

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

CITY OF HEYBURN,

Petitioner,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondent.

Case No. CV01-25-19943

IN THE MATTER OF APPLICATION
FOR TRANSFER NO. 87938 IN THE
NAME OF THE CITY OF HEYBURN

AGENCY RECORD ON APPEAL

Judicial Review from the Idaho Department of Water Resources
Phill Hummer, Presiding Hearing Officer
Mathew Weaver, Director

RAÚL R. LABRADOR
ATTORNEY GENERAL

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Chief of Energy and Natural Resources
Division

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TABLE OF CONTENTS

Table of Contents	ii
Index.....	iv
Amended Application for Transfer of Water Right, June 14, 2023	1–53
Request for Hearing, March 1, 2024.....	54–56
Order Granting Request for Hearing; Order Appointing Hearing Officer; Notice of Prehearing Conference, April 19, 2024.....	57–60
Notice of Hearing, May 15, 2024.....	61–62
City of Heyburn’s Exhibit and Witness List, July 2, 2024	63–65
Preliminary Order Affirming Approval of an Application for Transfer, October 2, 2025	66–77
Amended Final Order Approving Application for Transfer, in Part, October 21, 2025.....	78–88
Second Amended Transfer of Water Right Transfer No. 87938, October 21, 2025.....	89–100

EXHIBITS OFFERED AND ADMITTED DURING THE JULY 9, 2024 AGENCY HEARING

Exhibit 1: Application for Transfer, May 9, 2023	101–139
Exhibit 2: Email from James Cefalo re: City of Heyburn Wastewater Treatment Returns, August 11, 2023	140–141
Exhibit 3: IDWR Transfer Approval, January 16, 2024	142–169
Exhibit 4: Petition for Reconsideration, January 30, 2024	170–175
Exhibit 5: Declaration of Tony Morley in Support of Petition for Reconsideration, January 30, 2024	176–178
Exhibit 6: Preliminary Order, February 20, 2024	179–202
Exhibit 8: Technical Memo, Brockway Engineering, PLLC, June 14, 2024	203–208
Exhibit 9: 2023 Calendar Year Monthly Water Consumption for City of Heyburn, Brockway Engineering, PLLC, July 1, 2024	209–212
Exhibit 10: Proposed Condition.....	213

AGENCY RECORD CERTIFICATIONS AND NOTICES

Notice of Lodging the Agency Record and Transcript with the Agency,
December 5, 2025 214–216

INDEX

Amended Application for Transfer of Water Right, June 14, 2023.....	1–53
Amended Final Order Approving Application for Transfer, in Part, October 21, 2025.....	78–88
City of Heyburn’s Exhibit and Witness List, July 2, 2024	63–65
Exhibit 1: Application for Transfer, May 9, 2023	101–139
Exhibit 2: Email from James Cefalo re: City of Heyburn Wastewater Treatment Returns, August 11, 2023	140–141
Exhibit 3: IDWR Transfer Approval, January 16, 2024	142–169
Exhibit 4: Petition for Reconsideration, January 30, 2024	170–175
Exhibit 5: Declaration of Tony Morley in Support of Petition for Reconsideration, January 30, 2024	176–178
Exhibit 6: Preliminary Order, February 20, 2024	179–202
Exhibit 8: Technical Memo, Brockway Engineering, PLLC, June 14, 2024	203–208
Exhibit 9: 2023 Calendar Year Monthly Water Consumption for City of Heyburn, Brockway Engineering, PLLC, July 1, 2024	209–212
Exhibit 10: Proposed Condition.....	213
Index.....	iv
Notice of Hearing, May 15, 2024.....	61–62
Notice of Lodging the Agency Record and Transcript with the Agency, December 5, 2025	214–216
Order Granting Request for Hearing; Order Appointing Hearing Officer; Notice of Prehearing Conference, April 19, 2024.....	57–60
Preliminary Order Affirming Approval of an Application for Transfer, October 2, 2025	66–77
Request for Hearing, March 1, 2024.....	54–56
Second Amended Transfer of Water Right Transfer No. 87938, October 21, 2025.....	89–100

Table of Contents ii

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JUN 14 2023

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

DEPT OF WATER RESOURCES
SOUTHERN REGION

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Name of Applicant(s) CITY OF HEYBURN Phone 2086798158
Mailing address 941 18TH ST HEYBURN, ID 83336-4902 Email _____

- If applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign or act on behalf of the applicant. Label it **Attachment #1.**
- Attach water right ownership documentation if Department records do not show the transfer applicant as the current water right owner. Label it **Attachment #2a.**
- If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Label it **Attachment #2b.**
- Attach documentation of authority to make the proposed change if the applicant is not the water right owner. Label it **Attachment #3.**

Provide contact information below if a consultant, attorney, or any other person is representing the applicant in this transfer process.

No Representative

Name of Representative Greg Sullivan Brockway Engineering PLLC Phone 208-736-8543
Mailing address 2016 N Washington St Ste 4 Twin Falls, Idaho 83301 Email greg.sullivan@brockwayeng.com

- Send all correspondence for this application to the representative and not to the applicant.
OR
- Send original correspondence to the applicant and copies to the representative.
- The representative may submit information for the applicant but is not authorized to sign for the applicant.
OR
- The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4.**

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

Dick Galbraith
Signature of Applicant or Authorized Representative

Dick Galbraith, Mayor
Print Name and Title if applicable

June 14, 2023
Date

Signature of Applicant or Authorized Representative

Print Name and Title if applicable

Date

A. PURPOSE OF TRANSFER

- 1. Change point of diversion Add diversion point(s) Change place of use
 Change nature of use Change period of use Other _____

2. Is this a transfer for changes pursuant to Idaho Code §42-221.0.8?
If yes, attach an explanation and any supporting documentation labeled as **Part IA.2.**

3. Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part IA.3.**

This transfer proposes changing the domestic, irrigation and commercial portions of water rights 36-4233, 36-7970, 36-8332, 36-8332, 36-8744 and 36-17185 to a beneficial use of municipal.

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DEPARTMENT OF WATER RESOURCES

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SOUTHERN REGION

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.

1.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
<input checked="" type="checkbox"/> All or <input type="checkbox"/> Part	36-4233	0.12/16.0	Municipal	1/01 to 12/31	Ground Water
<input type="checkbox"/>		0.20/7.0	Municipal	1/01 to 12/31	Ground Water
<input checked="" type="checkbox"/>	36-7970	0.20/27.6	Municipal	1/01 to 12/31	Ground Water
<input checked="" type="checkbox"/>	36-8332	0.04/0.9	Municipal	1/01 to 12/31	Ground Water
<input checked="" type="checkbox"/>	36-8744	0.05/2.4	Municipal	1/01 to 12/31	Ground Water
<input type="checkbox"/>		0.02/0.6	Municipal	1/01 to 12/31	Ground Water
<input checked="" type="checkbox"/>	36-17185	0.05/2.4	Municipal	1/01 to 12/31	Ground Water
<input checked="" type="checkbox"/>	36-8550	6.67/	Municipal	1/01 to 12/31	Ground Water
<input checked="" type="checkbox"/>	36-8738	3.3/	Municipal	1/01 to 12/31	

Total authorized under rights 10.53 cfs and/or _____ acre-feet.

2. Total amount of water proposed to be transferred or changed 10.53 cubic feet per second and/or _____ acre-feet per year.

3. Point(s) of Diversion:

- No changes to point(s) of diversion are proposed - the following chart is therefore not completed. (Proceed to #4.)
- Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA. Label it **Attachment #5**.

New ?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
See Exhibit A										

4. Place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)

- No changes to place of use are proposed - the following chart is therefore not completed. (Proceed to #5.)

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
See Exhibit B																			
Total Acres (for irrigation use)																			

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Exhibit A
Points of Diversion

	Township	Range	Sec.	QQQ	QQ	Q	County	Local Name
1	10S	23E	15	NW	SE	NE	Minidoka	Well #2
2	10S	23E	9	SE	NW	NW	Minidoka	Well #3
3	10S	23E	22	SW	NE	NW	Minidoka	Well #4
4	10S	23E	11	SE	NE	NE	Minidoka	Well #5B
5	10S	23E	11	SW	NE	NE	Minidoka	Well #5A
6	10S	23E	11	SE	NW	NE	Minidoka	Joshnik Well
7								
8								
9								
10								

87938

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Exhibit B
Place of Use

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4			
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4
10S	23E	2																M
10S	23E	4											M					
10S	23E	5																M
10S	23E	7	M	M	M	M												
10S	23E	8	M	M	M	M	M	M	M	M								
10S	23E	9	M	M	M	M	M	M	M	M	M			M	M	M	M	M
10S	23E	10			M	M			M	M	M	M	M	M	M	M	M	M
10S	23E	11	M	M	M	M				M	M	M	M	M	M	M		
10S	23E	14					M	M	M									
10S	23E	15	M	M	M	M	M	M	M	M	M	M	M	M	M	M	M	
10S	23E	16	M	M	M	M	M	M	M	M					M	M		M
10S	23E	22	M	M			M	M		M	M			M		M	M	

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Total Acres 0

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

DEPT. OF WATER RESOURCES
SOUTHERN REGION

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

5. General Information:

a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:

Existing wells. Mainlines will be installed to connect all of the wells together.

b. Who owns the property at the point(s) of diversion? The applicant

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?

If yes, attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: N/A

It is the applicant's responsibility to provide notice to lien holder, trustee, mortgagor, or contract holder of the proposed changes that may impact or change the value of the water rights or affected real property. Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.

d. Are any of the water rights proposed for transfer currently leased to the Water Supply Bank?

If yes, complete Attachment WSB.

e. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer:

Historical use will remain unchanged.

f. Describe the use of any other water right(s) for the same purpose or land, or the same diversion system as right(s) proposed to be transferred at both the existing and proposed point(s) of diversion and place(s) use:

None

g. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

- undergone a period of five or more consecutive years of non-use,
- currently leased to the Water Supply Bank,
- currently used in a mitigation plan limiting the use of water under the right, or
- currently enrolled in a Federal set-aside program limiting the use of water under the rights?

If yes, describe:

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2

A. DESCRIPTION OF RIGHT(S) AS RECORDED

For each water right listed in Part 1B.1 of the application, attach a Part 2A report obtained from any Department office or from the Department's website @ idwr.idaho.gov, Water Right Transfers, Step 1. Insert Part 2A reports into the application following Part 1.

B. IF ONLY A PORTION OF THE RIGHT IS PROPOSED TO BE CHANGED, DESCRIBE THE PORTION BEING CHANGED AS IT APPEARS BEFORE THE REQUESTED CHANGES

Complete and attach one copy of Part 2B for each right for which only a portion is proposed to be changed. If the entire right is proposed to be changed, Part 2B is not applicable. Additional copies of the Part 2B form can be obtained from any Department office or from the Department's website @ idwr.idaho.gov, Water Right Transfers, Step 3, or Water Right Forms, Changes in Use. Insert completed Part 2B forms into the application following Part 2A of the same water right.

Right Number: _____

- 1. amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
 amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
 amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
 amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
 amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
 amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
 amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
 amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Lands irrigated or place of use: (If irrigation, identify with number of acres irrigated per 1/4 1/4 tract.)

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Acre Totals		
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
Total Acres (for irrigation use)																					

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 36-8550

Current Owner: CITY OF HEYBURN
 Priority Date: 5/29/1990
 Origin: Water Right
 Status: Active
 Basis: License

Source

Tributary

GROUND WATER

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
MUNICIPAL	01/01 to 12/31	6.67 CFS	
	<u>Total Diversion</u>	6.67 CFS	

Location of Point(s) of Diversion

GROUND WATER MINIDOKA County	NW1/4SE1/4NE1/4	Sec. 15, Twp 10S, Rge 23E B.M.
GROUND WATER MINIDOKA County	SW1/4NE1/4NW1/4	Sec. 15, Twp 10S, Rge 23E B.M.
GROUND WATER MINIDOKA County	SE1/4NW1/4NW1/4	Sec. 9, Twp 10S, Rge 23E B.M.
GROUND WATER MINIDOKA County	SW1/4NE1/4NW1/4	Sec. 22, Twp 10S, Rge 23E B.M.

Place of Use

MUNICIPAL Within MINIDOKA County

T10S R23E S8	NENE	T10S R23E S8	NWNE
T10S R23E S8	SWNE	T10S R23E S8	SENE
T10S R23E S9	NWNE	T10S R23E S9	SWNE
T10S R23E S9	NENW	T10S R23E S9	NWNW
T10S R23E S9	SWNW	T10S R23E S9	SESW
T10S R23E S9	NESW	T10S R23E S9	SESW
T10S R23E S9	SWSE	T10S R23E S10	NESW
T10S R23E S10	SWSW	T10S R23E S10	SESW
T10S R23E S10	NWSE	T10S R23E S10	SWSE
T10S R23E S10	SESE	T10S R23E S11	SWNE
T10S R23E S11	SENE	T10S R23E S11	SESW
T10S R23E S11	NESW	T10S R23E S11	NWSW
T10S R23E S11	SWSW	T10S R23E S11	SESW
T10S R23E S11	NESE	T10S R23E S11	NWSE
T10S R23E S15	NENE	T10S R23E S15	NENE
T10S R23E S15	NENE	T10S R23E S15	NENE

Page _____ of _____

T10S R23E S15 NWSW
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T10S R23E S15 SWSW
T10S R23E S15 SWSW
T10S R23E S16 Lot 6 NENE
T10S R23E S16 NENW
T10S R23E S16 Lot 5 SENW
T10S R23E S22
T10S R23E S22 NWNE
T10S R23E S22 NENW
T10S R23E S22 NENW
T10S R23E S22 SENW
T10S R23E S22 Lot 5 NESW

T10S R23E S15 NWSW
T10S R23E S15 NWSW
T10S R23E S15 NWSW
T10S R23E S15 NWSW
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T10S R23E S15 SWSW
T10S R23E S15 SWSW
T10S R23E S15 SWSW
T10S R23E S15 SWSW
T10S R23E S16 Lot 4 NWNW
T10S R23E S16 Lot 7 NESE
T10S R23E S22 NENE
T10S R23E S22 SWNE
T10S R23E S22 NENW
T10S R23E S22 NENW
T10S R23E S22 SENW

Conditions of Approval:

1. R55 This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
2. T07 The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
3. R43 The right holder shall maintain lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
4. T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
5. R05 Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
6. 115 Prior to the diversion and use of water under Transfer approval 73504, the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion, in accordance with Department specifications.
7. 124 Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
8. 046 Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
9. 004 This right does not grant any right-of-way or easement across the land of another.
10. 180 A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.

Licensed Date: 4/10/1998

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 36-8738

Current Owner: CITY OF HEYBURN

Priority Date: 5/22/1995

Origin: Water Right

Status: Active

Basis: License

Source

Tributary

GROUND WATER

Beneficial Use

From To

Diversion Rate

Annual Volume

MUNICIPAL 01/01 to 12/31
Total Diversion

3.3 CFS
3.3 CFS

Location of Point(s) of Diversion

GROUND WATER

NW1/4SE1/4NE1/4

Sec. 15, Twp 10S, Rge 23E B.M.

MINIDOKA County

GROUND WATER

SW1/4NE1/4NW1/4

Sec. 15, Twp 10S, Rge 23E B.M.

MINIDOKA County

GROUND WATER

SE1/4NW1/4NW1/4

Sec. 9, Twp 10S, Rge 23E B.M.

MINIDOKA County

GROUND WATER

SW1/4NE1/4NW1/4

Sec. 22, Twp 10S, Rge 23E B.M.

MINIDOKA County

Place of Use

MUNICIPAL Within MINIDOKA County

T10S R23E S8	NENE	T10S R23E S8	NWNE
T10S R23E S8	SWNE	T10S R23E S8	SENE
T10S R23E S9	NWNE	T10S R23E S9	SWNE
T10S R23E S9	NENW	T10S R23E S9	NWNW
T10S R23E S9	SWNW	T10S R23E S9	SENE
T10S R23E S9	NESW	T10S R23E S9	SESW
T10S R23E S9	SWSE	T10S R23E S10	NESW
T10S R23E S10	SWSW	T10S R23E S10	SESW
T10S R23E S10	NWSE	T10S R23E S10	SWSE
T10S R23E S10	SESE	T10S R23E S11	SWNE
T10S R23E S11	SENE	T10S R23E S11	SENE
T10S R23E S11	NESW	T10S R23E S11	NWSW
T10S R23E S11	SWSW	T10S R23E S11	SESW
T10S R23E S11	NESE	T10S R23E S11	NWSE
T10S R23E S15	NENE	T10S R23E S15	NENE
T10S R23E S15	NENE	T10S R23E S15	NENE

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T10S R23E S15		NWSW	T10S R23E S15		NWSW
T10S R23E S15		NWSW	T10S R23E S15		NWSW
T10S R23E S15		NWSW	T10S R23E S15		NWSW
T10S R23E S15		NWSW	T10S R23E S15		NWSW
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T10S R23E S15		SWSW	T10S R23E S15		SWSW
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T10S R23E S16		NENE	T10S R23E S16		NWNE
T10S R23E S16	Lot 6	SWNE	T10S R23E S16		SENE
T10S R23E S16		NENW	T10S R23E S16	Lot 4	NWNW
T10S R23E S16	Lot 5	SENW	T10S R23E S16	Lot 7	NESE
T10S R23E S22			T10S R23E S22		NENE
T10S R23E S22		NWNE	T10S R23E S22		SWNE
T10S R23E S22		NENW	T10S R23E S22		NENW
T10S R23E S22		NENW	T10S R23E S22		NENW
T10S R23E S22		SENW	T10S R23E S22		NENW
T10S R23E S22	Lot 5	NESW	T10S R23E S22		SENW

Conditions of Approval:

1. T07 The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
2. 046 Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
3. 115 Prior to the diversion and use of water under Transfer approval 73504 the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion, in accordance with Department specifications.
4. T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
5. 124 Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
6. R05 Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
7. 180 A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
8. R55 This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
9. 102 The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.
10. 075 Irrigation of large projects such as parks, golf courses, or sports activities fields is not authorized under this right.
11. 004 This right does not grant any right-of-way or easement across the land of another.
12. 022 The daily diversion volume for non-domestic uses under this municipal right shall not exceed 2,500 gallons per use and the daily diversion volume for domestic uses under this right shall not exceed 13,000 gallons per dwelling in accordance with Section 42-111, Idaho Code.
13. R43 The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).

Licensed Date: 7/10/2006

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 36-4233

Current Owner: CITY OF HEYBURN

Priority Date: 3/1/1963

Origin: Water Right

Status: Active

Basis: Decreed

Source

Tributary

GROUND WATER

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/01 to 10/31	0.12 CFS	20 AF
DOMESTIC	1/01 to 12/31	0.2 CFS	7 AF
	<u>Total Diversion</u>	0.2 CFS	27 AF

Location of Point(s) of Diversion

GROUND WATER

NE1/4NE1/4

Sec. 11, Twp 10S, Rge 23E B.M.

MINIDOKA County

Place of Use

IRRIGATION Within MINIDOKA County

T10S R23E S11 NENE 5.00

Total Acres: 5

Place of Use: DOMESTIC same as IRRIGATION

Conditions of Approval:

1. THE RIGHT HOLDER SHALL ACCOMPLISH THE CHANGE AUTHORIZED BY TRANSFER NO. 5323 BY MAY 24, 2000.
2. THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS MARCH 15 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE APRIL 1 AND AFTER OCTOBER 31 UNDER THIS REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.
3. S16 USE OF THIS RIGHT IS COMBINED WITH WATER FROM MINIDOKA IRRIGATION DIST.
4. TWO POINTS OF DIVERSION LOCATED IN T10S, R23E, S11, NENE.
5. C18 THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

Decreed Date: 8/27/2001

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 36-7970

Current Owner: CITY OF HEYBURN

Priority Date: 3/10/1981

Origin: Water Right

Status: Active

Basis: Decreed

Source

Tributary

GROUND WATER

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
DOMESTIC	1/01 to 12/31	0.2 CFS	27.6 AF
	<u>Total Diversion</u>	0.2 CFS	27.6 AF

Location of Point(s) of Diversion

GROUND WATER

SE1/4NE1/4NE1/4

Sec. 11, Twp 10S, Rge 23E B.M.

MINIDOKA County

Place of Use

DOMESTIC Within MINIDOKA County

T10S R23E S11

NENE

Decreed Date: 3/20/1998

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SCANNED
SEP 28 2023

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 36-8332

Current Owner: CITY OF HEYBURN

Priority Date: 10/12/1987

Origin: Water Right

Status: Active

Basis: License

Source

Tributary

GROUND WATER

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
COMMERCIAL	1/01 to 12/31	0.04 CFS	0.9 AF
	<u>Total Diversion</u>	0.04 CFS	0.9 AF

Location of Point(s) of Diversion

GROUND WATER

NE1/4NE1/4

Sec. 11, Twp 10S, Rge 23E B.M.

MINIDOKA County

Place of Use

COMMERCIAL Within MINIDOKA County

T10S R23E S11

NENE

Conditions of Approval:

1. Commercial use is for a gas station and convenience store.

Licensed Date: 7/6/1992

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**SCANNED
SEP 28 2023**

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 36-8744

Current Owner: CITY OF HEYBURN

Priority Date: 12/22/1995

Origin: Water Right

Status: Active

Basis: License

Source

Tributary

GROUND WATER

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
DOMESTIC	1/01 to 12/31	0.05 CFS	2.4 AF
IRRIGATION	03/15 to 11/15	0.02 CFS	0.8 AF
	<u>Total Diversion</u>	0.07 CFS	3.2 AF

Location of Point(s) of Diversion

GROUND WATER MINIDOKA County	NW1/4NE1/4	Sec. 11, Twp 10S, Rge 23E B.M.
GROUND WATER MINIDOKA County	NE1/4NE1/4	Sec. 11, Twp 10S, Rge 23E B.M.

Place of Use

IRRIGATION Within MINIDOKA County

T10S R23E S11 NWNE 0.20
Total Acres: 0.2

DOMESTIC Within MINIDOKA County

T10S R23E S11 NWNE
Total Acres: 0.2

Conditions of Approval:

1. WB5 Domestic use is for 4 RV spaces and does not include lawn, garden, landscape, or other types of irrigation.
2. R43 The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
3. 057 The rate of diversion of water for irrigation under this right and all other water rights on the same land shall not exceed 0.03 cubic feet per second for each acre of land.
4. R05 Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
5. 004 This right does not grant any right-of-way or easement across the land of another.

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**SCANNED
SEP 28 2023**

Page _____ of _____

Licensed Date: 5/3/2019

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SCANNED
SEP 28 2023

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 36-17185

Current Owner: CITY OF HEYBURN

Priority Date: 12/22/1995

Origin: Water Right

Status: Active

Basis: License

Source

Tributary

GROUND WATER

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
DOMESTIC	1/01 to 12/31	0.05 CFS	2.4 AF
	<u>Total Diversion</u>	0.05 CFS	2.4 AF

Location of Point(s) of Diversion

GROUND WATER NE1/4NE1/4 Sec. 11, Twp 10S, Rge 23E B.M.
MINIDOKA County

Place of Use

DOMESTIC Within MINIDOKA County

T10S R23E S11 NENE T10S R23E S11 NWNE
Total Acres: 0.3

Conditions of Approval:

1. R43 The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
2. 004 This right does not grant any right-of-way or easement across the land of another.
3. WB5 Domestic use is for 3 mobile homes and 1 RV space and does not include lawn, garden, landscape, or other types of irrigation.
4. R05 Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.

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**SCANNED
SEP 28 2023**

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

A. PLAT MAP (See Part 3A of Instructions for application for transfer for complete requirements.)

- Attach a map of the diversion, measurement, control, and distribution system. Label it **Attachment #7a.**
- If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (GIS) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. Label it **Attachment #7b.**

If the place of use currently consists of a permissible place of use, then the attachment is not required if the application contains a clear statement that the boundaries for the place of use are not proposed to be changed by the transfer and the total number of irrigated acres within the place of use before and after the transfer is clearly stated.

If any part of the irrigation water right is leased to the Water Supply Bank, you must also specify the location and number of acres that will remain idled for the duration of the lease contract at the new, proposed place of use.

B. CHANGES IN NATURE OF USE (WaterBalance)

- If you propose to change the nature of use or period of use of all or part of the rights(s) listed in this application, attach documentation describing the extent of historic beneficial use of the portion of the right(s) proposed to be changed. Also attach documentation showing that the portion of the right(s) to be changed will not be enlarged in rate, volume, or consumptive use through the proposed change. Label it **Attachment #8a.**

C. PLACE OF USE CHANGES TO SUPPLEMENTAL IRRIGATION RIGHTS

- If you propose to change the place of use of a supplemental irrigation right, answer below and attach supporting documentation. Label it **Attachment #8b.**

Describe how the supplemental water rights have been used historically in conjunction with other water rights at the existing place of use. Describe the time during the irrigation season that the supplemental rights have been used. Include information about the availability or reliability of the primary right(s) being supplemented, both before and after the change. If the applicant is proposing to change a supplemental irrigation right to a primary right, provide the information required on Part 3B above:

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments.
 Received by SG Date 5/11/2023 Preliminary check by SG Date 5/11/2023
 Fee paid \$1,550.00 Date 5/11/2023 Received by SG Receipt # 5039770
 Add'l fee paid _____ Date _____ Received by _____ Receipt # _____

Check all that apply: Attachment WSB (copy sent to state office) Lessor Designation form &/or W-9 (originals to state office)

WATER REQUIREMENTS ESTIMATION

City of Heyburn

GWS, Brockway Engineering, PLLC,

Annual Water Demand for Wayside Café

Restaurant Patrons	300 patrons per day
Restaurant Water Demand per Patron	13 gpd/patron
Employees	14 employees
Restaurant Employees	15 gpd/employee

Daily Volume	4,110 gpd
Annual Volume in Gallons	1,500,150 gal
Annual Volume in Acre Feet	4.60 ac-ft annually

Annual Water Demand for Stinker Station

Vehicles Visiting Business	150 vehicles per day
	10 gpd/vehicle
Restaurant Patrons	100 patrons per day
Restaurant Water Demand per Patron	13 gpd/patron
Employees	6 employees
Restaurant Employees	15 gpd/employee

Daily Volume	2,890 gpd
Annual Volume in Gallons	1,054,850 gal
Annual Volume in Acre Feet	3.24 ac-ft annually

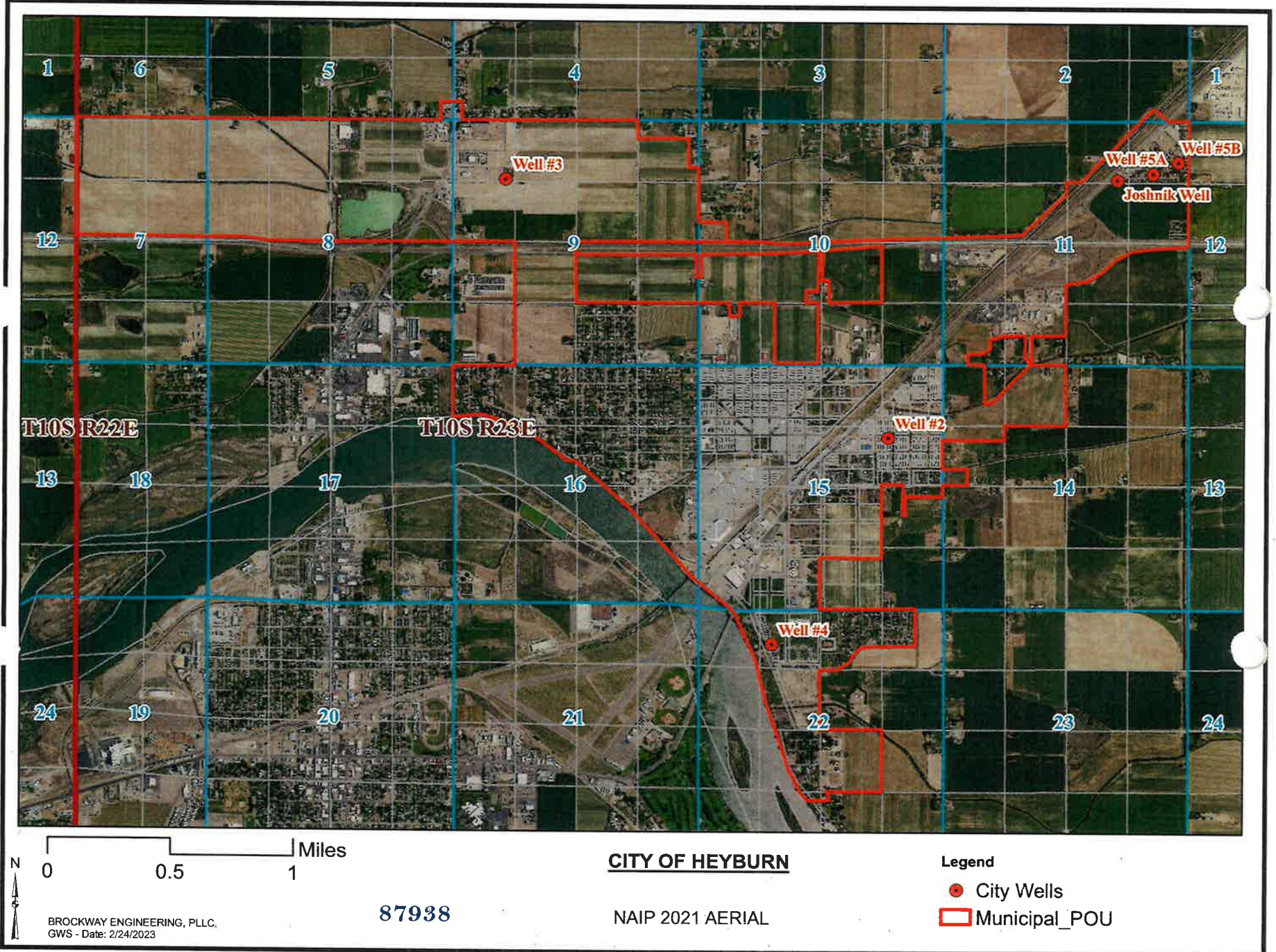
Annual Water Demand for In House Use

Number of houses	75 houses
Annual Water Demand per house	0.6 ac-ft annually
Annual Volume in Acre Feet	45.00 ac-ft annually

