

**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.

THE 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

**RESPONDENT IDWR'S BRIEF**

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Judicial Review from the Idaho Department of Water Resources  
Mathew Weaver, Director

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## I. STATEMENT OF THE CASE

### A. Nature of the Case.

This is a judicial review proceeding pursuant to the Idaho Administrative Procedure Act (“APA”). The City of Heyburn (“Heyburn”) challenges the October 21, 2025, *Amended Final Order Approving Application for Transfer, In Part* issued by the Director of the Idaho Department of Water Resources (“Department”). Heyburn challenges the Director’s conclusion that the transfer must be denied in part because it would otherwise result in an enlargement. The Director correctly partially denied Heyburn’s transfer application because converting water rights from historically nonconsumptive uses to a municipal use—potentially a fully consumptive use—would result in an enlargement.

### B. Statement of the Facts and Procedural Background

On June 14, 2023, Heyburn filed *Application for Transfer No. 87938* (“*Transfer*”) which proposed to change the purpose of use for water rights 36-4233, 36-7970, 36-8332, 36-8744, and 36-17185 (collectively, “Wayside Rights”) from irrigation, commercial, and domestic uses to municipal uses.<sup>1</sup> R. 78. The Wayside Rights authorize the diversion of ground water according to 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

<sup>1</sup> In the *Transfer*, Heyburn also requested changes in points of diversion for the Wayside Rights and other municipal rights, but those changes are not at issue in this proceeding. *See* R. 78.

R. 68. These water rights historically supplied water to a café, gas station, 75 homes, and the irrigation of 5.2 acres. R. 203. The Water Requirements Estimation submitted with the transfer application included an estimate of historic consumptive water use for the irrigation portion of the rights but did not include an estimate of historic consumptive water use for the in-home domestic or commercial portions of the rights. R. 35.

On January 16, 2024, the Department partially approved Heyburn's request to transfer the authorized annual diversion volume associated with the commercial right but denied the request to transfer the authorized annual diversion volume associated with any in-home portion of the domestic rights. R. 142.

On January 30, 2024, Heyburn filed a *Petition for Reconsideration on the Transfer* decision, requesting the Department approve the full authorized annual diversion volume associated with the in-home domestic portion of the water rights. R. 174. Heyburn disagreed with the Department's exclusion of the authorized annual diversion volume of the domestic component and asserted that the Department should approve the transfer of the domestic use just like it approved the transfer of the commercial use. *Id.*

On February 20, 2024, the Department's Southern Regional Manager issued a *Preliminary Order Granting Petition for Reconsideration and Amending Transfer Approval*. R. 179. In that order, the Department made two determinations. First, it rejected Heyburn's argument that the full authorized annual diversion volume associated with the in-home domestic portion of the water rights should have been approved, concluding that Heyburn failed to present evidence that the historic in-home domestic use was consumptive. R. 181. Second, it

acknowledged error in the original transfer approval by allowing a nonconsumptive commercial use to be transferred to a municipal use, concluding that Heyburn failed to provide evidence that the historic commercial use was consumptive. *Id.*

On March 1, 2024, Heyburn timely requested a hearing on the amended *Transfer* approval pursuant to Idaho Code § 42-1701A(3). R. 54. The Department subsequently granted the request for hearing and appointed a hearing officer. R. 58.

On July 9, 2024, the assigned hearing officer held a hearing in this matter and heard expert testimony from Dr. Charles Brockway. Hr’g Tr. 4:23–24, 5:10–11.

On October 2, 2025, the Hearing Officer issued a *Preliminary Order Affirming Approval of an Application for Transfer* (“*Preliminary Order*”). R. 66. The *Preliminary Order* (1) approved changing the purpose of use for the Wayside Rights to municipal, (2) retained the diversion rate associated with the in-home domestic and commercial portion of the water rights, and (3) imposed a 0.0 AF annual diversion limit on the portion of the water rights that were historically used for in-home domestic and commercial uses. R. 73–74.

