

**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**

**ORDER DENYING PETITION FOR
RECONSIDERATION OR IN THE
ALTERNATIVE TO RE-OPEN
HEARING**

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. On May 15, 2025, IPC withdrew its protests against Applications 84488 and 84490.

The Department consolidated the contested cases for hearing. The Department conducted an administrative hearing for the consolidated cases on December 18 and 19, 2025. The hearing officer for the Department issued an *Amended Preliminary Order Denying Applications* (“Preliminary Order”) on February 2, 2026.

On February 17, 2026, LCSC filed *Applicant’s Petition for Reconsideration or in the Alternative to Re-Open the Hearing* (“Petition”). Generally, a petition for reconsideration must be filed within fourteen days of the preliminary order. IDAPA 37.01.01.730.02.b. Because the fourteenth day fell on February 16, 2026, which was President’s Day, LCSC’s petition was still timely because it was filed the following day. *See* IDAPA 37.01.01.54.

The primary issue in the consolidated cases is whether the changes proposed in Applications 84488 and 84490 will reduce flows in designated reaches of the Snake River and injure water rights that rely on those flows. LCSC has been aware of this issue from the time the Coalition filed its protest on November 30, 2020. The Coalition’s protests against Applications 84488 and 84490 stated: “The Applicant has failed to show how the location and use of the new points of diversion (groundwater wells) will not impact the surface water supply and water rights in the Snake River.” *Coalition Protest at 2.*

Although the *Preliminary Order* includes a significant amount of information and analysis, the ultimate holding of the *Preliminary Order* is straightforward. LCSC did not satisfy its burden of proof to show 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. Specifically, LCSC did not provide reliable estimates of anticipated depletions for the designated reaches of the Snake River. The only technical evidence LCSC provided to address the anticipated depletions

to the Snake River was an analysis of Application 84488 using ETRAN 3.2 and an analysis of Application 84490 using ETRAN 3.3. The administrative record for this case includes persuasive evidence from both parties that the Department's Transfer Tool (ETRAN) cannot be used to reliably estimate anticipated depletions to the designated reaches of the Snake River for Applications 84488 and 84490 because of the complex hydrogeology at the proposed points of diversion and the proximity of the proposed points of diversion to the Snake River. The *Preliminary Order* included the following summary of the persuasive evidence in the record that supports this conclusion:

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]aution 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.

Preliminary Order at 14.

In the absence of reliable technical evidence quantifying the anticipated depletions caused by diverting water right 35-14041 from the proposed points of diversion, the Department cannot approve Applications 84488 or 84490. In its *Petition*, LCSC advances arguments about various aspects of the contested case. LCSC's arguments, however, do not address the primary reason that Applications 84488 and 84490 were denied – LCSC's failure to provide reliable estimates for anticipated depletions.

LCSC provided extensive argument in its expert reports, through expert testimony, and in its *Petition* that ETRAN 3.2 and 3.3 produce more reliable results than ETRAN 3.4. *Petition* at 17-21 (arguing that "ETRAN 3.2/ESPAM 2.1 is the more appropriate model version to utilize"). In one of its expert reports, LCSC asserts that the R^2 value for ESPAM 2.1 (0.0147) is better than the R^2 value for ESPAM 2.2 (0.0079) when comparing modeled flow to measured flow for the

Neeley to Minidoka Reach of the Snake River. Ex. 13 at 9-12. Even if ESPAM 2.1 (and ETRAN 3.2 and 3.2) is slightly more reliable than ESPAM 2.2 (and ETRAN 3.4) for estimating depletions in the Neeley to Minidoka Reach, that does not mean the results are reliable. LCSC acknowledges this limitation in its comparison of R^2 values:

The R^2 values of both models provide a quantitative measure of the “goodness of fit”, that is, how well a model fits a set of observations. An R^2 of 1 means the model fits the measurements perfectly. An R^2 of 0 means the worst possible model fits to the measured data. Both ESPAM2.1 and 2.2 have very small R^2 values for the Near Neeley to Minidoka Reach, 0.0147 and 0.0079, respectively, strongly indicating **very poor fittings** to the data by both models for this reach. In fact, the smaller R^2 value of ESPAM2.2 model suggests an even worse match to the measured data at Near Neeley to Minidoka Reach, compared with ESPAM2.1. It is also critical to understand that for most other reaches and springs along the Snake River, both the ESPAM2.1 and ESPAM2.2 models achieved much more satisfactory fittings to measured reach gains and losses.

Ex. 13 at 11 (emphasis in original).

LCSC’s comparison of ESPAM 2.1 to ESPAM 2.2 does not overcome the persuasive evidence that ESPAM and ETRAN are not reliable tools for predicting depletions from ground water points of diversion that are close to the Snake River in complex hydrogeology. Ultimately, the hearing officer does not have to decide which version of the Transfer Tool (ETRAN) is more reliable because both parties provided persuasive evidence that the Transfer Tool cannot be used to accurately predict the anticipated depletions for Application 84488 and 84490, regardless of which version of the Transfer Tool is used. Therefore, LCSC’s comparison of ESPAM 2.1 and ESPAM 2.2 has little probative value.