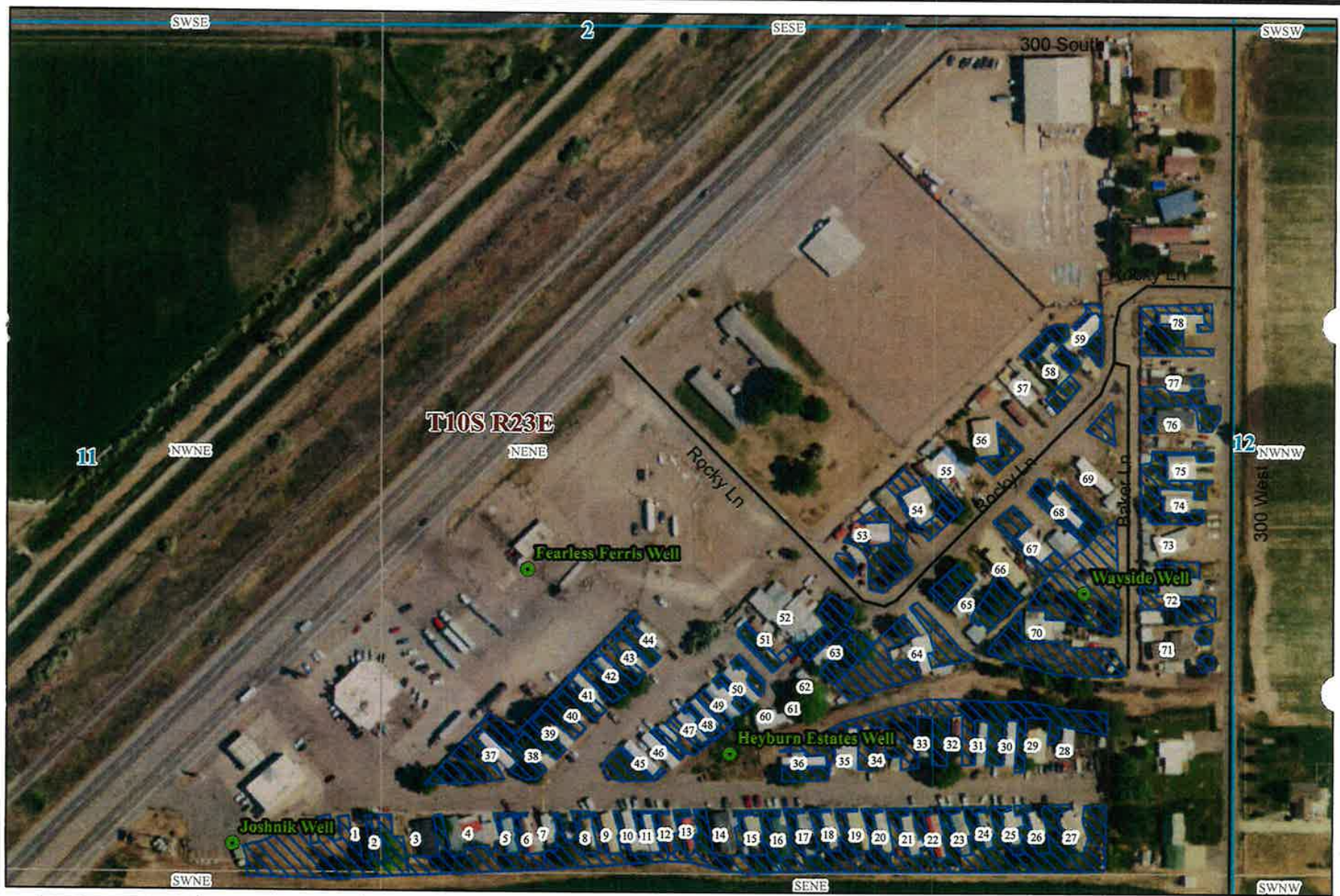
Annual Consumptive Use for Irrigation

Acres irrigated	5.2 acres
Annual Water Demand per Acre	3.21 ac-ft annually
Burley FAA AP (NWS -- USW00024133) Grass Turf	
Annual Volume in Acre Feet	16.69 ac-ft annually

Total Annual Volume Water Demand 69.5 ac-ft annually



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SEP 28 2023



0 250 500 Feet

CITY OF HEYBURN

- Legend**
- Wayside_Wells
 - Irrigation

BROCKWAY ENGINEERING, PLLC.
GWS - Date: 2/24/2023

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NAIP 2021 AERIAL

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 SEP 28 2023

Mitigation Analysis Period

Trimester

Wayside 56.9 AFA from ESPA Cell 84 54 to to Heyburn Well 4 located in ESPA Cell 85 52

One-Way Analysis of Independent Transfers

New Water Right (GModelo):

WR No.	Div. Rate (CFS)	Con. Vol. (AFA)	No. of Irr. Acres	Priority Date	POD Location	Dedicated Vol. AFA/ AFT	Model Node
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Transfer 1: Proposed Steady State Impacts following Transfer

Transfer 1: Worst Case Transient State Impacts following Transfer

		Impact by Reach (AF/Trimester)										
		Ashton to Rexburg	Heise to Shelley	Shelley to Nr Bickft	Nr Bickft To Neeley	Neeley to Minidoka	Dev. Wbl. To Buhl	Buhl to Kspr	Kspr	Kspr to Malad	Malad	Malad to Bancroft

Pre-SS	100.00%											
Post-SS	100.00%											
Pre-TS		0.21	0.34	1.81	8.01	0.81	2.66	2.12	0.95	0.87	0.96	0.13
Post-TS		0.20	0.33	1.75	7.78	0.78	2.80	2.22	0.99	0.90	0.98	0.13

Steady State Analysis	Mitigation Check 1 - >10% of Historical:	-2.9%	-2.9%	-2.9%	-2.9%	-3.6%	5.3%	4.6%	4.2%	3.4%	1.8%	1.7%
	Mitigation Check 2: > 2 AF/T:	0.0	0.0	-0.1	-0.2	-0.03	0.14	0.10	0.0	0.0	0.0	0.0
	Mitigation Check 3 - >10% of Total:	1.1%	1.8%	9.3%	41.2%	4.1%	14.9%	11.7%	5.3%	4.8%	5.2%	0.7%
	Mitigation Required?:	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
	Mitigation Vol. Req'd (ac-ft):	0.0	0.0	-0.1	-0.2	0.0	0.14	0.1	0.0	0.0	0.0	0.0

Transient State Analysis	Mitigation Check 1 - >10% of Historical:	-2.9%	-2.9%	-2.9%	-2.9%	-3.6%	5.3%	4.6%	4.2%	3.4%	1.8%	1.7%
	Mitigation Check 2: > 2.01 AF/T:	0.0	0.0	-0.1	-0.2	-0.03	0.1	0.10	0.0	0.0	0.0	0.0
	Mitigation Required?:	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
	Mitigation Vol. Req'd (ac-ft):	0.0	0.0	-0.1	-0.2	0.0	0.14	0.1	0.0	0.0	0.0	0.0

Read Me

WR No.	Div. Rate (CFS)	Con. Vol. (AFA)	No. of Irr. Acres	Priority Date	POD Location	Dedicated Vol. AFA/ AFT	Model Node
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Transfer: Proposed Steady State Impacts following Transfer

Transfer 1: Worst Case Transient State Impacts following Transfer

		Impact by Reach (AF/Trimester)										
		Ashton to Rexburg	Heise to Shelley	Shelley to Nr Bickft	Nr Bickft To Neeley	Neeley to Minidoka	Dev. Wbl. To Buhl	Buhl to Kspr	Kspr	Kspr to Malad	Malad	Malad to Bancroft

Pre-SS	0.00%											
Post-SS	0.00%											
Pre-TS		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Post-TS		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Steady State Analysis	Mitigation Check 1 - >10% of Historical:	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
	Mitigation Check 2: > 2 AF/T:	0.0	0.0	0.0	0.0	0.00	0.00	0.00	0.0	0.0	0.0	0.0
	Mitigation Check 3 - >10% of Total:	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
	Mitigation Required?:	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
	Mitigation Vol. Req'd (ac-ft):	0.0	0.0	0.0	0.0	0.0	0.00	0.0	0.0	0.0	0.0	0.0

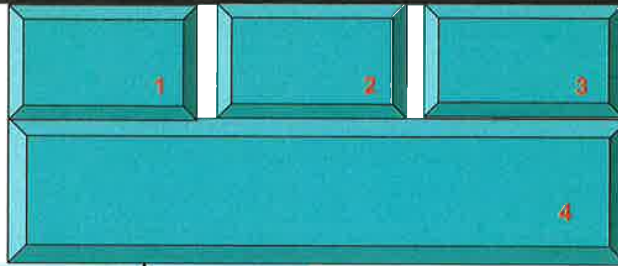
Transient State Analysis	Mitigation Check 1 - >10% of Historical:	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
	Mitigation Check 2: > 2.01 AF/T:	0.0	0.0	0.0	0.0	0.00	0.0	0.00	0.0	0.0	0.0	0.0
	Mitigation Required?:	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
	Mitigation Vol. Req'd (ac-ft):	0.0	0.0	0.0	0.0	0.0	0.00	0.0	0.0	0.0	0.0	0.0

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SEP 28 2023

ENHANCED GROUND-WATER RIGHTS TRANSFER

UNIVERSITY OF IDAHO - IDAHO WATER RESOURCES RESEARCH INSTITUTE IDAHO DEPARTMENT OF WATER RESOURCES

Cells this color are set up for user entries



ENTER STARTING DATE FOR SIMULATION. THEN PUSH "UPDATE DATES" BUTTON

TRANSFER NO:

YEAR: TRANSFER NAME:

SEASON:

ENTER CELL LOCATIONS:				
	'TO' CELL	'FROM1' CELL	'FROM2' CELL	'FROM3' CELL
ROW	85	84	0	0
COLUMN	52	54	0	0

56.9

TRIMESTER OF ACTIVITY	TO WELL	FROM1 WELL		FROM2 WELL		FROM3 WELL	
	Projected Use AF/TRIMESTER	With Transfer AF/TRIMESTER	Without Transfer AF/TRIMESTER	With Transfer AF/TRIMESTER	Without Transfer AF/TRIMESTER	With Transfer AF/TRIMESTER	Without Transfer AF/TRIMESTER
SPR 1950	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1950	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1950	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1951	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1951	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1951	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1952	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1952	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1952	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1953	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1953	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1953	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1954	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1954	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1954	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1955	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1955	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1955	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1956	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1956	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1956	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1957	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1957	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1957	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1958	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1958	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1958	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1959	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1959	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1959	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1960	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1960	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1960	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1961	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1961	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1961	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1962	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1962	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1962	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1963	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1963	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1963	0.0	7.7	7.7	0.0	0.0	0.0	0.0

SPR 1964	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1964	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1964	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1965	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1965	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1965	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1966	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1966	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1966	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1967	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1967	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1967	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1968	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1968	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1968	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1969	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1969	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1969	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1970	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1970	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1970	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1971	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1971	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1971	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1972	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1972	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1972	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1973	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1973	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1973	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1974	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1974	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1974	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1975	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1975	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1975	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1976	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1976	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1976	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1977	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1977	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1977	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1978	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1978	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1978	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1979	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1979	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1979	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1980	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1980	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1980	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1981	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SUM 1981	0.0	16.9	16.9	0.0	0.0	0.0	0.0
WIN 1981	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SPR 1982	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SUM 1982	0.0	16.9	16.9	0.0	0.0	0.0	0.0
WIN 1982	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SPR 1983	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SUM 1983	0.0	16.9	16.9	0.0	0.0	0.0	0.0
WIN 1983	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SPR 1984	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SUM 1984	0.0	16.9	16.9	0.0	0.0	0.0	0.0
WIN 1984	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SPR 1985	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SUM 1985	0.0	16.9	16.9	0.0	0.0	0.0	0.0
WIN 1985	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SPR 1986	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SUM 1986	0.0	16.9	16.9	0.0	0.0	0.0	0.0
WIN 1986	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SPR 1987	0.0	17.2	17.2	0.0	0.0	0.0	0.0
SUM 1987	0.0	17.2	17.2	0.0	0.0	0.0	0.0
WIN 1987	0.0	17.2	17.2	0.0	0.0	0.0	0.0
SPR 1988	0.0	17.2	17.2	0.0	0.0	0.0	0.0
SUM 1988	0.0	17.2	17.2	0.0	0.0	0.0	0.0
WIN 1988	0.0	17.2	17.2	0.0	0.0	0.0	0.0

SPR 2089	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2089	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2089	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SPR 2090	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2090	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2090	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SPR 2091	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2091	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2091	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SPR 2092	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2092	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2092	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SPR 2093	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2093	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2093	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SPR 2094	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2094	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2094	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SPR 2095	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2095	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2095	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SPR 2096	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2096	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2096	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SPR 2097	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2097	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2097	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SPR 2098	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2098	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2098	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SPR 2099	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2099	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2099	19.0	0.0	19.0	0.0	0.0	0.0	0.0

Mitigation Analysis Period

Trimester

Wayside 56.9 AFA from ESPA Cell 84 54 to to Heyburn Well 3 located in ESPA Cell 83 52

One-Way Analysis of Independent Transfers

New Water Right (GModelo):

WR No.	Div. Rate (CFS)	Con. Vol. (AFA)	No. of Irr. Acres	Priority Date	POD Location	Dedicated Vol. AFA/ AFT	Model Node
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Transfer 1: Proposed Steady State Impacts following Transfer

Transfer 1: Worst Case Transient State Impacts following Transfer

		Impact by Reach (AF/Trimester)										
		Ashton to Rexburg	Heise to Shelley	Shelley to Nr Bickft	Nr Bickft To Neeley	Neeley to Minidoka	Dev. Wbl. To Buhl	Buhl to Kspr	Kspr	Kspr to Malad	Malad	Malad to Bancroft
Pre-SS	100.00%											
Post-SS	100.00%											
Pre-TS		0.21	0.34	1.81	8.01	0.81	2.66	2.12	0.95	0.87	0.96	0.13
Post-TS		0.21	0.34	1.79	7.95	0.79	2.70	2.15	0.97	0.88	0.96	0.13

Steady State Analysis		Mitigation Check 1 - >10% of Historical:	-0.7%	-0.7%	-0.7%	-0.7%	-2.3%	1.5%	1.3%	1.2%	1.0%	0.6%	0.5%
		Mitigation Check 2: > 2 AF/T:	0.0	0.0	0.0	-0.1	-0.02	0.04	0.03	0.0	0.0	0.0	0.0
		Mitigation Check 3 - >10% of Total:	1.1%	1.8%	9.5%	42.2%	4.2%	14.3%	11.4%	5.1%	4.7%	5.1%	0.7%
		Mitigation Required?:	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
		Mitigation Vol. Req'd (ac-ft):	0.0	0.0	0.0	-0.1	0.0	0.04	0.0	0.0	0.0	0.0	0.0

Transient State Analysis		Mitigation Check 1 - >10% of Historical:	-0.7%	-0.7%	-0.7%	-0.7%	-2.3%	1.5%	1.3%	1.2%	1.0%	0.6%	0.5%
		Mitigation Check 2: > 2.01 AF/T:	0.0	0.0	0.0	-0.1	-0.02	0.0	0.03	0.0	0.0	0.0	0.0
		Mitigation Required?:	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
		Mitigation Vol. Req'd (ac-ft):	0.0	0.0	0.0	-0.1	0.0	0.04	0.0	0.0	0.0	0.0	0.0

Read Me

WR No.	Div. Rate (CFS)	Con. Vol. (AFA)	No. of Irr. Acres	Priority Date	POD Location	Dedicated Vol. AFA/ AFT	Model Node
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Transfer: Proposed Steady State Impacts following Transfer

Transfer 1: Worst Case Transient State Impacts following Transfer

		Impact by Reach (AF/Trimester)										
		Ashton to Rexburg	Heise to Shelley	Shelley to Nr Bickft	Nr Bickft To Neeley	Neeley to Minidoka	Dev. Wbl. To Buhl	Buhl to Kspr	Kspr	Kspr to Malad	Malad	Malad to Bancroft
Pre-SS	0.00%											
Post-SS	0.00%											
Pre-TS		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Post-TS		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

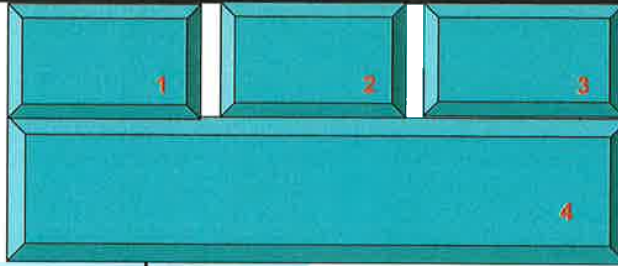
Steady State Analysis		Mitigation Check 1 - >10% of Historical:	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
		Mitigation Check 2: > 2 AF/T:	0.0	0.0	0.0	0.0	0.00	0.00	0.00	0.0	0.0	0.0	0.0
		Mitigation Check 3 - >10% of Total:	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
		Mitigation Required?:	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
		Mitigation Vol. Req'd (ac-ft):	0.0	0.0	0.0	0.0	0.0	0.00	0.0	0.0	0.0	0.0	0.0

Transient State Analysis		Mitigation Check 1 - >10% of Historical:	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
		Mitigation Check 2: > 2.01 AF/T:	0.0	0.0	0.0	0.0	0.00	0.0	0.00	0.0	0.0	0.0	0.0
		Mitigation Required?:	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
		Mitigation Vol. Req'd (ac-ft):	0.0	0.0	0.0	0.0	0.0	0.00	0.0	0.0	0.0	0.0	0.0

ENHANCED GROUND-WATER RIGHTS TRANSFER

UNIVERSITY OF IDAHO - IDAHO WATER RESOURCES RESEARCH INSTITUTE IDAHO DEPARTMENT OF WATER RESOURCES

Cells this color are set up for user entries



ENTER STARTING DATE FOR SIMULATION. THEN PUSH "UPDATE DATES" BUTTON

TRANSFER NO:

YEAR: TRANSFER NAME:

SEASON:

ENTER CELL LOCATIONS:				
	'TO' CELL	'FROM1' CELL	'FROM2' CELL	'FROM3' CELL
ROW	83	84	0	0
COLUMN	52	54	0	0

56.9

TRIMESTER OF ACTIVITY	TO WELL	FROM1 WELL		FROM2 WELL		FROM3 WELL	
	Projected Use AF/TRIMESTER	With Transfer AF/TRIMESTER	Without Transfer AF/TRIMESTER	With Transfer AF/TRIMESTER	Without Transfer AF/TRIMESTER	With Transfer AF/TRIMESTER	Without Transfer AF/TRIMESTER
SPR 1950	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1950	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1950	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1951	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1951	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1951	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1952	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1952	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1952	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1953	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1953	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1953	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1954	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1954	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1954	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1955	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1955	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1955	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1956	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1956	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1956	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1957	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1957	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1957	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1958	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1958	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1958	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1959	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1959	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1959	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1960	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1960	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1960	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1961	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1961	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1961	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1962	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SUM 1962	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WIN 1962	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SPR 1963	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1963	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1963	0.0	7.7	7.7	0.0	0.0	0.0	0.0

SPR 1964	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1964	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1964	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1965	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1965	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1965	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1966	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1966	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1966	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1967	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1967	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1967	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1968	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1968	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1968	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1969	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1969	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1969	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1970	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1970	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1970	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1971	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1971	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1971	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1972	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1972	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1972	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1973	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1973	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1973	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1974	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1974	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1974	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1975	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1975	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1975	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1976	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1976	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1976	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1977	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1977	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1977	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1978	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1978	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1978	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1979	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1979	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1979	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1980	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SUM 1980	0.0	7.7	7.7	0.0	0.0	0.0	0.0
WIN 1980	0.0	7.7	7.7	0.0	0.0	0.0	0.0
SPR 1981	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SUM 1981	0.0	16.9	16.9	0.0	0.0	0.0	0.0
WIN 1981	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SPR 1982	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SUM 1982	0.0	16.9	16.9	0.0	0.0	0.0	0.0
WIN 1982	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SPR 1983	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SUM 1983	0.0	16.9	16.9	0.0	0.0	0.0	0.0
WIN 1983	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SPR 1984	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SUM 1984	0.0	16.9	16.9	0.0	0.0	0.0	0.0
WIN 1984	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SPR 1985	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SUM 1985	0.0	16.9	16.9	0.0	0.0	0.0	0.0
WIN 1985	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SPR 1986	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SUM 1986	0.0	16.9	16.9	0.0	0.0	0.0	0.0
WIN 1986	0.0	16.9	16.9	0.0	0.0	0.0	0.0
SPR 1987	0.0	17.2	17.2	0.0	0.0	0.0	0.0
SUM 1987	0.0	17.2	17.2	0.0	0.0	0.0	0.0
WIN 1987	0.0	17.2	17.2	0.0	0.0	0.0	0.0
SPR 1988	0.0	17.2	17.2	0.0	0.0	0.0	0.0
SUM 1988	0.0	17.2	17.2	0.0	0.0	0.0	0.0
WIN 1988	0.0	17.2	17.2	0.0	0.0	0.0	0.0

SPR 2089	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2089	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2089	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SPR 2090	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2090	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2090	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SPR 2091	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2091	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2091	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SPR 2092	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2092	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2092	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SPR 2093	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2093	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2093	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SPR 2094	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2094	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2094	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SPR 2095	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2095	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2095	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SPR 2096	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2096	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2096	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SPR 2097	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2097	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2097	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SPR 2098	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2098	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2098	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SPR 2099	19.0	0.0	19.0	0.0	0.0	0.0	0.0
SUM 2099	19.0	0.0	19.0	0.0	0.0	0.0	0.0
WIN 2099	19.0	0.0	19.0	0.0	0.0	0.0	0.0

CHRIS M. BROMLEY
IDAHO STATE BAR NO. 6530
CANDICE MCHUGH
IDAHO STATE BAR NO. 5908
MCHUGH BROMLEY, PLLC
Attorneys at Law
380 S. 4th St., Ste. 103
Boise, ID 83702
Telephone: (208) 287-0991
Facsimile: (208) 287-0864
cbromley@mchughbromley.com
cmchugh@mchughbromley.com

Attorneys for City of Heyburn

RECEIVED

Mar 01, 2024

DEPARTMENT OF
WATER RESOURCES

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

IN THE MATTER OF TRANSFER NO.
87938 IN THE NAME OF CITY OF
HEYBURN

REQUEST FOR HEARING

COMES NOW, Petitioner City of Heyburn, by and through McHugh Bromley, PLLC, and pursuant to Idaho Code § 42-1701A(3), hereby requests a hearing before the Idaho Department of Water Resources (“IDWR” or “Department”) in the above-captioned matter.

On January 16, 2024, IDWR issued its *Preliminary Order* approving *Transfer Application No. 87938* (“Transfer”) signed by Corey Skinner, IDWR Southern Regional Manager. A purpose of the *Transfer* was to incorporate certain domestic and commercial water rights into the City’s municipal system by changing the purpose of use of those rights to municipal. In the *Preliminary Order*, the Department reduced the volume for certain domestic and commercial water rights from the volume that was previously licensed by IDWR and/or partially decreed in the Snake River Basin Adjudication.

REQUEST FOR HEARING

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On January 30, 2024, the City filed a *Petition for Reconsideration*, asking the Department to reconsider its decision to reduce the volumes and the lack of explanation as to why domestic, commercial, and municipal water rights are treated differently.

On February 20, 2024, Mr. Skinner issued a *Preliminary Order Granting Petition for Reconsideration and Amending Transfer Approval*, in which the Department did not address the differences between domestic, commercial, and municipal water rights and further reduced the volume for water right no. 36-8332 from 0.90 acre-feet to zero (0) acre-feet: “When approving the transfer, the Department did not properly consider the historic consumptive use in approving the nature of use change from commercial to municipal use for water right 36-8332.”

Preliminary Order Granting Petition for Reconsideration and Amending Transfer Approval at 3.

Pursuant to Idaho Code § 42-1701A(3), the City hereby requests a hearing in the above-captioned matter, including but not limited to the Department’s decision to treat domestic, commercial, and municipal water rights differently and the decision to reduce the volumes associated with the domestic and commercial water rights that were the subject of the *Transfer* from the volumes established by prior licenses and/or partial decree to a lesser quantity. The City reserves the right to raise any issues identified by the City at the hearing that relate to the decisions issued by the Department in the above-captioned proceeding.

DATED this 1st day of March, 2024.



Chris M. Bromley
McHugh Bromley, PLLC
Attorneys for City of Heyburn

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of March, 2024, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by electronic service:

IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720
Boise, ID 83720
file@idwr.idaho.gov

/s/ Chris M. Bromley
CHRIS M. BROMLEY

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 87938 IN THE NAME OF
THE CITY OF HEYBURN

**ORDER GRANTING REQUEST FOR
HEARING**

**ORDER APPOINTING HEARING
OFFICER**

**NOTICE OF PREHEARING
CONFERENCE**

BACKGROUND

On May 11, 2023, the City of Heyburn (“City”) filed an *Application for Transfer of Water Right* (“*Application*”) with the Idaho Department of Water Resources (“Department”), assigned Transfer No. 87938. An Amended *Application* was received on June 14, 2023. The Department advertised the *Application* in accordance with Idaho Code § 42-222, and no protests were received. On January 16, 2024, the Department issued a *Preliminary Order Approving Application for Transfer No. 87938*. On January 30, 2024, the City filed a *Petition for Reconsideration* (“*Petition*”) asking the Department “to reconsider its decision to reduce the volumes associated with water right nos. 36-17185, 36-4233, 36-8744, and 36-7970 (‘Domestic Rights’).” *Petition* at 1. On February 20, 2024, the Department issued a *Preliminary Order Granting Petition for Reconsideration and Amending Transfer Approval* (“*Order Amending Transfer*”).

On March 1, 2024, pursuant to Idaho Code § 42-1701A(3), the City filed a *Request for Hearing* (“*Request*”) with the Department. In the *Request*, the City lists the following as issues for hearing: 1) “the Department’s decision to treat domestic, commercial, and municipal water rights differently”; and 2) “the decision to reduce the volumes associated with the domestic and commercial water rights that were the subject of the [*Application*] from the volumes established by prior licenses and/or partial decree to a lesser quantity.” *Request* at 2.

ANALYSIS AND CONCLUSIONS OF LAW

Idaho Code § 42-1701A(3) provides in relevant part:

Unless the right to a hearing before the director . . . is otherwise provided by statute, any person aggrieved by any action of the director, including any decision, determination, order or other action . . . who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action.

ORDER GRANTING REQUEST FOR HEARING; ORDER APPOINTING HEARING
OFFICER; NOTICE OF PREHEARING CONFERENCE—Page 1

The City has not previously been afforded an opportunity for a hearing on the *Order Amending Transfer* and is entitled to a hearing pursuant to Idaho Code § 42-1701A(3). Accordingly, the Director will grant the hearing request, set a prehearing conference, and appoint Phill Hummer, Department Water Rights Section Manager, as the hearing officer in this matter.

ORDER

IT IS HEREBY ORDERED that the City's request for a hearing is GRANTED.

IT IS FURTHER ORDERED that Phill Hummer is appointed to serve as hearing officer in the above-captioned matter and is authorized to hear this contested case on behalf of the Department pursuant to IDAPA 37.01.01.0410–412 and the provisions of chapter 52, title 67 Idaho Code. Hearing Officer Hummer's contact information is as follows:

Phill Hummer
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front St. Suite 648
Boise, ID 83702
(208) 287-4925
Phill.Hummer@idwr.idaho.gov

NOTICE OF PREHEARING

NOTICE IS HEREBY GIVEN that Hearing Officer Hummer will hold a prehearing conference in this matter on **May 13, 2024, at 1:30 p.m. (MT)**. The prehearing will take place at the Department's State Office, located at 322 E. Front Street, 6th Floor, Conference Room 602B, Boise, Idaho. All parties must be present at the prehearing conference in person or via Webex. The parties shall come prepared to discuss proposed issues for hearing and any other matters that could aid in the fair and efficient resolution of this contested case.

Webex videoconference meeting information is:

Meeting link: <https://idahogov.webex.com/idahogov/j.php?MTID=mdddb4ec36f8025566a1672ccd5ae489>

Meeting number (access code): 2630 127 9339

Meeting password: MHfvYUcP252

The prehearing conference will be held in accordance with the provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, Idaho Code, the Department's Rules of Procedure, IDAPA 37.01.01, and the Department's Water Appropriation Rules, IDAPA 37.03.08. A copy of the Rules of Procedure may be obtained from the Department upon request or at <https://adminrules.idaho.gov/rules/current/37/370101.pdf>. A copy of the Water Appropriation Rules may be obtained from the Department upon request or at <https://adminrules.idaho.gov/rules/current/37/370308.pdf>.

The prehearing conference will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodation to attend, participate in, or understand the hearing, please advise the Department no later than five (5) days before the hearing. Inquiries for special accommodations should be directed to Jean Hersley, Idaho Department of Water Resources, PO Box 83720, Boise, Idaho 83720-0098, telephone (208) 287-4942, or email Jean.Hersley@idwr.idaho.gov.

DATED this 19th day of April 2024.




MATHEW WEAVER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of April 2024, the above and foregoing, was served by the method indicated below, and addressed to the following:

<p>Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC 380 South 4th Street, Suite 103 Boise, ID 83702 cmchugh@mchughbromley.com cbromley@mchughbromley.com <i>Attorneys for the City of Heyburn</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
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Megan Jenkins
Executive Assistant

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

**IN THE MATTER OF APPLICATION) NOTICE OF HEARING
FOR TRANSFER NO. 87938 IN THE)
NAME OF CITY OF HEYBURN)
_____)**

On March 1, 2024, the City of Heyburn (“City”) filed a Request for Hearing with the Idaho Department of Water Resources (“Department”). On May 13, 2024, Hearing Officer Phill Hummer held a pre-hearing conference. The City has established the following as issues for hearing: 1) The reduction to the volume of the domestic and commercial water rights from the established license or partial decree; and 2) The Department’s decision to consider domestic, commercial, and municipal water rights differently.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that Hearing Officer Phill Hummer will hold a hearing on the above captioned matter. The hearing will be held **July 9, 2024 beginning at 9:00 am (MT)**, at Twin Falls County West Building located at 630 Addison Ave W. Twin Falls ID 83301, Conference Room A.