On October 21, 2025, pursuant to Rule 760 of the Department’s Rules of Procedure (IDAPA 37.01.01) the Director amended the *Preliminary Order* when he issued the *Amended Final Order Approving Application for Transfer, In Part* (“*Final Order*”).<sup>2</sup> R. 78. Just like the *Preliminary Order*, the *Final Order* concluded that the historic in-home domestic and commercial uses of the Wayside Rights were nonconsumptive, and that changing those portions

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<sup>2</sup> The Director issued an amended final order because the *Preliminary Order* became a final order by operation of law on October 17, 2025. IDAPA 37.01.01.730.01.

to a municipal use would increase consumptive use and constitute an enlargement. R. 86. However, the Director disagreed with how the Hearing Officer retained the diversion rate associated with the in-home domestic and commercial portion of the water rights while imposing a 0.0 acre feet (AF) annual diversion limit on the portion of the water rights that were historically used for in-home domestic and commercial uses. The Director concluded that the Department cannot retain the diversion rate associated with the in-home domestic and commercial portion of the water rights and approve a transfer with a 0.0 AF volume limitation when the historic consumptive use is zero. R. 84. Accordingly, the Director denied changing those portions of the Wayside Rights historically used for in-home domestic or commercial purposes to municipal uses.

On October 31, 2025, Heyburn timely filed its *Petition for Judicial Review* challenging the *Final Order*.

On January 23, 2026, Heyburn filed its opening brief requesting this Court “reverse the Final Order, in part, with instructions to the Department to approve the transfer of 40.30 acre-feet from the Commercial and Domestic Rights to municipal, with inclusion of the Enlargement Condition.” *Heyburn Br.* at 11.

## II. ISSUES PRESENTED ON APPEAL

The Department reformulates Heyburn’s framing of the issues as follows:

1. Whether there is sufficient evidence in the record to support the conclusion that the historic in-home domestic use and the historic commercial use of the Wayside Rights are nonconsumptive?

2. Whether the Director correctly concluded that transferring from a historic nonconsumptive use to a fully consumptive use would constitute an enlargement?
3. Whether Heyburn presented sufficient evidence that the volume of the historic nonconsumptive use would remain nonconsumptive post-transfer?
4. Whether the *Final Order* prejudiced Heyburn's substantial rights?
5. Whether the *Final Order* violated Heyburn's individual liberty rights?

### **III. STANDARD OF REVIEW**

Judicial review of the *Final Order* is governed by the APA. I.C. §§ 67-5270–5279. The APA requires judicial review of an agency decision to be based on the record created before the agency. I.C. § 67-5277. The court shall affirm the agency decision unless it finds the agency's findings and conclusions are: “(a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion.” I.C. § 67-5279(3); *Barron v. Idaho Dep't of Water Res.*, 135 Idaho 414, 417, 18 P.3d 219, 222 (2001). The party challenging the agency decision must show that the agency erred in a manner specified in Idaho Code § 67-5279(3), and that a substantial right of the petitioner has been prejudiced. I.C. § 67-5279(4); *Barron*, 135 Idaho at 417, 18 P.3d at 222. The APA requires the court to interpret the meaning and effect of the law at issue de novo. I.C. § 67-5279(5). “In an action brought by or against an agency, after applying all customary tools of interpretation, the court shall exercise any remaining doubt in favor of a reasonable interpretation that limits agency power and maximizes individual liberty.” *Id.*

#### IV. ARGUMENT

**A. The record contains substantial evidence supporting the conclusion that the historic in-home domestic and commercial uses of the Wayside Rights are nonconsumptive.**

Idaho Code § 42-222(1) governs applications to transfer water rights. A water right holder may apply to change the purpose of use for all or part of their water right. I.C. § 42-222(1). Upon receipt of an application for transfer, the Director must “examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided . . . the change does not constitute an enlargement in use of the original right.” *Id.* The Department may consider consumptive use when evaluating whether a proposed transfer results in an enlargement. *Id.* Consumptive use is defined 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. . . .” I.C. § 42-202B(1). Stated another way, consumptive use is the portion of water diverted and beneficially used under a water right that is not returned to waters of the state. The Director concluded that there had been no historic consumptive use associated with in-home domestic and commercial uses of the Wayside Rights and, to prevent an enlargement, partially denied the transfer. R. 86.

Heyburn asserts that the evidence in the record establishes that the historic consumptive use volume associated with the in-home domestic and commercial uses of the Wayside Rights was 40.30 AF, not zero. *Heyburn Br.* at 7 (citing R. 204–05, 207). However, the record does not support Heyburn’s characterization of the historic use. To the contrary, substantial evidence

demonstrates that the in-home domestic and commercial uses of the Wayside Rights were historically nonconsumptive.

