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Jan 30, 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

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-

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

Maline, Denise

From: cmchugh@mchughbromley.com
Sent: Tuesday, January 30, 2024 2:17 PM
To: IDWR File
Cc: 'Chris Bromley'; 'Paul Ross'
Subject: Petition For Reconsideration Transfer NO 87938
Attachments: 20240130 Morley Aff FINAL.pdf; 20240130 Petition for Reconsideration FINAL.pdf

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Please find the attached documents.

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