

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

IN THE MATTER OF	)	
APPLICATION FOR TRANSFER	)	PRELIMINARY ORDER
NO. 90005 IN THE NAME OF	)	DENYING APPLICATION
<u>HASTINGS FAMILY TRUST</u>	)	

On August 14, 2025, Hastings Family Trust (“Hastings”) filed Application for Transfer 90005 with the Idaho Department of Water Resources (“Department”). The Department published notice of the application on September 10 and 17, 2025. No protests were filed against the application. After carefully considering the application and all evidence and available information, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Application 90005 proposes to move a one-acre portion of water right 35-7449B to property owned by Hastings. The proposed point of diversion and place of use are in Swan Valley, a tributary basin of the Eastern Snake Plain Aquifer (“ESPA”). The proposed point of diversion and place of use are located approximately thirty miles east of Idaho Falls.

2. Hastings has agreements in place to purchase one acre of water right 35-7449B from the current owner of the right.

3. At the time Application 90005 was filed, water right 35-7449B bore the following elements:

Water Right 35-7449B
Current Owner: Phillips Brothers Farm & Livestock
Priority Date: October 15, 1974
Source: Ground Water
Purpose of Use: Irrigation
Season of Use: 4/1 – 10/31
Diversion Rate: 3.76 cubic feet per second (“cfs”)
Diversion Volume: 1,093.2 acre-feet per year
Place of Use: 273.3 acres

4. The existing point of diversion and place of use for water right 35-7449B are in Sections 1 and 2, T01S, R32E, approximately thirty miles west of Idaho Falls.

5. If water right 35-7449B were split proportionally, a one-acre portion of the water right would only authorize a diversion rate of 0.01 cfs (4.5 gallons per minute).

6. On February 2, 2026, Hastings filed Application for Permit No. 23-11564, seeking a permit to divert 0.10 cfs from ground water for the irrigation of one acre of lawn, native grasses and landscaping. The one-acre proposed place of use is identical to the proposed place of use in Application 90005.

7. Application 23-11564 included the following description of the proposed use:

Applicant submitted Transfer Application No. 90005 to relocate 1.0 acre of water right [35-7449B] that is proposed to be purchased. The diversion rate is deficient to allow a sprinkler system to operate. This application proposes to obtain an adequate diversion rate to operate the sprinkler system for the 1.0 acre of irrigation. All volume is mitigated by the transferred water right. In combination, this Permit Application and Transfer No. 90005 will not exceed 1.0 acre of irrigation with a standard volume for this area.

8. Based on the rate proposed in Application 23-11564, the sprinkler system to be constructed at the proposed place of use for Application 90005 will divert water at a rate of 0.10 cfs (44.9 gallons per minute).

9. Rocky Mountain Environmental Associates Inc. ("RMEA") is listed as an authorized representative for Hastings on Applications 90005 and 23-11564 and helped Hastings prepare the applications. RMEA also prepared a technical analysis included with Application 90005.

10. The diversion of ground water for consumptive use from the ESPA or its tributary basins reduces stream flow in the Snake River.

11. Water in the Snake River and in other sources hydraulically connected to the ESPA is considered fully appropriated during most of the year.

RELEVANT LEGAL PROVISIONS

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

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

ANALYSIS

On July 16, 2024, the Director of the Department issued an *Amended Snake River Basin Moratorium Order* (“Moratorium”), prohibiting the “processing and approval of . . . new applications for permits to appropriate water from the Snake River upstream from Swan Falls Dam and all surface and ground water sources in the trust water area and the non-trust water area . . .” *Moratorium* at 33. “The moratorium does not prevent the Director from reviewing for approval on a case-by-case basis an application which otherwise would not be approved under terms of this moratorium if . . . [t]he Director determines that the development and use of the water . . . will have no effect on prior surface and ground water rights because of . . . mitigation provided by the applicant to offset injury to other water rights.” *Id.* at 34.

