Electronically Filed
2/27/2026 10:19 AM
Fourth Judicial District, Ada County
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CITY OF POCATELLO,

Petitioner,

vs.

IDAHO DEPARTMENT OF WATER RESOURCES, and MATHEW WEAVER in his capacity as Director of the Idaho Department of Water Resources,

Respondents,

and

BURLEY IRRIGATION DISTRICT, FREMONT-MADISON IRRIGATION DISTRICT, AND IDAHO IRRIGATION DISTRICT,

Intervenors.

IN THE MATTER OF THE ALLOCATION OF STORED WATER TO THE CITY OF POCATELLO BY WATER DISTRICT 01

Case No. CV01-25-19039

SPACEHOLDERS' COMBINED RESPONSE BRIEF

Judicial Review from the Idaho Department of Water Resources
Mathew Weaver, Director
Honorable Eric J. Wildman, Presiding

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STATEMENT OF THE CASE

I. Nature of the Case.

This case concerns the City of Pocatello's ("City" or "Pocatello") petition for judicial review of the *Preliminary Order Denying Motion for Summary Judgment and Upholding Department Action* ("Order") issued by the Idaho Department of Water Resources ("IDWR" or "Department") on September 3, 2025. R. 881.[1] The *Order* rejected Pocatello's challenge to Water District 01's ("WD01") use of the last-to-fill rule against the City's privately leased space from Palisades Reservoir when allocating storage water amongst contract holders in 2023. R. 240. The *Order* became the final order of the Department. Pocatello filed a *Petition for Judicial Review* on October 15, 2025, and later its *Opening Brief* on December 18, 2025.

II. Procedural History / Statement of Facts.

On March 16, 2023, the City filed a Complaint for Declaratory Relief to Find the WD01 Rental Pool Procedures Void, to Find Rule 7.3 Unconstitutional, and for Damages from the Unconstitutional Taking of Property with the Sixth District Court. The City sought a declaratory ruling that adoption of WD01 Rental Pool Procedures and application of Rule 7.3 is an ultra vires act; that adoption of the Rental Pool Procedures violates the Idaho Administrative Procedure Act; that WD01 Rental Pool Procedures Rule 7.3 is facially unconstitutional; and for damages associated with a taking of the City's property. The State's affirmative defenses included that all or some of Pocatello's claims failed for lack of a claim upon which relief can be granted; the City's claims were barred by the statute of limitations; the City failed to exhaust administrative remedies; and the City's claims for special or economic damages must be dismissed because they were insufficiently pled in contravention of the requirements of I.R.C.P.

[1] The *Settled Agency Record on Appeal* will be cited throughout this brief with an "R." followed by the corresponding page number found in the *Record*.

9(g). Answer to Complaint at 19. The State requested the Court enter judgment in its favor against the City and dismiss its claims with prejudice in its entirety and that judgment be entered in the State's favor. *Id.*

On April 24, 2023, the *Joint Motion for Change of Venue I.R.C.P. 40.1(a)(1)(B)* was filed by the City and State, requesting the matter be moved from the Sixth Judicial District of Idaho to the Fifth Judicial District in Twin Falls, Idaho. The request was subsequently granted on May 1, 2023. Pocatello filed an *Amended Complaint for Declaratory Relief* on May 2, 2023, and the State filed an *Amended Answer to Complaint* on May 16, 2023. On May 4, 2023, an *Order* was filed that officially moved the venue for the case to the Fifth Judicial District. On May 17, 2023, the Spaceholders filed the *Spaceholders' Motion to Intervene* and supportive documents, observing that the Spaceholders had significant and protectable interests in the litigation because it involved a matter of first impression concerning the legitimacy of WD01 Rental Pool Procedures and the Spaceholders hold unique storage water rights administered by WD01. On June 21, 2023, the Coalition of Cities also filed the *Coalition of Cities' Unopposed Motion to Intervene*. Notices for remote hearing and an order for scheduling conference were submitted in July through September 2023. On October 17, 2023, the City filed the *City of Pocatello's Motion for Partial Summary Judgment*. On November 2, 2023, the State filed the *State of Idaho's Cross Motion for Summary Judgment*. The intervening parties joined in the summary judgment motions and responses were filed in November 2023.

Judge Wildman issued an *Amended Order on Cross Motions for Summary Judgment* on January 10, 2024, rejecting the City's facial constitutional challenge and granting the State and Spaceholders' *Cross Motion for Summary Judgment*. On February 1, 2024, Judge Wildman issued the final *Judgment* which dismissed the case with prejudice. One of the issues identified in

the *Judgment* was that Pocatello failed to exhaust its administrative remedies. On April 25, 2024, the City filed its *Petition Requesting a Hearing on WD01's 2023 Storage Report*, claiming that "WD01's allocation of stored water to Pocatello's space in Palisades Reservoir in 2023 was erroneous and that it has been aggrieved thereby." R. 2. Spaceholders subsequently filed a motion to intervene on August 7, 2024. R. 4. The Coalition of Cities also filed a motion to intervene on October 7, 2024. R. 20. Both motions were granted. R. 29; R. 37. On September 9, 2024, the Department granted Pocatello's request for hearing and appointed a hearing officer for the contested case. R. 17.