As summarized in the *Preliminary Order*, LCSC hired Clearwater Geosciences LLP (“Clearwater”) to conduct a pump test to evaluate the local impacts of diverting water from the proposed points of diversion. *Preliminary Order* at 12-14. The expert report prepared by Clearwater, summarizing the methods and results of the pump test, was admitted into the record as Exhibit 12. LCSC asserts that the hearing officer improperly used the expert report from Clearwater to support the determination that ETRAN cannot be used to accurately predict the anticipated depletions from the proposed points of diversion. *Petition* at 21 (“The Coalition[‘s] assertion of site-specific localized impacts were addressed separately by LCSC [through the Clearwater analysis] . . . which the hearing officer evidently utilized and mixed into the ETRAN/ESPAM analysis to justify denial of the Transfers.”).

Pursuant to Idaho Code § 42-222, the Department may “examine all the evidence and available information” when evaluating an application for transfer. This means that a hearing officer may rely on any evidence in the record to decide an issue, even if the evidence was not intentionally offered to address that particular issue. The Clearwater pump test and analysis may not have been performed to address the general reliability of the Transfer Tool for estimating depletions from the proposed points of diversion. The Clearwater report confirms, nonetheless, that the hydrogeology at the proposed points of diversion is complex. Ex. 12 at 3-4 (describing

the complex hydrogeology). The Clearwater report comparing ESPAM 2.1 to ESPAM 2.2 (Exhibit 13) may not have been created to address the general reliability of the Transfer Tool for estimating depletions from the proposed points of diversion. The report confirms, nonetheless, that “neither ESPAM2.1 nor ESPAM2.2 are very reliable for evaluating impacts from the transfer applications along the Near Neeley to Minidoka Reach.” Ex. 13 at 10. “It is obvious that both ESPAM2.1 and ESPAM2.2 models failed to match the measured reach gains and losses to any reasonably satisfactory degree.” *Id.* (emphasis in original). “Because of the apparent inadequacy of the ESPAM2.2 and ETRAN3.4 for representing the complex river-aquifer interaction nature for the Neeley to Minidoka Reach, the predicted river depletion for the Neeley to Minidoka Reach by these models is not robust or reliable, particularly when the proposed transfer pumping locations are near this river reach.” *Id.* at 12. “ESPAM is not capable of the refinement necessary to understand ground water behavior at the local scale.” *Id.* “The consultants [for the protestants] used different versions of the ETRAN models developed by IDWR . . . to calculate the impacts of planned transfers upon gaining and losing river reaches but made the same observation—the 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. “We [LCSC’s experts] agree with these expert opinions.” *Id.* Although LCSC provided persuasive evidence that ESPAM 2.1 and ESPAM 2.2 and the ETRAN versions based on those models are not reliable tools for estimating the anticipated depletions associated with Application 84488 and 84490, LCSC did not provide any alternate depletion analysis.

LCSC provides a summary of the burdens of proof in a protested transfer application and contends that LCSC met its initial burden of proof by simply providing an analysis using the Transfer Tool, regardless of whether that analysis is reliable. *Petition* at 17. LCSC asserts that once it provided an analysis using ETRAN 3.2, the burden of proof shifted to the Coalition to demonstrate that ETRAN 3.4 should be used over ETRAN 3.2. *Id.* at 18. According to LCSC, “the transfer applicant’s burden is an ‘initial’ burden that then shifts to any protestants to the application for transfer once the applicant provides sufficient and persuasive evidence for the Department to evaluate the transfer criteria” *Id.* at 10.

LCSC suggests that the evaluation of whether an applicant has satisfied their burden of proof should be conducted when an application is filed or should be conducted using only a portion of the evidence in the administrative record. This idea must be rejected. The evaluation of whether an applicant has satisfied their initial burden of proof to demonstrate that an application for transfer will not injure other water rights is based on all the evidence in the administrative record. It is not a box that can be checked prior to the administrative hearing. In this case, LCSC has not satisfied its initial burden of proof because, when considering all the evidence in the administrative record, including persuasive evidence that ETRAN is not a reliable tool for evaluating depletions in this case, LCSC has not provided reliable technical evidence of the anticipated depletions to the designated reaches of the Snake River.