Hastings proposes to develop a new use of water in the Upper Snake River Basin. The full extent of the proposed new use of water is reflected in Application 23-11564. Hastings proposes to divert 0.10 cfs from ground water, up to 3.5 acre-feet per year, to irrigate 1.0 acre of landscaping. Pursuant to the *Moratorium*, Application 23-11564 may only be approved if the applicant fully mitigates any potential injury to other water rights. For applications proposing to divert ground water from the ESPA or its tributary basins, this means that there cannot be an increase in depletions for any designated reach of the Snake River.

The proposed point of diversion for Application 23-11564 is located outside of the Eastern Snake Plain Aquifer Model (version 2.2) boundary, in a tributary basin upstream of the Heise to Shelley Reach of the Snake River. In its technical analysis for Application 90005, RMEA determined that the full depletion impact from the proposed irrigation use would be realized in the Heise to Shelley Reach of the Snake River.

Consistent with technical information available to the Department, the maximum consumptive use for irrigation at the proposed place of use is 2.5 acre-feet per acre per year. Therefore, the new irrigation system proposed by Hastings could deplete the Heise to Shelley Reach of the Snake River by as much as 2.5 acre-feet per year. Pursuant to the *Moratorium*, the Department may only approve Application 23-11564, if the 2.5 acre-feet of new depletions to the Heise to Shelley Reach of the Snake River are fully mitigated.

Hastings does not propose to fully mitigate the depletions to the Heise to Shelley Reach of the Snake River. Instead, Hastings provides an analysis of depletion impacts using the Department’s Transfer Tool (ETRAN). The RMEA ETRAN analysis shows that moving a one-acre portion of water right 35-7449B from its existing point of diversion to the proposed point of diversion will increase depletions in the Heise to Shelley Reach of the Snake River by 0.83 acre-feet per trimester. According to RMEA, “Because 0.83 af/trimester is less than the IDWR-defined de minimus threshold of 2 af/trimester, no mitigation is required for this transfer when modeled at steady state.” *RMEA Analysis* at 3.

Under its current policies, the Department may approve a transfer application that increases depletions in designated reaches of the Snake River as long as the depletions fall within certain thresholds established by the Department. One of the thresholds allows an increase in depletions to a specific reach of the Snake River if the increase is 2.0 acre-feet per trimester or less. According to RMEA, because the increase in depletions to the Heise to

Shelley Reach of the Snake River under the transfer application are less than 2.0 acre-feet per trimester, Hastings does not have to mitigate for the increased depletions to that reach.

By filing an application for transfer and an application for permit for their proposed project, Hastings seek to derive the benefits of both processes but avoid the full requirements of those processes. Hastings want the benefit of the diversion rate for the full system demand (0.10 cfs) through the application for permit but assert that they do not have to fully mitigate for the increased depletions to the Heise to Shelley Reach of the Snake River caused by the new water use. Similarly, Hastings want to rely on the mitigation thresholds available for transfer applications but want to avoid transferring enough water to cover the full rate required for irrigation.

Hastings approach for obtaining water rights for their proposed ground water use is not consistent with the provisions of the *Moratorium*. An application for permit that would otherwise be barred by the *Moratorium* may only be approved if the applicant mitigates for all anticipated depletions. For an application proposing to divert ground water from the ESPA or its tributary basins, this means that an applicant must mitigate for all anticipated depletions to the designated reaches of the Snake River. The mitigation thresholds used for transfer applications do not apply to applications for permit. Therefore, the combination of Applications 90005 and 23-11564 will result in unmitigated depletions to the Heise to Shelley Reach of the Snake River and will injure water rights that rely on flows in the Heise to Shelley Reach.

By combining the transfer application and permit application processes into a single process or successive processes, applicants like Hastings are not fully mitigating for depletion impacts to the Snake River as required by the *Moratorium*. If a property owner wants to develop a new water use from ground water in the ESPA or its tributary basins, the property owner has two options to cover the proposed development:

- 1) File an application for transfer to move an existing water right to cover the proposed project. If this option is pursued, the property owner must transfer enough water rights to satisfy the full demand of the proposed use (rate, volume, and acres). For irrigation of smaller acreage, this will likely mean that a property owner must acquire and move more acres than are proposed to be irrigated, to satisfy the high instantaneous diversion rate of a proposed project.

