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Attorneys for Defendants Idaho Water Resource Board, Idaho Department of Water Resources, Mathew Weaver in his official capacity as the Director of the Idaho Department of Water Resources, and Tony Olenichak in his capacity as Water District 01 Watermaster.

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS**

CITY OF POCA TELLO,

Plaintiff,

vs.

IDAHO WATER RESOURCES BOARD, IDAHO
DEPARTMENT OF WATER RESOURCES,
MATHEW WEAVER, in his capacity as Director of
the Idaho Department of Water Resources, and TONY
OLENICHAK, in his capacity as Water District 01
Watermaster,

Defendants,

Case No. CV42-23-1668

**STATE OF IDAHO'S CROSS
MOTION FOR SUMMARY
JUDGMENT**

and

CITY OF BLISS, CITY OF BURLEY, CITY OF CAREY, CITY OF DECLO, CITY OF DIETRICH, CITY OF GOODING, CITY OF HAZELTON, CITY OF HEYBURN, CITY OF JEROME, CITY OF PAUL, CITY OF RICHFIELD, CITY OF RUPERT, CITY OF SHOSHONE, and CITY OF WENDELL, BURLEY IRRIGATION DISTRICT, FREMONT-MADISON IRRIGATION DISTRICT, and IDAHO IRRIGATION DISTRICT,

Intervenors.

COME NOW Defendants Idaho Water Resource Board, Idaho Department of Water Resources, Mathew Weaver in his official capacity as the Director of the Idaho Department of Water Resources, and Tony Olenichak in his capacity as Water District 01 Watermaster (collectively the “State of Idaho”), by and through their counsel of record, hereby file its Cross Motion for Summary Judgment and response pursuant to Idaho Rules of Civil Procedure (“I.R.C.P.”) 7(b)(1) and 56 in relation to the *City of Pocatello’s Motion for Partial Summary Judgment, Memorandum in Support of City of Pocatello’s Motion for Partial Summary Judgment, and Affidavit of Maximilian C. Bricker in Support of City of Pocatello’s Motion for Partial Summary Judgment* filed on October 17, 2023.

The State of Idaho’s Motion is made on the grounds that there are no issues of material facts in dispute for the issues listed herein and that the State of Idaho is entitled to judgment as a matter of law.

The State of Idaho moves this Court for a grant of summary judgment finding that the State of Idaho is entitled to judgment as a matter of law, as follows:

1. That the Water District 01 Rental Pool Procedures are not rules that are subject to rulemaking as defined by the Idaho Administrative Procedures Act 67-5201–5292.

2. That the City of Pocatello failed to exhaust its administrative remedies and is now time barred from bringing this action under I.R.C.P. 84(n).
3. That the Water District 01 Rental Pool Procedures are not facially unconstitutional.
4. That the Water District 01 Rental Pool Procedures do not result in a physical taking of the City of Pocatello's property rights.

The State of Idaho further moves the Court to grant judgment as a matter of law dismissing all the City of Pocatello's causes of action. The State of Idaho's Motion is made and supported by the pleadings and filings of record herein, as well as the *State of Idaho's Memorandum in Support of State of Idaho's Cross-Motion for Summary Judgment and Response to Plaintiff's Motion for Partial Summary Judgment, Affidavit of Anthony S. Olenichak in Support of State of Idaho's Cross-Motion for Partial Summary Judgment and Response to Plaintiff's Motion for Partial Summary Judgment* and the *Affidavit of Ann N. Yribar in Support of State of Idaho's Cross-Motion for Partial Summary Judgment and Response to Plaintiff's Motion for Partial Summary Judgment*, all filed contemporaneously herewith.

DATED this 2nd day of November 2023.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL



ANN N. YRIBAR
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of November 2023, 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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