All parties and witnesses must attend in person.

All exhibits, expert reports, and witness lists must be filed with the Department on or before **July 2, 2024**. The City shall mark its exhibits with numbers in the series 1-99. Electronic service on the Department may be made by email to file@idwr.idaho.gov.

The hearing will be held in accordance with provisions of Chapter 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, the Department’s Rules of Procedure, IDAPA 37.01.01. Copies may be obtained from the Department upon request or at <https://adminrules.idaho.gov/rules/current/37/>.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the status conference, please notify the Department at least (10) days prior to the hearing. Inquiries about scheduling, hearing facilities, etc., should be directed to Denise Maline, at 208-293-9908.

Dated this 15th day of May 2024.



Phill Hummer
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of May, 2024, I served a true and correct copy of the foregoing document on the following by the method(s) indicated below:

CHRIS BROMLEY
CANDICE MCHUGH
MCHUGH BROMLEY PLLC
380 S 4TH ST STE 103
BOISE ID 83702
Attorneys for the City of Heyburn

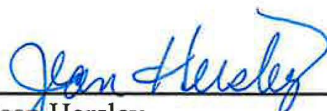
- U.S. Mail, Certified, postage prepaid
- U.S. Mail, postage prepaid
- Overnight Mail
- Facsimile
- Email

CITY OF HEYBURN
PO BOX 147
HEYBURN ID 83336-0147
Applicant

- U.S. Mail, Certified, postage prepaid
- U.S. Mail, postage prepaid
- Overnight Mail
- Facsimile
- Email

COURTESY COPIES TO:

BROCKWAY ENGINEERING PLLC
GREG SULLIVAN
2016 N WASHINGTON ST STE 4
TWIN FALLS ID 83301-3082
greg.sullivan@brockwayeng.com



Jean Hersley
Technical Records Specialist II

CHRIS M. BROMLEY, ISB #6530
CANDICE M. MCHUGH, ISB # 5908
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380 South 4th Street, Suite 103
BOISE, ID 83702
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Facsimile (208) 287-0864
Email: cbromley@mchughbromley.com
cmchugh@mchughbromley.com

Attorneys for City of Heyburn

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN RE APPLICATION FOR TRANSFER
NO. 87938

In the Name of the City of Heyburn Re:
Water Right nos. 36-4233, 36-7970, 36-8744,
and 37-17185

**CITY OF HEYBURN'S EXHIBIT AND
WITNESS LIST**

COMES NOW the City of Heyburn and files the following exhibits and witnesses for the hearing in the above-captioned matter, scheduled for July 9, 2024, as discussed at the May 13, 2024 prehearing conference.

EXHIBITS

Exhibits 1 – 7 are part of the agency record and are listed as exhibits simply for ease of reference at the hearing:

1. *Application for Transfer*, May 9, 2023
2. Email from James Cefalo re: City of Heyburn Wastewater Treatment Returns, August 11, 2023
3. *IDWR Transfer Approval*, January 16, 2024
4. *Petition for Reconsideration*, January 30, 2024

5. *Declaration of Tony Morley in Support of Petition for Reconsideration*, January 30, 2024
6. *Preliminary Order*, February 20, 2024
7. *Request for Hearing*, March 1, 2024
8. Technical Memo, Brockway Engineering, PLLC
9. 2023 Calendar Year Monthly Water Consumption for City of Heyburn, Brockway Engineering, PLLC

WITNESSES

1. Charles Brockway, Ph.D., P.E., Brockway Engineering, PLLC

Dr. Brockway will testify as to the *Application for Transfer* and documents associated thereto, the City's use of water, the City's disposal of wastewater, and his expert opinions as to the approvability of the Application for Transfer.

2. Greg Sullivan, M.S., Brockway Engineering, PLLC

Mr. Sullivan will testify as to the *Application for Transfer* and documents associated thereto, the City's use of water, the City's disposal of wastewater, and his expert opinions as to the approvability of the Application for Transfer.

3. Ivan McCracken, P.E., City of Heyburn

Mr. McCracken will testify as to the *Application for Transfer* and documents associated thereto, the City's use of water, and the City's disposal of wastewater.

4. Tony Morley, City of Heyburn

Mr. Morley will testify as to the *Application for Transfer* and documents associated thereto, the City's use of water, and the City's disposal of wastewater.

RESPECTFULLY SUBMITTED this 2nd day of July, 2024.

MCHUGH BROMLEY, PLLC



CHRIS M. BROMLEY

Attorneys for City of Heyburn

CERTIFICATE OF SERVICE

I certify that on this 2nd day of July, 2024, I caused to be served a true and correct copy of the foregoing *Notice of Protest* upon the following persons by the method(s) indicated:

Idaho Department of Water Resources
322 East Front Street
PO Box 83720
Boise, ID 83720-0098
file@idwr.idaho.gov
Phill.Hummer@idwr.idaho.gov

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

**IN THE MATTER OF APPLICATION FOR) PRELIMINARY ORDER
TRANSFER NO. 87938 IN THE NAME OF) AFFIRMING APPROVAL OF
THE CITY OF HEYBURN) AN APPLICATION FOR TRANSFER**
_____)

Procedural History

1. On June 14, 2023, the City of Heyburn (“Heyburn”) filed Application for Transfer No. 87938 (“*Transfer*”). The *Transfer* proposed changing the points of diversion for existing municipal water rights nos. 36-8550 and 36-8738 (“Municipal Rights”). The *Transfer* also proposed to change the points of diversion and the nature of use for water rights nos. 36-4233, 36-7970, 36-8332, 36-8744, and 36-17185 (“Wayside Rights”) from irrigation, commercial, and domestic uses to municipal use. The six proposed points of diversion include three existing wells authorized as points of diversion by the Wayside Rights and three existing wells that are part of Heyburn’s municipal system.
2. On January 16, 2024, the Department approved the *Transfer*. To prevent enlargement, the municipal rights resulting from the nature of use changes were approved with an annual diversion volume limitation based on the historic consumptive use. Ex. 6 at 3. Domestic in-home uses were considered nonconsumptive, commercial uses were considered fully consumptive, and irrigation uses were considered partially consumptive. Ex. 3, at 24.
3. On January 30, 2024, Heyburn filed a *Petition for Reconsideration* (“*Petition*”) asking the Department to reconsider the authorized diversion volume. Ex. 4, at 4-5. Heyburn states: “there is no rational basis to treat the Domestic Rights differently from commercial water right no. 36-8332. Accordingly, the *Transfer* should be amended to approve the entire volume associated with water right nos. 36-17185, 36-4233, 36-8744, and [36-7970].” Ex. 4, at 5.
4. On February 20, 2024, the Department issued a *Preliminary Order Granting Petition for Reconsideration and Amending Transfer Approval* (“*Preliminary Order*”). The *Preliminary Order* concluded, in relevant part:
 6. When approving the transfer, the Department did not properly consider the historic consumptive use in approving the nature of use change from commercial to municipal water use for water right 36-8332.
 7. The Applicant’s *Transfer* and *Petition* did not include evidence confirming the historic consumptive water use in the “Wayside Café”, “Stinker Station”, and “In House Use” The Department must limit the transferred volumes of these

rights to ensure the proposed change to municipal use does not result in an enlargement in use of the water rights.

Ex. 6, at 3. Accordingly, the municipal rights resulting from the nature of use changes approved in the *Preliminary Order* included reduced annual volume diversion limits, reflecting only the consumptive portion of the irrigation uses because the in-home domestic and commercial uses were considered non-consumptive.

5. On March 1, 2024, Heyburn filed a *Request for Hearing* (“*Request*”) regarding “the Department’s decision to treat domestic, commercial, and municipal water rights differently and the decision to reduce the volumes associated with the domestic and commercial water rights that were the subject of the *Transfer . . .*” *Request*, at 2.
6. On April 19, 2024, the Department issued an *Order Granting Request for Hearing; Order Appointing Hearing Officer*; and *Notice of Prehearing Conference* granting Heyburn’s *Request* and appointing Phill Hummer as Hearing Officer.
7. On July 9, 2024, the Department held an administrative hearing pursuant to the *Request*.
8. At the hearing, Chris Bromley of McHugh Bromley PLLC represented Heyburn, and Charles G. Brockway of Brockway Engineering PLLC (“Brockway”) testified as an expert witness on behalf of Heyburn. The *Transfer*, application approvals, *Petition*, and other records from the application process prior to the hearing were admitted into the record as Exhibits nos. 1 through 6. Exhibit no. 8 is a technical memorandum prepared by Brockway, Exhibit no. 9 is a waste water analysis also prepared by Brockway, and Exhibit no. 10 is a proposed condition by Brockway. Exhibit nos. 8, 9, and 10 were admitted into the record.

Based on consideration of evidence, the Hearing Officer finds, concludes, and orders as follows:

Findings of Fact

1. The *Transfer* proposes three changes to the elements of existing water rights: (1) a change in nature of use for the Wayside Rights to municipal purposes; (2) a change to the points of diversion and places of use of the Wayside Rights to incorporate the Wayside Rights into Heyburn’s municipal system and service area; and (3) a change to the points of diversion of the Municipal Rights to include the wells that have historically served the Wayside Rights.
2. Before the *Transfer*, the Wayside Rights authorized the diversion of ground water for the following:

Water Right	Diversion Rate (CFS)	Diversion Volume (AF)	Acres	Beneficial Use
36-4233	0.12	20.0	5.0	Irrigation
36-4233	0.20	7.0	N/A	Domestic
total	0.20	27.0	5	
36-7970	0.20	27.6	N/A	Domestic
36-8332	0.04	0.9	N/A	Commercial
36-8744	0.02	0.8	0.2	Irrigation
36-8744	0.05	2.4	N/A	Domestic
total	0.07	3.2	0.2	
36-17185	0.05	2.4	N/A	Domestic

3. Water diverted pursuant to the Wayside Rights historically supplied water to a café, gas station, 75 domestic homes, and the irrigation of 5.2 acres. Ex. 1, at 37; Ex. 8, at 1.
4. The unconsumed portion of water diverted and beneficially used pursuant to the domestic and commercial portion of the Wayside Rights entered Heyburn’s wastewater treatment plant and discharged into the Snake River after treatment. Ex. 5, at 1; Ex. 8, at 2.
5. The Municipal Rights authorized the following:

Water Right	Diversion Rate (CFS)	Diversion Volume (AF)	Acres	Beneficial Use
36-8550	6.67	N/A	N/A	Municipal
36-8738	3.30	N/A	N/A	Municipal

Applicable Law

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

The director of the [Department] 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 [Idaho Code § 42-202B] The director may consider consumptive use, as defined in [Idaho Code § 42-202B], as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right.

Idaho Code § 42-222(2) sets forth the forfeiture provision criteria and states, in pertinent part: “All rights to the use of water . . . shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated.”

Analysis

I. Water Right Validity

Idaho Code § 42-222(1) states that a person “entitled to the use of water” may apply to the Department to change elements of the authorized water use. The water rights proposed to be changed must be valid as evidenced by an existing claim, license, or decree and not lost in accordance with the forfeiture provisions of Idaho Code § 42-222(2). If the water rights proposed to be changed are valid, the proposed transfer can be approved if the changes meet the criteria in Idaho Code § 42-222(1).

The Snake River Basin Adjudication (“SRBA”) Court issued a partial decree for water right no. 36-4233 on December 4, 1997, and for water right no. 36-7970 on March 20, 1998. The Department issued licenses for water right no. 36-8332 on July 6, 1992; water right no. 36-8550 on April 10, 1998; water right no. 36-8738 on July 10, 2006; and water right no. 36-8744 on May 3, 2019. Water right no. 36-17185 was created as the result of a *Notice in Change in Water Right Ownership* split filed on January 21, 2021 by Heyburn Estates LLC for a portion of water right no. 36-8744.

Heyburn submitted evidence identifying the location of irrigation occurring pursuant to the Wayside Rights. Ex. 1, at 38. Evaluation of aerial imagery available to the Department supports a conclusion that the full 5.2 acres have been irrigated within the most recent five year period. Ex. 3, at 23. Heyburn identified the homes served by the Wayside Rights. Ex. 1, at 38. Testimony and discussion in the record demonstrate water use within the homes and commercial buildings occurred within the five year period before the *Transfer* was filed. Ex. 8, at 4; Ex. 9, at 1; Brockway Test. Therefore, the Wayside Rights have not been forfeited. Similarly, testimony and discussion in the record demonstrate the Municipal Rights are utilized to deliver water to users within the service area and are not lost to forfeiture.

II. Injury and Enlargement

Pursuant to Idaho Code § 42-222(1), the Department must evaluate whether the proposed transfer will cause an injury or enlargement. The proposed transfer cannot be approved if the proposed change constitutes an enlargement or injures other water rights. I.C. § 42-222(1). Injury results from reduced availability of water to satisfy a water right. *See Barron v. IDWR*, 135 Idaho 414,418 (2001) (“IDWR’s concern over the potential for reduced availability, *i.e.*, injury, to those rights appears valid.”). In addition, “there is a per se injury to junior water right holders anytime an enlargement receives priority.” *A & B Irr. Dist. v. Aberdeen-American Falls Ground Water Dist.*, 141 Idaho 746, 753 (2005).

Enlargement occurs if the total diversion rate, annual volume diverted, or the number of acres irrigated, increases beyond what is authorized by the water rights prior to the proposed transfer. *See 3G AG LLC v. Idaho Dep't of Water Res.* 170 Idaho 251, 259 (2022).

The Department may consider consumptive use when evaluating whether a proposed change would result in enlargement. I.C. § 42-222(1). Idaho Code § 42-202B(1) defines consumptive use as “that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, converted to nonrecoverable water vapor, incorporated into products, or otherwise does not return to the waters of the state.” In other words, consumptive use is the portion of water diverted and beneficially used under a water right that is not returned to the waters of the state. The statute makes no distinction between ground water and surface water.

The Department considers any future consumptive use that is in excess of the historic consumptive use to be an enlargement. *In re Application for Amendment of Permit No. 63-32225 in the Name of Intermountain Sewer & Water, Corp. and Application for Transfer No. 83875 in the Name of Gregory B. Johnson, Order on Exceptions; Final Order Approving Application for Amendment of Permit with Conditions and Denying Transfer*, at 6 (Sept. 22, 2021) [hereinafter *Johnson Exceptions*]. “To prevent enlargement of the historic consumptive use, [a water right] could be changed to municipal purposes [when] its annual diversion volume [is] reduced to its historic consumptive use.” *Johnson Exceptions*, at 6 n.7.

1. *Municipal purposes are fully consumptive.*

Heyburn asserts that the Department treats domestic and commercial uses different than municipal use as a matter of policy without basis and argues the use of water pursuant to the Wayside Rights prior to the proposed change will not be different after the proposed change. Ex. 8, at 5; Brockway Test. Specifically, Heyburn argues that no enlargement will occur by incorporating the full volume of the domestic and commercial use components of the Wayside Rights into the municipal system because the historic diversion and disposal system is fully consumptive with regard to the aquifer. Ex. 4, at 5; Ex. 8, at 4; Brockway Test. Heyburn claims there will be no net change to the water balance under the proposed transfer because the unused water will continue to be conveyed to Heyburn’s wastewater treatment facility and discharged to the Snake River. Ex. 8, at 4. As a result, ground water diverted pursuant to the Wayside Rights would not return to the aquifer. Ex. 8, at 4–5; Ex. 9, at 1; Brockway Test.

Municipal purpose water rights are treated differently than other beneficial uses because they are fully consumptive in nature due to their role in facilitating a broader range of end uses that inherently involve higher levels of consumption. A water right for municipal purposes may be fully consumptive without (a) engaging in waste, (b) violating the duty of beneficial use, or (c) exceeding the scope of the right. *Mem. Decision & Order*, at 10, *Riverside Irr. Dist. v. Idaho Dep't of Water Res.*, No. CV 14-21-05008 (Canyon Cnty. Dist. Ct. Idaho Dec. 28, 2021) [hereinafter *Riverside*]. This occurs because “other components of the municipal water use may consume, either now or in the future, more water” than what was historically used prior to the transfer. *Johnson Exceptions*, at 6. For example, a municipal

right diverted today for non-consumptive in-home uses could later be used for a manufacturing facility that is fully consumptive.

In addition, municipal purpose water rights are treated differently because effluent production is inherent in municipal use. *See Riverside*, at 10. Treated effluent¹ is the unused portion of water collected at the municipality's effluent treatment plant, processed for treatment, and disposed of in some manner by the municipality. For instance, treated effluent may be discharged either (a) directly into a surface water source, or (b) through land application methods.² Discharging the treated effluent directly to the original source or another source is non-consumptive because it enters the "waters of the state" and is available for use by others. However, discharging treated effluent through land application methods may be partially consumptive because water is lost through evaporation or transpiration.

A municipality cannot always guarantee it will discharge treated effluent into the "waters of the state" because methods of discharging treated effluent may change in the future. Changing the discharge method to the partially consumptive land application method would constitute an enlargement of use and would cause injury by reducing the water available for use by other water right holders. Therefore, the Department considers water used for municipal purposes as fully consumptive. *See In re Applications for Permits for the Diversion and Use of Surface and Ground Water Within the Snake River Basin, Amended Snake River Basin Moratorium Order*, at 29 (July 16, 2024).

2. *Domestic and commercial uses in this matter are nonconsumptive.*

At the time the *Transfer* was filed, four Wayside Rights (water rights nos. 36-4233, 36-7970, 36-8744, and 36-17185) authorized domestic use and one Wayside Right (water right no. 36-8332) authorized commercial use for a gas station and convenience store. Ex. 8, at 1. These rights were used within defined places of use, and the in-home and commercial uses were historically non-consumptive. The appropriated water returned to waters of the State through Heyburn's effluent treatment system and discharged into the Snake River as treated effluent without a reduction in volume. Ex. 5, at 1; Ex. 8, at 1–2; Brockway Test.

While domestic and commercial uses may involve return flows to city effluent treatment systems, municipal distribution systems often result in the full consumption of water by end users. Because Heyburn proposes to connect the wells associated with the Wayside Rights to its municipal distribution system, the pre-transfer water from the Wayside Rights would be delivered to end users throughout its service area. Ex. 1, at 3, 5; Brockway Test. This change could facilitate the use of water for purposes that are more consumptive—such as industrial cooling, car washes, or park irrigation—and may result in evaporative or transpiration losses. Additionally, commingling the previously used domestic and commercial water into the municipal system would transfer control to the end user and makes it difficult to ensure the water will not be fully consumed. *Johnson Exceptions*, at 5. Without suitable

¹ Because the term "wastewater" frequently refers to agricultural runoff, this order will refer to the water entering, and discharged from, a municipality's wastewater treatment plant as "treated effluent."

² Either method is subject to Idaho Department of Environmental Quality's standards and permitting requirements that are not at issue in this matter.

control over the end use, Heyburn cannot ensure enlargement would not occur. Accordingly, changing from a non-consumptive use to a potentially fully consumptive use constitutes an enlargement of the historic use.

Moreover, domestic and commercial rights are often subject to both volume and diversion rate limitations. Municipal rights, by contrast, often do not include a volume limitation. Approving the *Transfer* with an annual diversion volume limitation when changing the nature of use to municipal use is necessary to prevent increased consumptive use caused by end users that are more consumptive than those historically authorized.

To prevent enlargement, the Department must limit the annual diversion volume to the historic consumptive use portion. Given the historic use of the Wayside Rights that authorized in-home domestic use and commercial use was non-consumptive, the historic consumptive use portion of water rights nos. 36-4233, 36-8744, 36-8332, and 36-17185 is 0.0 acre-feet (af). Accordingly, the Department should place an annual diversion volume limit on those rights of 0.0 af.

The historic use of water right no. 36-7970 is partially consumptive because the domestic use includes both in-home use and external use such as irrigation of lawns and landscaping. Water right no. 36-7970 authorizes 27.6 af for 23 homes, which is equivalent to the Department's standard of 0.6 af allocated for in-home use and 0.6 af allocated for domestic type irrigation. As discussed in greater detail below, the consumptive portion of irrigation pursuant to the Wayside Rights is 3.21 af per acre. The Department's standard field headgate allowance for irrigation at the place of use of the Wayside Rights in the Department's Administrative Basin No. 36 is 4.0 af. *Standards for Irrigation Consumptive Use Requirements, Irrigation Field Headgate Requirements, and Irrigation Season of Use*, Administrator's Licensing Memorandum No. 9, at 4 (Oct. 12, 1999). The following calculation determines the consumptive portion of the annual diversion volume associated with the external portion of the domestic use pursuant to water right no. 36-7970:

$$23 \text{ homes} * 0.6 \text{ af per home} * (3.21 \text{ af}/4.00\text{af}) = 11.07 \text{ af}$$

Accordingly, the Department must limit the annual diversion volume for water right no. 36-7970 to 11.1 af. Therefore, the prior approval excluding the annual volume for in-home domestic and commercial use of the Wayside Rights and including the portion used for domestic lawn and landscape irrigation was correct and warranted.

3. *Irrigation uses are partially consumptive.*

At the time the *Transfer* was filed, two Wayside Rights (water right nos. 36-4233 and 36-8744) authorized irrigation use. Irrigation use is partially consumptive because a portion of the water applied to a crop returns to the waters of the state and is available for use. Heyburn agrees that the portion of the irrigation use component represented by precipitation deficit data is a consumptive water use under the Wayside Rights. Ex. 8, at 5. Precipitation deficit data shows the consumptive volume for irrigation pursuant to the Wayside Rights is 3.21

acre-feet per acre (af/ac). Ex. 3, at 1; Ex. 8, at 2. The following calculations determine the historic consumptive use volume associated with irrigation under each right:

Water Right No. 36-4233:	5.0 acres * 3.21 af/ac = 16.1 af
Water Right No. 36-8744:	0.2 acres * 3.21 af/ac = 0.6 af

Therefore, 16.1 af for right no. 36-4233 and 0.6 af for right no. 36-8744 can be transferred to municipal purposes without enlarging the historic consumptive use.

III. Conservation of Water Resources Within the State of Idaho

Heyburn proposes to connect the wells that currently serve as the points of diversion for the Wayside Rights to Heyburn's municipal conveyance works and continue to treat effluent through the treatment system. Ex. 8, at 2, Brockway Test. Reports and testimony in the record demonstrate that Heyburn monitors their conveyance and treatment system to ensure their system is functioning efficiently. Efficient diversion and conveyance systems preserve as much water as possible for beneficial use by other users. Therefore, the proposed change is consistent with the conservation of water resources.

IV. Local Public Interest

Idaho Code § 42-202B(3) defines local public interest "as the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource." Changes to a water right as authorized by Idaho Code § 42-222 can be utilized to meet the changing needs of water users. *See* Idaho Water Resource Board, *Idaho State Water Plan*, at 17 (Nov. 2012). The changes proposed by Heyburn are intended to improve Heyburn's ability to serve users within the service area. Therefore, the proposed change is in the local public interest.

CONCLUSIONS OF LAW


1. Pursuant to Idaho Code § 42-222(1), the Department cannot approve a transfer application if the proposed change would enable an enlargement of use of the right or cause an injury to existing water rights.
2. The in-home domestic and commercial portions of the Wayside Rights have historically been non-consumptive and a change of the nature of use to municipal purposes within Heyburn's service area would facilitate an increase in the consumptive use volume.
3. The historic use of water and Idaho Code § 42-222(1) govern how the Department evaluates changes to water rights. The Department's decision to reduce the volume of the Wayside Rights is warranted.

4. To prevent enlargement of the historic water use and the resultant injury, the Department must limit the amount of water changed to municipal purposes to the historic consumptive volume.
5. The Department will place an annual diversion volume limit on water right nos. 36-8332 and 36-17185 of 0.0 af, water right no. 36-7970 of 11.1 af, water right no. 36-4233 of 16.1 af, and water right no. 36-8744 of 0.6 af.

ORDER

IT IS HEREBY ORDERED that the *Preliminary Order Granting Petition for Reconsideration and Amending Transfer Approval* is **AFFIRMED**.

Dated this 2nd day of October 2025.



Phill Hummer
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of October, 2025, I served a true and correct copy of the foregoing document on the following by the method(s) indicated below:

CHRIS BROMLEY
MCHUGH BROMLEY PLLC
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Jean Hersley
Technical Records Specialist II

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.

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

**IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 87938 IN THE NAME OF)
THE CITY OF HEYBURN)**

**AMENDED FINAL ORDER
APPROVING APPLICATION
FOR TRANSFER, IN PART**

PROCEDURAL HISTORY

On June 14, 2023, the City of Heyburn (“Heyburn”) filed Application for Transfer No. 87938 (“*Transfer*”). The *Transfer* proposed changing the points of diversion for existing municipal water rights 36-8550 and 36-8738 (“Municipal Rights”). The *Transfer* also proposed to change the points of diversion and the nature of use for water rights 36-4233, 36-7970, 36-8332, 36-8744, and 36-17185 (“Wayside Rights”) from irrigation, commercial, and domestic uses to municipal use. The six proposed points of diversion include three existing wells authorized as points of diversion by the Wayside Rights and three existing wells that are part of Heyburn’s municipal system.

On January 16, 2024, the Department approved the *Transfer*. To prevent enlargement, the water rights changed to municipal use were approved with an annual diversion volume limitation based on the historical consumptive use associated with each water right. Ex. 6, at 3. Domestic in-home uses were considered nonconsumptive, commercial uses were considered fully consumptive, and irrigation uses were considered partially consumptive. Ex. 3, at 24.

On January 30, 2024, Heyburn filed a *Petition for Reconsideration* (“Petition”) asking the Department to reconsider the annual diversion volume limits. Ex. 4, at 4-5. Heyburn argued that “there is no rational basis to treat the Domestic Rights differently from commercial water right no. 36-8332. Accordingly, the *Transfer* should be amended to approve the entire volume associated with water right nos. 36-17185, 36-4233, 36-8744, and [36-7970].” *Id.*

On February 20, 2024, the Department issued a *Preliminary Order Granting Petition for Reconsideration and Amending Transfer Approval* (“2024 Preliminary Order”). The 2024 *Preliminary Order* concluded, in relevant part:

6. When approving the transfer, the Department did not properly consider the historical consumptive use in approving the nature of use change from commercial to municipal water use for water right 36-8332.
7. The Applicant’s Transfer and Petition did not include evidence confirming the historical consumptive water use in the “Wayside Café”, “Stinker Station”, and “In House Use” The Department must limit the transferred volumes of these rights

to ensure the proposed change to municipal use does not result in an enlargement in use of the water rights.

Ex. 6, at 3.

Accordingly, the municipal rights resulting from the nature of use changes approved in the *2024 Preliminary Order* included smaller annual volume diversion limits, reflecting only the consumptive portion of the irrigation uses because the in-home domestic and commercial uses were considered non-consumptive.

On March 1, 2024, Heyburn filed a *Request for Hearing* (“*Request*”) regarding “the Department’s decision to treat domestic, commercial, and municipal water rights differently and the decision to reduce the volumes associated with the domestic and commercial water rights that were the subject of the Transfer . . .” *Request*, at 2.

On April 19, 2024, the Department issued an *Order Granting Request for Hearing; Order Appointing Hearing Officer; and Notice of Prehearing Conference* granting Heyburn’s *Request* and appointing Phill Hummer as Hearing Officer.

On July 9, 2024, the Department held an administrative hearing pursuant to the *Request*.

At the hearing, Chris Bromley of McHugh Bromley PLLC represented Heyburn, and Charles G. Brockway of Brockway Engineering PLLC (“Brockway”) testified as an expert witness on behalf of Heyburn. The *Transfer*, application approvals, *Petition*, and other records from the application review process prior to the hearing were admitted into the record as Exhibits 1 through 6. Exhibit 8 is a technical memorandum prepared by Brockway, Exhibit 9 is a wastewater analysis also prepared by Brockway, and Exhibit 10 is a proposed condition by Brockway. Exhibits 8, 9, and 10 were admitted into the record.

On October 3, 2025, the hearing officer for the Department issued a *Preliminary Order Affirming Approval of an Application for Transfer* (“*Preliminary Order*”). The *Preliminary Order* set forth water right elements that were not consistent with the determinations of historical beneficial use set forth in the Findings of Fact and Analysis. Rule 760 of the Department’s Rules of Procedure (IDAPA 37.01.01) states, in pertinent part:

The agency head may modify or amend a final order of the agency (be it a preliminary order that became final because no party challenged it or a final order issued by the agency head itself) at any time before notice of appeal to District Court has been filed or the expiration of the time for appeal to District Court, whichever is earlier, by withdrawing the earlier final order or by substituting a new final order for it.

IDAPA 37.01.01.760.

The *Preliminary Order* became a final order by operation of law on October 17, 2025. See IDAPA 37.01.01.730.01. As of the date of this order, Heyburn has not filed an appeal of the *Preliminary Order* to the District Court. Therefore, the Director of the Department has the authority to substitute this Amended Final Order for the Preliminary Order that became a final order on October 17, 2025.

Based on the evidence available to the Department and the evidence presented by Heyburn at hearing, the Director finds, concludes, and orders as follows:

FINDINGS OF FACT

1. The *Transfer* proposes three changes to the elements of existing water rights: (1) a change in nature of use for the Wayside Rights to municipal purposes; (2) a change to the points of diversion and places of use of the Wayside Rights to incorporate the Wayside Rights into Heyburn’s municipal system and service area; and (3) a change to the points of diversion of the Municipal Rights to include the wells that have historically served the Wayside Rights.
2. Before the *Transfer*, the Wayside Rights authorized the diversion of ground water and included the following elements:

Water Right	Diversion Rate (CFS)	Diversion Volume (AF)	Acres	Beneficial Use
36-4233	0.12	20.0	5.0	Irrigation
36-4233	0.20	7.0	N/A	Domestic
total	0.20	27.0	5	
36-7970	0.20	27.6	N/A	Domestic
36-8332	0.04	0.9	N/A	Commercial
36-8744	0.02	0.8	0.2	Irrigation
36-8744	0.05	2.4	N/A	Domestic
total	0.07	3.2	0.2	
36-17185	0.05	2.4	N/A	Domestic

3. Water diverted pursuant to the Wayside Rights historically supplied water to a café, gas station, 75 homes, and the irrigation of 5.2 acres. Ex. 1, at 37; Ex. 8, at 1.
4. The unconsumed portion of water diverted and beneficially used pursuant to the domestic and commercial portion of the Wayside Rights entered Heyburn’s wastewater treatment plant and was discharged into the Snake River after treatment. Ex. 5, at 1; Ex. 8, at 2.