LCSC also argues that the hearing officer should have created and adopted approval conditions that would address any injury concerns. One of the proposed points of diversion in Application 84488 is an existing well (“West Well”) that, according to LCSC, intercepts water in the shallow aquifer at the Walcott property and is in direct communication with the Snake River. LCSC asserts that the depletions associated with water pumped from the West Well “will be

realized in the Neeley to Minidoka reach.” *Petition* at 24. LCSC asserts that “some portion of the . . . pumping impacts [from the West Well] will result in depletions in the Near Blackfoot to Neeley Reach.” *Id.* In theory, one might be able to set pumping limits on the West Well, the Duffin Well, and the proposed new wells to balance the impacts to the various river reaches. To do so, however, one would need to have reliable technical evidence summarizing the anticipated depletions caused by diverting water from the deeper aquifer the Walcott property. LCSC has not provided such evidence.

Finally, LCSC asks the hearing officer to “re-open the hearing for the limited purpose of taking evidence on the below Milner issues pursuant to Rule 59(a)(3) of the Idaho Rules of Civil Procedure.” *Petition* at 27. LCSC contends that the hearing officer identified new issues that were not raised by the Coalition and were not addressed at hearing. *Id.* at 5.

As an initial matter, Rule 59 of the Idaho Rules of Civil Procedure does not apply to contested cases before the Department. IDAPA 37.01.01.051 (“Unless required by statute, or otherwise provided by these rules, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested cases before the agency.”). The Department’s Rules of Procedure do not include any reference to Rule 59 of the Idaho Rules of Civil Procedure. LCSC cites an order from a previous contested case before the Department (Application for Transfer 82640 in the name of Clinton K. Aston) to support its argument that a hearing officer has the authority to re-open a contested case to allow the parties to provide additional evidence. The *Aston* case is a poor comparison to this contested case. In *Aston*, the hearing officer re-opened the administrative record to allow the parties to provide evidence related to forfeiture and defenses to forfeiture for certain water rights. Forfeiture and defenses to forfeiture had not been raised by any party prior to the initial hearing. As noted above, in this case, the parties were aware that the primary issue in the case was anticipated depletion to all designated reaches of the Snake River, including the reaches below Milner Dam.

LCSC presented the following arguments related to depletions in the reaches of the Snake River below Milner:

As for modeled depletions below Milner, which the Hearing Officer primarily based his denial of the Transfers on, none of the modeled impacts for [] each specific reach exceeded the mitigation thresholds.

Petition at 20.

The hearing officer’s decision to deny the Transfers on this basis [that the Applications would cause unmitigated impacts below Milner] was not anticipated, particularly given ETRAN/ESPAM evidence in the record on below Milner impacts.

Id. at 23.

[T]he Hearing Officer assumed that all new pumping impacts under the Transfers (including from the West Well) would come from the deep aquifer and be fully isolated from the Snake River in the local vicinity[.]

Id.

[The hearing officer assumed] that all of the pumping impacts will reveal themselves below Milner in volumes that will exceed the mitigation thresholds.

Id. at 24.

These statements mischaracterize the *Preliminary Order* and reflect a misunderstanding of the primary reason Applications 84488 and 84490 were denied. The hearing officer did not assume that all the unaccounted pumping impacts would be realized in reaches below Milner. The *Preliminary Order* does not conclude that the proposed changes will exceed the mitigation thresholds for the reaches of the Snake River below Milner. The references to the Snake River reaches below Milner simply highlight why it is critical for LCSC to provide reliable estimates for anticipated depletions. According to the ETRAN results provided by LCSC, the anticipated depletions from the proposed changes are very close to the mitigation thresholds for certain Snake River reaches below Milner. If, as the experts from both parties assert, ETRAN does not provide reliable estimates for depletion impacts for wells located in complex hydrogeology near the Snake River, then ETRAN may underestimate the depletion in the Snake River reaches below Milner Dam. It is also possible that ETRAN may overestimate the depletions below Milner. Without reliable evidence of anticipated depletions, it is impossible to know whether the anticipated depletions resulting from the proposed changes fall below the mitigation thresholds for the reaches of the Snake River below Milner.

LCSC has not identified any errors in the findings of fact set forth in the *Preliminary Order*. LCSC has not provided persuasive justification to revise the *Preliminary Order* or to re-open the contested case for additional technical evidence. Therefore, LCSC's *Petition* should be denied.

ORDER

IT IS HEREBY ORDERED that the *Petition for Reconsideration or in the Alternative to Re-Open the Hearing* filed by LCSC is DENIED.

Dated this 24th day of February 2026.

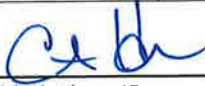


James Cefalo
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of February 2026, true and correct copies of the above *Order Denying Petition for Reconsideration or in the Alternative to Re-Open Hearing* 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
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Christina Henman
Administrative Assistant

EXPLANATORY INFORMATION

The accompanying order is an **Order Denying Petition for Reconsideration** of the "preliminary order" issued previously in this proceeding by the department pursuant to section 67-5243, Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after the service date of this denial of petition for reconsideration of the preliminary order, any party may in writing file exceptions to any part of the preliminary order and file a brief 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.

If any party appeals or takes exceptions to the 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, 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 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 issuance 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.