On February 18, 2025, Pocatello filed a *Motion for Summary Judgment* and the Spaceholders filed a *Motion to Dismiss*. R. 44; R. 549. Responsive briefing from the City and Spaceholders was filed from May to August of 2025. On June 25, 2025, the Hearing Officer issued his *Order Denying Motion to Dismiss and Amending Scheduling Order*. R. 799. The Hearing Officer then issued his *Preliminary Order Denying Motion for Summary Judgment and Upholding Department Action* on September 3, 2025. R. 881. There were no genuine disputes with respect to the facts relied on by the Hearing Officer in the *Order* and to the extent any were disputed, they were construed in favor of Pocatello. R. 904. The City's *Motion for Summary Judgment* was based on facts that Pocatello asserted were "undisputed material facts", therefore a hearing was not required and summary judgment was entered against Pocatello based on undisputed facts presented by the City itself. *Id.*

The City then filed a *Petition for Judicial Review* and its *Opening Brief*. This response is submitted according to the *Order Granting Motion to Modify Briefing Schedule* issued by the Court on November 19, 2025.

STANDARD OF REVIEW

When reviewing an agency action on a petition for judicial review, this court must affirm the agency unless it finds that the agency's findings, inferences, conclusions, or decisions 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 in the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion." *3G AG LLC v. Idaho Dept. of Water Res.*, 170 Idaho 251, 257, 509 P.3d 1180, 1186 (2022) (quoting I.C. § 67-5279(3); *see also, South Valley*, 173 Idaho 762, 772, 548 P.3d 734, 744 (2024). Furthermore, even if one of the conditions in § 67-5279(3)(a)-(e) is met, a reviewing court should still affirm the agency action "unless substantial rights of the appellant have been prejudiced." *A&B Irr. Dist. v. Idaho Dept. of Water Res.*, 153 Idaho 500, 505-06, 284 P.3d 225, 230-31 (2012) (quoting I.C. § 67-5279(4)).

Finally, the court will not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. *3G AG LLC*, 170 Idaho at 257, 509 P.3d at 1186 (citing I.C. § 67-5279(1)). So long as the agency's determinations are supported by substantial, competent evidence in the record, the factual determinations are binding on the court, even where there is conflicting evidence before the agency. *In re Idaho Workers Compensation Bd.*, 167 Idaho 13, 22, 467 P.3d 377, 386 (2020); *South Valley,* 173 Idaho 762, 789, 548 P.3d 734, 762 (2024) ("We do not resolve factual issues like this on appeal. Our duty is to review the decision of the Director to determine whether substantial, competent evidence supports his decision")

ARGUMENT

I. The City Previously Attempted to Obtain its Own Storage Water Right in the Snake River Basin Adjudication and Was Denied.

On December 15, 2006, the City of Pocatello's claim for Water Right No. 1-2068Y was disallowed under the *IDWR Preliminary Recommendation of Water Rights Acquired Under State Law* in the Snake River Basin Adjudication ("SRBA"). The City also submitted a *Notice of Claim to a Water Right Acquired Under State Law* on December 15, 2006. This was an attempt by Pocatello to file its own separate *Notice of Claim* to a portion of the space represented by the storage water right 01-2068. Among the purposes that Pocatello claimed were the following: Municipal Storage, Municipal from Storage, Irrigation Storage, Irrigation from Storage, Power Storage, Power from Storage, Domestic Storage, Domestic from Storage, Industrial Storage, Industrial from Storage, Commercial Storage, Commercial from Storage, Recharge Storage, Recharge from Storage, Mitigation Storage, and Mitigation from Storage. *See Notice of Claim* at 1-2. Further, the City requested that the place of use encompass the following:

> The place of use consists of two areas. One area consists of the lands located within the service area for the City of Pocatello. A map of the City's service area is included with the IDWR files for the City of Pocatello's state law SRBA claims (29-00271 et seq.) The other area consists of those lands located within the Snake River Valley below Palisades Reservoir that have or may in the future receive water from the City's Palisades Reservoir storage right through mitigation or through rental or lease from the City.

Id. at 2.

On April 11, 2007, the City submitted a *Standard Form 1 Objection* in Subcase No. 1-2068Y, stating that:

> Claim 01-2068Y was disallowed and recommended as 01-2068 for the U.S. Bureau of Reclamation. However, 01-2068 was only claimed and recommended in the SRBA for storage water in Palisades Reservoir for the limited purposes of irrigation and power. Pursuant to Article 24 of the Contract, Pocatello's claim 01-2068Y is necessary to ensure that the full nature and extent of the City's Palisades storage right is properly decreed in the SRBA.

Id. at 4.

The matter proceeded toward hearing. A mandatory settlement conference was scheduled and the City identified issues for the conference in the *City of Pocatello's Statement of Issues for February 15, 2011 Settlement Conference SRBA Subcase Nos 01-02068, 01-2068Y, 01-10043*, including "Whether, and to what extent, the Palisades Reservoir Storage water right decree(s) should recognize the Idaho Supreme Court's decision in United States v. Pioneer Irrigation District." *Id.* at 1. The City also identified the recommended place of use as an issue. *Id.* at 2.

The parties continued through summary judgment briefing, trial, and post-trial briefing. In the *Special Master Report and Recommendation Amended Nunc Pro Tunc*, filed April 15, 2013, the special master noted the State's argument that Pocatello never appealed issuance of license 01-2068 for irrigation and power uses and since then, never filed an administrative transfer to add industrial, commercial, recharge, municipal, domestic, and mitigation uses, which it could do at any time. R. 848. Further, the special master astutely observed the following:

> For over 53 years, Pocatello has been entitled to Palisades Reservoir storage water based on its 1960 contract with the BOR. Water right 01-2068 was licensed to the BOR in 1973, without objection and exclusively for irrigation and power uses. When Pocatello used its water for other uses, it did so lawfully not because the license was amended or because of an accomplished transfer, but because Pocatello put the water into a rental pool. As the State has pointed out, Pocatello's water was 'rented for uses and in places other than those set forth in the elements of the underlying water rights without obtaining a transfer, without risk of forfeiture, and without effecting a permanent change in the underlying water right.'