5. Before the *Transfer*, the Municipal Rights included the following elements:

Water Right	Diversion Rate (CFS)	Diversion Volume (AF)	Acres	Beneficial Use
36-8550	6.67	N/A	N/A	Municipal
36-8738	3.30	N/A	N/A	Municipal

APPLICABLE LAW

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

The director of the [Department] 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 [Idaho Code § 42-202B] . . . The director may consider consumptive use, as defined in [Idaho Code § 42-202B], as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right.

ANALYSIS

I. Water Right Validity

Idaho Code § 42-222(1) states that a person “entitled to the use of water” may apply to the Department to change elements of the authorized water use. The water rights proposed to be changed must be valid as evidenced by an existing claim, license, or decree and not lost in accordance with the forfeiture provisions of Idaho Code § 42-222(2). If the water rights proposed to be changed are valid, the proposed transfer can be approved if the changes meet the criteria in Idaho Code § 42-222(1).

The Snake River Basin Adjudication (“SRBA”) Court issued a partial decree for water right 36-4233 on December 4, 1997, and for water right 36-7970 on March 20, 1998. The Department issued licenses for water right 36-8332 on July 6, 1992; water right 36-8550 on April 10, 1998; water right 36-8738 on July 10, 2006; and water right 36-8744 on May 3, 2019. Water right 36-17185 was created as the result of a *Notice in Change in Water Right Ownership* split filed on January 21, 2021, by Heyburn Estates LLC for a portion of water right 36-8744.

Heyburn submitted evidence identifying the location of irrigation occurring pursuant to the Wayside Rights. Ex. 1, at 38. Evaluation of aerial imagery available to the Department supports the conclusion that the full 5.2 acres authorized by the Wayside Rights have been irrigated within the most recent five-year period. Ex. 3, at 23. Heyburn identified the homes served by the Wayside Rights. Ex. 1, at 38. Testimony and discussion in the record demonstrate water use within the homes and commercial buildings occurred within the five-year period before the *Transfer* was filed. Ex. 8, at 4; Ex. 9, at 1; Brockway Test. Therefore, the Wayside Rights have not been lost or forfeited through non-use. Similarly, testimony and discussion in the record demonstrate the Municipal Rights are used to supply water to patrons within the service area for Heyburn and have not been lost or forfeited through non-use.

II. Injury and Enlargement

Pursuant to Idaho Code § 42-222(1), the Department cannot approve the proposed transfer if the proposed change constitutes an enlargement or injures other water rights. Injury results from reduced availability of water to satisfy a water right. *See Barron v. IDWR*, 135 Idaho 414,418 (2001) (“IDWR’s concern over the potential for reduced availability, *i.e.*, injury, to those rights appears valid.”). In addition, “there is a per se injury to junior water right holders anytime an enlargement receives priority.” *A & B Irr. Dist. v. Aberdeen-American Falls Ground Water Dist.*, 141 Idaho 746, 753 (2005).

Enlargement occurs if the total diversion rate, annual diversion volume, or the number of acres irrigated increases beyond what is authorized by the water rights prior to the proposed transfer. *See 3G AG LLC v. Idaho Dep’t of Water Res.* 170 Idaho 251, 259 (2022).

The Department may consider consumptive use when evaluating whether the proposed change will result in enlargement. I.C. § 42-222(1). Idaho Code § 42-202B(1) defines consumptive use as “that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, converted to nonrecoverable water vapor, incorporated into products, or otherwise does not return to the waters of the state.” In other words, consumptive use is the portion of water diverted and beneficially used under a water right that is not returned to the waters of the state. The statute makes no distinction between ground water and surface water.

The Department considers any future consumptive use that is in excess of the historical consumptive use to be an enlargement. *In re Application for Amendment of Permit No. 63-32225 in the Name of Intermountain Sewer & Water, Corp. and Application for Transfer No. 83875 in the Name of Gregory B. Johnson, Order on Exceptions; Final Order Approving Application for Amendment of Permit with Conditions and Denying Transfer*, at 6 (Sept. 22, 2021) [hereinafter *Johnson Exceptions*]. “To prevent enlargement of the historic consumptive use, [a water right] could be changed to municipal purposes [when] its annual diversion volume [is] reduced to its historic consumptive use.” *Johnson Exceptions*, at 6 n.7.

1. *Municipal water rights are fully consumptive.*

Heyburn asserts that the Department treats domestic and commercial uses differently than municipal use as a matter of policy without basis and argues the use of water pursuant to the Wayside Rights prior to the proposed change will not be different after the proposed change. Ex. 8, at 5; Brockway Test. Specifically, Heyburn argues that no enlargement will occur by incorporating the full volume of the domestic and commercial use components of the Wayside Rights into the municipal system because the historical diversion and disposal system is fully consumptive with regard to the aquifer. Ex. 4, at 5; Ex. 8, at 4; Brockway Test. Heyburn claims there will be no net change to the water balance under the proposed transfer because the unused water will continue to be conveyed to Heyburn's wastewater treatment facility and discharged to the Snake River. Ex. 8, at 4. As a result, ground water diverted pursuant to the Wayside Rights would not return to the aquifer. Ex. 8, at 4–5; Ex. 9, at 1; Brockway Test.

Water rights authorizing municipal use are treated differently than other beneficial uses because they facilitate a broader range of end uses that inherently involve higher levels of consumption. A water right for municipal purposes may be fully consumptive without (a) engaging in waste, (b) violating the duty of beneficial use, or (c) exceeding the scope of the right. *Mem. Decision & Order at 10, Riverside Irr. Dist. v. Idaho Dep't of Water Res.*, No. CV 14-21-05008 (Canyon Cnty. Dist. Ct. Idaho Dec. 28, 2021) [hereinafter *Riverside*]. This occurs because “other components of the municipal water use may consume, either now or in the future, more water” than was historically used prior to the transfer. *Johnson Exceptions*, at 6. For example, a municipal right diverted today for non-consumptive in home uses could later be used for a manufacturing facility that is fully consumptive.

In addition, water rights authorizing municipal use are treated differently because effluent production is inherent in municipal use. *See Riverside*, at 10. Treated effluent¹ is the unused portion of water collected at the municipality's effluent treatment plant, processed for treatment, and disposed of in some manner by the municipality. For instance, treated effluent may be discharged either (a) directly into a surface water source, or (b) through land application methods.² Discharging the treated effluent directly to the original source or another source is non-consumptive because it enters the “waters of the state” and is available for use by others. However, discharging treated effluent through land application methods are intended to be consumptive because water is lost through evaporation or transpiration.

A municipality cannot always guarantee it will discharge treated effluent into the “waters of the state” because methods of discharging treated effluent may change in the future. If municipal water rights were considered partially consumptive or non-consumptive, changing the discharge method to the partially consumptive land application method would constitute an enlargement of use and would cause injury by reducing the water available for use by other water right holders. Therefore, the Department considers water rights used for municipal purposes as

¹ Because the term “wastewater” frequently refers to agricultural runoff, this order will refer to the water entering, and discharged from, a municipality's wastewater treatment plant as “treated effluent.”

² Either method is subject to Idaho Department of Environmental Quality's standards and permitting requirements that are not at issue in this matter.

fully consumptive. See *In re Applications for Permits for the Diversion and Use of Surface and Ground Water Within the Snake River Basin, Amended Snake River Basin Moratorium Order*, at 29 (July 16, 2024).

2. *Domestic and commercial uses in this matter are nonconsumptive.*

At the time the *Transfer* was filed, four of the Wayside Rights (water rights 36-4233, 36-7970, 36-8744, and 36-17185) authorized domestic use, and one Wayside Right (water right 36-8332) authorized commercial use for a gas station and convenience store. Ex. 8, at 1. These rights were used within defined places of use, and the in-home and commercial uses were historically non-consumptive. The appropriated water returned to waters of the State through Heyburn's effluent treatment system and was discharged into the Snake River as treated effluent without a reduction in volume. Ex. 5, at 1; Ex. 8, at 1–2; Brockway Test.

While domestic and commercial uses may involve return flows to city effluent treatment systems, municipal distribution systems often result in the full consumption of water by end users. Because Heyburn proposes to connect the wells associated with the Wayside Rights to its municipal distribution system, the pre-transfer water from the Wayside Rights would be delivered to end users throughout its service area. Ex. 1, at 3, 5; Brockway Test. This shift could facilitate the use of water for purposes that are more consumptive—such as industrial cooling, car washes, or park irrigation—and may result in evaporative or transpiration losses. Additionally, commingling the previously used domestic and commercial water into the municipal system would transfer control to the end user and makes it difficult to ensure the water will not be fully consumed. *Johnson Exceptions*, at 5. Without suitable control over the end use, Heyburn cannot ensure enlargement would not occur. Accordingly, changing from a non-consumptive use to a potentially fully consumptive use constitutes an enlargement of the historical use of a water right.

Moreover, domestic and commercial rights are often subject to both volume and diversion rate limitations. Municipal rights, by contrast, often do not include a volume limitation. Approving the *Transfer* with an annual diversion volume limitation when changing the nature of use to municipal use is necessary to prevent increased consumptive use caused by end users that are more consumptive than those historically authorized.

To prevent enlargement, the Department must limit the water rights to an annual diversion volume equal to the historical consumptive use occurring under the water rights. Because the historical consumptive use of water rights 36-8332 and 36-17185 has been zero, the Department cannot approve the transfer for these water rights.³ Therefore, water rights 36-8332 and 36-17185 should be excluded from the transfer approval.

The historical use of water right 36-7970 is partially consumptive because the domestic use includes both in-home use and external use such as irrigation of lawns and landscaping.

³ Although the historical consumptive use for the in-home domestic portion of water rights 36-4233 and 36-8744 is also 0.0 af, these rights also include an irrigation component that have a historical consumptive use. That portion is calculated below in Subsection 3.

Water right 36-7970 authorizes 27.6 acre-feet (“af”) for 23 homes, which is equivalent to the Department’s standard of 0.6 af allocated for in-home use and 0.6 af allocated for domestic type irrigation. As discussed in greater detail below, the consumptive portion of irrigation pursuant to the Wayside Rights is 3.21 af per acre. The Department’s standard field headgate allowance for irrigation at the place of use of the Wayside Rights in the Department’s Administrative Basin No. 36 is 4.0 af. *Standards for Irrigation Consumptive Use Requirements, Irrigation Field Headgate Requirements, and Irrigation Season of Use*, Administrator’s Licensing Memorandum No. 9, at 4 (Oct. 12, 1999). The following calculation determines the consumptive portion of the annual diversion volume associated with the external portion of the domestic use pursuant to water right 36-7970:

$$23 \text{ homes} * 0.6 \text{ af} * (3.21/4.00) = 11.07 \text{ af}$$

Accordingly, the Department must limit the annual diversion volume for water right 36-7970 to 11.1 af. Therefore, the prior approval excluding the annual volume for in-home domestic and commercial use of the Wayside Rights and including the portion used for domestic lawn and landscape irrigation was correct and warranted.

3. *Irrigation uses are partially consumptive.*

At the time the *Transfer* was filed, two Wayside Rights (water rights 36-4233 and 36-8744) also authorized irrigation use. Irrigation use is partially consumptive because a portion of the water applied to a crop returns to the waters of the state and is available for use. Heyburn agrees that the portion of the irrigation use component represented by precipitation deficit data is a consumptive water use under the Wayside Rights. Ex. 8, at 5. Precipitation deficit data shows the consumptive volume for irrigation pursuant to the Wayside Rights is 3.21 acre-feet per acre (af/ac). Ex. 3, at 1; Ex. 8, at 2. The following calculations determine the historical consumptive use volume associated with irrigation under each right:

Water Right 36-4233:	5.0 acres * 3.21 af/ac = 16.1 af
Water Right 36-8744:	0.2 acres * 3.21 af/ac = 0.6 af

Therefore, 16.1 af for right 36-4233 and 0.6 af for right 36-8744 can be transferred to municipal purposes without enlarging the historical consumptive use.

III. Conservation of Water Resources within the State of Idaho

Heyburn proposes to connect the wells that currently serve as the points of diversion for the Wayside Rights to Heyburn’s municipal conveyance works and continue to treat effluent through the treatment system. Ex. 8, at 2, Brockway Test. Reports and testimony in the record demonstrate that Heyburn monitors their conveyance and treatment system to ensure their system is functioning efficiently. Efficient diversion and conveyance systems preserve as much water as possible for beneficial use by other users. Therefore, the proposed change is consistent with the conservation of water resources.

IV. Local Public Interest

Idaho Code § 42-202B(3) defines local public interest “as the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource.” Changes to a water right as authorized by Idaho Code § 42-222 can be utilized to meet the changing needs of water users. *See* Idaho Water Resource Board, *Idaho State Water Plan* at 17 (Nov. 2012). The changes proposed by Heyburn are intended to improve Heyburn’s ability to serve users within the service area. Therefore, the proposed change is in the local public interest.

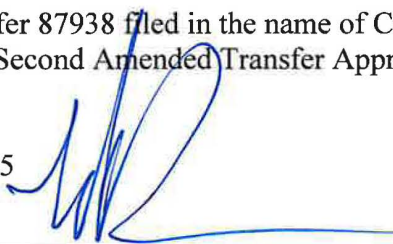
CONCLUSIONS OF LAW

1. Pursuant to Idaho Code § 42-222(1), the Department cannot approve a transfer application if the proposed change would enable an enlargement of use of the right or cause an injury to existing water rights.
2. The in-home domestic and commercial portions of the Wayside Rights have historically been non-consumptive and a change of the nature of use to municipal purposes within Heyburn’s service area would facilitate an increase in the consumptive use volume.
3. The historical use of water and Idaho Code § 42-222(1) govern how the Department evaluates changes to water rights. The Department’s decision to reduce the volume of the Wayside Rights is warranted.
4. To prevent enlargement of the historical water use and the resultant injury, the Department must limit the amount of water changed to municipal purposes to the historical consumptive volume.
5. Because there is no historical consumptive use associated with water rights 36-8332 and 36-17185, these two rights are excluded from the transfer approval. The Department will adopt an annual volume limit of 11.1 af for water right 36-7970, 16.1 af for water right 36-4233, and 0.6 af for water right 36-8744. These volume limits represent the historical consumptive use occurring under the respective water rights.

ORDER

IT IS HEREBY ORDERED that Application for Transfer 87938 filed in the name of City of Heyburn is APPROVED, IN PART as reflected in the Second Amended Transfer Approval 87938 issued in conjunction with this order.

Dated this 21 day of OCTOBER 2025



Mathew Weaver
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of October, 2025, the above and foregoing was served on the following by the method(s) indicated below:

<p>CHRIS BROMLEY MCHUGH BROMLEY PLLC PO BOX 107 BOISE ID 83701-0107 cbromley@mchughbromley.com</p> <p><i>Attorney for the City of Heyburn</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>CITY OF HEYBURN PO BOX 147 HEYBURN ID 83336-0147 paul@paulnjrosslaw.com imccracken@heyburncity.org</p> <p><i>Petitioner</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>

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Greg.sullivan@brockwayeng.com



Sarah Tschohl
Paralegal

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

The accompanying document is a "**Final Order**" issued by the Idaho Department of Water Resources ("Department") pursuant to Idaho Code § 67-5246. Unless a different date is stated in the final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration as further described below:

PETITION FOR RECONSIDERATION

(See Idaho Code § 67-5246(4))

Any party may file a petition for reconsideration of this final order 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.

APPEAL TO DISTRICT COURT

(See Idaho Code §§ 67-5270 through 67-5279)

Within twenty-eight (28) days after: (a) the service date of this final order, (b) the service date of a denial of a petition for reconsideration of this final order, or (c) the failure within twenty-one (21) days of the presiding officer to act on a petition for reconsideration of this final order, any party may file a petition for judicial review of this final order with a district court. The filing of an appeal to a district court does not in itself stay the effectiveness or enforcement of the order under appeal.

CERTIFICATE OF SERVICE

(See IDAPA 37.01.01.053, 37.01.01.202; I.R.C.P. 84)

All documents filed with or served on the Department in connection with a petition for reconsideration or an appeal of this final order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 53 and 202, or Idaho Rule of Civil Procedure 84.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Second Amended

TRANSFER OF WATER RIGHT
TRANSFER NO. 87938

This is to certify that: CITY OF HEYBURN
941 18TH ST
HEYBURN, ID 83336-4902

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Changes

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
36-4233	WR/DECREED	3/1/1963	0.200 cfs	16.1 af	N/A	N/A	GROUND WATER
36-7970	WR/DECREED	3/10/1981	0.200 cfs	11.1 af	N/A	N/A	GROUND WATER
36-8550	WR/LICENSE	5/29/1990	6.670 cfs	N/A	N/A	N/A	GROUND WATER
36-8738	WR/LICENSE	5/22/1995	3.300 cfs	N/A	N/A	N/A	GROUND WATER
36-8744	WR/LICENSE	12/22/1995	0.070 cfs	0.6 af	N/A	N/A	GROUND WATER

Purpose of Transfer (Changes Proposed)

<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
36-4233	NO	NO	YES	YES	YES	YES
36-7970	NO	NO	YES	YES	NO	YES
36-8550	NO	YES	YES	YES	NO	NO
36-8738	NO	YES	YES	YES	NO	NO
36-8744	NO	NO	YES	YES	YES	YES

Summary Of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (Changed Portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
36-4233	36-4233	0.200 cfs	16.1 af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-7970	36-7970	0.200 cfs	11.1 af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-8550	36-8550	6.670 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-8738	36-8738	3.300 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-8744	36-8744	0.070 cfs	0.6 af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		10.440 cfs	N/A	N/A	N/A		N/A	N/A	N/A	N/A

SUPPORT DATA

IN FILE # 36-4233

Transfer No. 87938

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT
TRANSFER NO. 87938

Second Amended

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this 21 day of OCTOBER, 2025.



Director



Transfer No. 87938

WATER RIGHT NO. 36-7970
As Modified by Transfer No. 87938

In accordance with the approval of Transfer No. 87938, Water Right No. 36-7970 is now described as follows:

Right Holder: CITY OF HEYBURN
 941 18TH ST
 HEYBURN, ID 83336-4902

Priority Date: 3/10/1981

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
MUNICIPAL	01/01	to 12/31	0.200 cfs	11.1 af
			0.200 cfs	11.1 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SEWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SEWNW	Sec 9 Twp 10S Rge 23E	MINIDOKA County

PLACE OF USE: MUNICIPAL

Twp	Rng	Sec	NE				NW				SW				SE				Totals	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
10S	23E	11	X																	

CONDITIONS OF APPROVAL

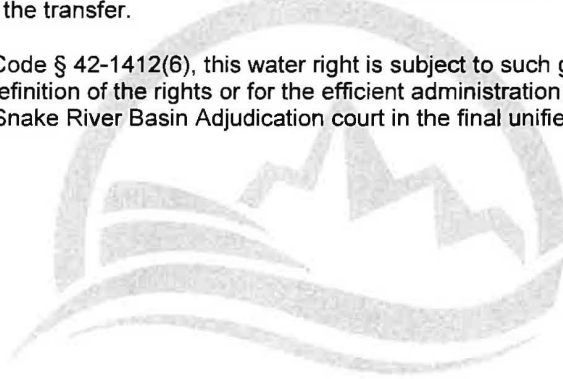
- Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
- A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
- Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
- The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).

Transfer No. 87938

WATER RIGHT NO. 36-7970
As Modified by Transfer No. 87938

CONDITIONS OF APPROVAL

5. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in decree dated 3/20/1998.
6. This right does not grant any right-of-way or easement across the land of another.
7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. Pursuant to Idaho Code § 42-1412(6), this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.



Transfer No. 87938

WATER RIGHT NO. 36-4233
As Modified by Transfer No. 87938

In accordance with the approval of Transfer No. 87938, Water Right No. 36-4233 is now described as follows:

Right Holder: CITY OF HEYBURN
 941 18TH ST
 HEYBURN, ID 83336-4902

Priority Date: 3/1/1963

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
MUNICIPAL	01/01	to 12/31	0.200 cfs	16.1 af
			0.200 cfs	16.1 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SEWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SEWNE	Sec 9 Twp 10S Rge 23E	MINIDOKA County

PLACE OF USE: MUNICIPAL

Twp	Rng	Sec	NE				NW				SW				SE				Totals	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
10S	23E	11	X																	

CONDITIONS OF APPROVAL

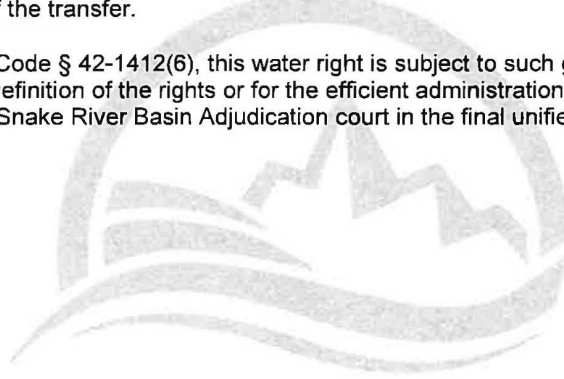
1. Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).

Transfer No. 87938

WATER RIGHT NO. 36-4233
As Modified by Transfer No. 87938

CONDITIONS OF APPROVAL

5. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in decree dated 8/27/2001.
6. This right does not grant any right-of-way or easement across the land of another.
7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. Pursuant to Idaho Code § 42-1412(6), this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.



Transfer No. 87938

WATER RIGHT NO. 36-8550
As Modified by Transfer No. 87938

In accordance with the approval of Transfer No. 87938, Water Right No. 36-8550 is now described as follows:

Right Holder: CITY OF HEYBURN
 PO BOX 147
 HEYBURN, ID 83336-0147

Priority Date: 5/29/1990

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
MUNICIPAL	01/01	to 12/31	6.670 cfs 6.670 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENE	Sec 9 Twp 10S Rge 23E	MINIDOKA County

PLACE OF USE: MUNICIPAL

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10S	23E	11	X																

CONDITIONS OF APPROVAL

1. Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).

Transfer No. 87938

WATER RIGHT NO. 36-8550
As Modified by Transfer No. 87938

CONDITIONS OF APPROVAL

5. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in Transfer 73504 dated 1/3/2008.
6. This right is for the use of trust water, and it is subject to review 20 years after its initial approval (date of permit approval) to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.
7. When the minimum stream flow water rights in the Snake River at Murphy Gage are not being satisfied, the right holder shall cease diverting water for the consumptive uses authorized by this right. The minimum stream flow water rights are for 3,900 cfs from April 1 through October 31 and 5,600 cfs from November 1 through March 31. See IDAPA 37.03.08.030.
8. This right does not grant any right-of-way or easement across the land of another.
9. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
10. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Transfer No. 87938

WATER RIGHT NO. 36-8738
As Modified by Transfer No. 87938

In accordance with the approval of Transfer No. 87938, Water Right No. 36-8738 is now described as follows:

Right Holder: CITY OF HEYBURN
 PO BOX 147
 HEYBURN, ID 83336-0147

Priority Date: 5/22/1995

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
MUNICIPAL	01/01	to 12/31	3.300 cfs
			3.300 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SEWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SEWNE	Sec 9 Twp 10S Rge 23E	MINIDOKA County

PLACE OF USE: MUNICIPAL

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10S	23E	11	X																

CONDITIONS OF APPROVAL

1. Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. The daily diversion volume for non-domestic uses under this municipal right shall not exceed 2,500 gallons per use and the daily diversion volume for domestic uses under this right shall not exceed 13,000 gallons per dwelling in accordance with Section 42-111, Idaho Code.
4. The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.

Transfer No. 87938

WATER RIGHT NO. 36-8738
As Modified by Transfer No. 87938

CONDITIONS OF APPROVAL

5. Irrigation of large projects such as parks, golf courses, or sports activities fields is not authorized under this right.
6. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
7. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
8. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in Transfer 73504 dated 1/3/2008.
9. This right is for the use of trust water, and it is subject to review 20 years after its initial approval (date of permit approval) to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.
10. When the minimum stream flow water rights in the Snake River at Murphy Gage are not being satisfied, the right holder shall cease diverting water for the consumptive uses authorized by this right. The minimum stream flow water rights are for 3,900 cfs from April 1 through October 31 and 5,600 cfs from November 1 through March 31. See IDAPA 37.03.08.030.
11. This right does not grant any right-of-way or easement across the land of another.
12. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
13. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Transfer No. 87938

WATER RIGHT NO. 36-8744
As Modified by Transfer No. 87938

In accordance with the approval of Transfer No. 87938, Water Right No. 36-8744 is now described as follows:

Right Holder: CITY OF HEYBURN
 941 18TH ST
 HEYBURN, ID 83336-4902

Priority Date: 12/22/1995

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
MUNICIPAL	01/01	to 12/31	0.070 cfs	0.6 af
			0.070 cfs	0.6 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENE	Sec 9 Twp 10S Rge 23E	MINIDOKA County

PLACE OF USE: MUNICIPAL

Twp	Rng	Sec	NE				NW				SW				SE				Totals	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
10S	23E	11	X																	

CONDITIONS OF APPROVAL

1. Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).

Transfer No. 87938

WATER RIGHT NO. 36-8744
As Modified by Transfer No. 87938

CONDITIONS OF APPROVAL

5. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in license dated 5/3/2019.
6. This right does not grant any right-of-way or easement across the land of another.
7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.



Transfer No. 87938



BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

May 9, 2023

Corey Skinner
Idaho Department of Water Resources
650 Addison Ave. W., Ste. 500
Twin Falls, ID 83301

Re: City of Heyburn

Dear Mr. Skinner:

The City of Heyburn desires to update the water rights utilized to provide water to its citizens. Municipal water rights 36-8550 and 36-8738 will be updating their place of use and points of diversions. The beneficial uses of water rights 36-4233, 36-7970, 36-8332, 36-8744 and 36-17185 will be changing to municipal with this transfer and their place of use and points of diversion will match 36-8550 and 36-8738.

No ESPA Model analysis is required with this transfer application. Historical water use for water rights 36-4233, 36-7970, 36-8332, 36-8744 and 36-17185 were determined by calculating the water demands for the Wayside Café, Stinker Station, in house use and consumptive irrigation on 5.2 acres of irrigation. These calculations are attached to the transfer application.

Please contact me if you have any questions.

Sincerely,

Greg Sullivan, M.S., Engineer

Cc: City of Heyburn
Enc: Transfer Application, Aerial Maps, Exhibit A, Exhibit B, Water Requirement Estimation, Brockway Engineering Check # 17440 for \$1,550.00

2016 NORTH
WASHINGTON
STREET • SUITE 4

TWIN FALLS,
IDAHO 83301

208•736•8543

FAX: 736•8506



MINIMUM REQUIREMENTS CHECKLIST
TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

An application for transfer must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. Incomplete applications will be returned. The instructions, fee schedule, Part 2A reports and additional Part 2B forms are available from any Department office or on the Department’s website at idwr.idaho.gov.

Name of Applicant(s) CITY OF HEYBURN

Check whether each item below is *attached* (Yes) or *not applicable* (N/A) for the proposed transfer.

Yes N/A * Means the item is always required and must be included with the application.

- * Completed Application for Transfer of Water Right form, Part 1.
- * Signature of applicant(s) or applicant’s authorized representative on Application for Transfer Part 1. Include evidence of authority labeled Attachment #3 (see below) if signed by representative.
- * Application for Transfer Part 2A. Attach a [Part 2A](#) report describing each water right in the transfer as currently recorded.
- Complete and attach an Application for Transfer [Part 2B](#) for each water right for which only a portion is proposed to be changed through this transfer application.
- * Application for Transfer Part 3A is always required (see Attachment #7a below); Parts 3B and 3C must be completed for transfer applications proposing to change the nature of use of the water right(s) or proposing changes to supplemental right(s).
- * Correct fee submitted with transfer application form. ([Fee schedule](#) is on website and instructions for application for transfer.)

Attachments to Application - Label each attachment with the corresponding number shown below as Attachment #1-10.

- #1 If the applicant is a business, partnership, organization, or association, and not currently registered in the State of Idaho as a business entity, attach documentation identifying officers authorized to sign or act on behalf of right holder. (See Part 1.)
- #2a Water Right ownership documentation if Dept. records do not show the applicant as the current water right owner. **
- #2b If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s).**
** Additional fee(s) required for water right ownership changes; see fee schedule.
- #3 Documentation of authority to make the change if the applicant is not the water right owner.
- #4 Power of Attorney or documentation providing authority to sign or act on the applicant’s behalf. (See Part 1.)
- #5 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. ESPA transfer spreadsheet and model grid labeled cells are available on the Department’s website at <https://idwr.idaho.gov/water-rights/transfers/resources/>.
- #6 Notarized statement of agreement or a statement on official letterhead signed by an authorized representative from each lien holder or other entity with financial interest in the water right(s) or land affected by the proposed transfer. (See Part 1.5.c.)
- * #7a Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described on the application. Include legal description labels. If only a portion of the right is proposed to be changed, identify the current location of the part of the existing right(s) proposed to be changed. (See Part 3A.)
- #7b If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (GIS) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. If some or all of any right is leased to the Water Supply Bank, you must also show the the specific location and/or acres to be idled at the new, proposed place of use to satisfy lease requirements.
- #8a If the transfer application proposes to change the nature of use or period of use for one or more rights, provide documentation describing the extent of historic beneficial use for the water rights proposed to be transferred and document how enlargement will be avoided. (See Part 3B.) Additional fee required for proposed changes to nature of use; see [fee schedule](#).
- #8b If the transfer application proposes to change the place of use of a supplemental irrigation right, provide documentation regarding the historic use of the supplemental right(s) and availability or reliability of the primary right(s) being supplemented, both before and after the proposed change. (See Part 3C.)
- #9 Water Supply Bank information for all rights proposed for transfer and currently leased to the Bank. ([Attachment WSB](#))
- #10 Other. Please describe: _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Name of Applicant(s) CITY OF HEYBURN Phone 2086798158
Mailing address 941 18TH ST HEYBURN, ID 83336-4902 Email _____

- If applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign or act on behalf of the applicant. Label it Attachment #1.
- Attach water right ownership documentation if Department records do not show the transfer applicant as the current water right owner. Label it Attachment #2a.
- If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Label it Attachment #2b.
- Attach documentation of authority to make the proposed change if the applicant is not the water right owner. Label it Attachment #3.

