ex. 13 at 12. “ESPAM is not capable of the refinement necessary to understand ground water behavior at the local scale. *Id.* “[C]autious is needed when applying the ETRAN model for assessing the effects of ground water pumping at locations near the Snake River.” *Id.* at 10. “[N]either ESPAM 2.1 nor ESPAM 2.2 are very reliable for evaluating impacts from the transfer applications along the [N-M] Reach.” *Id.* “[T]he ESPAM models (one-mile by one-mile grid resolution) are too coarse to provide reliable evaluation of the impact of near-river pumping.” *Id.* at 13. “The resolution of the ESPAM . . . is insufficient to evaluate stream depletion timing from wells located very close to the river, such as the wells involved in the proposed transfers.” Ex. 202 at 21. ESPAM relies on a “regional conceptualization that does not fully capture site-specific features such as perched aquifers, discontinuous impermeable layers, or preferential flow paths associated with basalt flow boundaries.” Ex. 201 at 6. “Due to the short distance between the proposed points of diversion (PODs) and the Snake River, and the complex hydrogeology in the areas of the proposed PODs, the [ESPAM and ETRAN] are inappropriate for evaluating these transfers and the impact of flows on specific reaches of the Snake River.” *Id.* at 6.

30. Based on the compelling technical information provided by LCSC and the Coalition, the ETRAN analysis provided by LCSC is unreliable. LCSC did not provide any alternative technical analysis.

31. In Applications 84488 and 84490, LCSC proposes to continue to use water right 35-14041 for irrigation. Applications 84488 and 84490 do not propose to increase any of the elements of water right 35-14041.

32. In Applications 84488 and 84490, LCSC proposes to irrigate the proposed places of use with closed conduit conveyance lines and sprinklers.

CONCLUSIONS OF LAW

LCSC has demonstrated that the changes proposed in Applications 84488 and 84490 do not constitute an enlargement in use of the original right and are consistent with the conservation of water resources within the state of Idaho. LCSC has not demonstrated that the changes proposed in Applications 84488 and 84490 will not injure other water rights or that the changes are in the local public interest. LCSC has not provided reliable technical evidence estimating the anticipated depletions caused by diverting water right 35-14041 from the proposed points of diversion. Therefore, Applications 84488 and 84490 should be denied.

ORDER

IT IS HEREBY ORDERED that Applications for Transfer 84488 and 84490 in the name of LCSC Enterprises LLC are DENIED.

Dated this 30th day of January 2026.

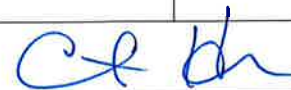
A handwritten signature in black ink, appearing to read 'J. Cefalo', written over a horizontal line.

James Cefalo
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30 day of January 2026, true and correct copies of the above *Preliminary Order Denying Applications* were served by the method indicated below to the following:

LCSC ENTERPRISES LLC 433 LAS COLINAS BLVD E STE 1290 IRVING, TX 75039-5058	☒ Certified Mail
ROBERT L HARRIS HOLDEN KIDWELL HAHN & CRAPO PLLC PO BOX 50130 IDAHO FALLS, ID 83405 rharris@holdenlegal.com	☒ Certified Mail ☒ Email
TRAVIS THOMPSON ABBY BITZENBURG PARSONS BEHLE & LATIMER PO BOX 63 TWIN FALLS, ID 83303-0063 tthompson@parsonsbehle.com abitzenburg@parsonsbehle.com	☒ Certified Mail ☒ Email
NORMAN SEMANKO GARRETT KITAMURA PARSONS BEHLE & LATIMER 800 W MAIN ST, STE 1300 BOISE, ID 83702 nsemanko@parsonsbehle.com gkitamura@parsonsbehle.com	☒ Certified Mail ☒ Email
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Christina Henman
Administrative Assistant

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was held)

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

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer 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 to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

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, request 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 Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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.