R. 849.

The special master went on to recommend that Pocatello's claim 01-2068Y be disallowed. *Id.* In the May 15, 2013, *City of Pocatello's Brief on Motion to Alter or Amend Recommendation*, the City argued that it was error for the special master to determine that an accomplished transfer and the diversion of storage water by the City under water right 1-2068 or 1-2068Y were necessary for the inclusion of a municipal purpose of use. *Id.* at 4. The City failed

to challenge the denial of its other requested uses, further putting into question the City's right to raise these issues now. The *Order Denying Motion to Alter or Amend Recommendation* was filed June 24, 2013.

Ultimately, on July 10, 2013, the *Final Order Disallowing Water Right Claim* for Water Right 01-2068Y was filed. The Court stated that the "above water right claim is hereby **disallowed with prejudice** and shall not be confirmed in any partial decree or in any final decree entered in the SRBA, Case No. 39576, in whatever form that final decree may take or be styled." (bold text is present in the original). *Id.* at 1. Repeatedly, the City's claims to expand the approved uses and places of use for its storage water were flatly rejected, culminating in the official decree. Despite this clear rejection of Pocatello's separate water right claim and associated uses, Pocatello is now trying to relitigate the matter and collaterally attack the *Decree* for 01-2068. The court was explicit in its denial, with prejudice, of the claim for mitigation that the City attempted to make. Seeking to use the City's storage in the exact manner that the court disallowed is a backhanded attempt by Pocatello to undermine the court's decision and relitigate long-settled issues.

II. If AFRD#2's Use of the City's Storage was Authorized by Water Right 1-2068, then Why Did the City Use the Rental Pool?

If it were true that no change to the water right occurred when AFRD#2 used storage under the water right instead of Pocatello, then utilizing the Rental Pool to facilitate such use would have been unnecessary. However, even the City observes that, when it did not initiate transfer proceedings in 2022 or 2023, it voluntarily participated in the WD01 Rental Pool in those years—implicitly acknowledging the two options available when a water right is being used outside its authorized limits. *Pocatello Br.* at 8. This is consistent with findings by the

special master in the SRBA noting that the City had leased its water in prior years, which is an implicit admission that the place of use was not unlimited.

A. The City's Authorized Place of Use is Limited to the Pocatello City Limits or Service Area.

The City claims that "The Department erred in concluding that, in 2022, 'Pocatello's delivery of its storage water to AFRD#2 constitute[d] a change in place of use for water right 1-2068.'" *Pocatello Br.* at 12. "Any proposal to use storage water held by Pocatello outside of the municipal service area of Pocatello would constitute a change in place of use and, as such, would require Pocatello to either 1) file an application for transfer pursuant to Idaho Code § 42-222, prior to making the change, or 2) pursue a short-term change through the Water Supply Bank." R. 897. Clearly, use of the City's storage water by any person or entity other than Pocatello results in a change in the nature or place of the use of the water right that is designed to be used specifically by the spaceholder.

The *Partial Decree* for water right 1-2068's place of use element is clarified by Condition #1 that states:

> The name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address section of this partial decree. However, as a matter of Idaho Constitutional and Statutory Law, title to the use of the water is held by the consumers or users of the water. The irrigation organizations act on behalf of the consumers or users to administer the use of the water for the landowners in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations. The interest of the consumers or users of the water is appurtenant to the lands within the boundaries of or served by such irrigation organizations, and that interest is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.

R. 481.

Pocatello ignores this condition that water is appurtenant to the boundaries and for the benefit of entitled landowner projects. *See id*. Moreover, Pocatello's own spaceholder contract states that "[s]tored water available under the rights in Palisades Reservoir created by this contract shall be available for delivery to the City during any irrigation season…" R. 83 (emphasis added). Further, the water right must be interpreted as a whole, and the conditions cannot be ignored despite what the City's argument suggests. *See City of Blackfoot v. Spackman*, 162 Idaho 302, 306, 396 P.3d 1184, 1188 (2017) ("When interpreting a water decree this Court utilizes the same rules of interpretation applicable to contracts"); *Nelsen v. Nelsen*, 170 Idaho 102, 134, 508 P.3d 301, 333 (2022) ("In determining the intent of the parties, this Court must view the contract as a whole").

Moreover, Pocatello's argument is simply an impermissible collateral attack on the partial decree. *See e.g.*, *City of Blackfoot*, 162 Idaho at 307, 396 P.3d at 1189 ("The City's attempt to argue otherwise is nothing more than an impermissible collateral attack on the partial decree"). The Department uses conditions to further define the elements of water rights. Therefore, further specification of a place of use in a condition is meant to assist in defining the water right at issue and provide for efficient administration of the right and cannot be ignored. The partial decree for water right 1-2068 specifies that the place of use for the water right must be "lands within the boundaries of or served by such irrigation organizations." R. 852. The City's argument would allow any spaceholder's storage to be used for irrigation purposes within any county listed on the decree. For example, Burley Irrigation District's storage could be delivered to Fremont County and Idaho Irrigation District's storage could be delivered to Gooding County without any regulation or oversight. Such a scenario would result in an unlawful expansion of the water right. Therefore, AFRD#2's use of Pocatello's storage water right was not authorized

under the decree, thus necessitating use of the Rental Pool for a temporary transfer by way of a private lease. R. 481.

While Pocatello attempts to dismiss the applicability of *United States v. Pioneer Irr. Dist.*, 144 Idaho 106, 157 P.3d 600 (2007), such an attempt is futile. As affirmed in *Pioneer*, the Reclamation Act provides that "the right to the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, measure, and limit of the right." *Id*. at 110, 604. The City describes the Department's reliance on *Pioneer* as a rationale devised "out of whole cloth" while seemingly choosing to discredit and ignore legitimate precedent in the form of *Pioneer*. *Pocatello Br.* at 11. As observed by the Department in the *Preliminary Order*:

> Pocatello's interpretation of the elements of water right 1-2068 ignores important water law principles established prior to the issuance of the second amended partial decree for water right 1-2068…language from *Pioneer* was included verbatim as a condition on the second amended partial decree for water right 1-2068. Therefore, any interpretation of the elements of water right 1-2068 must be consistent with *Pioneer*.