For instance, Heyburn’s own expert report states that the in-home domestic and commercial uses associated with the Wayside Rights were nonconsumptive. The report states that “[t]he domestic portion of the [Wayside Rights] has historically been used for in-house purposes with *negligible consumptive loss* and thence directed into the City of Heyburn municipal wastewater system.” R. 204 (emphasis added). Likewise, the report further states that the commercial portion “*has not been used consumptively* but has returned to the Snake River via the City’s wastewater system.” *Id.* (emphasis added). Consistent with those conclusions, the expert created a water balance table that calculated a historic consumptive loss of 0.0 AF for the in-home domestic and commercial uses. R. 207.

Heyburn’s expert witness at hearing, Dr. Charles Brockway, reiterated that the historic consumptive use associated with the in-home domestic and commercial uses was essentially zero. He testified that “[t]he domestic portion historically has been diverted from the aquifer used for primarily in-house purposes, which typically *has negligible consumptive loss*.” Hr’g Tr. 21:3–6. (emphasis added). He also testified that “the same analysis goes for the commercial portion of those rights.” *Id.* at 21:11–12.

In addition, Heyburn included a Water Requirements Estimation in its transfer application that similarly undermines Heyburn’s position. The estimation shows the annual water demands for the café, gas station, in-house use, and irrigation use, and only assigned the

irrigation use a consumptive use value. R. 35. No consumptive use calculation was attributed to the in-home domestic or commercial uses. *See id.*

In the expert report and in his testimony, Dr. Brockway seemingly suggests that diversions from ground water that return to surface water should be viewed as consumptive. R. 203; Hr’g Tr. 21:19–23. However, this argument is inconsistent with the conjunctive administration of surface and ground water. *See 3G AG LLC v. Idaho Dep’t of Water Res.*, 170 Idaho 251, 262, 509 P.3d 1180, 1191 (2022) (“Thus, in examining ‘all the evidence’ in a transfer application, [the Department] must stay mindful of its duty to conjunctively manage the waters of the Upper Snake River system and the [Eastern Snake Plain Aquifer (“ESPA”)].”). It is also contrary to the statutory definition of consumptive use. Under the statutory definition, a use is not consumptive if it “return[s] to the waters of the state.” I.C. § 42-202B(1). In the expert report and in his testimony, Dr. Brockway affirmed that the in-home domestic and commercial uses were directed to the City’s wastewater treatment plant (“WWTP”) and discharged to the Snake River—a water of the State. R. 204. The statutory definition of consumptive use does not distinguish between surface and ground water like Dr. Brockway suggests.

Moreover, Dr. Brockway opined how the annual diversion volume should be calculated based on the historic consumptive use associated with the City’s wells:

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.

R. 209. This analysis is used to establish that the volume of water pumped by the City’s wells is 45% consumptive. Even if taken at face value, this calculation shows the consumptive use of the entire City system, not the historic consumptive use of the Wayside Rights.

Accordingly, the record contains substantial evidence that the historic volume associated with the in-home domestic and commercial portions of the Wayside Rights is nonconsumptive.

**B. The Director reasonably limited the volume of water changed to municipal uses because changing from a historic nonconsumptive use to a potential fully consumptive use constitutes enlargement.**

The Director evaluated the evidence in the record and compared the historic nonconsumptive uses of the Wayside Rights with the potentially fully consumptive nature of the proposed municipal use and concluded that the *Transfer* would increase consumptive use and therefore constitute an enlargement. R. 84. Because the findings are supported by substantial evidence in the record, the Court should affirm the Director’s *Final Order*.

***i. Enlargement includes any increase in consumptive use and is not limited in scope to increases in irrigated acreage or diversion rates.***

Heyburn argues that the *Final Order* failed to identify which category of enlargement the *Transfer* would constitute—either an increase in irrigated acres or increase in diversion rate or duration. *Heyburn Br.* at 16. Heyburn interprets these categories of enlargement in a vacuum and overlooks every possible enlargement scenario.

Enlargement is not defined by statute. However, the Idaho Supreme Court has recognized that “Idaho law prohibits any transfer from resulting in an enlargement of the water right above its beneficial use” and has interpreted enlargement to include an increase in “the amount of water

diverted or consumed to accomplish the beneficial use.” *Barron*, 135 Idaho at 420, 18 P.3d at 225. Stated another way, enlargement encompasses “any increase in the beneficial use to which an existing water right has been applied.” *3G AG*, 170 Idaho at 259, 509 P.3d at 1188 (quoting *Fremont-Madison Irr. Dist. & Mitigation Grp. v. Idaho Ground Water Appropriators, Inc.*, 129 Idaho 454, 458, 926 P.2d 1301, 1305 (1996)).

