

CHRIS M. BROMLEY
IDAHO STATE BAR NO. 6530
CANDICE MCHUGH
IDAHO STATE BAR NO. 5908
MCHUGH BROMLEY, PLLC
Attorneys at Law
PO Box 107
Boise, ID 83701
Telephone: (208) 287-0991
Facsimile: (208) 287-0864
cbromley@mchughbromley.com
cmchugh@mchughbromley.com

Wildman, Eric J.

Attorneys for City of Heyburn

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

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

Case No.: CV01-25-19943

PETITION FOR JUDICIAL REVIEW

Fee Category: Exempt, I.C. § 67-2301

Case Type: L.3.a

COMES NOW Petitioner, the City of Heyburn (“Heyburn”), by and through its counsel of record, McHugh Bromley, PLLC, and pursuant to I.R.C.P. 84, hereby files this petition seeking judicial review of a final agency action by the Idaho Department of Water Resources (“IDWR” or “Department”).

STATEMENT OF THE ISSUES AND CASE

1. This Petition seeks judicial review of the *Amended Final Order Approving Application for Transfer, In Part*, together with a *Second Amended Transfer No. 87938*, issued and served on October 21, 2025 (hereinafter “Final Order”). A true and correct copy of the *Final Order* is attached hereto. The *Final Order* was issued by IDWR following issuance of its *Preliminary Order Affirming Approval of an Application for Transfer* (Oct. 3, 2025).

2. The issue in this matter is whether the Department erred when it determined that the consumptive use associated with the domestic and commercial water rights that were at issue could not be transferred due to an incorrect, policy-based perception that enlargement would result.

JURISDICTION AND VENUE

3. The *Final Order* is a final agency action subject to judicial review pursuant to I.C. §§ 42-1701A(4), 67-5246(1), and 67-5270(3).

4. This Court has jurisdiction over this action pursuant to Idaho Code §§ 42-1701A(4) and 67-5270(3).

5. Venue lies in this Court pursuant to Idaho Code § 67-5272 and the Snake River Basin Adjudication (“SRBA”) Court’s December 3, 2020 Administrative Order Regarding Transition to Electronic Filing System (“SRBA Administrative Order”). IDWR’s final action was taken in Ada County, Idaho.

6. Pursuant to the Idaho Supreme Court’s December 9, 2009 Administrative Order, “all petitions for judicial review of any decision regarding administration of water rights from the Department of Water Resources shall be assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District.” The *SRBA Administrative Order* instructs the clerk of the district court in which the petition is filed to reassign the case to the presiding judge of the SRBA Court.

7. This Petition is timely as it is filed within 28 days of the date of service of the *Final Order*. I.C. § 67-5273(2).

PARTIES

8. Petitioner is a municipal corporation located in Minidoka County, Idaho.

9. Respondent IDWR is an Idaho state agency with its main office in Ada County, located at 322 E. Front St., Boise, Idaho, 83702.

STATEMENT OF INITIAL ISSUES

10. Petitioner asserts the following issue on judicial review: Whether the Department erred when it determined that the consumptive use associated with the domestic and commercial water rights that were at issue could not be transferred due to an incorrect, policy-based perception that enlargement would result.

11. Petitioner reserves the right to assert other issues. I.R.C.P. 84(c)(5).

AGENCY RECORD

12. IDWR has compiled a documentary record in this matter.

13. The undersigned attorneys for Petitioner hereby certifies that they have made a request of the Department for the estimated fee to prepare the agency record. Petitioner has paid the \$20.00 estimated fee to the Department to prepare the agency record. Petitioner is exempt from the filing fees in this matter pursuant to I.C. § 67-2301.

SERVICE

14. The undersigned hereby certifies that service of this Petition has been made on Respondent.

I.R.C.P. 84(c) INFORMATION

15. **Name of Agency for Which Judicial Review is Sought:** Idaho Department of Water Resources, an executive department existing under the laws of the state of Idaho pursuant to Idaho Code § 42-1701 et seq., with its state office located at 322 E. Front St., Boise, Ada County, Idaho 83702.

16. **Title of District Court to Which Petition is Taken:** In the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada.

17. **Case Caption and Action for Which Judicial Review is Sought:** The Department's October 21, 2025, *Amended Final Order Approving Application for Transfer, In Part, In the Matter of Application for Transfer No. 87938, In the Name of the City of Heyburn.*

18. **Hearing Recording:** A hearing was held in this matter on July 9, 2024.

19. **Statement of Issues of Judicial Review:** As stated above in the section titled "Statement of Initial Issues," the issues is: Whether the Department erred when it determined that the consumptive use associated with the domestic and commercial water rights that were at issue could not be transferred due to an incorrect, policy-based perception that enlargement would result.

20. **Designation of Whether a Transcript is Required:** A hearing transcript is requested.

21. **Attorney Certification:** The undersigned counsel for Petitioner certifies the following: 1) service of this petition has been made upon the Department; and 2) the estimated fee of \$20.00 has been paid to the Department to prepare the agency record.

DATED this 31st day of October, 2025.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October, 2025, 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
garrick.baxter@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)**

**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:	$5.0 \text{ acres} * 3.21 \text{ af/ac} = 16.1 \text{ af}$
Water Right 36-8744:	$0.2 \text{ acres} * 3.21 \text{ af/ac} = 0.6 \text{ af}$

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 p the area directly affected by a proposed water use have in the effects of such use on the water resource.” Changes to a water right as authorized by Idaho Code § 42-222 can be to meet the changing needs of water users. *See* Idaho Water Resource Board, *Idaho Sta Plan* at 17 (Nov. 2012). The changes proposed by Heyburn are intended to improve He ability to serve users within the service area. Therefore, the proposed change is in the lo public interest.