R. 894.

Under the Reclamation Act, Pocatello's storage water is appurtenant to land defined by the City's service area. Therefore, Pocatello's lease of its water to the Cities for "mitigation" purposes related to the delivery call extends beyond the basis, measure, and limit of the storage water right.

The City continues to argue that, so long as the storage water is utilized in one of the counties listed on the decreed water right, and for the purpose of use listed on the *Decree*, no constraints should exist and no injury could occur to other spaceholders. *Pocatello Br.* at 11. That argument lacks merit.

First, beneficial use is a constraint that exists and pertains to the City's water. Idaho Code establishes that proof of application to a beneficial use must be submitted by a permit holder, including the following:

(a) The name and post office address of the permit holder;

(b) The permit number;

(c) A description of the extent of the use;

(d) In the case of a municipal provider, a description of the current service area;

(e) The source of the water used; and

(f) Such other information as shall be required by the department's form.

I.C. § 42-217.

Traditionally, for the City to obtain its water right, a description of its current service area would be required, per I.C. § 42-217. When a water right is decreed, the notice of claim form also requires the source and quantity of water claimed, a legal description of the existing point(s) of diversion, and a legal description of the place of use. Section 42-1409 authorizes the use of digital boundaries to show an irrigation district's place of use in an adjudication of water rights. Digital boundaries are defined by section 42-202B as "the boundary encompassing and defining an area consisting of or incorporating the place of use or permissible place of use for a water right prepared and maintained by the department of water resources using a geographic information system in conformance with the national standard for spatial data accuracy or succeeding standard." "A license shall give a description, by legal subdivisions, of the land irrigated by such water, except that the general description of a place of use described in accordance with subsection (5) or (6) of this section may be described using a digital boundary…If the use is for municipal purposes, the license shall describe the service area as

provided in section 42-202B(9)" I.C. § 42-219(2). Accordingly, digital boundaries are often included in decrees and water rights for cities and irrigation organizations.

The applicable storage right for Palisades Reservoir is unique because it does not list all individual spaceholders' project areas, but each spaceholder does have an authorized service area. The service areas and areas where irrigation water is used are incorporated by reference in the decree because the spaceholders are recognized as beneficial owners of the water right. It is not surprising that IDWR or the SRBA Court did not list all service areas approved under individual contracts to avoid promulgating documents stretching for thousands of pages, but impliedly, such service areas are incorporated nevertheless because of the spaceholders' ownership. Working under the City's theory, this water right could be used on any land within the identified counties, even on lands which were never historically irrigated. As noted by the hearing officer in the *Preliminary Order*,

> Pocatello holds equitable title to a discrete portion of water right 1-2068. The portion of water right 1-2068 held by Pocatello is limited in scope. Pocatello's portion of water right 1-2068 constitutes only a portion of the total volume and only a portion of the total place of use described in water right 1-2068. Under the reasoning in Pioneer, Pocatello's portion of water right 1-2068 is inextricably linked to the beneficial use accomplished by Pocatello's patrons. *Mullinix v. Killgore's Salmon River Fruit Co.*, 158 Idaho 269, 277, 346 P.3d 286, 294 (2015) ("the right to use water is an appurtenance to the land to which the water is beneficially used…). Therefore, the authorized place of use for Pocatello's portion of water right 1-2068 would be the land within Pocatello's municipal service area.

R. 896-897.

Service areas are often referenced or described by digital boundaries, and that is how many natural flow water rights incorporate a place of use. I.C. § 42-219(2). Such places of use are included by implication in the storage water right partial decrees. The City is an owner of space under the decree for water right 01-2068, therefore, the place of use for Pocatello's

contracted space is the city service area, which is generally recognized as the legal city limits for the City of Pocatello.

The City mistakenly argues that the storage associated with its contract "was never meant to be physically delivered to Pocatello's service area." *Pocatello Br.* at 15. On the contrary, the contract expressly recognizes that future possibility and contemplates that very scenario. R. 98 ("If the City should, however, construct facilities which would permit the direct delivery of stored water to it from the Snake River, such delivery shall be effected by the City giving notification to the watermaster . . .").

Any private lease and use of Pocatello's water right outside of the city limits of Pocatello is a use outside of the authorized place of use set forth by the partial decree and therefore causes a risk of injury that should be mitigated by last-to-fill procedures. Further, the Bureau's license for Palisades was superseded by the SRBA decree, so the Bureau's pre-SRBA water right license cited by the Appellant is now irrelevant and has no application in this case. *See Pocatello Br.* at 13, n. 12. "This recommended decree includes all of the rights established…and upon its adoption supersedes all prior judgments of the Court." *In re: SRBA Case No. 39576 Subcase Nos. 65-23531 and 65-23532*, 163 Idaho 144, 150, 408 P.3d 899, 905 (2018). "…when the Payette Adjudication was consolidated with the SRBA, the SRBA court decreed the water rights in 2003 and certified the partial decrees as final judgments…The partial decrees were incorporated into the SRBA's final unified decree, which 'is binding against all persons…'" *Id.* "…we emphasize that the decrees are conclusive and final, which comports our general reluctance to allow already-decreed water rights to be relitigated." *See, e.g. City of Blackfoot v. Spackman*, 162 Idaho 302, 308, 396 P.3d 1184, 1190 (2017). "…it is equally clear from the plain language of the decree that recharge is not listed as an authorized use under the purpose of use

element of 181C. Claiming, at this stage, that recharge is an authorized use of 181C, is nothing more than an impermissible collateral attack…" *See e.g., Idaho Ground Water Assoc. v. Idaho Dep't of Water Res.,* 160 Idaho 119, 128, 369 P.3d 897, 906 (2016).