The types of enlargement outlined in *3G AG* do not prohibit the Department from evaluating changes in consumptive use to determine whether enlargement occurs. *Id.* at 262, 509 P.3d at 1191. In *3G AG*, the Court upheld the Department’s decision to deny a transfer proposing to change the place of use for ground water irrigation rights because unstacking ground water and surface water rights serving the same acreage would increase the number of irrigated acres. *Id.* at 261, 509 P.3d at 1190. While the Court identified increases in irrigated acreage and diversion rate as common types of enlargement, *id.* at 259, 509 P.3d at 1188, it also explained the Department must evaluate the relationship of the original right and the proposed change to determine whether consumptive use would increase, *id.* at 262, 509 P.3d at 1191. Accordingly, a proper inquiry for determining enlargement is whether the transfer will cause an increase in consumptive use, and the examples in *3G AG* are illustrative, not exhaustive.

This matter is distinguishable from *3G AG* because changing a water right’s purpose of use is significantly different from changing an irrigation right’s place of use. Changing to municipal use does not necessarily involve unstacking overlapping rights or increasing irrigated acres like Heyburn suggests. *See Heyburn Br.* at 16. If the Legislature intended to limit enlargement only to the examples cited in *3G AG*, it would have expressly included those

examples in Idaho Code § 42-222(1) and not included consumptive use as a factor in determining whether enlargement exists. Accordingly, the appropriate inquiry to determine whether enlargement occurs here is to compare the historic consumptive use of the original right to the new consumptive use of the proposed change.

***ii. The in-home domestic and commercial portions of the Wayside Rights were historically nonconsumptive and changing to municipal purposes enlarges them into fully consumptive end uses.***

The Director properly concluded that approving the *Transfer* would result in enlargement because the *Transfer* proposes to change historically nonconsumptive uses to a potentially fully consumptive municipal use. R. 86. Municipal purpose water rights are considered fully consumptive for two reasons: (1) they serve a broad scope of authorized end uses; and (2) treated effluent discharge methods may change. R. 83–84.

First, municipal rights serve a variety of uses including “residential, commercial, industrial, irrigation of parks and open space, and related purposes . . . .” I.C. § 42-202B(6). While not every use is considered fully consumptive, several uses are fully consumptive due to experiencing transpiration or evaporation from land application by irrigating open spaces or being “converted to nonrecoverable water vapor [or] incorporated into products” through commercial or industrial uses. I.C. § 42-202B(1).

Second, this Court has recognized that municipal rights may “be fully consumed without engaging in waste or violating a beneficial use duty of water.” *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). In *Riverside*, the City of Nampa changed its effluent disposal method from

discharging into Indian Creek to land application, which impaired Riverside Irrigation District's ability to divert its full water right from Indian Creek. *Id.* at 2–4. This Court reasoned that sewage conveyance is an authorized municipal use and that a municipality is not required to treat effluent to be returned to a water source for further appropriation. *Id.* at 10. Because effluent production is inherent in a municipal right, failure to return treated effluent falls within the scope of the right and does not constitute enlargement, as the effluent is effectively fully consumed. *Id.* at 11. Accordingly, this Court recognized that municipal rights are inherently fully consumptive given effluent production and disposal methods. *Id.* at 10–11.

Heyburn misrepresents that the 40.30 AF volume associated with the in-home domestic and commercial portion of the Wayside Rights are historically consumptive. *Heyburn Br.* at 15. Instead, the 40.30 AF is the full *authorized* annual diversion volume associated with the in-home domestic and commercial portion of the Wayside Rights. R. 80. Heyburn's assertion overlooks the evidence in the record establishing that the historic use of the in-home domestic portion of the rights have "negligible consumptive loss" and the commercial portion "has not been used consumptively" because the water from both uses is returned to the Snake River via the WWTP. R. 204. Although Heyburn's expert indicates that the Wayside Rights are fully consumptive on the aquifer, *see* R. 203, that does not reflect the hydrologic reality and the Department's conjunctive administration of ground and surface water. The facts in the record are simple: the volume associated with the in-home domestic and commercial portion of the Wayside Rights have historically been treated at the WWTP and discharged back into the Snake River. By

statutory definition, those portions of the rights are historically nonconsumptive because that water is returning to the waters of the State.