Provide contact information below if a consultant, attorney, or any other person is representing the applicant in this transfer process.

No Representative
Name of Representative Greg Sullivan Phone 208-736-8543
Mailing address 2016 N Washington St Ste 4 Twin Falls, Idaho 83301 Email greg.sullivan@brockwayeng.com

- Send all correspondence for this application to the representative and not to the applicant.
OR
- Send original correspondence to the applicant and copies to the representative.
- The representative may submit information for the applicant but is not authorized to sign for the applicant.
OR
- The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it Attachment #4.

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

Dick Galbraith Dick Galbraith Mgr 4/17/02
 Signature of Applicant or Authorized Representative Print Name and Title if applicable Date

 Signature of Applicant or Authorized Representative Print Name and Title if applicable Date

A. PURPOSE OF TRANSFER

- 1. Change point of diversion Add diversion point(s) Change place of use
 Change nature of use Change period of use Other _____

2. Is this a transfer for changes pursuant to Idaho Code §42-221-O.8?
If yes, attach an explanation and any supporting documentation labeled as Part 1A.2.

3. Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it Part 1A.3.
This transfer proposes changing the domestic and commercial portions of water rights 36-4233, 36-7970, 36-8332, 36-8332, 36-8744 and 36-17185 to a beneficial use of municipal. The irrigation portions of 36-4233 and 36-8744 will remain irrigation and will continue irrigating the historical 5.2 acres currently irrigated.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.

1.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
<input checked="" type="checkbox"/> All or <input type="checkbox"/> Part	36-4233	0.12/16.0	Municipal	1/01 to 12/31	Ground Water
<input type="checkbox"/> <input type="checkbox"/>		0.20/7.0	Municipal	1/01 to 12/31	Ground Water
<input checked="" type="checkbox"/> <input type="checkbox"/>	36-7970	0.20/27.6	Municipal	1/01 to 12/31	Ground Water
<input checked="" type="checkbox"/> <input type="checkbox"/>	36-8332	0.04/0.9	Municipal	1/01 to 12/31	Ground Water
<input checked="" type="checkbox"/> <input type="checkbox"/>	36-8744	0.05/2.4	Municipal	1/01 to 12/31	Ground Water
<input type="checkbox"/> <input type="checkbox"/>		0.02/0.6	Municipal	1/01 to 12/31	Ground Water
<input checked="" type="checkbox"/> <input type="checkbox"/>	36-17185	0.05/2.4	Municipal	1/01 to 12/31	Ground Water
<input checked="" type="checkbox"/> <input type="checkbox"/>	36-8550	6.67/	Municipal	1/01 to 12/31	Ground Water
<input checked="" type="checkbox"/> <input type="checkbox"/>	36-8738	3.3/	Municipal	1/01 to 12/31	

Total authorized under rights 10.53 cfs and/or _____ acre-feet.

2. Total amount of water proposed to be transferred or changed 10.53 cubic feet per second and/or _____ acre-feet per year.

3. Point(s) of Diversion:

- No changes to point(s) of diversion are proposed - the following chart is therefore not completed. (Proceed to #4.)
- Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA. Label it **Attachment #5**.

New ?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
See Exhibit A										

4. Place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)

- No changes to place of use are proposed - the following chart is therefore not completed. (Proceed to #5.)

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
See Exhibit B																			
Total Acres (for irrigation use)																			

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

5. General Information:

a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:

Existing wells. Mainlines will be installed to connect all of the wells together.

b. Who owns the property at the point(s) of diversion? The applicant

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?

If yes, attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: N/A

It is the applicant's responsibility to provide notice to lien holder, trustee, mortgagor, or contract holder of the proposed changes that may impact or change the value of the water rights or affected real property. Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.

d. Are any of the water rights proposed for transfer currently leased to the Water Supply Bank?

If yes, complete Attachment WSB.

e. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer:

Historical use will remain unchanged.

f. Describe the use of any other water right(s) for the same purpose or land, or the same diversion system as right(s) proposed to be transferred at both the existing and proposed point(s) of diversion and place(s) use:

None

g. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

- undergone a period of five or more consecutive years of non-use,
- currently leased to the Water Supply Bank,
- currently used in a mitigation plan limiting the use of water under the right, or
- currently enrolled in a Federal set-aside program limiting the use of water under the rights?

If yes, describe:

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 36-8550

Current Owner: CITY OF HEYBURN
 Priority Date: 5/29/1990
 Origin: Water Right
 Status: Active
 Basis: License

Source

Tributary

GROUND WATER

Beneficial Use

From To

Diverslon Rate

Annual Volume

MUNICIPAL

01/01 to 12/31

6.67 CFS

Total Diverslon

6.67 CFS

Location of Point(s) of Diverslon

GROUND WATER

NW1/4SE1/4NE1/4

Sec. 15, Twp 10S, Rge 23E B.M.

MINIDOKA County

GROUND WATER

SW1/4NE1/4NW1/4

Sec. 15, Twp 10S, Rge 23E B.M.

MINIDOKA County

GROUND WATER

SE1/4NW1/4NW1/4

Sec. 9, Twp 10S, Rge 23E B.M.

MINIDOKA County

GROUND WATER

SW1/4NE1/4NW1/4

Sec. 22, Twp 10S, Rge 23E B.M.

MINIDOKA County

Place of Use

MUNICIPAL Within MINIDOKA County

T10S R23E S8	NENE	T10S R23E S8	NWNE
T10S R23E S8	SWNE	T10S R23E S8	SENE
T10S R23E S9	NWNE	T10S R23E S9	SWNE
T10S R23E S9	NENW	T10S R23E S9	NWNW
T10S R23E S9	SWNW	T10S R23E S9	SENE
T10S R23E S9	NESW	T10S R23E S9	SESW
T10S R23E S9	SWSE	T10S R23E S10	NESW
T10S R23E S10	SWSW	T10S R23E S10	SESW
T10S R23E S10	NWSE	T10S R23E S10	SWSE
T10S R23E S10	SESE	T10S R23E S11	SWNE
T10S R23E S11	SENE	T10S R23E S11	SENE
T10S R23E S11	NESW	T10S R23E S11	NWSW
T10S R23E S11	SWSW	T10S R23E S11	SESW
T10S R23E S11	NESE	T10S R23E S11	NWSE
T10S R23E S15	NENE	T10S R23E S15	NENE
T10S R23E S15	NENE	T10S R23E S15	NENE

Page _____ of _____

T10S R23E S15		NWSW	T10S R23E S15		NWSW
T10S R23E S15		NWSW	T10S R23E S15		NWSW
T10S R23E S15		NWSW	T10S R23E S15		NWSW
T10S R23E S15		NWSW	T10S R23E S15		NWSW
T10S R23E S15		NWSW	T10S R23E S15		SWSW
T10S R23E S15		SWSW	T10S R23E S15		SWSW
T10S R23E S15		SWSW	T10S R23E S15		SWSW
T10S R23E S15		SWSW	T10S R23E S15		SWSW
T10S R23E S15		SWSW	T10S R23E S15		SWSW
T10S R23E S15		SWSW	T10S R23E S15		SWSW
T10S R23E S15		SESW	T10S R23E S15		SESW
T10S R23E S15		SESW	T10S R23E S15		SESW
T10S R23E S15		SESW	T10S R23E S15		SESW
T10S R23E S15		SESW	T10S R23E S15		SESW
T10S R23E S15		SESW	T10S R23E S15		SESW
T10S R23E S15		SESW	T10S R23E S15		SESW
T10S R23E S15		SESW	T10S R23E S15		SESW
T10S R23E S15		SESW	T10S R23E S15		SESW
T10S R23E S15		SESW	T10S R23E S15		NWSE
T10S R23E S15		NWSE	T10S R23E S15		NWSE
T10S R23E S15		NWSE	T10S R23E S15		NWSE
T10S R23E S16		NENE	T10S R23E S16		NWNE
T10S R23E S16	Lot 6	SWNE	T10S R23E S16		SENE
T10S R23E S16		NENW	T10S R23E S16	Lot 4	NWNW
T10S R23E S16	Lot 5	SENW	T10S R23E S16	Lot 7	NESE
T10S R23E S22			T10S R23E S22		NENE
T10S R23E S22		NWNE	T10S R23E S22		SWNE
T10S R23E S22		NENW	T10S R23E S22		NENW
T10S R23E S22		NENW	T10S R23E S22		NENW
T10S R23E S22		SENW	T10S R23E S22		NENW
T10S R23E S22	Lot 5	NESW	T10S R23E S22		SENW

Conditions of Approval:

1. R55 This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
2. T07 The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
3. R43 The right holder shall maintain lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
4. T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
5. R05 Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
6. 115 Prior to the diversion and use of water under Transfer approval 73504, the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion, in accordance with Department specifications.
7. 124 Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
8. 046 Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
9. 004 This right does not grant any right-of-way or easement across the land of another.
10. 180 A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.

Licensed Date: 4/10/1998

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 36-8738

Current Owner: CITY OF HEYBURN
 Priority Date: 5/22/1995
 Origin: Water Right
 Status: Active
 Basis: License

<u>Source</u>			<u>Tributary</u>			
GROUND WATER						
<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>		
MUNICIPAL	01/01 to	12/31	3.3 CFS			
	<u>Total Diversion</u>		3.3 CFS			
<u>Location of Point(s) of Diversion</u>						
GROUND WATER			NW1/4SE1/4NE1/4	Sec. 15,	Twp 10S,	Rge 23E B.M.
MINIDOKA County						
GROUND WATER			SW1/4NE1/4NW1/4	Sec. 15,	Twp 10S,	Rge 23E B.M.
MINIDOKA County						
GROUND WATER			SE1/4NW1/4NW1/4	Sec. 9,	Twp 10S,	Rge 23E B.M.
MINIDOKA County						
GROUND WATER			SW1/4NE1/4NW1/4	Sec. 22,	Twp 10S,	Rge 23E B.M.
MINIDOKA County						
<u>Place of Use</u>						
<u>MUNICIPAL, Within MINIDOKA County</u>						
T10S R23E S8	NENE		T10S R23E S8	NWNE		
T10S R23E S8	SWNE		T10S R23E S8	SENE		
T10S R23E S9	NWNE		T10S R23E S9	SWNE		
T10S R23E S9	NENW		T10S R23E S9	NWNW		
T10S R23E S9	SWNW		T10S R23E S9	SENW		
T10S R23E S9	NESW		T10S R23E S9	SESW		
T10S R23E S9	SWSE		T10S R23E S10	NESW		
T10S R23E S10	SWSW		T10S R23E S10	SESW		
T10S R23E S10	NWSE		T10S R23E S10	SWSE		
T10S R23E S10	SESE		T10S R23E S11	SWNE		
T10S R23E S11	SENE		T10S R23E S11	SENW		
T10S R23E S11	NESW		T10S R23E S11	NWSW		
T10S R23E S11	SWSW		T10S R23E S11	SESW		
T10S R23E S11	NESE		T10S R23E S11	NWSE		
T10S R23E S15	NENE		T10S R23E S15	NENE		
T10S R23E S15	NENE		T10S R23E S15	NENE		

Page _____ of _____

T10S R23E S15		NWSW	T10S R23E S15		NWSW
T10S R23E S15		NWSW	T10S R23E S15		NWSW
T10S R23E S15		NWSW	T10S R23E S15		NWSW
T10S R23E S15		NWSW	T10S R23E S15		NWSW
T10S R23E S15		NWSW	T10S R23E S15		SWSW
T10S R23E S15		SWSW	T10S R23E S15		SWSW
T10S R23E S15		SWSW	T10S R23E S15		SWSW
T10S R23E S15		SWSW	T10S R23E S15		SWSW
T10S R23E S15		SWSW	T10S R23E S15		SWSW
T10S R23E S15		SWSW	T10S R23E S15		SWSW
T10S R23E S15		SESW	T10S R23E S15		SESW
T10S R23E S15		SESW	T10S R23E S15		SESW
T10S R23E S15		SESW	T10S R23E S15		SESW
T10S R23E S15		SESW	T10S R23E S15		SESW
T10S R23E S15		SESW	T10S R23E S15		SESW
T10S R23E S15		SESW	T10S R23E S15		SESW
T10S R23E S15		SESW	T10S R23E S15		SESW
T10S R23E S15		SESW	T10S R23E S15		SESW
T10S R23E S15		SESW	T10S R23E S15		NWSE
T10S R23E S15		NWSE	T10S R23E S15		NWSE
T10S R23E S15		NWSE	T10S R23E S15		NWSE
T10S R23E S16		NENE	T10S R23E S16		NWNE
T10S R23E S16	Lot 6	SWNE	T10S R23E S16		SENE
T10S R23E S16		NENW	T10S R23E S16	Lot 4	NWNW
T10S R23E S16	Lot 5	SENW	T10S R23E S16	Lot 7	NESE
T10S R23E S22			T10S R23E S22		NENE
T10S R23E S22		NWNE	T10S R23E S22		SWNE
T10S R23E S22		NENW	T10S R23E S22		NENW
T10S R23E S22		NENW	T10S R23E S22		NENW
T10S R23E S22		SENW	T10S R23E S22		NENW
T10S R23E S22	Lot 5	NESW	T10S R23E S22		SENW

Conditions of Approval:

1. T07 The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
2. 046 Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
3. 115 Prior to the diversion and use of water under Transfer approval 73504 the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion, in accordance with Department specifications.
4. T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
5. 124 Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
6. R05 Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
7. 180 A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
8. R55 This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
9. 102 The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.
10. 075 Irrigation of large projects such as parks, golf courses, or sports activities fields is not authorized under this right.
11. 004 This right does not grant any right-of-way or easement across the land of another.
12. 022 The daily diversion volume for non-domestic uses under this municipal right shall not exceed 2,500 gallons per use and the daily diversion volume for domestic uses under this right shall not exceed 13,000 gallons per dwelling in accordance with Section 42-111, Idaho Code.
13. R43 The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).

Licensed Date: 7/10/2006

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 36-4233

Current Owner: CITY OF HEYBURN
 Priority Date: 3/1/1963
 Origin: Water Right
 Status: Active
 Basis: Decreed

Source

Tributary

GROUND WATER

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/01 to 10/31	0.12 CFS	20 AF
DOMESTIC	1/01 to 12/31	0.2 CFS	7 AF
<u>Total Diversion</u>		0.2 CFS	27 AF

Location of Point(s) of Diversion

GROUND WATER NE1/4NE1/4 Sec. 11, Twp 10S, Rge 23E B.M.
 MINIDOKA County

Place of Use

IRRIGATION Within MINIDOKA County

T10S R23E S11 NENE 5.00
 Total Acres: 5

Place of Use: DOMESTIC same as IRRIGATION

Conditions of Approval:

1. THE RIGHT HOLDER SHALL ACCOMPLISH THE CHANGE AUTHORIZED BY TRANSFER NO. 5323 BY MAY 24, 2000.
2. THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS MARCH 15 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE APRIL 1 AND AFTER OCTOBER 31 UNDER THIS REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.
3. S16 USE OF THIS RIGHT IS COMBINED WITH WATER FROM MINIDOKA IRRIGATION DIST.
4. TWO POINTS OF DIVERSION LOCATED IN T10S, R23E, S11, NENE.
5. C18 THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

Decreed Date: 8/27/2001

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 36-7970

Current Owner: CITY OF HEYBURN
Priority Date: 3/10/1981
Origin: Water Right
Status: Active
Basis: Decreed

Source

Tributary

GROUND WATER

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
DOMESTIC	1/01 to 12/31	0.2 CFS	27.6 AF
	<u>Total Diversion</u>	0.2 CFS	27.6 AF

Location of Point(s) of Diversion

GROUND WATER

SE1/4NE1/4NE1/4

Sec. 11, Twp 10S, Rge 23E B.M.

MINIDOKA County

Place of Use

DOMESTIC Within MINIDOKA County

T10S R23E S11 NENE

Decreed Date: 3/20/1998

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 36-8332

Current Owner: CITY OF HEYBURN
Priority Date: 10/12/1987
Origin: Water Right
Status: Active
Basis: License

Source

Tributary

GROUND WATER

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
COMMERCIAL	1/01 to 12/31	0.04 CFS	0.9 AF
	<u>Total Diversion</u>	0.04 CFS	0.9 AF

Location of Point(s) of Diversion

GROUND WATER NE1/4NE1/4 Sec. 11, Twp 10S, Rge 23E B.M.
MINIDOKA County

Place of Use

COMMERCIAL Within MINIDOKA County
T10S R23E S11 NENE

Conditions of Approval:

1. Commercial use is for a gas station and convenience store.

Licensed Date: 7/6/1992

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 36-8744

Current Owner: CITY OF HEYBURN
 Priority Date: 12/22/1995
 Origin: Water Right
 Status: Active
 Basis: License

Source

Tributary

GROUND WATER

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
DOMESTIC	1/01 to 12/31	0.05 CFS	2.4 AF
IRRIGATION	03/15 to 11/15	0.02 CFS	0.8 AF
	<u>Total Diversion</u>	0.07 CFS	3.2 AF

Location of Point(s) of Diversion

GROUND WATER MINIDOKA County	NW1/4NE1/4	Sec. 11,	Twp 10S,	Rge 23E B.M.
GROUND WATER MINIDOKA County	NE1/4NE1/4	Sec. 11,	Twp 10S,	Rge 23E B.M.

Place of Use

IRRIGATION Within MINIDOKA County

T10S R23E S11 NWNE 0.20
 Total Acres: 0.2

DOMESTIC Within MINIDOKA County

T10S R23E S11 NWNE
 Total Acres: 0.2

Conditions of Approval:

1. WB5 Domestic use is for 4 RV spaces and does not include lawn, garden, landscape, or other types of irrigation.
2. R43 The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
3. 057 The rate of diversion of water for irrigation under this right and all other water rights on the same land shall not exceed 0.03 cubic feet per second for each acre of land.
4. R05 Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
5. 004 This right does not grant any right-of-way or easement across the land of another.

Page _____ of _____

Licensed Date: 5/3/2019

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 36-17185

Current Owner: CITY OF HEYBURN
 Priority Date: 12/22/1995
 Origin: Water Right
 Status: Active
 Basis: License

Source

Tributary

GROUND WATER

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
DOMESTIC	1/01 to 12/31	0.05 CFS	2.4 AF
	<u>Total Diversion</u>	0.05 CFS	2.4 AF

Location of Point(s) of Diversion

GROUND WATER NE1/4NE1/4 Sec. 11, Twp 10S, Rge 23E B.M.
 MINIDOKA County

Place of Use

DOMESTIC Within MINIDOKA County

T10S R23E S11 NENE T10S R23E S11 NWNE
 Total Acres: 0.3

Conditions of Approval:

1. R43 The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
2. 004 This right does not grant any right-of-way or easement across the land of another.
3. WB5 Domestic use is for 3 mobile homes and 1 RV space and does not include lawn, garden, landscape, or other types of irrigation.
4. R05 Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

A. PLAT MAP (See Part 3A of Instructions for application for transfer for complete requirements.)

- Attach a map of the diversion, measurement, control, and distribution system. Label it **Attachment #7a**.
- If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (**GIS**) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. Label it **Attachment #7b**.

If the place of use currently consists of a permissible place of use, then the attachment is not required if the application contains a clear statement that the boundaries for the place of use are not proposed to be changed by the transfer and the total number of irrigated acres within the place of use before and after the transfer is clearly stated.

If any part of the irrigation water right is leased to the Water Supply Bank, you must also specify the location and number of acres that will remain idled for the duration of the lease contract at the new, proposed place of use.

B. CHANGES IN NATURE OF USE (Water Balance)

- If you propose to change the nature of use or period of use of all or part of the rights(s) listed in this application, attach documentation describing the extent of historic beneficial use of the portion of the right(s) proposed to be changed. Also attach documentation showing that the portion of the right(s) to be changed will not be enlarged in rate, volume, or consumptive use through the proposed change. Label it **Attachment #8a**.

C. PLACE OF USE CHANGES TO SUPPLEMENTAL IRRIGATION RIGHTS

- If you propose to change the place of use of a supplemental irrigation right, answer below and attach supporting documentation. Label it **Attachment #8b**.

Describe how the supplemental water rights have been used historically in conjunction with other water rights at the existing place of use. Describe the time during the irrigation season that the supplemental rights have been used. Include information about the availability or reliability of the primary right(s) being supplemented, both before and after the change. If the applicant is proposing to change a supplemental irrigation right to a primary right, provide the information required on Part 3B above:

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments.

Received by _____ Date _____ Preliminary check by _____ Date _____

Fee paid _____ Date _____ Received by _____ Receipt # _____

Add'l fee paid _____ Date _____ Received by _____ Receipt # _____

Check all that apply: Attachment WSB (copy sent to state office) Lessor Designation form &/or W-9 (originals to state office)

Exhibit A
Points of Diversion

	Township	Range	Sec.	QQQ	QQ	Q	County	Local Name
1	10S	23E	15	NW	SE	NE	Minidoka	Well #2
2	10S	23E	9	SE	NW	NW	Minidoka	Well #3
3	10S	23E	22	SW	NE	NW	Minidoka	Well #4
4	10S	23E	11	SE	NE	NE	Minidoka	Well #5B
5	10S	23E	11	SW	NE	NE	Minidoka	Well #5A
6	10S	23E	11	SE	NW	NE	Minidoka	Joshnik Well
7								
8								
9								
10								

WATER REQUIREMENTS ESTIMATION

City of Heyburn

GWS, Brockway Engineering, PLLC,

Annual Water Demand for Wayside Café

Restaurant Patrons	300 patrons per day
Restaurant Water Demand per Patron	13 gpd/patron
Employees	14 employees
Restaurant Employees	15 gpd/employee

Daily Volume	4,110 gpd
Annual Volume in Gallons	1,500,150 gal
Annual Volume in Acre Feet	4.60 ac-ft annually

Annual Water Demand for Stinker Station

Vehicles Visiting Business	150 vehicles per day
	10 gpd/vehicle
Restaurant Patrons	100 patrons per day
Restaurant Water Demand per Patron	13 gpd/patron
Employees	6 employees
Restaurant Employees	15 gpd/employee

Daily Volume	2,890 gpd
Annual Volume in Gallons	1,054,850 gal
Annual Volume in Acre Feet	3.24 ac-ft annually

Annual Water Demand for In House Use

Number of houses	75 houses
Annual Water Demand per house	0.6 ac-ft annually
Annual Volume in Acre Feet	45.00 ac-ft annually

Annual Consumptive Use for Irrigation

Acres irrigated	5.2 acres
Annual Water Demand per Acre	3.21 ac-ft annually
Burley FAA AP (NWS -- USW00024133) Grass Turf	
Annual Volume in Acre Feet	16.69 ac-ft annually

Total Annual Volume Water Demand 69.5 ac-ft annually



BROOKWAY ENGINEERING, PLLC.
GWS - Date: 2/24/2023

CITY OF HEYBURN
NAIP 2021 AERIAL

- Legend**
- Wayside_Wells
 - Irrigation

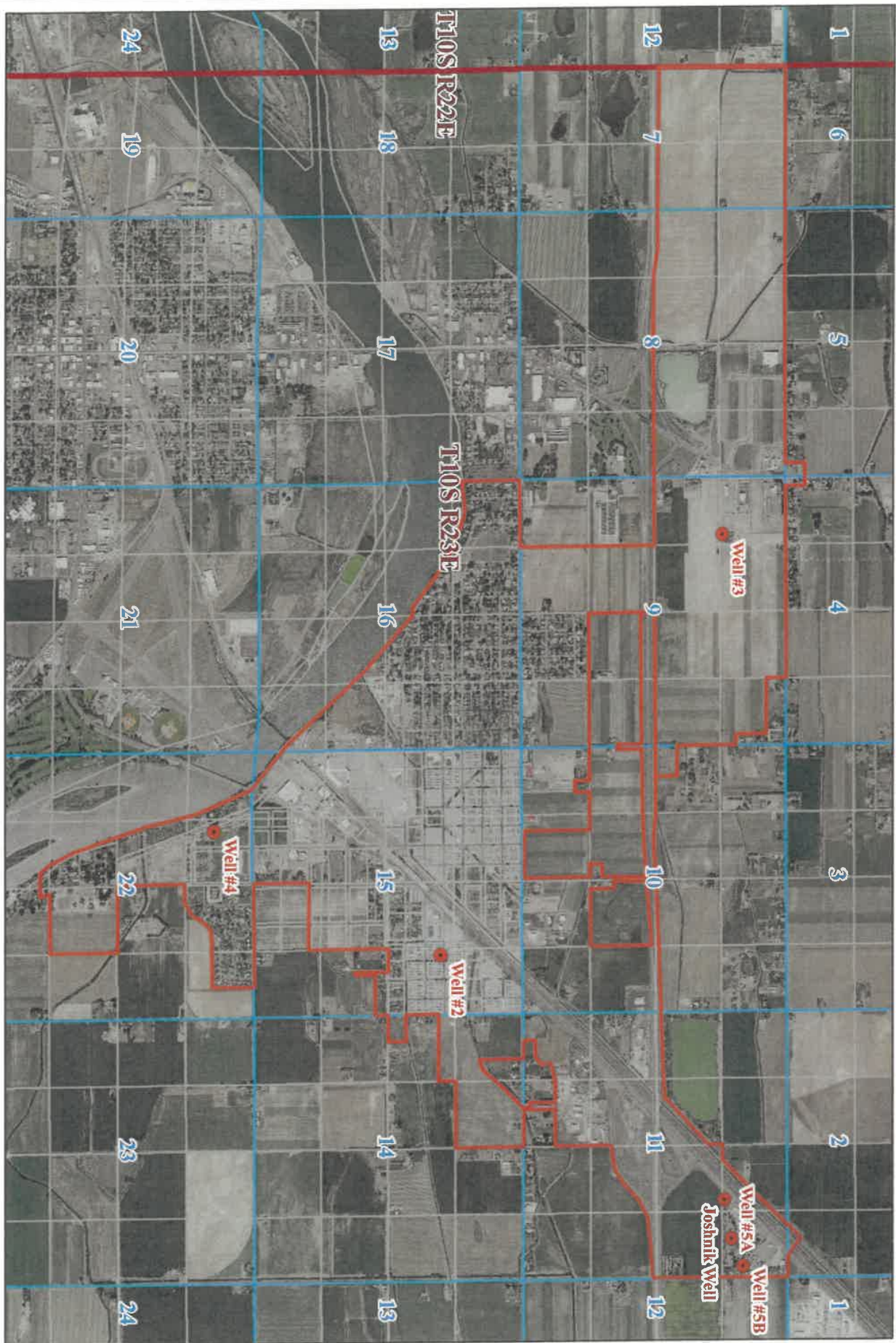
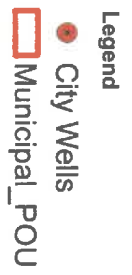


Exhibit 1
Pg. 39



CITY OF HEYBURN
NAIP 2021 AERIAL



BROCKWAY ENGINEERING, PLLC.
GWS - Date: 2/24/2023

From: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Sent: Friday, August 11, 2023 2:52 PM
To: Chris Bromley <cbromley@mchughbromley.com>; Greg Sullivan <greg.sullivan@brockwayeng.com>
Cc: John K. Simpson <jsimpson@martenlaw.com>; Pugrud, Scott <spugrud2@idahopower.com>; Lafortune, Thomas <Thomas.Lafortune@idwr.idaho.gov>
Subject: Applications for Transfer 87984 and 87987 (City of Heyburn)

Chris and Greg,

We are scheduled to conduct an informal settlement conference for these contested cases on August 29th. In addition to the issues of protest raised by Idaho Power Company, I wanted to make you aware of some concerns I have with Applications 87984 and 87987. I think it is worthwhile to make you aware of these concerns prior to the informal settlement conference so you can prepare for the discussion.

Application 87984

Water right 35-14680 is a split portion of water right 35-2122. Application for Permit 35-2122, filed on December 24, 1948, stated that the proposed place of use was covered by 15 shares in Aberdeen Springfield Canal Company (ASCC). The proof of beneficial use for the right refers to the same 15 shares in ASCC. The licensed place of use for water right 35-2122 covered parts of the NW1/4, NWNE and SWNE of Section 22, T03S, R33E.

Water right 35-14683 is a split portion of water right 35-7417. Application for Permit 35-7417 was filed on May 8, 1974. The place of use described in the application included acres in the NE1/4, NENW and SENW of Section 21, and the NWNW of Section 22, T03S, R33E. Application 35-7417 states that 48 shares in Aberdeen-Springfield Canal Company were also used to irrigate the 200-acre proposed place of use.

Some of the acres under the current place of use for water rights 35-14680 and 35-14683 were claimed as irrigated acres by ASCC in the SRBA. These claimed acres are part of the 61,772.6 authorized acres described in the ASCC water rights. The current combined place of use for water rights 35-14680 and 35-14683 overlaps the irrigated acres claimed by ASCC by 83 acres.

A recent Idaho Supreme Court Case, 3G Ag LLC v. IDWR, addressed questions of enlargement when unstacking ground water rights from canal company shares. The court held that moving ground water irrigation rights to a new place of use without reducing the irrigated acres of the underlying canal company rights would result in an enlargement.



Application 87984 raises similar enlargement concerns. Water rights 35-14680 and 35-14683 and the ASCC canal shares constitute a single combined beneficial use on the 83 acres of overlap. If the entire consumptive use associated with water rights 35-14680 and 35-14683 is moved off the property under Application 87984, then the ASCC water rights must be reduced by 83 acres to prevent an enlargement of the water rights.