The prior license was superseded by the final decree, which is binding, conclusive, and final. Further, "mitigation" is not an authorized beneficial use on the storage water right decree. As noted in the case law above, Pocatello cannot go through the adjudication, receive a decree, and then go back and try to rely on a license that has now been superseded.

Moreover, as recognized by IDWR, "Pocatello is not required to use the Water Supply Bank to change the place of use for its water rights. Pocatello, in coordination with Reclamation is free to pursue an application for transfer under Idaho Code § 42-222…Pocatello chose to accomplish the change in place of use through the Water Supply Bank, specifically through the WD1 Rental Pool." R. 898.

The Department properly interpreted water right 1-2068 and its finding that Pocatello could not use its storage water on AFRD#2's lands in 2023 without an approved transfer or participation through the WD01 rental pool via a private lease should be affirmed.

B. The City Leased its Storage for Mitigation Purposes in 2022 and did not Use That Storage for its own Irrigation Purposes.

The City claims that the water that it voluntarily placed in the Rental Pool was authorized for irrigation from storage. *Pocatello Br.* at 11. The relevant decree, no. 1-2068, states that irrigation and power are the two authorized purposes of use under the decree. R. 600. It is important to evaluate the purpose of Pocatello's lease with the Cities in the first place. The private lease was made, and approved, as part of the City's approved mitigation plan to allow Pocatello, and other cities, to pump their out-of-priority ground water rights in response to the Surface Water Coalition delivery call. It is vital that context be recalled—not just the end use of

the lease. The City's contract for use of its Palisades storage space reveals the City's individual authorized purpose of use—mitigation:

> ...the City, securing water for all municipal uses by pumping from underground and from surface flows that would, if not intercepted by the City, flow into the Snake River below Palisades Dam, desires to replace in the Snake River by means of storage at Palisades Reservoir water in volume approximately the equivalent of that removed by pumping from the Snake River tributary underground and surface flows, and it having been determined that 50,000 acre-feet of active capacity in Palisades Reservoir will furnish such approximate equivalent volume;"

R. 75.

The City's contract requires that certain storage water be delivered to mitigate for its own groundwater pumping and impact on the Snake River, which includes the storage system. The City's decision to lease storage through the WD01 Rental Pool subjects that water to the relevant procedures and requirements. The City has leased certain storage to other cities in the ESPA for that very purpose. If the City decides to obtain the benefit of leasing out its storage for monetary gain, it does not have the right to mitigate for others at any given location and complain when the change creates a last-to-fill obligation.

As the hearing officer aptly stated: "Mitigation is not one of the authorized beneficial uses described in the second amended partial decree for water right 1-2068." R. 900. "In Idaho, mitigation is a recognized beneficial use of water." R. 899. "Pocatello's delivery of storage water to AFRD#2 in 2022 constituted a beneficial use of water by Pocatello." R.900. As observed above, the City's separate claim for mitigation in the SRBA was flatly rejected as well.

Essentially, the City is trying to obtain the benefit of leases and mitigation and then avoid the procedures' conditions for that changed use by using the water right for mitigation, receiving compensation for leasing the storage water, and yet also fight to maintain their status quo position and avoid the responsibility of last-to-fill. The law precludes the City's attempts and IDWR rightfully rejected the City's claims in the *Preliminary Order*.

III. The Department's Approval of WD01's Last-to-Fill Provision to Pocatello's Lease Did Not Violate Idaho law.

As was explained in the previous sections, Pocatello's storage was not used in a manner that is authorized under water right 1-2068. Both the place of use and purpose of use that the storage was applied to were not authorized and justified the application of the procedures' last-to-fill condition. The last-to-fill condition does not violate any provision under Idaho law and instead prevents injury to other water users, in compliance with the requirements of Idaho law.

A. Article XV, § 3 of the Idaho Constitution and Related Sections of Idaho Code Were Not Violated by Application of Last-to-Fill.

Article XV Section 3 of the Idaho Constitution states that priority of appropriation shall give the better right as between those using the water. If a senior spaceholder does not use all of its storage for the spaceholder's own needs, but instead leased it to others, the last-to-fill condition honors the directive of prior appropriation and ensures that junior spaceholders are not denied water in priority ahead of that lease. Thus, protection of spaceholders from injury through last-to-fill is a classification that is rationally related to a legitimate government purpose and therefore survives the rational basis test.

Section 42-101 addresses the nature of property in water and lists some general policy provisions. Pocatello claims IDWR violated this section by "applying the LTF Provision against Pocatello but not applying it against contract holders in other water districts whose leased water is also used within the parameters of its defined elements." *Pocatello Br.* at 24. This appeal concerns Pocatello's 2023 lease and IDWR's review of the same, not other water districts or spaceholders. The City's argument that IDWR substantively violated section 42-101 by a vague argument concerning other water districts and their rental pool procedures is misplaced and should be denied.