Moreover, if the Department were to approve the 40.30 AF annual diversion volume, it does not guarantee that Heyburn will continue to apply that volume to the same or similar nonconsumptive uses once that volume is commingled with Heyburn's municipal system. For example, Heyburn could use that volume for fully consumptive uses such as irrigating parks which could be lost to evapotranspiration or incorporating that volume into product manufacturing. In addition, similar to Nampa in *Riverside*, Heyburn could lawfully shift to land application methods if regulatory discharge requirements render surface water discharge economically or technically infeasible which would increase consumptive use.

Finally, Idaho Code § 42-222(1) does not require the Director to impose a condition on a transfer approval if the transfer proposes to change from a historic nonconsumptive use to a fully consumptive use and causes an enlargement. The Enlargement Condition<sup>3</sup> failed to provide sufficient evidence to establish that the change from a historic nonconsumptive use to a fully consumptive use could prevent enlargement.

Accordingly, the historic annual diversion volume of the in-home domestic and commercial uses of the Wayside Rights has been nonconsumptive. Heyburn's proposed change to a fully consumptive municipal use results in an enlargement and was appropriately denied.

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<sup>3</sup> The proposed Enlargement Condition is: "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." R. 213 (alterations in original).

**C. Heyburn failed to provide sufficient evidence that transferring the historic nonconsumptive volume would remain nonconsumptive post-transfer.**

Heyburn asserts that the *Final Order* creates an irrebuttable presumption<sup>4</sup> that municipal rights are fully consumptive which is contrary to the findings and conclusions made in the Director’s July 16, 2024 *Amended Snake River Basin Moratorium Order* (“*Moratorium Order*”). *Heyburn Br.* at 14. That argument rests on a misreading of both the *Moratorium Order* and this proceeding.

In 2024, the Director amended the *Moratorium Order* to address the fully consumptive issue as it relates to new development of domestic and municipal uses on the ESPA. *Moratorium Order*, at 1. The *Moratorium Order* only applies to new applications for water right permits on the ESPA, including municipal and domestic purpose rights. *Id.* ¶ 3, at 33. It does not apply to applications for transfer.<sup>5</sup> *Id.* ¶ 5.

Although the *Moratorium Order* does not apply in this proceeding, it is still instructive. In the *Moratorium Order*, the Department recognized that community water systems and municipal providers may be able to rebut the presumption that applications for new municipal uses are fully consumptive. *Id.* ¶ 3. It explains that an applicant may overcome that presumption

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<sup>4</sup> Heyburn cites a series of cases to support the assertion that “when a party presents evidence to rebut a presumption, the presumption is eliminated in its entirety.” *Heyburn Br.* at 13. This is not relevant here because the Department did not deny the transfer on the basis that Heyburn failed to rebut the presumption. By framing this issue as rebutting a presumption, Heyburn ignores that it sought to transfer the full *authorized* diversion volume without quantifying the actual *historic* nonconsumptive use and without submitting sufficient reporting, measuring, and mitigation data to ensure the historic nonconsumptive use would not be enlarged.

<sup>5</sup> The *Moratorium Order* applies to new applications for permit that would newly divert water that was not historically diverted and would result in an impact to the water source and existing water rights. It does not, however, apply to transfer applications because transfers are evaluated under the enlargement standard which ensures the proposed change does not result in a net impact on the water source.

by submitting “substantial, detailed evidence that the proposed use is not fully consumptive, will not become more consumptive or fully consumptive over time, and will not injure existing vested water rights.” *Id.* Such evidence includes “monitoring, reporting, and mitigation measures” to ensure the use will not become more or fully consumptive over time. *Id.* The Director considers this evidence when evaluating an application, but “[s]ufficiently rebutting the presumption alone shall not entitle an applicant to approval of its application.” *Id.*

Although the *Moratorium Order* does not apply to transfer applications, Heyburn could have applied the same framework and demonstrated through substantial evidence that the historic *nonconsumptive* use may be changed to municipal use without becoming fully consumptive over time or injuring other water rights. It failed to do so.