Or

- 2) File an application for permit to cover the full water demands of a proposed project. The application must include a mitigation plan that fully mitigates any anticipated depletions to the designated reaches of the Snake River.

According to the documents provided with Application 90005, Hastings has an agreement to purchase one acre of water right 35-7449B. A one-acre portion only equates to an authorized diversion rate of 0.01 cfs. This is not sufficient to cover the full demand of the proposed water development (0.10 cfs). Therefore, Application 90005 must be denied. Hastings is free to file an application for transfer in the future that covers the full 0.10 cfs associated with their proposed irrigation system. As noted above, Hastings is also free to pursue

an application for permit for the proposed project and fully mitigate for any anticipated depletions. The Department will not reject Application 23-11564 at this time, providing Hastings with an opportunity to develop a mitigation plan to fully mitigate for the anticipated depletions in the Heise to Shelley Reach of the Snake River.

CONCLUSIONS OF LAW

Application 90005 does not propose to move sufficient rate under water right 35-7449B to cover the full diversion rate of the proposed irrigation project. This creates a substantial risk of enlargement. Any diversion in excess of the rate authorized by the one-acre portion of water right 35-7449B (0.01 cfs) would enlarge the use under the water right. Further, it is not in the local public interest to allow water users to circumvent the requirements of the *Moratorium* by obtaining new consumptive use water rights without fully mitigating for the anticipated depletions. Therefore, Application 90005 should be denied.

ORDER

IT IS HEREBY ORDERED that Application for Transfer 90005 filed in the name of Hastings Family Trust is DENIED.

Dated this 10th day of March 2026.



James Cefalo
Regional Manager

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of March 2026, I served a copy of this *Preliminary Order Denying Application* by US Mail, certified with return receipt requested, postage prepaid and properly addressed to the following:

HASTINGS FAMILY TRUST
471 E RIDGEVIEW CIR
IVINS, UT 84738
jmfhastings@gmail.com

ROCKY MOUNTAIN ENVIRONMENTAL ASSOC.
482 CONSTITUTION WAY, STE 303
IDAHO FALLS, ID 83402
thane.rmea@gmail.com
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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 **not** held.)

The accompanying document is a "**Preliminary Order**" issued by the Idaho Department of Water Resources ("Department") pursuant to Idaho Code § 67-5243. **This preliminary order can and will become a final order without further action of the Department, unless a party petitions for reconsideration, petitions for review, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

(See Idaho Code § 67-5243(3))

Any party may file a petition for reconsideration of this preliminary order with the Department within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The presiding 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.

PETITION FOR REVIEW (EXCEPTIONS)

(See Idaho Code § 67-5245)

Within fourteen (14) days after: (a) the service date of this preliminary order, (b) the service date of a denial of a petition for reconsideration of this preliminary order, or (c) the failure within twenty-one (21) days of the presiding officer to act on a petition for reconsideration of this preliminary order, any party may petition the Director in writing to review any part of this preliminary order by filing exceptions, and any supporting brief, with the Department.¹ Any parties opposing the exceptions shall have fourteen (14) days from the service date of the exceptions to file a brief. If the Director determines that oral argument is to be heard, the Director will provide reasonable notice to the parties of the place, date, and hour for the argument.

The Director will issue a final order on exceptions within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless extended for good cause. The Director may remand the matter for or hold an evidentiary hearing if further factual development of the record is necessary before issuing a final order.

REQUEST FOR HEARING

(See Idaho Code § 42-1701A(3))

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to Idaho Code § 42-1701A(3). A written petition to the Director contesting the preliminary order and requesting a hearing must be filed with the Department

¹ The Director may decide to review this preliminary order upon his own motion. Should the Director decide to do so, the Director will provide written notice to the parties within the period the parties are allowed to petition the director for review of the preliminary order.

by any aggrieved person **within fifteen (15) days after service of this preliminary order.**

CERTIFICATE OF SERVICE

(See IDAPA 37.01.01.053, 37.01.01.202)

All documents filed with the Department in connection with a petition for reconsideration, petition for review, or a request for hearing of this preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 53 and 202.