CONCLUSIONS OF LAW

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

ORDER

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

Dated this 21 day of OCTOBER 2025

CERTIFICATE OF SERVICE

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

CHRIS BROMLEY
MCHUGH BROMLEY PLLC
PO BOX 107
BOISE ID 83701-0107
cbromley@mchughbromley.com

Attorney for the City of Heyburn

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

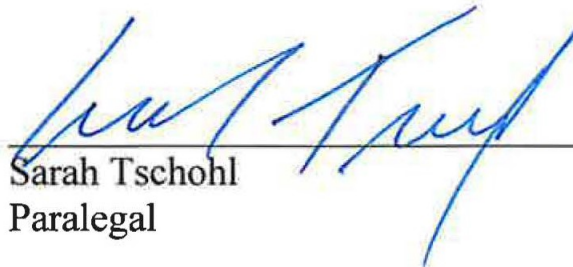
CITY OF HEYBURN
PO BOX 147
HEYBURN ID 83336-0147
paul@paulnjrosslaw.com
imccracken@heyburncity.org

Petitioner

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

COURTESY COPIES TO:

BROCKWAY ENGINEERING PLLC
GREG SULLIVAN
CHARLES G BROCKWAY
2016 N WASHINGTON ST STE 4
TWIN FALLS ID 83301-3082
Charles.g.brockway@brockwayeng.com
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 A

**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</u>
36-4233	NO	NO	YES	YES	YES	
36-7970	NO	NO	YES	YES	NO	
36-8550	NO	YES	YES	YES	NO	
36-8738	NO	YES	YES	YES	NO	
36-8744	NO	NO	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 Acres</u>
36-4233	36-4233	0.200 cfs	16.1 af	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	
36-8550	36-8550	6.670 cfs	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	
36-8744	36-8744	0.070 cfs	0.6 af	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	

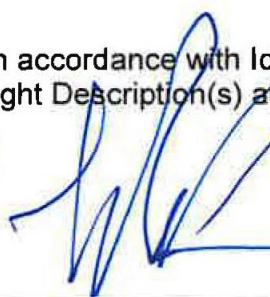
**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

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

Second A

This water right(s) is subject to all prior water rights and shall be administered in accordance with local and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) are on page 1.

Dated this 21 day of OCTOBER, 2025.



Director



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	SENENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SEWNENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSENE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNENW	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

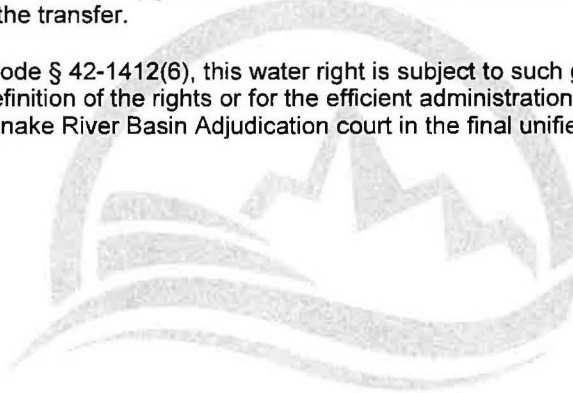
1. Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. Use of water under 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. 36-7970
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.



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	SWNENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENWNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSENE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNENW	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SENWNW	Sec 9 Twp 10S Rge 23E	MINIDOKA County

PLACE OF USE: MUNICIPAL

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

CONDITIONS OF APPROVAL

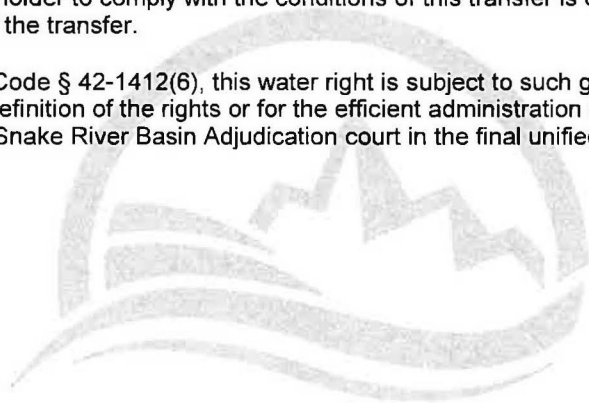
1. Place of use is within the service area of the City of Heyburn municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. Use of water under 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.



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

BENEFICIAL USE

MUNICIPAL

From

01/01

To

to 12/31

Diversion Rate

6.670 cfs

6.670 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SEWNENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSENE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNENW	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

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.

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

BENEFICIAL USE

MUNICIPAL

From

01/01

To

to 12/31

Diversion Rate

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

PLACE OF USE: MUNICIPAL

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	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.

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 0.070 cfs	0.6 af 0.6 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	SENENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNENE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SEWNNE	Sec 11 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	NWSENE	Sec 15 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SWNENW	Sec 22 Twp 10S Rge 23E	MINIDOKA County
GROUND WATER	SEWNW	Sec 9 Twp 10S Rge 23E	MINIDOKA County

PLACE OF USE: MUNICIPAL

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	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.