Pocatello also cites section 42-602 and claims that the last-to-fill provision generally violates the prior appropriation doctrine. *See Pocatello Br.* at 25. The prior appropriation doctrine consists of two core principles: the first appropriator in time is the first in right, and water must be placed to a beneficial use. *South Valley Ground Water District v. Idaho Dep't of Water Resources*, 173 Idaho 762, 548 P.3d 734, 780, 752 (2024). Along with "first in time, first in right" and "beneficial use," prior appropriation encompasses the rights and obligations of the appropriator, including: "water appropriation procedures, priority date, point and means of diversion, period of use, place of use, conveyance loss, duty to not waste water, economical and reasonable use, the sale, transfer or rental of water rights, and the administration and distribution of water rights." *Id*. at 781, 753. Prior appropriation controls insofar as beneficial use is met. Prior appropriation protects water rights if used in the appropriate place of use (which Pocatello's was not) and protects the ability to sell, transfer, or rent water rights, but does not protect the ability of a water right owner to agree to terms of a rental agreement and then claim harm to their water rights when required to live up to the terms of that rental.

When Pocatello chose to use water beyond what the City's needs or authorized uses were by leasing water to others, the City chose to do so under the conditions of that temporary lease. When temporarily moving water to other entities, there must be appropriate conditions to prevent enlargement and injury to other water rights. Nothing in the prior appropriation doctrine allows a water user to use water for any purpose, at any place, without following the conditions of such temporary transfers or rentals. Pocatello's claim that its storage use was not "enlarged" by having that water used on lands within AFRD2 in 2023 was therefore properly rejected.

Moreover, regardless of whether direct injury occurred the year water was leased, there remains the potential for injury to junior water right holders because, if the system fails to fill the

following year, water that was evacuated as a result of the rental should be placed in priority by other space. As a result, there have not been disparities between physical reservoir contents and spaceholder carryover caused by storage supplied for private leases, storage assignments, and *Supplemental Pool* rentals since 2004, because rentals are deducted from the suppliers' storage allocations in the year rental storage was used. *Concepts and Procedures*; R. 464. In the *Stipulated Order*, the hearing officer noted that, "If a spaceholder in Palisades Reservoir were allowed to use its storage water beyond the limits of its equitable portion of water right 1-2068, the expanded use could injure the spaceholders of the junior water rights in Palisades Reservoir because it creates a larger volume to fill before the junior storage right holders can begin to accrue water to their storage space." R. 903. "Therefore, the LTF Provision properly places the risk of not filling the reservoir system on the spaceholder proposing to expand the use of its storage water." R. 903.

B. WD01 and IDWR did not Violate the Equal Protection Clause.

The City claims that WD01's application of the last-to-fill provision violates the Idaho Const. art. I, § 2. The City cites *Alpine Vill. Co. v. City of McCall*, 154 Idaho 930, 937, 303 P.3d 617, 624 (2013), noting that "[e]qual protection violations occur 'where the State has…engaged in the disparate treatment of similarly situated individuals."

The Idaho Supreme Court has described the applicable test as follows: "Where the classification is based on a suspect classification or involves a fundamental right we have employed the strict scrutiny test. Where the discriminatory character of a challenged statutory classification is apparent on its face and where there is also a patent indication of a lack of relationship between the classification and the declared purpose of the statute, the means-focus test is applicable. In other cases the rational basis test is employed." *Gomersall v. St. Luke's Regional Medical Center, Ltd.*, 168 Idaho 308, 318, 483 P.3d 365, 375 (2021). "Under either the

Fourteenth Amendment or the Idaho Constitution, a classification will survive rational basis analysis if the classification is rationally related to a legitimate government purpose." *Id*. "The Court will not evaluate the fairness or efficacy of the statute that is being challenged…Under the rational basis test, a classification will survive scrutiny if there is any conceivable state of facts which will support it." *Id*. Rational basis review only requires the determination of whether there is any conceivable state of facts which support the statutory provision without judging "the wisdom or fairness of the legislation being challenged." *Nelson v. Pocatello*, 170 Idaho 160, 171, 508 P.3d 1234, 1245 (2022). "It is well settled that the state has wide discretion to enact laws affecting some groups of citizens differently than others, and the legislature is presumed to have acted within its constitutional power despite the fact that the enforcement of a statute results in some inequality." *Gomersall* at 320, 377.

Pocatello is attempting to prevail in this case by challenging "the distinction the Department makes between contract holders in WD01 and contract holders in other water districts when adopting and applying the LTF provision." *Pocatello Br.* at 22. The City is essentially claiming that it should be subject to procedures used in other water districts. However, Pocatello does not own storage in WD63 or WD65, so those procedures are not applicable to the City nor subject to any order on judicial review before this Court.

Further, not all basins within the state are the same. The geography, hydrology, water systems, water availability, reservoir operations and countless other circumstances vary greatly from basin-to-basin. Accordingly, the rental procedures applied to each basin must be appropriately customized to meet the unique challenges of the various basins. Were a tailored approach not important, there would be no reason for separate water districts and all basins in the state would be treated as a conglomerate basin managed under one set of procedures, regulations,

and conditions. Instead, a distinctive set of procedures are applied to each basin, and in the present case, IDWR's review of this case is not judged or to be compared to procedures used in other districts. What is relevant for this discussion is whether the last-to-fill procedure is applied equally to all WD01 spaceholders. It is other individuals and spaceholders located in WD01 that are "similarly situated individuals" as they relate to the City. Importantly, Pocatello is not treated any differently than any other spaceholder under the WD01 procedures, therefore no equal protection violation has occurred in this case.

As noted in *Gomersall*, under either the Fourteenth Amendment or Idaho Constitution, a classification survives rational basis analysis if the classification is rationally related to a legitimate government purpose and a classification survives scrutiny if there is any conceivable set of facts which will support it. Any classification at stake here is present because of concerns about injury to water rights. If water is allowed to be leased for uses other than what is authorized and to individuals other than who is authorized, that can impact the fill of junior storage space the following year. It is for this reason that private leases have the condition of last-to-fill in the first place. Trying to prevent injury to water rights is uncontestably a legitimate government purpose—protection of property rights is a classic government responsibility. As explained above, the risk of injury to junior water right holders after senior water right holders rent water that they don't need to others is viewed as too great. Therefore, the last-to-fill condition ensures that juniors have their water rights appropriately allocated to them rather than have other non-spaceholders rent water ahead of the junior spaceholders.

