

**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.

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=mddddb4ec36f8025566a1672ccd5ae489>

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:

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>	☒ U.S. Mail, postage prepaid ☒ Email
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Megan Jenkins
Executive Assistant