Application 87987

Application 87987 proposes to change the nature of use of water rights 36-8550 and 36-8738 from municipal use to irrigation use. Generally, when an application for transfer proposes to change the nature of use for a water right, the Department limits the new beneficial use to the historical consumptive use occurring under the existing water rights. The City proposes to divert 1,126.8 acre-feet of water under water rights 36-8550 and 36-8738 for irrigation use. However, the City has never pumped that volume of water under water rights 36-8550 and 36-8738 at the existing points of diversion. Based on delivery records from Water District 130, the City usually pumps between 500 and 600 combined acre-feet per year under water rights 36-8550 and 36-8738. Although the water district records show a large volume of water pumped in 2013, the watermaster confirmed that the city's flowmeters were broken in 2013 and the diversion volume for that year is not reliable. Further, the City's wastewater flow for 2013 suggests that the diversion volume reported for that year is not reliable. Most of the water pumped by the City is not consumed and is discharged into a drain channel connected to the Snake River. For example, in 2022, the City diverted 513.7 acre-feet and returned 510.5 acre-feet to the drain channel through its wastewater treatment facility. The wastewater plant returns the water to the reach of the Snake River most impacted by the pumping from the City's wells. Based on the current ESPA model, over 40% of the depletion impacts from the City's wells propagate to the Neeley to Minidoka reach of the Snake River.

I look forward to our discussion.

James

 IDAHO DEPARTMENT OF
WATER RESOURCES
James Cefalo | Regional Manager
900 N Skyline Drive, Idaho Falls, ID 83402
(208) 525-7161 | www.idwr.idaho.gov

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 87938**

This is to certify that: **CITY OF HEYBURN**
941 18TH ST
HEYBURN, ID 83336-4902

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Changes

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
36-17185	WR/LICENSE	12/22/1995	0.050 cfs	2.4 af	N/A	N/A	GROUND WATER
36-4233	WR/DECREED	3/1/1963	0.200 cfs	27.0 af	N/A	5.0	GROUND WATER
36-7970	WR/DECREED	3/10/1981	0.200 cfs	27.6 af	N/A	N/A	GROUND WATER
36-8332	WR/LICENSE	10/12/1987	0.040 cfs	0.9 af	N/A	N/A	GROUND WATER
36-8550	WR/LICENSE	5/29/1990	6.670 cfs	N/A	N/A	N/A	GROUND WATER
36-8738	WR/LICENSE	5/22/1995	3.300 cfs	N/A	N/A	N/A	GROUND WATER
36-8744	WR/LICENSE	12/22/1995	0.070 cfs	3.2 af	N/A	0.2	GROUND WATER

Purpose of Transfer (Changes Proposed)

<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
36-17185	NO	NO	YES	YES	NO	YES
36-4233	NO	NO	YES	YES	YES	YES
36-7970	NO	NO	YES	YES	NO	YES
36-8332	NO	NO	YES	YES	NO	YES
36-8550	NO	YES	YES	YES	NO	NO
36-8738	NO	YES	YES	YES	NO	NO
36-8744	NO	NO	YES	YES	YES	YES

Summary Of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (Changed Portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
36-17185	36-17185	0.050 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-4233	36-4233	0.200 cfs	16.1af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-7970	36-7970	0.200 cfs	11.1af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-8332	36-8332	0.040 cfs	0.9 af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-8550	36-8550	6.670 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-8738	36-8738	3.300 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-8744	36-8744	0.070 cfs	0.6 af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		10.530 cfs	N/A	N/A	N/A		N/A	N/A	N/A	N/A

SUPPORT DATA

Transfer No. 87938

IN FILE # 36-4233



**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 87938**

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this 16th day of January, 2024.



Southern Region Manager



Transfer No. 87938

WATER RIGHT NO. 36-7970
As Modified by Transfer No. 87938

In accordance with the approval of Transfer No. 87938, Water Right No. 36-7970 is now described as follows:

Right Holder: CITY OF HEYBURN
 941 18TH ST
 HEYBURN, ID 83336-4902

Priority Date: 3/10/1981

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
MUNICIPAL	01/01	to 12/31	0.200 cfs	11.1 af
			0.200 cfs	11.1 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SEWN	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNW	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SEWNW	Sec 9 Twp 10S Rge 23E	MINIDOKA County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
5. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in decree dated 3/20/1998.
6. This right does not grant any right-of-way or easement across the land of another.

Transfer No. 87938

WATER RIGHT NO. 36-7970
As Modified by Transfer No. 87938

CONDITIONS OF APPROVAL

7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. Pursuant to Idaho Code § 42-1412(6), this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.



Transfer No. 87938

WATER RIGHT NO. 36-8332
As Modified by Transfer No. 87938

In accordance with the approval of Transfer No. 87938, Water Right No. 36-8332 is now described as follows:

Right Holder: CITY OF HEYBURN
 941 18TH ST
 HEYBURN, ID 83336-4902

Priority Date: 10/12/1987

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
MUNICIPAL	01/01	to 12/31	0.040 cfs	0.9 af
			0.040 cfs	0.9 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENE	Sec 9 Twp 10S Rge 23E	MINIDOKA County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
5. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in license dated 7/6/1992.
6. This right does not grant any right-of-way or easement across the land of another.

Transfer No. 87938

WATER RIGHT NO. 36-8332
As Modified by Transfer No. 87938

CONDITIONS OF APPROVAL

7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.



Transfer No. 87938

WATER RIGHT NO. 36-4233

As Modified by Transfer No. 87938

In accordance with the approval of Transfer No. 87938, Water Right No. 36-4233 is now described as follows:

Right Holder: CITY OF HEYBURN
941 18TH ST
HEYBURN, ID 83336-4902

Priority Date: 3/1/1963

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
MUNICIPAL	01/01	to 12/31	0.200 cfs	16.1 af
			0.200 cfs	16.1 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENE	Sec 9 Twp 10S Rge 23E	MINIDOKA County

CONDITIONS OF APPROVAL

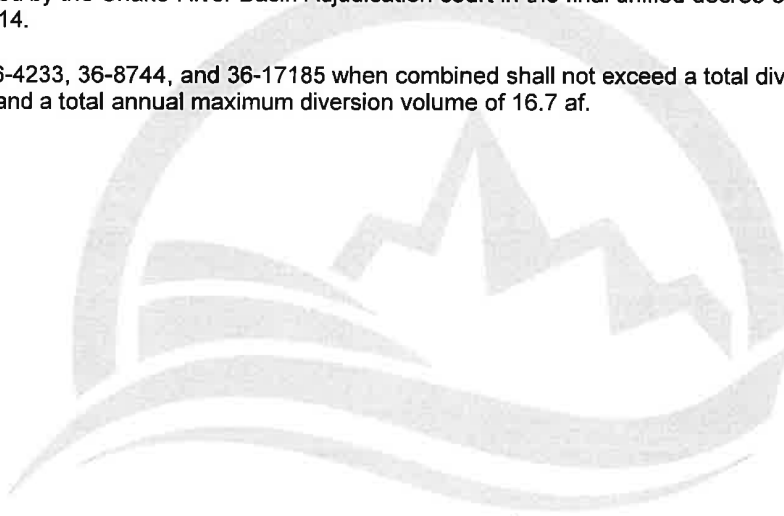
1. Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
5. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in decree dated 8/27/2001.
6. This right does not grant any right-of-way or easement across the land of another.

Transfer No. 87938

WATER RIGHT NO. 36-4233
As Modified by Transfer No. 87938

CONDITIONS OF APPROVAL

7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. Pursuant to Idaho Code § 42-1412(6), this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.
10. Rights 36-4233, 36-8744, and 36-17185 when combined shall not exceed a total diversion rate of 0.32 cfs and a total annual maximum diversion volume of 16.7 af.



Transfer No. 87938

WATER RIGHT NO. 36-8550

As Modified by Transfer No. 87938

In accordance with the approval of Transfer No. 87938, Water Right No. 36-8550 is now described as follows:

Right Holder: CITY OF HEYBURN
941 18TH ST
HEYBURN, ID 83336-4902

Priority Date: 5/29/1990

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
MUNICIPAL	01/01	to 12/31	6.670 cfs
			6.670 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENE	Sec 9 Twp 10S Rge 23E	MINIDOKA County

CONDITIONS OF APPROVAL

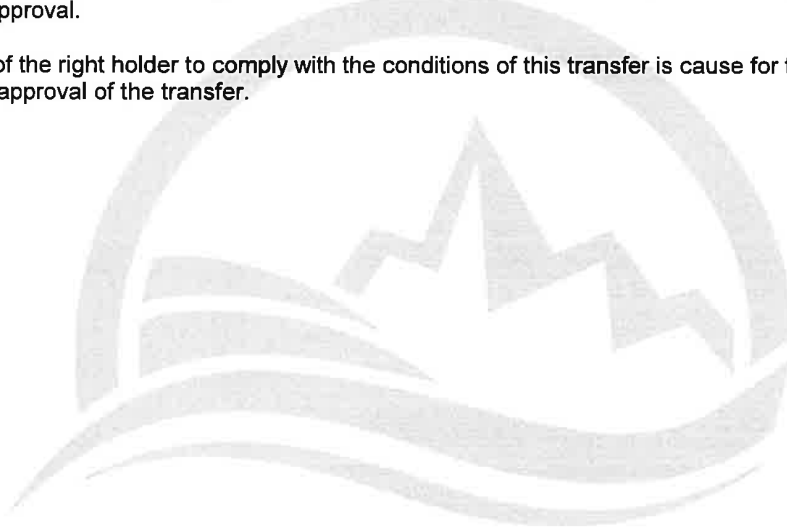
1. Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
5. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in Transfer 73504 dated 1/3/2008.
6. This right is for the use of trust water, and it is subject to review 20 years after its initial approval (date of permit approval) to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.

Transfer No. 87938

WATER RIGHT NO. 36-8550
As Modified by Transfer No. 87938

CONDITIONS OF APPROVAL

7. When the minimum stream flow water rights in the Snake River at Murphy Gage are not being satisfied, the right holder shall cease diverting water for the consumptive uses authorized by this right. The minimum stream flow water rights are for 3,900 cfs from April 1 through October 31 and 5,600 cfs from November 1 through March 31. See IDAPA 37.03.08.030.
8. This right does not grant any right-of-way or easement across the land of another.
9. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
10. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.



Transfer No. 87938

WATER RIGHT NO. 36-8738

As Modified by Transfer No. 87938

In accordance with the approval of Transfer No. 87938, Water Right No. 36-8738 is now described as follows:

Right Holder: CITY OF HEYBURN
941 18TH ST
HEYBURN, ID 83336-4902

Priority Date: 5/22/1995

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
MUNICIPAL	01/01	to 12/31	3.300 cfs
			3.300 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENE	Sec 9 Twp 10S Rge 23E	MINIDOKA County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. The daily diversion volume for non-domestic uses under this municipal right shall not exceed 2,500 gallons per use and the daily diversion volume for domestic uses under this right shall not exceed 13,000 gallons per dwelling in accordance with Section 42-111, Idaho Code.
4. The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.
5. Irrigation of large projects such as parks, golf courses, or sports activities fields is not authorized under this right.
6. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.

Transfer No. 87938

WATER RIGHT NO. 36-8738
As Modified by Transfer No. 87938

CONDITIONS OF APPROVAL

7. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
8. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in Transfer 73504 dated 1/3/2008.
9. This right is for the use of trust water, and it is subject to review 20 years after its initial approval (date of permit approval) to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.
10. When the minimum stream flow water rights in the Snake River at Murphy Gage are not being satisfied, the right holder shall cease diverting water for the consumptive uses authorized by this right. The minimum stream flow water rights are for 3,900 cfs from April 1 through October 31 and 5,600 cfs from November 1 through March 31. See IDAPA 37.03.08.030.
11. This right does not grant any right-of-way or easement across the land of another.
12. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
13. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Transfer No. 87938

WATER RIGHT NO. 36-8744
As Modified by Transfer No. 87938

In accordance with the approval of Transfer No. 87938, Water Right No. 36-8744 is now described as follows:

Right Holder: CITY OF HEYBURN
 941 18TH ST
 HEYBURN, ID 83336-4902

Priority Date: 12/22/1995

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
MUNICIPAL	01/01	to 12/31	0.070 cfs	0.6 af
			0.070 cfs	0.6 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENESE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNESE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENESE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSESE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNESE	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENESE	Sec 9 Twp 10S Rge 23E	MINIDOKA County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
5. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in license dated 5/3/2019.
6. This right does not grant any right-of-way or easement across the land of another.

Transfer No. 87938

WATER RIGHT NO. 36-8744
As Modified by Transfer No. 87938

CONDITIONS OF APPROVAL

7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. Rights 36-4233, 36-8744, and 36-17185 when combined shall not exceed a total diversion rate of 0.32 cfs and a total annual maximum diversion volume of 16.7 af.



Transfer No. 87938

WATER RIGHT NO. 36-17185

As Modified by Transfer No. 87938

In accordance with the approval of Transfer No. 87938, Water Right No. 36-17185 is now described as follows:

Right Holder: CITY OF HEYBURN
941 18TH ST
HEYBURN, ID 83336-4902

Priority Date: 12/22/1995

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
MUNICIPAL	01/01	to 12/31	0.050 cfs 0.050 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENE	Sec 9 Twp 10S Rge 23E	MINIDOKA County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
5. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in license 36-8744 dated 5/3/2019.
6. This right does not grant any right-of-way or easement across the land of another.

Transfer No. 87938

WATER RIGHT NO. 36-17185
As Modified by Transfer No. 87938

CONDITIONS OF APPROVAL

7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. Rights 36-4233, 36-8744, and 36-17185 when combined shall not exceed a total diversion rate of 0.32 cfs and a total annual maximum diversion volume of 16.7 af.



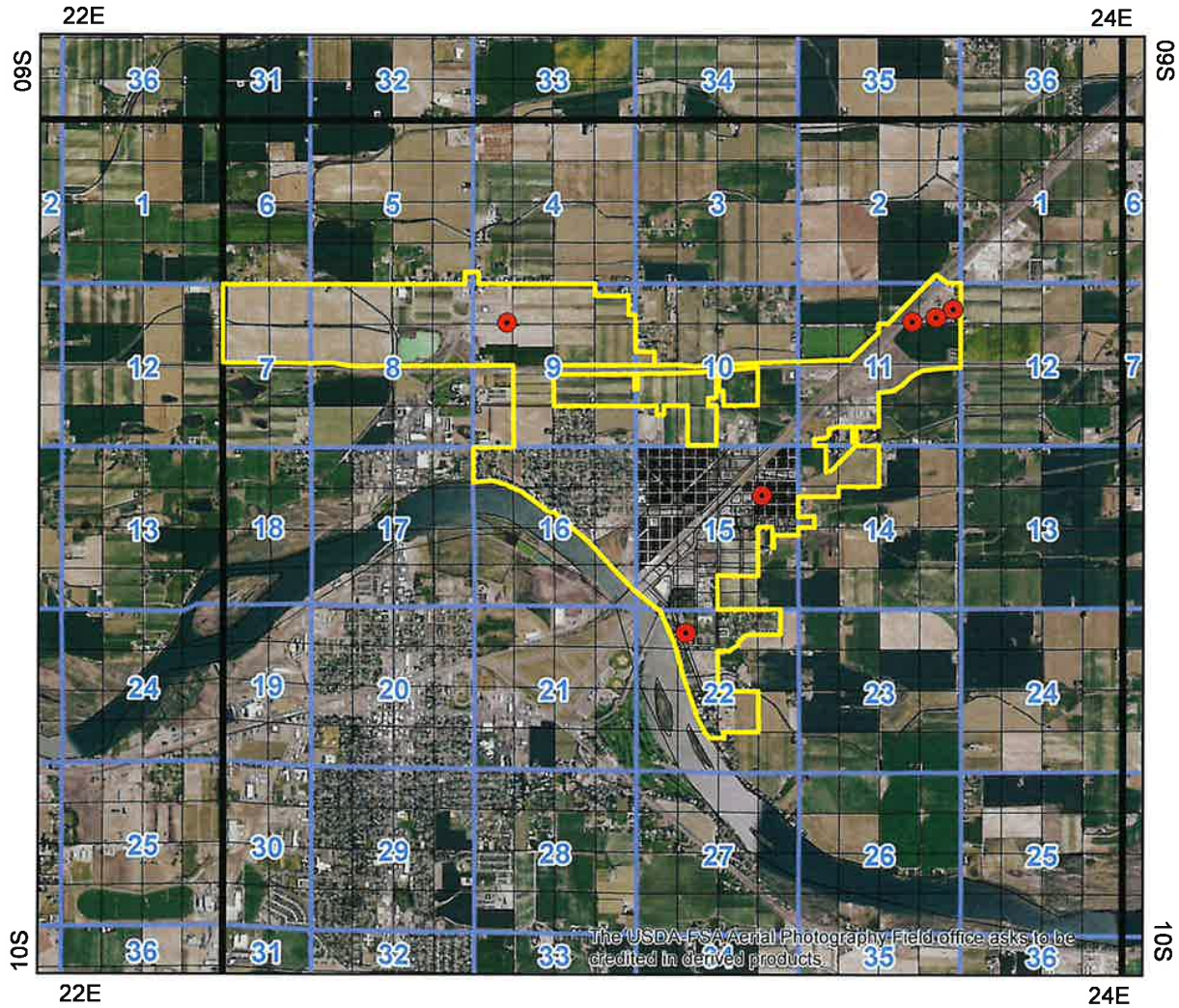
Transfer No. 87938






State of Idaho
Department of Water Resources

Attachment to Transfer # 87938

36-4233, 36-7970, 36-8332, 36-8550, 36-8738, 36-8744, and 36-17185

This map depicts the MUNICIPAL place of use boundary for these water rights at the time of this approval and is attached to the approval document solely for illustrative purposes.



-  Point of Diversion
-  Water Service Area Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters





Governor Brad Little

Director Mathew Weaver

January 19, 2024

CITY OF HEYBURN
941 18TH ST
HEYBURN ID 83336-4902

Re: Transfer No: 87938

Water Right No(s): 36-4233, 36-7970, 36-8332, 36-8550, 36-8738, 36-8744,
36-17185

Transfer Approval Notice

Dear Water Right Holder and other Interested Persons:

The Department of Water Resources has issued the enclosed approved Transfer of Water Right(s). Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Transfer of Water Right(s) is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

If the transfer approval includes a condition requiring measuring and recording devices, such devices shall comply with specifications established by the Department. Detailed specifications are available on the Department's home page on the Internet, or you can request a copy by contacting any office of the Department. Please be sure to thoroughly review the specifications to avoid unnecessary costs for reinstallation or modification due to non-conforming or improperly installed devices.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at (208) 736-3033.

Sincerely,



Corey Skinner
Southern Regional Manager

Enclosure

c:

BROCKWAY ENGINEERING PLLC
C/O GREG SULLIVAN
2016 WASHINGTON ST N STE 4
TWIN FALLS ID 83301-3082

WATER DISTRICT 130
COREY KING
650 ADDISON AVE W STE 500
TWIN FALLS ID 83301-5858

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2024 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved Transfer) to the person(s) listed below:

Re: Transfer No.: 87938

Water Right No(s): 36-4233, 36-7970, 36-8332, 36-8550, 36-8738, 36-8744,
36-17185

CITY OF HEYBURN
941 18TH ST
HEYBURN ID 83336-4902

BROCKWAY ENGINEERING PLLC
C/O GREG SULLIVAN
2016 WASHINGTON ST N STE 4
TWIN FALLS ID 83301-3082

WATER DISTRICT 130
COREY KING
650 ADDISON AVE W STE 500
TWIN FALLS ID 83301-5858



Denise Maline
Administrative Assistant

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

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

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

MEMORANDUM

Date: January 15, 2024
To: Transfer 87938
From: Corey Skinner
Re: Evaluation of Sufficiency of Information Submitted

Application proposes to change and add authorized points of diversion for two existing municipal water rights (9.97 cfs total) by identifying six existing wells as authorized points of diversion. The application also proposes to change the nature of use of five ground water rights (0.56 cfs) from domestic, irrigation, and/or commercial uses to municipal use and identify the six existing wells as authorized points of diversion. The six wells are all located within the City of Heyburn service area specifically within Sections 9, 11, 15, and 22, Township 10 South, Range 23 East. In total, the application proposes to divert a total of 10.53 cfs from six wells for year-round municipal use.

The wells involved with the transfer are located within the ESPA model boundary area. A ground water model analysis was submitted by the applicant's representative, showing that no mitigation was required. The analysis assumed that all of the proposed transfer volume would be diverted from the furthest cells, which would be the very worst-case scenario. However, such a scenario would be extremely unlikely. The Department also conducted the same model analysis and came to the same conclusion that mitigation for this transfer is not required. The proposed transfer is within Water District 130, so watermaster comments were solicited and the watermaster did not oppose approval of this transfer. The transfer was subject to notice and protest and no protests were received.

- **Authority to File:**
The applicant, City of Heyburn, is listed as the current owner of the water rights involved in the transfer.
- **Water Right Validity:**
For the seven water rights involved in the transfer, two were decreed in the SRBA in 1998 and 2001. The other five water rights were licensed in 1992, 1998, 2006, and 2019. Recent aerial photography indicates that these water rights have been used in recent years.
- **Injury to Other Water Rights:**
None anticipated.

- **Enlargement of Use:**

The applicant proposed allowing more volume through the change in nature of use than what will ultimately be approved. A meeting was held between me, IDWR administration, and IDWR Eastern & Western Regional Managers. During this meeting, it was decided that IDWR cannot allow volume credit in a conversion from in house domestic use to municipal use (see transfer # 82259 approved in 2018). However, credit for diversion rates for in-house use could be allowed. Accounting for this, the following allowed rate and volumes for the rights will be approved:

Right 36-17185 allows for 0.05 cfs and 2.4 AF for in-house domestic use only prior to the transfer. After the transfer, 0.05 cfs and no volume credit will be allowed. Note that rights 36-17185, 36-4233, and 36-8744 were diverted from the same well (system) prior to the transfer. A rate and volume limiting condition will be placed on these rights to account for no volume allowance on right 36-17185. Allowing this right to be converted to municipal use also prevents a domestic right being diverted and used out of a municipal system since this right's original POD (well) will be added to the municipal system after the transfer.

Right 36-4233 allows for 0.20 cfs and 7.0 AF for in-house domestic use (57 trailers per SRBA decree) and 0.12 cfs and 20.0 AF for five acres of irrigation prior to the transfer. The total for this right prior to the transfer is 0.20 cfs and 27.0 AF. After the transfer, 0.20 cfs and 16.1 AF will be allowed for this right. The volume limit is based on 5.0 acres at 3.21 AF/acre (Pdef for turfgrass in the Burley area).

Right 36-8744 allows for 0.05 cfs and 2.4 AF for in house use (4 RV spaces) and 0.02 cfs and 0.8 AF for irrigation of 0.2 acres. The total for this right prior to the transfer is 0.07 cfs and 3.2 AF. After the transfer, 0.07 cfs and 0.6 AF will be allowed for this right . The volume limit is based on 0.2 acres at 3.21 AF/acre (Pdef for turfgrass in the Burley area).

Right 36-7970 allows for 0.20 cfs and 27.6 AF for domestic use prior to the transfer. The SRBA decree indicates that this right is for 23 homes. Note that 27.6 AF for 23 homes equates to 1.2 AF per home. This is the IDWR standard for 0.6 AF for in house use, and 0.6 AF for irrigation per home (1.2 AF per home). To account for recognition of irrigation being allowed for this right, a ratio of 3.21 AF (Pdef for turfgrass in the Burley area) divided by 4.0 AF (field headgate allowance in the Burley/Heyburn area) will be applied to half the allowed volume of 27.6 AF (23 homes at 0.6 AF each for irrigation). This results in an allowable volume of 11.1 AF for the consumptive portion of the irrigation allowance for this right. After the transfer, 0.20 cfs and 11.1 AF will be allowed.

Right 36-8332 allows for 0.04 cfs and 0.9 AF for commercial use prior to the transfer. Since commercial use can be 100% consumptive, 0.4 cfa and 0.9 AF will be allowed after the transfer for this right.

Rights 36-8550 and 36-8738 are already for municipal use prior to the transfer (diversion rates with no volume limits). After the transfer, they will retain their original rates (no diversion volume limits).

- **Local Public Interest:**
No negative impacts anticipated. No protests were received.
- **Beneficial Use/Conservation of Water Resources:**
Proposed use is recognized as a beneficial use of water.
- **Effect on Economy of the Local Area:**
None anticipated.
- **Effect of the Agricultural Base of the Local Area:**
None anticipated.

Review of the application finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.

**** Proof of Publication ****

Twin Falls Times-News
132 Fairfield St W, Twin Falls, Idaho 83301

SHERRI DAVIS, being duly sworn, deposes and says: That she is the Principal Clerk of the Times-News, a daily newspaper printed and published at Twin Falls, Twin Falls County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in the Times-News, in conformity with Section 60-108, Idaho Code, as amended, for:

2 Insertions

ID DEPARTMENT OF WATER RESOURCES Southern Region
Denise Maliine Adminisrative Assistant
650 ADDISON AVE W, STE 500
TWIN FALLS ID 83301

RECEIVED
OCT 19 2023
DEPT OF WATER RESOURCES
SOUTHERN REGION

ORDER NUMBER 144611

Sherri Davis

(Legals Clerk)

STATE OF IDAHO)
)SS
COUNTY OF TWIN FALLS)

On this 18 day of Oct in the year of 2023 before me, a Notary Public, personally appeared before me Sherri Davis known or identified to me to be the person whose name subscribed to the within instrument, and being by first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Amy Wiesmore
Notary Public FOR Idaho
Residing at: Twin Falls, Idaho
My Commission expires: 9-4-26

Section: Legals
Category: 50 Legal
PUBLISHED ON: 10/05/2023, 10/12/2023

TOTAL AD COST: 180.13
FILED ON: 10/12/2023

**NOTICE OF PROPOSED CHANGE OF WATER RIGHT
TRANSFER NO. 87938**
CITY OF HEYBURN, 941 18TH ST, HEYBURN, ID 83336-4902 has filed Application No. 87938 for changes to the following water rights within MINIDOKA County(s): Right No(s). 36-17185, 36-4233, 36-7970, 36-8332, 36-8550, 36-8738, 36-8744. The purpose of the transfer is to change a portion of the above rights as follows: Application proposes to change and add authorized points of diversion for two existing municipal water rights (9.97 cfs total) by identifying six existing wells as authorized points of diversion. The application also proposes to change the nature of use of five ground water rights (0.56 cfs) from domestic, irrigation, and/or commercial uses to municipal use and identify the six existing wells as authorized points of diversion. The six wells are all located within the City of Heyburn service area specifically within Sections 9, 11, 15, and 22, Township 10 South, Range 23 East. In total, the application proposes to divert a total of 10.53 cfs from six wells for year-round municipal use.

TRANSFER NO. 88521
MART GROUP LLC, PO BOX 34, RUPERT, ID 83350-0034 has filed Application No. 88521 for changes to the following water rights within MINIDOKA County(s): Right No(s). 36-16384, 36-8457, 36-8458. The purpose of the transfer is to change a portion of the above rights as follows: Application proposes to change one of two points of diversion (POD) for three ground water commercial rights with a combined flow rate of 0.36 cfs. The POD to be changed is located approximately 0.9 mile east and 0.7 mile north of the intersection of 8th Street and Meridian Road in Rupert. The proposed POD is a new well to be located approximately 0.3 mile southeast of the existing well.

For additional information concerning the property location, contact Southern Region office at (208) 736-3033; or to see a full description of these rights and/or the proposed transfers, please see <https://research.idwr.idaho.gov>. Protests may be submitted based on the criteria of Idaho Code Sec. 42-222. Any protest against the proposed change must be filed with the Department of Water Resources, Southern Region, 650 ADDISON AVE W, STE 500, TWIN FALLS, ID 83301-5858 together with a protest fee of \$25.00 for each application on or before October 23, 2023. The protestant must also send a copy of the protest to the applicant.

MATHEW WEAVER, Director
Publish: October 5, 12, 2023

AMY WIESMORE
COMMISSION NO. 20203230
NOTARY PUBLIC
STATE OF IDAHO
MY COMM. EXPIRES 09/04/2026

✓ OK DM 10/23/2023

RECOMMENDATION OF WATERMASTER

Transfer No: 87938
Applicant Name: City of Heyburn

Watermaster's Recommendation:

- a) I do not oppose approval of this application
- b) I do not oppose approval of this application under the following terms:
- c) I oppose approval of this application(s) for the following reasons:
- d) Additional comment:

Dated: September 29, 2023

Water District 130



Corey King, Watermaster

Customer Ad Proof

164-60002276 ID DEPARTMENT OF WATER RESOURCES

Order Nbr 144611

Publication	Times News	
Contact	ID DEPARTMENT OF WATER RESOURCES	PO Number
Address 1	650 ADDISON AVE W, STE 500	Rate
Address 2		Legal Notice
City St Zip	TWIN FALLS ID 83301	Order Price
		Amount Paid
Phone	2087363033	Amount Due
Fax		
Section	Legals	Start/End Dates
SubSection		Insertions
Category	50 Legal	Size
Ad Key	144611-1	Salesperson(s)
Keywords	TRANSFER NO. 87938 & 88521	Taken By

Notes

Ad Proof

**NOTICE OF PROPOSED CHANGE OF WATER RIGHT
TRANSFER NO. 87938**

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TRANSFER NO. 88521

MART GROUP LLC, PO BOX 34, RUPERT, ID 83350-0034 has filed Application No. 88521 for changes to the following water rights within MINIDOKA County(s): Right No(s). 36-16384, 36-8457, 36-8458. The purpose of the transfer is to change a portion of the above rights as follows: Application for transfer proposes to change one of two points of diversion (POD) for three ground water commercial rights with a combined flow rate of 0.36 cfs. The POD to be changed is located approximately 0.9 mile east and 0.7 mile north of the intersection of 8th Street and Meridian Road in Rupert. The proposed POD is a new well to be located approximately 0.3 mile southeast of the existing well.