C. Application of the Last-to-Fill Condition to Pocatello's Rented Storage Did Not Result in an Involuntary Taking under Article I, § 14 of the Idaho Constitution.

The City next invokes the equal protection clause of the Idaho Constitution and claims that application of the last-to-fill provision against Pocatello's space in 2023 was a taking

without just compensation in violation of article I, section 24. *Pocatello Br.* at 21. The City ignores the fact that it voluntarily participated in the rental pool and chose to rent its storage. It is patently unfair to volunteer to have a right subjected to a set of procedures, accept monetary gain from that process, and then claim a "taking" occurred when the procedures and its known conditions are applied.

Voluntary participation in the rental pool is not an involuntary taking of any storage. Pocatello's participation in the rental pool provided a source of money in exchange for the approved rental. The City traded temporary use of its water for monetary gain. It is impossible to successfully claim, as the City tries, that the Water District's allocation of Pocatello's stored water to "subsequent appropriators" was a taking of Pocatello's real property without "just compensation" because Pocatello received just compensation for the voluntary lease of that water to others. *Pocatello Br.* at 21. Had Pocatello forgone use of the rental pool, the Department would have administered Pocatello's water right "in priority" and there would have been no application of the last to fill provision. The City voluntarily gave up that administration "in priority" in favor of leasing its water to other cities and receiving payment in return.

Allowing a lease of property to become a taking would be an absurd step in precedent—anyone could rent their property and then sue for a "taking" and try to keep the rental money and the rented item because they were temporarily deprived of the use of their possession. Furthermore, to suffer a taking, one must be deprived of a property right. Pocatello suffered no deprivation of property and has full rights to its storage. It voluntarily surrendered *use* of its water for a temporary period, but never the right to its property.

An issue becomes moot if it does not present a real and substantial controversy that is capable of being concluded through judicial decree of specific relief. *Ameritel Inns, Inc. v.*

Greater Boise Auditorium Dist., 141 Idaho 849, 851, 119 P.3d 624, 626 (2005). This issue is moot, because Pocatello's right to the use of its water has since been returned to the City once its voluntary rental pool participation ended—if they can currently use their water, how can there have been a taking of their water and how can it still be a live issue? Further, the only way the City will be in a similar situation in the future is if they voluntarily utilize the Rental Pool again, so a judicial decree cannot grant specific relief. One can hardly claim a circumstance capable of repetition yet evading review when the repetition would occur due to a voluntary action of the City.

Finally, the City has failed to show that it would have actually used its water in 2023 any more than it did in 2022 when it volunteered the water for the private lease for mitigation purposes. Accordingly, IDWR's order should be affirmed as there was no unlawful taking.

IV. Pocatello Has Not Shown that the WD01 or Department Action was Arbitrary and Capricious.

The City also argues that Water District 1's application of last-to-fill in 2023 was arbitrary and capricious. *Pocatello Br.* at 25. The Idaho Administrative Procedure Act states that the court is not to substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. I.C. § 67-5279. "When an agency was required by the provisions of this chapter or by other provisions of law to issue an order, the court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are…arbitrary, capricious, or an abuse of discretion." *A&B Irr. Dist. v. Idaho Dept. of Water Resources*, 153 Idaho 500, 506 284 P.3d 225, 231 (2012). As observed by the City, an agency action is arbitrary "if it was done in disregard of the facts and circumstances presented or without adequate determining principles." *A&B Irr. Dist. v. Idaho Dept. of Water Resources*, 153 Idaho

500, 511, 284 P.3d 225, 236 (2012). An action is capricious if it is done without a rational basis. *Id*.

First, the rational basis analysis provided above is equally applicable to the rational basis argument under the Idaho APA and is incorporated by reference herein. Second, the agency action in question was applied in light of many facts and circumstances surrounding the risk of injury to spaceholders when water is rented, that have already been described. There are many guiding principles described in the Water District 1 *Concepts, Practices, and Procedures* that provide the reasons for the last-to-fill condition, repercussions of renting, and steps that WD01 takes to ensure fairness and equity for the spaceholders. R. 328. The document states:

> Spaceholders interested in consigning storage through the supplemental pool shall execute a standardized supplemental pool rental contract, which shall be provided by the Watermaster and include provisions for the following…Notice to the spaceholder that if the spaceholder's consignment through the supplemental pool causes computed impacts, the mitigation required under Procedure 8.7 will result in an amount of the spaceholder's space, not to exceed the quantity of storage consigned by the spaceholder, being assigned a junior priority which may not fill for multiple consecutive years, and accounting commonly referred to as "last-to-fill.

R. 320.

An entire section labeled "Impacts" provides even more context: "In any year in which the storage rights in the reservoir system do not fill, the Watermaster will determine the actual computed impacts to spaceholders, if any, associated with the prior year's rentals and leases. R. 317. In making this determination, the Watermaster will use a procedure which identifies the following…" *Id*. The list goes on to include a) what each computed reservoir fill would have been if the previous year's rentals and leases hadn't occurred, b) the storage space from which rented or leased storage was supplied for the previous year's rental or lease, and c) the amount of storage each spaceholder's current allocation was reduced by the previous year's rental or lease activities. *Id*. In keeping with this guidance, WD01 applies the last-to-fill procedure where it is

applicable—which includes use of water rights used in locations they are not authorized for, for purposes they are not authorized for, and by people other than the spaceholder owning the water right. As explained, the City's storage water right was used outside of the City's service area, for mitigation purposes by other cities, and ultimately delivered to landowners within AFRD#2 rather than the City. If the City was truly concerned about use of its water the next year, the City did not have to participate in the rental pool and instead could have carried over that water for future use. Instead, the City chose to privately lease the storage and submitted that storage to the potential impacts of the last-to-fill provision.