Instead, Heyburn seeks approval to transfer 40.30 AF—the maximum authorized volume for the in-home domestic and commercial uses. This is not the *actual* nonconsumptive use. By failing to submit substantial evidence quantifying the portion of the 40.30 AF that was historically nonconsumptive, Heyburn fails to establish a transferable nonconsumptive component. Without establishing that nonconsumptive baseline, there is no measurable limit to evaluate appropriate monitoring, reporting, or mitigation components to prevent future fully consumptive uses or injury to other water rights. Without sufficient data, the Department cannot impose conditions to ensure the requested volume remains nonconsumptive over time.

In addition, the Enlargement Condition—which allows discharge of the full 40.30 AF diversion volume—contains insufficient monitoring, reporting, or mitigation components to ensure that any historic nonconsumptive portion would remain nonconsumptive post-transfer.

Further, nothing in the Enlargement Condition addresses what happens if Heyburn does not meet the discharge volume requirement. This would be something the Department would require to be spelled out in any condition.

Moreover, Heyburn's reliance on the 45% historic consumptive use figure relies on the City's wastewater collection system as a whole. R. 209. It does not isolate the Wayside Rights from other municipal rights contributing flows to the WWTP, nor does it explain how the 45% figure applies to the requested 40.30 AF volume. Accordingly, even under the *Moratorium Order's* rebuttable presumption framework, Heyburn failed to submit the substantial, detailed evidence necessary to establish that the nonconsumptive portion of the Wayside Rights would remain nonconsumptive post-transfer.

**D. Heyburn failed to establish that its substantial rights were prejudiced by the *Final Order*.**

Heyburn argues its substantial rights were violated by denying the transfer of volume associated with the domestic and commercial portion of the Wayside Rights because the denial injures its water rights which are real property right interests. *Heyburn Br.* at 19.

In order to prevail in a petition for judicial review, Heyburn must show its substantial rights were prejudiced by the *Final Order*, and that the Department erred in a manner specified in Idaho Code § 67-5279(3). I.C. § 67-5279(4); *Barron*, 135 Idaho at 417, 18 P.3d at 222.

Heyburn failed to show that the errors alleged in this proceeding are, in fact, errors and that they have prejudiced its rights. The Director followed his statutory duty and evaluated all the evidence in the record to determine whether the proposed change in the *Transfer* would cause an

enlargement based on an increase in consumptive use. Moreover, the Director still partially approved the *Transfer*, and Heyburn is not precluded from using the in-home domestic and commercial portions of the Wayside Rights in accordance with their historic uses. Therefore, Heyburn has failed to show how its substantial rights were prejudiced, or that the Director acted arbitrarily or in abuse of his discretion when considering the evidence in the record regarding the historic consumptive use of the Wayside Rights.

**E. Heyburn misconstrues the purpose of Idaho Code § 67-5279(5).**

Heyburn argues that the Director “incorrectly interprets the law at the expense of the City’s liberty interests to be free from unreasonable and unlawful governmental interference.” *Heyburn Br.* at 20.

Idaho Code § 67-5279(5) requires a court to review “an agency’s interpretation of the law or rule” de novo, and after such interpretation, the court “shall exercise any remaining doubt in favor of a reasonable interpretation that limits agency power and maximizes individual liberty.” In other words, this statute simply states a court’s legal standard for reviewing an agency decision. It does not provide justification or support for Heyburn’s claim that its liberty interests are violated as it suggests.

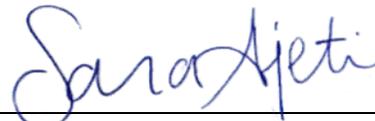
**V. CONCLUSION**

The Director’s *Final Order* was consistent with Idaho law and supported by substantial evidence in the record. The Director approved in part and denied in part Heyburn’s *Transfer* pursuant to Idaho Code § 42-222(1). Heyburn failed to prove that the *Transfer* deprived it of its water rights or that the administrative proceeding was otherwise procedurally deficient.

Therefore, Heyburn has not met its burden to show that the Department erred in one of the ways specified in Idaho Code § 67-5279(3) or that those alleged errors prejudiced Heyburn's substantial rights. The Department respectfully requests this Court to affirm the Director's *Final Order*.

DATED this 20th day of February 2026.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL



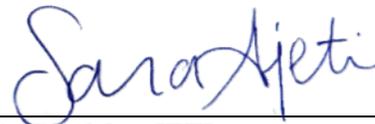
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SARA M. AJETI  
Deputy Attorney General

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20th day of February 2026, I caused to be served a true and correct copy of the foregoing, via iCourt E-file and Serve, upon the following:

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