For additional information concerning the property location, contact Southern Region office at (208) 736-3033; or to see a full description of these rights and/or the proposed transfers, please see <https://research.idwr.idaho.gov>. Protests may be submitted based on the criteria of Idaho Code Sec. 42-222. Any protest against the proposed change must be filed with the Department of Water Resources, Southern Region, 650 ADDISON AVE W, STE 500, TWIN FALLS, ID 83301-5858 together with a protest fee of \$25.00 for each application on or before October 23, 2023. The protestant must also send a copy of the protest to the applicant.

MATHEW WEAVER, Director
Publish: October 5, 12, 2023

*Proof of legal notice received from
Times News 9/28/2023*

✓ OK DM 9/29/2023

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cmchugh@mchughbromley.com

Attorneys for City of Heyburn

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

IN THE MATTER OF TRANSFER NO.
87938 IN THE NAME OF CITY OF
HEYBURN

PETITION FOR RECONSIDERATION

COMES NOW, Petitioner City of Heyburn, pursuant to IDAPA 37.01.01.730 and Idaho Code § 67-5243, and hereby petitions the Idaho Department of Water Resources (“IDWR” or “Department”) to reconsider its *Preliminary Order* approving *Transfer Application No. 87938*, signed by Corey Skinner, IDWR Southern Regional Manager, on January 16, 2024. The basis of this Petition is to ask IDWR to reconsider its decision to reduce the volumes associated with water right nos. 36-17185, 36-4233, 36-8744, and 36-7970 (“Domestic Rights”). The Petition is supported by the *Declaration of Tony Morley*.

FACTUAL AND PROCEDURAL BACKGROUND

Transfer No. 87938 (“Transfer”) was filed by the City on May 9, 2023. A purpose of the Transfer was to change “the domestic and commercial portions of water rights 36-4223, 36-

PETITION FOR RECONSIDERATION



7970, 36-8332, 36-8744 and 36-17185 to a beneficial use of municipal. The irrigation portions of 36-4233 and 36-8744 will remain irrigation and will continue to irrigate the historical 5.2 acres currently irrigated.” *Application for Transfer* at 1, ln. A.3. Before the Transfer was filed, the water rights were summarized as follows:

Summary of Water Rights Before the Proposed Changes

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
36-17185	WR/LICENSE	12/22/1995	0.050 cfs	2.4 af	N/A	N/A	GROUND WATER
36-4233	WR/DECREED	3/1/1963	0.200 cfs	27.0 af	N/A	5.0	GROUND WATER
36-7970	WR/DECREED	3/10/1981	0.200 cfs	27.6 af	N/A	N/A	GROUND WATER
36-8332	WR/LICENSE	10/12/1987	0.040 cfs	0.9 af	N/A	N/A	GROUND WATER
36-8550	WR/LICENSE	5/29/1990	6.670 cfs	N/A	N/A	N/A	GROUND WATER
36-8738	WR/LICENSE	5/22/1995	3.300 cfs	N/A	N/A	N/A	GROUND WATER
36-8744	WR/LICENSE	12/22/1995	0.070 cfs	3.2 af	N/A	0.2	GROUND WATER

Transfer at 1.

The *Transfer* was advertised with no protests received. Comments from the Watermaster of Water District No. 130 were solicited by IDWR with the Watermaster not opposing approval.

On January 16, 2024, the Department approved the *Transfer*, yet reduced the annual volumes associated with the Domestic Rights, summarized as follows:

Summary Of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (Changed Portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
36-17185	36-17185	0.050 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-4233	36-4233	0.200 cfs	16.1af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-7970	36-7970	0.200 cfs	11.1af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-8332	36-8332	0.040 cfs	0.9 af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-8550	36-8550	6.670 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-8738	36-8738	3.300 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-8744	36-8744	0.070 cfs	0.6 af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		10.530 cfs	N/A	N/A	N/A		N/A	N/A	N/A	N/A

Id.

According to Mr. Skinner's January 15, 2024 *Memorandum* that accompanied approval of the *Transfer*, the reason for the volumetric reductions were as follows:

Right 36-17185 allows for 0.05 cfs and 2.4 AF for in-house domestic use only prior to the transfer. After the transfer, 0.05 cfs and no volume credit will be allowed.

Right 36-4233 allows for 0.20 cfs and 7.0 AF for in-house domestic use (57 trailers per SRBA decree) and 0.12 cfs and 20.0 AF for five acres of irrigation prior to the transfer. The total for this right prior to the transfer is 0.20 cfs and 27.0 AF. After the transfer, 0.20 cfs and 16.1 AF will be allowed for this right. The volume limit is based on 5.0 acres at 3.21 AF/acre (Pdef for turfgrass in the Burley area).

Right 36-8744 allows for .05 cfs and 2.4 AF for in house use (4 RV spaces) and 0.02 cfs and 0.8 AF for irrigation of 0.2 acres. The total for this right prior to the transfer is 0.07 cfs and 3.2 AF. After the transfer, 0.07 cfs and 0.06 AF will be allowed for this right. The volume limit is based on 0.2 acres at 3.21 AF/acre (Pdef for turfgrass in the Burley area).

Right 36-7970 allows for 0.20 cfs and 27.6 AF for domestic use prior to the transfer. The SRBA decree indicates that this right is for 23 homes. Note that 27.6 AF for 23 homes equates to 1.2 AF per home. This is the IDWR standard for 0.6 AF for in house use, and 0.6 AF for irrigation per home (1.2 AF per home). To account for recognition of irrigation being allowed for this right, a ratio of 3.21 AF (Pdef for turfgrass in the Burley area) divided by 4.0 AF (field headgate allowance in the Burley/Heyburn area) will be applied to half the allowed volume of 27.6 AF (23 homes at 0.6 AF each for irrigation). This results in an allowable volume of 11.1 AF for the consumptive portion of the irrigation allowance for this right. After the transfer, 0.20 cfs and 11.1 AF will be allowed.

Right 36-8332 allows for 0.04 cfs and 0.9 AF for commercial use prior to the transfer. Since commercial use can be 100% consumptive, 0.4 cfa (sic) and 0.9 AF will be allowed after the transfer for this right.

Transfer Memo at 2 (emphasis added).

Thus, not accounting for the 0.9 AF associated with the commercial use for water right no. 36-8332 (“commercial use can be 100% consumptive”) (emphasis added), the *Transfer* reduced the overall volume of the Domestic Rights from 60.2 acre-feet to 28.1 acre-feet.

ARGUMENT

The *Transfer* should be reconsidered because it treats consumptive use associated with domestic and commercial uses differently, with no explanation as to why. As explained in maps associated with the *Application for Transfer*, all water at issue is located in a discrete area, shown below:



The entire volume associated with water right no. 36-8332 (gas station), was approved because “commercial use can be 100% consumptive . . .” *Transfer Memo* at 2. The idea that commercial use is fully consumptive is consistent with the *Amended Snake River Basin Moratorium Order* (Oct. 21, 2022): “commercial . . . use[] . . . will be considered consumptive.” *Amended Snake River Basin Moratorium Order* at 28.

While considering commercial use to be fully consumptive, the *Transfer* incorrectly assumes the indoor potable use associated with the Domestic Rights (homes) is non-consumptive. This is inconsistent with the *Amended Snake River Basin Moratorium Order*: “[D]omestic use from community water systems shall be considered fully consumptive. Applications from non-community water systems shall be evaluated on a case-by-case basis to determine whether the proposed use is non-consumptive.” *Id.*

The Department has further stated that domestic and commercial water use shall be considered fully consumptive when wastewater is discharged into a “municipal or publicly owned treatment works” *Id.* Indeed, since approximately July 6, 1982, wastewater from this area has been discharged wastewater into the City’s wastewater treatment plant. *Declaration of Tony Morley.*

Therefore, since the Department approved the full volume for water right no. 36-8332, and since it and the Domestic Rights discharge wastewater into the City’s wastewater treatment plant, there is no rational basis to treat the Domestic Rights differently from commercial water right no. 36-8332. Accordingly, the *Transfer* should be amended to approve the entire volumes associated with water right nos. 36-17185, 36-4233, 36-8744, and 36-7929.

CONCLUSION

Based on the foregoing, the City respectfully asks IDWR to amend the *Transfer* to include the entire volume associated with water right nos. 36-17185, 36-4233, 36-8744, and 36-7929.

DATED this 30th day of January, 2024.



Chris M. Bromley
McHugh Bromley, PLLC
Attorneys for City of Heyburn

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of January, 2024, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by electronic service:

IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720
Boise, ID 83720
file@idwr.idaho.gov

/s/ Candice M. McHugh
CANDICE M. McHUGH

CHRIS M. BROMLEY
IDAHO STATE BAR NO. 6530
CANDICE MCHUGH
IDAHO STATE BAR NO. 5908
MCHUGH BROMLEY, PLLC
Attorneys at Law
380 S. 4th St., Ste. 103
Boise, ID 83702
Telephone: (208) 287-0991
Facsimile: (208) 287-0864
cbromley@mchughbromley.com
cmchugh@mchughbromley.com

Attorneys for City of Heyburn

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

IN THE MATTER OF TRANSFER NO.
87938 IN THE NAME OF CITY OF
HEYBURN

DECLARATION OF TONY MORLEY

TONY MORLEY under penalty of perjury states as follows:

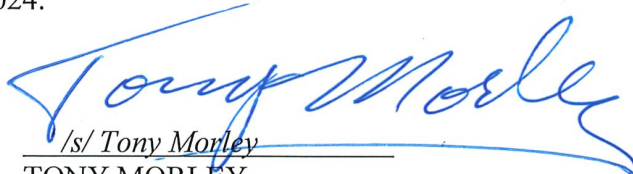
1. I am over the age of eighteen and state the following based upon my own personal knowledge.
2. I am currently employed by the City of Heyburn and hold the position of City Administrator. I have been the City Administrator since August 17, 2017.
3. In my position, I regularly review the City's records.
4. Based on my review of the City's records, the homes and gas station in the area that are the subject of the Transfer have discharged wastewater into the City's wastewater treatment plant since approximately July 6, 1982.

DECLARATION OF TONY MORLEY



5. I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 30th day of January, 2024.


/s/ Tony Morley
TONY MORLEY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of January, 2024, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by electronic service:

IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720
Boise, ID 83720
file@idwr.idaho.gov

/s/ Candice M. McHugh
CANDICE M. McHUGH

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR) **PRELIMINARY ORDER GRANTING**
 TRANSFER NO. 87938 IN THE NAME OF) **PETITION FOR RECONSIDERATION**
 CITY OF HEYBURN) **AND AMENDING TRANSFER**
) **APPROVAL**

This matter having come before the Department of Water Resources (“Department”) as a petition to reconsider a preliminary order approving a transfer application, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On January 19, 2024, the Department issued a preliminary order (“Order”) approving Application for Transfer No. 87938 (“Transfer”) in the name of City of Heyburn (“Applicant”).
2. The Transfer proposed to add existing wells as points of diversion for water rights 36-4233, 36-7970, 36-8332, 36-8550, 36-8738, 36-8744, and 36-17185. The Transfer also proposed to change the place of use and the nature of use of rights 36-4233, 36-7970, 36-8332, 36-8744, and 36-17185 to municipal use within the Applicant’s municipal service area. Prior to the Transfer, right 36-4233 allowed for the diversion of up to 0.20 cubic feet per second (“cfs”) and 27.0 acre feet per year (“AFY”) for domestic and irrigation use. Prior to the Transfer, right 36-7970 allowed for the diversion of up to 0.20 cfs and 27.6 AFY for domestic use. Prior to the Transfer, right 36-8332 allowed for the diversion of up to 0.04 cfs and 0.9 AFY for commercial use. Prior to the Transfer, right 36-8744 allowed for the diversion of up to 0.07 cfs and 3.2 AFY for domestic and irrigation use. Prior to the Transfer, right 36-17185 allowed for the diversion of up to 0.05 cfs and 2.4 AFY for domestic use. In total, rights 36-4233, 36-7970, 36-8332, 36-8744, and 36-17185 allowed for the diversion of up to 0.56 cfs and 61.1 AFY prior to approval of the Transfer.
3. When irrigation volumes are excluded, rights 36-4233, 36-7970, 36-8332, 36-8744, and 36-17185 collectively allowed for the diversion of up to 40.3 AFY prior to approval of the Transfer. Evidence in the water right file for right 36-7970 shows that up to 13.8 AFY of its 27.6 AFY domestic use volume may have been used for irrigation associated with the domestic use. When the 13.8 AFY of potential domestic irrigation use from right 36-7970 is subtracted from the 40.3 AFY combined total described above, 26.5 AFY may have been used for in-house domestic and commercial uses under rights 36-4233, 36-7970, 36-8332, 36-8744, and 36-17185 prior to approval of the Transfer.

Transfer No. 87938 Order Granting Petition for Reconsideration and Amending Transfer Approval



4. The Transfer included a “Water Requirements Estimation” attachment that estimated the annual water demand for the “Wayside Café”, “Stinker Station”, “In House Use”, and “Consumptive Use for Irrigation”. These are the uses supplied by water diverted pursuant to rights 36-4233, 36-7970, 36-8332, 36-8744, and 36-17185. The total of the Applicant’s estimate is 69.5 AFY, which is more than the total diversion volume of 61.1 AFY authorized by rights 36-4233, 36-7970, 36-8332, 36-8744, and 36-17185 prior to the Transfer. The “Water Requirements Estimation” attachment includes an estimate of historical consumptive water use for the irrigation use, but it has no estimate of the historical consumptive water use for the “Wayside Café”, “Stinker Station”, and “In House Use”. The total estimate for these three uses on the “Water Requirements Estimation” attachment is 52.8 AFY, nearly double the 26.5 AFY maximum volume limitation for the in-house domestic and commercial uses authorized by rights 36-4233, 36-7970, 36-8332, 36-8744, and 36-17185 prior to approval of the Transfer.
5. Approval of the Transfer added existing wells as points of diversion to water rights 36-4233, 36-7970, 36-8332, 36-8550, 36-8738, 36-8744, and 36-17185, changed the place of use of rights 36-4233, 36-7970, 36-8332, 36-8744, and 36-17185, and changed the nature of use of rights 36-4233, 36-7970, 36-8332, 36-8744, and 36-17185 to municipal use. To prevent enlargement of the water rights changed to municipal use, the Department limited each to an estimate of its historical consumptive use. The Transfer approval limited the diversion and use of right 36-4233 to 0.20 cfs and 16.1 AFY, right 36-7970 to 0.20 cfs and 11.1 AFY, right 36-8332 to 0.04 cfs and 0.9 AFY (the total diversion rate and volume authorized prior to the Transfer approval), right 36-8744 to 0.07 cfs and 0.6 AFA, and right 36-17185 to 0.05 cfs with no annual volume allowance. Historically rights 36-4233, 36-8744, and 36-17185 were diverted through the same system. The Transfer approval included a condition limiting rights 36-4233, 36-8744, and 36-17185 to a combined total of 0.32 cfs and 16.7 AFA. The Transfer approval limited rights 36-4233, 36-7970, 36-8332, 36-8744, and 36-17185 to a combined total of 0.56 cfs and 28.7 AFY. The Department based the Transfer approval diversion volume limits on the historical consumptive use estimates for the irrigation use data outlined in the “Water Requirements Estimation” attachment included with the Transfer. Except for water right 36-8332, the Department gave no volume credit for non-irrigation uses because no estimate of the historical consumptive water use for non-irrigation uses was provided with the Transfer. The Department did not employ its normal practice of limiting the annual volume to the historic consumptive use volume when approving the nature of use change from commercial to municipal water use for water right 36-8332.
6. On January 30, 2024, the Applicant filed a Petition for Reconsideration (“Petition”) with the Department in connection with the Order. In its Petition, the Applicant asked the Department to amend the Transfer approval to approve the entire diversion volumes authorized by rights 36-17185, 36-4233, 36-8744, and 36-7929 (presumably right 36-7970) prior to the Transfer. The Applicant provided a declaration from the City of Heyburn City Administrator that the “homes and gas station in the area that are the subject of the Transfer have discharged wastewater into the City’s wastewater treatment plant since approximately July 6, 1982.” The Applicant cited a section of the Department’s 2022 *Amended Snake River Basin Moratorium Order* on applications to appropriate water in the Snake River Basin upstream of Swan Falls Dam. This section of the moratorium order states commercial and domestic water uses that result in the discharge of wastewater to a municipal or publicly owned treatment works will be considered consumptive.

7. Order item no. 5 of the Department's 2022 *Amended Snake River Basin Moratorium* Order states the moratorium does not apply to applications for transfer.
8. Idaho Code § 42-202B(1) states that "consumptive use" means that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated by soils, converted to nonrecoverable water vapor, incorporated into products, or otherwise does not return to the waters of the state.

CONCLUSIONS OF LAW

1. Rule 730.02.b of the Department's Rules of Procedure (IDAPA 37.01.01) states in pertinent part:

A party may file a petition for reconsideration of this preliminary order with the agency within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law.

2. The Applicant filed the Petition timely.
3. Rule 730.02.b of the Department's Rules of Procedure (IDAPA 37.01.01) authorizes the Department to reconsider the issuance of a preliminary order.
4. The provisions of Idaho Code § 42-222(1) authorize the Department to approve a transfer provided the change does not constitute an enlargement in use of the original right. Idaho Code § 42-222(1) further states the Department may consider consumptive use, as defined in Idaho Code § 42-202B, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right.
5. To ensure the proposed change to municipal use, which may be fully consumptive, does not result in an enlargement in use of the water rights, the Department should limit the Transfer approval to the volume of water historically consumed by the use of water pursuant to water rights 36-4233, 36-7970, 36-8332, 36-8744, and 36-17185. Consistent with Idaho Code § 42-202B(1), consumptive use does not include water that returns to the waters of the state.
6. When approving the transfer, the Department did not properly consider the historic consumptive use in approving the nature of use change from commercial to municipal water use for water right 36-8332.
7. The Applicant's Transfer and Petition did not include evidence confirming the historic consumptive water use in the "Wayside Café", "Stinker Station", and "In House Use" (the domestic and commercial uses for rights 36-4233, 36-7970, 36-8332, 36-8744, and 36-17185 prior to the Transfer). The Department must limit the transferred volumes of these rights to ensure the proposed change to municipal use does not result in an enlargement in use of the water rights.
8. The Department should amend the Transfer No. 87938 approval.

ORDER

IT IS HEREBY ORDERED that the Petition is **GRANTED** pursuant to IDAPA 37.01.01.730.02.b.

IT IS FURTHER ORDERED that Transfer No. 87938 is **AMENDED** subject to the conditions set forth in Amended Transfer No. 87938 issued in conjunction with this order.

Dated this 20th day of February, 2024.



Corey Skinner
Southern Region Manager

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of February, 2024, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER GRANTING PETITION FOR RECONSIDERATION AND AMENDED TRANSFER APPROVAL**, to the person(s) listed below:

Documents Served: Preliminary Order Granting Petition for Reconsideration and Amended Transfer Approval, Transfer No. 87938

CITY OF HEYBURN
PO BOX 147
HEYBURN ID 83336-0147

MC HUGH BROMLEY PLLC
380 S 4TH ST STE 103
BOISE ID 83702-7687

BROCKWAY ENGINEERING PLLC
GREG SULLIVAN
2016 N WASHINGTON ST STE 4
TWIN FALLS ID 83301-3082

WATER DISTRICT 130
COREY KING
650 ADDISON AVE W STE 500
TWIN FALLS ID 83301-5858

A handwritten signature in blue ink that reads "Denise Maline". The signature is written in a cursive style and is positioned above a horizontal line.

Denise Maline
Administrative Assistant

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

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

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**AMENDED TRANSFER OF WATER RIGHT
TRANSFER NO. 87938**

This is to certify that: **CITY OF HEYBURN
PO BOX 147
HEYBURN, ID 83336-0147**

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Changes

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
36-17185	WR/LICENSE	12/22/1995	0.050 cfs	2.4 af	N/A	N/A	GROUND WATER
36-4233	WR/DECREED	3/1/1963	0.200 cfs	27.0 af	N/A	5.0	GROUND WATER
36-7970	WR/DECREED	3/10/1981	0.200 cfs	27.6 af	N/A	N/A	GROUND WATER
36-8332	WR/LICENSE	10/12/1987	0.040 cfs	0.9 af	N/A	N/A	GROUND WATER
36-8550	WR/LICENSE	5/29/1990	6.670 cfs	N/A	N/A	N/A	GROUND WATER
36-8738	WR/LICENSE	5/22/1995	3.300 cfs	N/A	N/A	N/A	GROUND WATER
36-8744	WR/LICENSE	12/22/1995	0.070 cfs	3.2 af	N/A	0.2	GROUND WATER

Purpose of Transfer (Changes Proposed)

<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
36-17185	NO	NO	YES	YES	NO	YES
36-4233	NO	NO	YES	YES	YES	YES
36-7970	NO	NO	YES	YES	NO	YES
36-8332	NO	NO	YES	YES	NO	YES
36-8550	NO	YES	YES	YES	NO	NO
36-8738	NO	YES	YES	YES	NO	NO
36-8744	NO	NO	YES	YES	YES	YES

Summary Of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (Changed Portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
36-17185	36-17185	0.050 cfs	0.0 af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-4233	36-4233	0.200 cfs	16.1af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-7970	36-7970	0.200 cfs	11.1af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-8332	36-8332	0.040 cfs	0.0 af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-8550	36-8550	6.670 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-8738	36-8738	3.300 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
36-8744	36-8744	0.070 cfs	0.6 af	N/A	N/A	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		10.530 cfs	N/A	N/A	N/A		N/A	N/A	N/A	N/A

Transfer No. 87938

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED TRANSFER OF WATER RIGHT
TRANSFER NO. 87938

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this 20th day of February, 2024.



Southern Region Manager



Transfer No. 87938

WATER RIGHT NO. 36-7970

As Modified by AMENDED Transfer No. 87938

In accordance with the AMENDED approval of Transfer No. 87938, Water Right No. 36-7970 is now described as follows:

Right Holder: CITY OF HEYBURN
PO BOX 147
HEYBURN, ID 83336-0147

Priority Date: 3/10/1981

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
MUNICIPAL	01/01	to 12/31	0.200 cfs	11.1 af
			0.200 cfs	11.1 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SEWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SEWNE	Sec 9 Twp 10S Rge 23E	MINIDOKA County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
5. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in decree dated 3/20/1998.
6. This right does not grant any right-of-way or easement across the land of another.

Transfer No. 87938

WATER RIGHT NO. 36-7970

As Modified by AMENDED Transfer No. 87938

CONDITIONS OF APPROVAL

7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. Pursuant to Idaho Code § 42-1412(6), this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

Transfer No. 87938

WATER RIGHT NO. 36-8332

As Modified by AMENDED Transfer No. 87938

In accordance with the AMENDED approval of Transfer No. 87938, Water Right No. 36-8332 is now described as follows:

Right Holder: CITY OF HEYBURN
PO BOX 147
HEYBURN, ID 83336-0147

Priority Date: 10/12/1987

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
MUNICIPAL	01/01	to 12/31	0.040 cfs	0.0 af
			0.040 cfs	0.0 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SEWN	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNW	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SEWNW	Sec 9 Twp 10S Rge 23E	MINIDOKA County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
5. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in license dated 7/6/1992.
6. This right does not grant any right-of-way or easement across the land of another.

Transfer No. 87938

WATER RIGHT NO. 36-8332
As Modified by AMENDED Transfer No. 87938

CONDITIONS OF APPROVAL

7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. Rights 36-4233, 36-8332, 36-8744, and 36-17185 when combined shall not exceed a total diversion rate of 0.36 cfs and a total annual maximum diversion volume of 16.7 af.

Transfer No. 87938

WATER RIGHT NO. 36-4233

As Modified by AMENDED Transfer No. 87938

In accordance with the AMENDED approval of Transfer No. 87938, Water Right No. 36-4233 is now described as follows:

Right Holder: CITY OF HEYBURN
PO BOX 147
HEYBURN, ID 83336-0147

Priority Date: 3/1/1963

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
MUNICIPAL	01/01	to 12/31	0.200 cfs	16.1 af
			0.200 cfs	16.1 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENE	Sec 9 Twp 10S Rge 23E	MINIDOKA County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
5. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in decree dated 8/27/2001.
6. This right does not grant any right-of-way or easement across the land of another.

Transfer No. 87938

WATER RIGHT NO. 36-4233
As Modified by AMENDED Transfer No. 87938

CONDITIONS OF APPROVAL

7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. Pursuant to Idaho Code § 42-1412(6), this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.
10. Rights 36-4233, 36-8332, 36-8744, and 36-17185 when combined shall not exceed a total diversion rate of 0.36 cfs and a total annual maximum diversion volume of 16.7 af.

Transfer No. 87938

WATER RIGHT NO. 36-8550

As Modified by AMENDED Transfer No. 87938

In accordance with the AMENDED approval of Transfer No. 87938, Water Right No. 36-8550 is now described as follows:

Right Holder: CITY OF HEYBURN
PO BOX 147
HEYBURN, ID 83336-0147

Priority Date: 5/29/1990

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
MUNICIPAL	01/01	to 12/31	6.670 cfs
			6.670 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENE	Sec 9 Twp 10S Rge 23E	MINIDOKA County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
5. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in Transfer 73504 dated 1/3/2008.
6. This right is for the use of trust water, and it is subject to review 20 years after its initial approval (date of permit approval) to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.

Transfer No. 87938

WATER RIGHT NO. 36-8550
As Modified by AMENDED Transfer No. 87938

CONDITIONS OF APPROVAL

7. When the minimum stream flow water rights in the Snake River at Murphy Gage are not being satisfied, the right holder shall cease diverting water for the consumptive uses authorized by this right. The minimum stream flow water rights are for 3,900 cfs from April 1 through October 31 and 5,600 cfs from November 1 through March 31. See IDAPA 37.03.08.030.
8. This right does not grant any right-of-way or easement across the land of another.
9. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
10. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Transfer No. 87938

WATER RIGHT NO. 36-8738

As Modified by AMENDED Transfer No. 87938

In accordance with the AMENDED approval of Transfer No. 87938, Water Right No. 36-8738 is now described as follows:

Right Holder: CITY OF HEYBURN
PO BOX 147
HEYBURN, ID 83336-0147

Priority Date: 5/22/1995

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
MUNICIPAL	01/01	to 12/31	3.300 cfs
			3.300 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SEWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SEWNW	Sec 9 Twp 10S Rge 23E	MINIDOKA County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. The daily diversion volume for non-domestic uses under this municipal right shall not exceed 2,500 gallons per use and the daily diversion volume for domestic uses under this right shall not exceed 13,000 gallons per dwelling in accordance with Section 42-111, Idaho Code.
4. The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.
5. Irrigation of large projects such as parks, golf courses, or sports activities fields is not authorized under this right.
6. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.

Transfer No. 87938

WATER RIGHT NO. 36-8738

As Modified by AMENDED Transfer No. 87938

CONDITIONS OF APPROVAL

7. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
8. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in Transfer 73504 dated 1/3/2008.
9. This right is for the use of trust water, and it is subject to review 20 years after its initial approval (date of permit approval) to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.
10. When the minimum stream flow water rights in the Snake River at Murphy Gage are not being satisfied, the right holder shall cease diverting water for the consumptive uses authorized by this right. The minimum stream flow water rights are for 3,900 cfs from April 1 through October 31 and 5,600 cfs from November 1 through March 31. See IDAPA 37.03.08.030.
11. This right does not grant any right-of-way or easement across the land of another.
12. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
13. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Transfer No. 87938

WATER RIGHT NO. 36-8744

As Modified by AMENDED Transfer No. 87938

In accordance with the AMENDED approval of Transfer No. 87938, Water Right No. 36-8744 is now described as follows:

Right Holder: CITY OF HEYBURN
PO BOX 147
HEYBURN, ID 83336-0147

Priority Date: 12/22/1995

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
MUNICIPAL	01/01	to 12/31	0.070 cfs	0.6 af
			0.070 cfs	0.6 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENE	Sec 9 Twp 10S Rge 23E	MINIDOKA County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
5. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in license dated 5/3/2019.
6. This right does not grant any right-of-way or easement across the land of another.

Transfer No. 87938

WATER RIGHT NO. 36-8744

As Modified by AMENDED Transfer No. 87938

CONDITIONS OF APPROVAL

7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. Rights 36-4233, 36-8332, 36-8744, and 36-17185 when combined shall not exceed a total diversion rate of 0.36 cfs and a total annual maximum diversion volume of 16.7 af.

Transfer No. 87938

WATER RIGHT NO. 36-17185

As Modified by AMENDED Transfer No. 87938

In accordance with the AMENDED approval of Transfer No. 87938, Water Right No. 36-17185 is now described as follows:

Right Holder: CITY OF HEYBURN
PO BOX 147
HEYBURN, ID 83336-0147

Priority Date: 12/22/1995

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
MUNICIPAL	01/01	to 12/31	0.050 cfs	0.0 af
			0.050 cfs	0.0 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SEWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNE	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SEWNW	Sec 9 Twp 10S Rge 23E	MINIDOKA County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
5. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in license 36-8744 dated 5/3/2019.
6. This right does not grant any right-of-way or easement across the land of another.