This process provides guidance and principles for spaceholders to understand and apply, provides adequate guiding and determining principles, and is done on a rational basis—protection of all spaceholders from injury.

V. Pocatello Has Not Suffered Prejudice to a Substantial Right.

As was noted in *Pioneer*, "The Idaho Constitution provides that when water is appropriated or used for agriculture purposes, 'such person…shall not thereafter, without his consent, be deprived of the annual use of the same." *U.S. v. Pioneer*, 144 Idaho 106, 114, 157 P.3d 600, 608 (2007). Spaceholders like Pocatello are not required to participate in the Rental Pool. Instead, Pocatello gave its explicit consent to participate in the Rental Pool by signing up as a participant.

The Rental Pool *Concepts and Procedures* notes that, "Beginning in 1988, storage suppliers to the Rental Pool were given the option to designate whether their space would be made available for rentals to power purposes below Milner in addition to being made available for ag (agricultural) purposes above Milner." R. 456. The act of opting into the Rental Pool and reaping the benefits voluntarily binds participants to a different set of rules than they might

otherwise experience. Pocatello has no "substantial right" to have its storage water used by anyone it wants without being subject to the conditions in the Rental Pool procedures.

Impacts on spaceholder storage allocation can occur when other spaceholders empty their storage allocation for two-party leases. The space evacuated to supply the leases is placed in the reservoir system's last-to-fill space the year after evacuation to prevent any impact on other spaceholder reservoir fill the following year. *Concepts and Procedures*; R. 436. To protect other spaceholders and provide mitigation when the reservoir system fails to fill, spaceholders who choose to lease their storage to a second party are required to have their evacuated space placed in the reservoir system's last-to-fill space in the year following the lease. *Concepts and Procedures*; R. 466.

Concern existed that spaceholders in senior reservoirs could receive money by leasing all their surplus storage remaining in reservoirs at the end of the year, but the impact of the leases would be borne by junior spaceholders when the reservoir failed to fill the next year. Therefore, spaceholders *choosing* to lease their storage to a second party are required to have their evacuated space placed in the reservoir system's last-to-fill space for the year following the lease. *Concepts and Procedures*; R. 466.

Rather than personally use Pocatello's water right and receive a benefit, the City chose to lease the water to other Cities for mitigation use by AFRD#2 and received a monetary benefit in exchange. How can Pocatello claim to have a substantial right harmed when it, a) <u>voluntarily</u> participated in the rental pool, and b) received money in exchange for use of the water? Voluntary participation and compensation prevented Pocatello from suffering harm. The City was under no obligation to lease its storage water. When it chose to lease the water, it assumed the conditions of the lease, which is exactly what IDWR rightfully upheld. The theory that

Pocatello is trying to posit is exactly what last-to-fill was designed to avoid—a water right holder failing to use its own water right, renting it to another entity, receiving money in exchange, and other spaceholders suffering as a consequence.

The City quotes *Lane Ranch Partnership v. City of Sun Valley*, 145 Idaho 87, 91, 175 P.3d 776, 780 (2007), wherein the Court found the petitioners' substantial right was prejudiced because the land use application was not evaluated properly and they were "unable to develop their property for admittedly permissible uses." On the contrary, in the present case, Pocatello's substantial right to its water was evaluated properly precisely because of the procedure that WD01 enforced and which was upheld by IDWR. Pocatello determined that it could not personally use its storage water and instead chose to allow others to use some of that water and obtain a monetary benefit for that lease. The purpose of the Rental Pool is to allow spaceholders to lease their water on a temporary basis without impacting other spaceholders or water right holders. Not only would other spaceholders be impacted by the validation of Pocatello's arguments, but rights junior to the Palisades 1939 priority would be impacted by such a finding, including storage rights in Ririe Reservoir and other natural flow water rights.

Pocatello had the option to a) use its own water right, b) place its water right in the rental pool and accept the conditions of that voluntary decision, or c) complete an official transfer of the water right. If Pocatello wishes there to be an alternative option, that is a legislative matter they must tackle in the proper venue, not one to be decided in court. There can be no question that Pocatello has a substantial right to have the Department properly administer its water right—that is exactly what the Department did.

CONCLUSION

For the reasons set forth above, the Spaceholders respectfully request that the Court deny the City's issues on judicial review. Pocatello continues to misconstrue Idaho law and the

guiding principles for water right 1-2068 and attempts to make unfounded constitutional claims that fall flat. The City is mistaken in its claim of where the place of use is authorized for this right—the City's service area is the appropriate place of use for its portion of the water right. Additionally, the purpose of use for the right is authorized for irrigation but was instead used by the City as mitigation and fulfilled that purpose upon delivery to AFRD#2. No prejudice to a substantial right was suffered by the City because it was never deprived of ownership of the storage right and elected to temporarily give up the use of a portion of its right through the rental.

Finally, the City's equal protection, arbitrary and capricious, and taking claims arguments all fail for the same reason. Pocatello voluntarily participated in the WD01 Rental Pool, received over $100,000 in exchange for use of its water in 2022, and was thus subject to the valid and reasonable conditions placed on the lease, including last-to-fill condition in 2023. All relevant procedures were properly implemented, as observed by IDWR in its final order. Therefore, the City's arguments and petition should be denied.

DATED this 27th day of February, 2026.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of February, 2026, I caused to be filed and served a true and correct copy of the foregoing document via electronic mail to the following:

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