Transfer No. 87938

WATER RIGHT NO. 36-17185

As Modified by AMENDED Transfer No. 87938

CONDITIONS OF APPROVAL

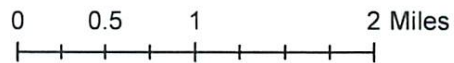
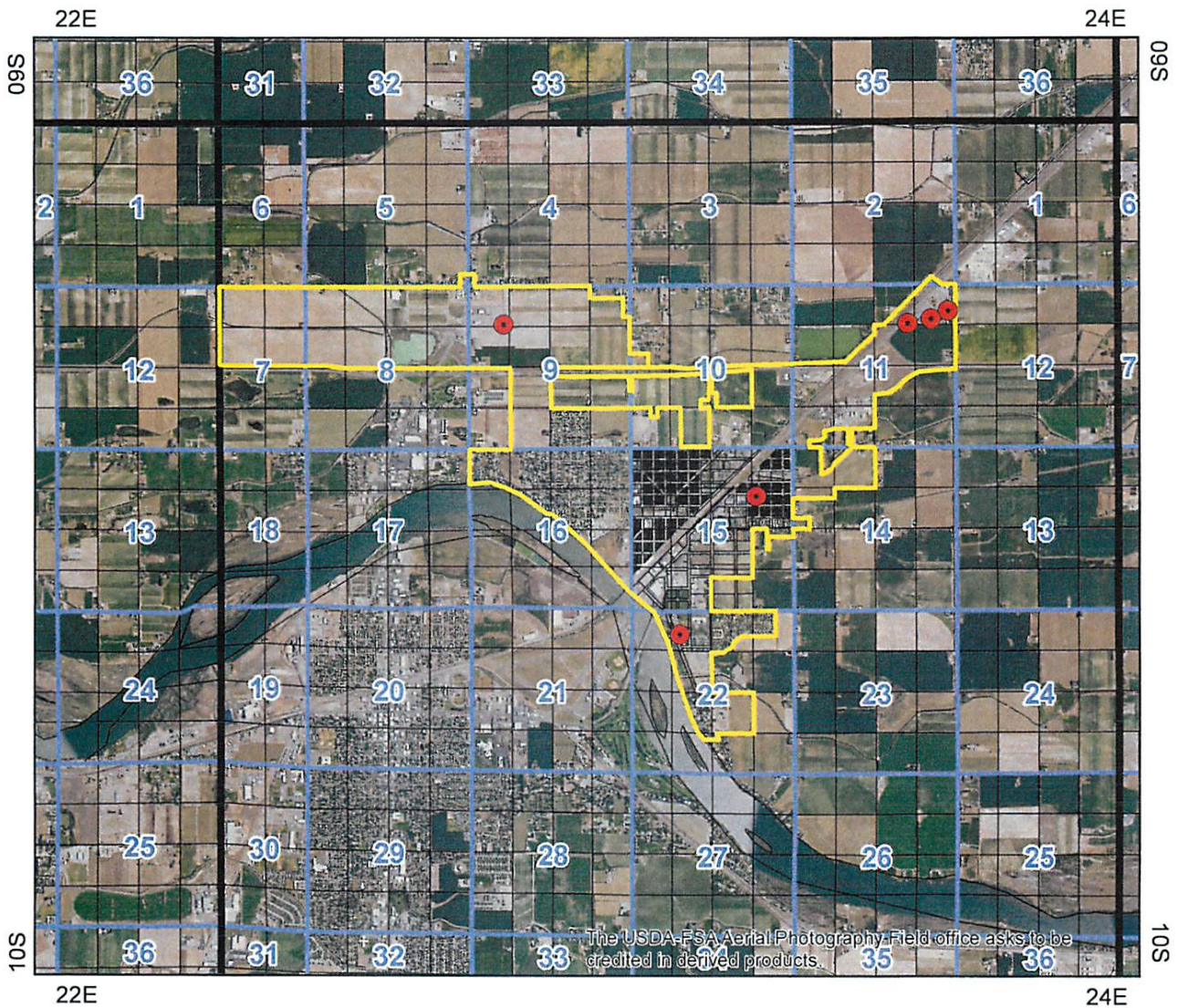
7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. Rights 36-4233, 36-8332, 36-8744, and 36-17185 when combined shall not exceed a total diversion rate of 0.36 cfs and a total annual maximum diversion volume of 16.7 af.






Transfer No. 87938

Attachment to AMENDED Transfer # 87938

36-4233, 36-7970, 36-8332, 36-8550, 36-8738, 36-8744, and 36-17185

This map depicts the MUNICIPAL place of use boundary for these water rights at the time of this approval and is attached to the approval document solely for illustrative purposes.



-  Point of Diversion
-  Water Service Area Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters





Technical Memo



To: Chris Bromley
From: Greg Sullivan M.S. and Charles G. Brockway, Ph.D., P.E.
Date: June 14, 2024
Re: Expert Report for Transfer #87938

This report concerns the contested approvals of Transfer #87938 pertaining to water rights 36-4233, 36-7970, 36-8332, 36-8744 and 36-17185. The characteristics of these rights before the transfer are provided in Table 1, which shows the diversion rate and annual volume allowed for the beneficial uses authorized by the rights. Since their development, the water rights have provided water to a cafe, a gas station, 75 domestic houses and the irrigation of 5.2 acres, all in the vicinity of the I-84 interchange near the City of Heyburn. Groundwater wells at these sites have historically provided the water supply, but wastewater has been discharged to the City wastewater system as described below. The City acquired all of these rights and sought to transfer them to the existing municipal system and change their beneficial uses to “municipal.”

Table 1: Water right descriptions before the Transfer #87938 application.

RIGHT #	36-4233		36-8744		36-17185	36-8332	36-7970
PRIORITY DATE	3/1/1963		12/22/1995		12/22/1995	10/12/1987	3/10/1981
BASIS	Decreed		License		License	License	Decreed
SOURCE	Ground Water		Ground Water		Ground Water	Ground Water	Ground Water
USE	Irrigation	Domestic	Irrigation	Domestic	Domestic	Commercial	Domestic
Period of Use	4/01-10/31	1/01-12/31	3/15-11/15	1/01-12/31	1/01-12/31	1/01-12/31	1/01-12/31
Diversion	0.12 CFS	0.20 CFS	0.02 CFS	0.05 CFS	0.05 CFS	0.04 CFS	0.20 CFS
Combined Diversion	0.20 CFS		0.07 CFS				
VOLUME	20.0 AFA	7.0 AFA	0.8 AFA	2.4 AFA	2.4 AFA	0.9 AFA	27.6 AFA
COMBINED VOLUMES	27.0 AFA		3.2 AFA				
TOTAL VOLUME	61.1 AFA						

IDWR policy in general is to allow only the “consumptive” portion of a water right to be changed to municipal usage. However, this policy cannot be properly implemented unless the actual hydrology of individual situations is analyzed. In the present case, the water rights in question historically have had some fraction that was truly consumptive in the sense of being lost from the water resource via evapotranspiration, some fraction that returned directly to the aquifer from whence it was diverted, and some fraction that discharged to the City of Heyburn wastewater collection system, where it was treated and returned to the Snake River, with the latter case being wholly consumptive *to the aquifer* since there was no return to groundwater.

All of these rights will now be diverted from the City’s municipal wells, and the actual hydrology and historical usage of these rights in relation to the City’s municipal water supply and wastewater system must be evaluated in order to answer the question of enlargement. The City has an independent irrigation system supplied by surface water that is used by residents for irrigation needs, and the City’s existing municipal groundwater rights are sufficient to cover current demands.



The aquifer depletion caused by the irrigation portion of the rights in Table 1 was evaluated based on precipitation deficit from ET Idaho for irrigated turfgrass at the Burley station. This value is 3.21 acre-feet per acre of irrigation. Volume diverted for irrigation exceeding this amount has historically returned to the aquifer.

The domestic portion of the rights in Table 2 has historically been used for in-house purposes with negligible consumptive loss and thence directed into the City of Heyburn municipal wastewater system. After the transfer, this water will continue to be used in the same manner. Similarly, the commercial portion of the rights in Table 2 has not been used consumptively but has returned to the Snake River via the City's wastewater system.

B. Description of Proposed Changes

In the transfer application, the following analyses were made and changes proposed for each right:

36-4233

The application proposed to convert the 5.0 acres (20.0 AFA) of irrigation and the 7.0 AFA of domestic water under water right 36-4233 to municipal use. The allowed consumptive use volume that can be converted to municipal water from irrigation water is calculated by multiplying the 5.0 acres of irrigation by 3.21 acre-feet/acre, or 16.0 AFA. The 7.0 AFA of domestic water that was pumped and delivered to the residential houses has historically been diverted from the aquifer and discharged to the City's wastewater treatment facility, without returning to the aquifer. This amount should therefore continue to be available for municipal purposes. In total, 23.0 AFA of 36-4233 was proposed to be converted to municipal use.

36-8744

Under this right, the volume to be converted to municipal water from irrigation was calculated by multiplying the 0.2 acres of irrigation by 3.21 acre-feet/acre, or 0.6 AFA. The 2.4 AFA of domestic water that was pumped and delivered to the residential houses has historically been diverted from the aquifer and discharged to the City's wastewater treatment facility, without returning to the aquifer. This amount should therefore continue to be available for municipal purposes. In total, 3.0 AFA of 36-8744 was proposed to be converted to municipal water.

36-17185 and 36-7970

For these rights it was proposed to convert the entire volume to municipal use. The domestic water that was pumped and delivered to the residences has historically been discharged into the City of Heyburn wastewater treatment facility, and therefore this amount should continue to be available for municipal purposes. This amounts to 2.4 AFA under 36-17185 and 27.6 AFA under 36-7970.

36-8332

This right has historically provided 0.9 AFA of commercial water for a gas station and convenience store. Similar to in-house use, this water is discharged essentially undiminished to the City's wastewater system – the same as it will after the transfer – and therefore conversion to

municipal use should be allowed. In addition, a long-standing internal policy of IDWR identifies stockwater, commercial, and industrial water as 100% consumptive, even if it isn't. Therefore, even without the historical fact of diverting to the City's wastewater system and the fact that this mechanism will continue to occur, there should be no question that the entire volume should be allowed to transfer.

Table 2: Water right descriptions proposed by Transfer #87938 application.

RIGHT #	<u>36-4233</u>		<u>36-8744</u>		<u>36-17185</u>	<u>36-8332</u>	<u>36-7970</u>
PRIORITY DATE	3/1/1963		12/22/1995		12/22/1995	10/12/1987	3/10/1981
BASIS	Decreed		License		License	License	Decreed
SOURCE	Ground Water		Ground Water		Ground Water	Ground Water	Ground Water
USE	Municipal	Municipal	Municipal	Municipal	Municipal	Municipal	Municipal
Period of Use	4/01-10/31	1/01-12/31	3/15-11/15	1/01-12/31	1/01-12/31	1/01-12/31	1/01-12/31
Diversion	0.12 CFS	0.20 CFS	0.02 CFS	0.05 CFS	0.05 CFS	0.04 CFS	0.20 CFS
Combined Diversion	0.20 CFS		0.07 CFS				
VOLUME	16.0 AFA	7.0 AFA	0.6 AFA	2.4 AFA	2.4 AFA	0.9 AFA	27.6 AFA
COMBINED VOLUMES	23.0 AFA		3.0 AFA				
TOTAL VOLUME	57.0 AFA						

C. Reduction of Volumes by IDWR

Transfer #87938 was approved on January 19, 2024. A memo by Corey Skinner, IDWR Southern Region Manager, describing his evaluation of the proposed transfer stated that “A meeting was held between Corey, IDWR administration and IDWR Eastern & Western Regional Managers. During this meeting, it was decided that IDWR cannot allow volume credit in a conversion from in house domestic use to municipal use (see transfer # 82259 approved in 2018). However, credit for diversion rates for in-house use could be allowed.”

The Department approved the transfer with the annual volumes for all domestic water use reduced to zero. The Department did recognize the consumptive use volumes of irrigation portions of the water rights, and with regard to the commercial water right 36-8332, Mr. Skinner’s memo stated, “Since commercial use can be 100% consumptive, 0.4 cfs and 0.9 AF will be allowed after the transfer of this right.” See Table 3.

Table 3: Water right descriptions under Transfer #87938 as originally approved by IDWR.

RIGHT #	<u>36-4233</u>		<u>36-8744</u>		<u>36-17185</u>	<u>36-8332</u>	<u>36-7970</u>
PRIORITY DATE	3/1/1963		12/22/1995		12/22/1995	10/12/1987	3/10/1981
BASIS	Decreed		License		License	License	Decreed
SOURCE	Ground Water		Ground Water		Ground Water	Ground Water	Ground Water
USE	Municipal	Municipal	Municipal	Municipal	Municipal	Municipal	Municipal
Period of Use	4/01-10/31	1/01-12/31	3/15-11/15	1/01-12/31	1/01-12/31	1/01-12/31	1/01-12/31
Diversion	0.12 CFS	0.20 CFS	0.02 CFS	0.05 CFS	0.05 CFS	0.04 CFS	0.20 CFS
Combined Diversion	0.20 CFS		0.07 CFS				
VOLUME	16.1 AFA	0.0 AFA	0.6 AFA	0.0 AFA	0.0 AFA	0.9 AFA	11.1 AFA
COMBINED VOLUMES	16.1 AFA		0.6 AFA				
COMBINED VOLUMES	16.7 AFA						
TOTAL VOLUME	28.7 AFA						

The Applicant filed a Petition for Reconsideration with IDWR. The Petition for Reconsideration asked the Department to amend the transfer approval to include the historical volume used under the domestic beneficial use for water rights 36-4233, 36-8744, 36-17185 and 36-7970. The Department determined that the Applicant did not provide sufficient historical consumptive use analysis for the domestic and commercial water uses under 36-4233, 36-7970, 36-8332, 36-8744 and 36-17185. Further, the Department determined that both the domestic and commercial volumes under these water rights must be reduced to zero to prevent an enlargement in use of the water rights.

IDWR granted the Petition for Reconsideration and Amended transfer #87938 to eliminate all volume under the historic beneficial uses of domestic and commercial, further reducing the total allowable volume by 0.9 AFA. See Table 4.

Table 4: Water right descriptions under Transfer #87938 as amended by IDWR.

RIGHT #	36-4233		36-8744		36-17185	36-8332	36-7970
PRIORITY DATE	3/1/1963		12/22/1995		12/22/1995	10/12/1987	3/10/1981
BASIS	Decreed		License		License	License	Decreed
SOURCE	Ground Water		Ground Water		Ground Water	Ground Water	Ground Water
USE	Municipal	Municipal	Municipal	Municipal	Municipal	Municipal	Municipal
Period of Use	4/01-10/31	1/01-12/31	3/15-11/15	1/01-12/31	1/01-12/31	1/01-12/31	1/01-12/31
Diversion	0.12 CFS	0.20 CFS	0.02 CFS	0.05 CFS	0.05 CFS	0.04 CFS	0.20 CFS
Combined Diversion	0.20 CFS		0.07 CFS				
VOLUME	16.1 AFA	0.0 AFA	0.6 AFA	0.0 AFA	0.0 AFA	0.0 AFA	11.1 AFA
COMBINED VOLUMES	16.1 AFA		0.6 AFA				
COMBINED VOLUMES	16.7 AFA						
TOTAL VOLUME	27.8 AFA						

D. The water balance reality

An annual water balance for the transfer as proposed is shown in Table 5. This table represents the actual historical hydrology of the water usage under the five rights, as best as it can be determined. The balance accounts for groundwater diverted, consumptive loss from the system, return to the aquifer, and return to the Snake River. This analysis demonstrates that the depletion to the aquifer is 57.0 acre-feet, the same volume as proposed to be converted to municipal use in the original application.

In Table 5, the depletion of the aquifer is equal to the irrigation consumptive use (precipitation deficit) plus all of the diversion for domestic and commercial uses because this amount is discharged to the City’s wastewater system with no return to the aquifer. It is important to note that because of this fact, the aquifer depletion would remain the same before and after the change, and the return to the Snake River would remain the same before and after the change, regardless of the actual overall “consumptiveness” of the domestic and commercial use.

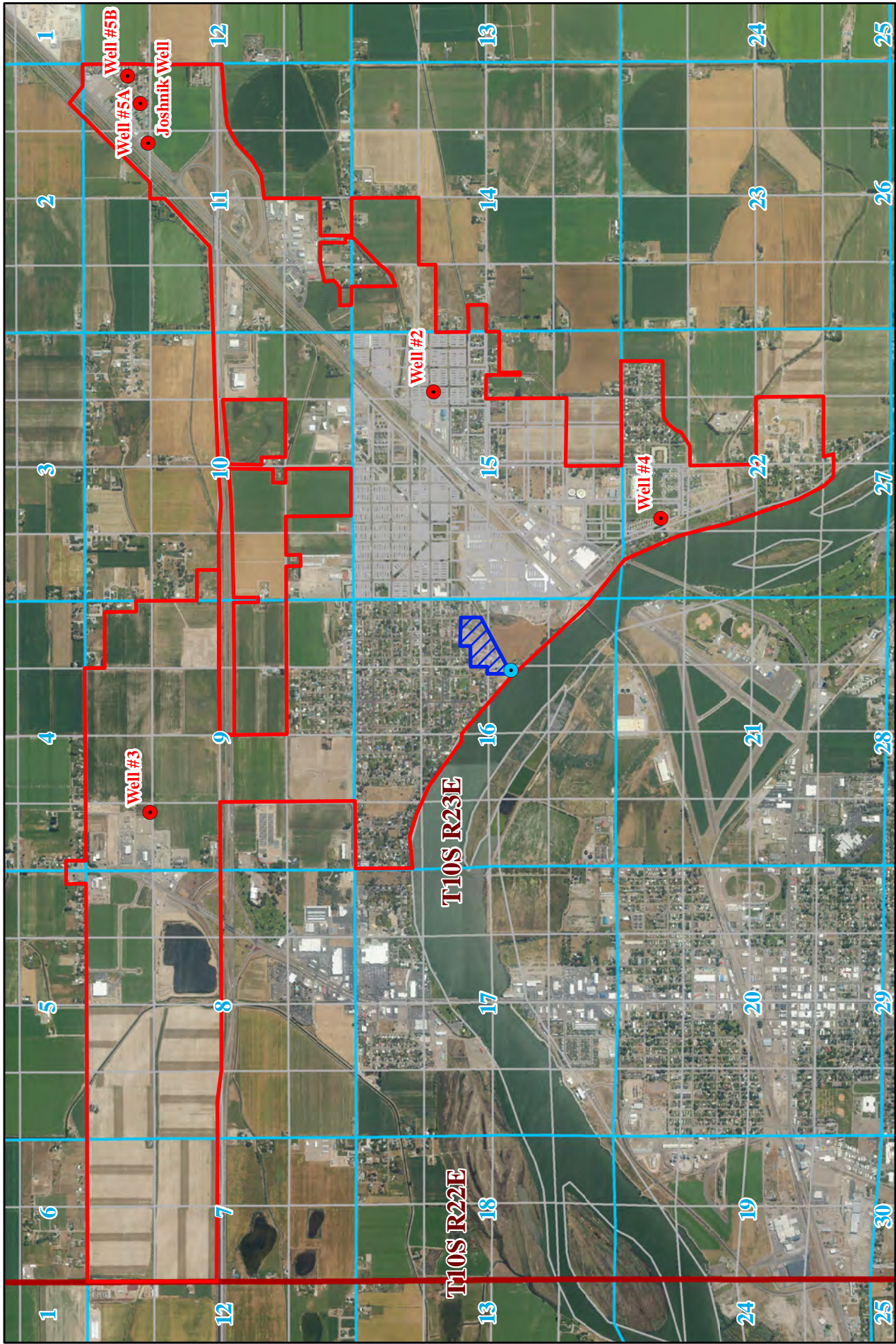
In short, there will be no change in the depletion of the aquifer before or after the transfer as originally proposed, and there will be no change in the return to the Snake River before or after the transfer as originally proposed. Water currently being discharged to the wastewater system and returned to the river will continue to return.

This water balance is straightforward, but it appears that in Transfer #87938, the Department prioritized policy over the hydrologic reality when reducing the volumes under the transfer. By policy, if the beneficial use on a water right is “domestic,” no volume can be transferred. Yet if that word on paper had been “municipal,” then volume could be transferred. This kind of policy-based distinction does not have a proper scientific basis. Every case should be subjected to a hydrologic analysis that takes into account its particular facts and characteristics on a case-by-case basis. If the Department is concerned that the type of wastewater treatment employed by the City of Heyburn may change, and therefore the degree of overall consumptive depletion may change, it can simply condition the transferred rights accordingly to provide that a certain volume under the transferred rights always be allowed to return to the Snake River, with the City agreeable to such a condition.

Table 5. Annual water balance for transfer as proposed. Values are in acre-feet per year unless otherwise indicated.

	Water Right No.				
	36-4233	36-8744	36-17185	36-8332	36-7970
Irrigated acres	5.0	0.2	0.0	0.0	0.0
Diversion volume - irrigation	20.0	0.8	0.0	0.0	0.0
Diversion volume - domestic	7.0	2.4	2.4	0.0	27.6
Diversion volume - commercial	0.0	0.0	0.0	0.9	0.0
Consumptive loss from overall water resource*	16.1	0.6	0.0	0.0	0.0
Return to source aquifer	4.0	0.2	0.0	0.0	0.0
Discharge to Heyburn WW system	7.0	2.4	2.4	0.9	27.6
Return to Snake River	7.0	2.4	2.4	0.9	27.6
TOTALS:					
Total aquifer withdrawal	61.1				
Return to aquifer	4.1				
Depletion of aquifer	57.0				
Return to Snake River	40.3				
Consumptive loss from overall water resource	16.7				

*Consumptive loss consists of Irrigation Pdef only; minor loss from in-house use is neglected



Legend

- Treated WW Discharge
- WWTP
- City Wells
- Municipal_POU

CITY OF HEYBURN

NAIP 2023 AERIAL



BROCKWAY ENGINEERING, PLLC.
GWS - Date: 6/13/2024



Memo

To: C. Bromley
From: Greg Sullivan
Cc:
Date: July 1, 2024
Re: City of Heyburn wastewater usage

City of Heyburn ground water consumptive use calculations were calculated from data provided by the City of Heyburn. The analysis includes monthly pumping volumes for the 2023 calendar year for City Wells #2, #3, #4, Heyburn Est. and Wayside Est. Data is also provided by the City of Heyburn's 2023 waste water treatment facility discharge as waste water total pumped (WWTP). Estimated monthly infiltration and inflow values into the City of Heyburn's waste water collection system are based on a City of Heyburn Wastewater Collection System Master Plan report dated December 2018 prepared by JUB Engineers, Inc.

The 2018 report prepared by JUB calculated ground water infiltration in the wastewater collection system to be 0.07 million gallons per day (MGD) during the low flow periods of the year. A calculated ground water infiltration in the wastewater collection system to be 0.47 million gallons per day (MGD) during the summer flow periods of the year. A ground water infiltration rate of 0.27 MGD was used during months transitioning from spring to summer and from summer to winter periods.

The annual well production for the 2023 is 530 acre feet. Total WWTP discharge for 2023 is 594 acre feet. Calculated infiltration and inflow to the waste water collection system is 304 acre feet. By adding the total well production volume of 530 acre feet to the calculated infiltration and inflow volume of 304 acre feet and then subtracting out the actually volume amount of 594 acre feet discharged by the WWTP a consumptive use volume of City of Heyburn is calculated to be 240 acre feet or 45% of the volume of water pumped by the City's well.

There is no amount of discharged treated wastewater that is returned or recharged back into the ground water aquifer.



2023 Calendar Year Monthly Water Consumption for City of Heyburn

Month	WWTP Discharge (Gal)	Estimated I&I ⁽¹⁾ (Gal)	Net WWTP Discharge ⁽²⁾ (Gal)	Well Production (Gal)
January	12,397,000	2,170,000	10,227,000	7,928,252
February	12,121,000	1,960,000	10,161,000	8,034,823
March	13,089,000	2,170,000	10,919,000	9,745,520
April	12,784,000	8,100,000	4,684,000	9,702,194
May	14,880,000	8,370,000	6,510,000	17,675,154
June	17,880,000	8,100,000	9,780,000	19,788,918
July	23,476,000	14,570,000	8,906,000	31,809,180
August	21,058,000	14,570,000	6,488,000	25,370,018
September	20,479,000	14,100,000	6,379,000	16,808,053
October	19,038,000	8,370,000	10,668,000	10,702,025
November	14,792,000	8,100,000	6,692,000	7,998,616
December	11,648,000	8,370,000	3,278,000	7,203,717
Total Gallons for 2023:				
	193,642,000	98,950,000	94,692,000	172,766,470
Total Acre-Feet	594	304	291	530
Avg Consumptive Volume (by %):				45%
Avg Consumptive Volume (by Acre-Feet):				240

Notes:

- (1) Estimated Infiltration and Inflow (I&I) based on the City of Heyburn Wastewater Collection System Master Plan dated December 13, 2018 by J-U-B Engineers, Inc., pages 23-24 and C-10 - C-11. Factors used are 0.07 MGD for Jan - Mar, 0.27 MGD for Apr - Jun and Oct - Dec, and 0.47 MGD for July - Sep.
- (2) Net Discharge for the WWTP subtracts the estimated Infiltration and Inflow from the total discharge to estimate the amount of well water processed by the WWTP.

2023 Calendar Year Monthly Well Production for City of Heyburn

Month	well # 2	Well # 3	well # 4	Heyburn Est.	Wayside Est.	Tot. Mo. Gals.
January	1,757,000	321,000	5,765,000	71,142	14,110	7,928,252
February	1,687,000	765,000	5,395,000	175,203	12,620	8,034,823
March	1,749,000	991,000	4,397,000	95,610	2,512,910	9,745,520
April	1,759,000	1,340,000	6,301,000	173,594	128,600	9,702,194
May	1,865,000	3,287,000	12,087,000	304,354	131,800	17,675,154
June	1,695,000	5,306,000	12,041,000	628,718	118,200	19,788,918
July	1,811,000	14,022,000	14,371,000	1,457,680	147,500	31,809,180
August	1,831,000	10,183,000	12,422,000	796,718	137,300	25,370,018
September	1,755,000	6,100,000	8,462,000	375,553	115,500	16,808,053
October	1,813,000	579,000	8,020,000	179,125	110,900	10,702,025
November	1,874,000	3,688,000	2,110,000	218,016	108,600	7,998,616
December	1,694,000	189,000	4,978,000	245,617	97,100	7,203,717
12 Month Total Gallons	21,290,000	46,771,000	96,349,000	4,721,330	3,635,140	172,766,470
12 Month Total Acre-Feet	65	144	296	14	11	530

Maline, Denise

From: Chris Bromley <cbromley@mchughbromley.com>
Sent: Monday, July 8, 2024 2:39 PM
To: IDWR File; Hummer, Phill
Cc: 'Charles Brockway'; Greg Sullivan; Ivan McCracken; 'Tony Morley'; Paul Ross
Subject: RE: Transfer No. 87938 -- City of Heyburn
Attachments: Ex 9 - WW Memo.pdf

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Phil,

It was brought to my attention that the first page of Exhibit 9 wasn't formatted on Brockway Engineering letterhead. I'm attaching a corrected version of the exhibit. Nothing else has changed in the exhibit except the header. We'll have the corrected version printed for tomorrow.

Thanks,

Chris

From: Chris Bromley
Sent: Tuesday, July 2, 2024 1:35 PM
To: Idaho Department of Water Resources Filing <file@idwr.idaho.gov>; Hummer, Phill <Phill.Hummer@idwr.idaho.gov>
Cc: 'Charles Brockway' <charles.g.brockway@brockwayeng.com>; Greg Sullivan <greg.sullivan@brockwayeng.com>; Ivan McCracken <imccracken@heyburncity.org>; 'Tony Morley' <tmorley@heyburncity.org>; Paul Ross <paul@paulnjrosslaw.com>
Subject: Transfer No. 87938 -- City of Heyburn

Please find attached for filing on behalf of the City of Heyburn, an *Exhibit and Witness List* and associated exhibits in re: Application for Transfer No. 87938.

Thank you,

Chris M. Bromley
McHugh Bromley, PLLC
380 S. 4th St., Ste. 103
Boise, Idaho 83702
(208) 287-0991
www.mchughbromley.com

PROPOSED CONDITION

The commercial and domestic volumes under water right nos. 36-4233, 36-8744, 36-17185, 36-7970, and 36-8332, in the amount of 40.3 acre-feet per annum, shall continue to be discharged by the City of Heyburn to the Snake River at the City's wastewater treatment plant [insert DEQ number] and an annual report shall be filed with the Idaho Department of Water Resources by [insert date] to demonstrate that this requirement is met.



RAÚL R. LABRADOR
ATTORNEY GENERAL

SCOTT L. CAMPBELL
Chief of Energy and Natural Resources Division

GARRICK L. BAXTER, ISB No. 6301
Deputy Attorney General
Idaho Department of Water Resources
PO Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 287-4800
Facsimile: (208) 287-6700
garrick.baxter@idwr.idaho.gov

Attorney for Respondent

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

CITY OF HEYBURN,

Petitioner,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondent.

Case No. CV01-25-19943

**NOTICE OF LODGING THE
AGENCY RECORD AND
TRANSCRIPT WITH THE AGENCY**

IN THE MATTER OF APPLICATION
FOR TRANSFER NO. 87938 IN THE
NAME OF THE CITY OF HEYBURN

TO: THE DISTRICT COURT AND THE PARTIES OF RECORD

In accordance with I.R.C.P. 84(j), YOU ARE HEREBY NOTIFIED that the agency record and transcript, having been prepared pursuant to I.R.C.P. 84(f), (g) and (i), are lodged with the Idaho Department of Water Resources for the purpose of settlement.

A copy of the agency record and transcript filed with the Department have been uploaded to the Department's website. The parties may visit <https://idwr.idaho.gov/legal->

NOTICE OF LODGING THE AGENCY RECORD AND TRANSCRIPT WITH THE
AGENCY—1

[actions/district-court-actions/heyburn-v-idwr/](#) and follow their browser's document download procedure to obtain a copy of the agency record and transcript after expanding the accordion labeled "Agency Record and Transcript" and clicking on the PDF titled "Agency Record on Appeal" and "Agency Hearing Transcript on Appeal."

The parties have fourteen (14) days from the date of this notice to file any objections to the record or transcript. The agency's decision on any objection timely filed along with all evidence, exhibits, and written presentations on the objection shall be determined by the agency within fourteen (14) days and included in the record. If no objections are filed within that time, the record and transcript shall be deemed settled. Subsequently, the agency will lodge the settled record and transcript with the District Court pursuant to I.R.C.P. 84(k), the Court's November 3, 2025 *Procedural Order*, and the Court's November 19, 2025 *Order Granting Extension*.

DATED this 5th day of December 2025.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL



GARRICK L. BAXTER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of December 2025, I caused to be served a true and correct copy of the foregoing *Notice of Lodging the Agency Record and Transcript With the Agency*, via iCourt E-File and Serve, upon the following:

Chris Bromley
Candice McHugh
MCHUGH BROMLEY, PLLC
cbromley@mchughbromley.com
cmchugh@mchughbromley.com



GARRICK L. BAXTER
Deputy Attorney General