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

CITY OF POCA TELLO,

Plaintiff,

vs.

IDAHO WATER RESOURCE BOARD,
IDAHO DEPARTMENT OF WATER
RESOURCES, GARY SPACKMAN, 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

**AMENDED ANSWER TO
COMPLAINT**

Filing Fee: Exempt I.C. § 67-2301

Defendants, Idaho Water Resource Board (“Board”), Idaho Department of Water Resources (“IDWR”), Gary Spackman, and Tony Olenichak (collectively referred to as the

“State”), by and through their attorneys of record, hereby file this *Amended Answer*. The *Amended Answer* is filed in response to the *Notice of Errata* filed by the Plaintiffs in this matter on April 20, 2023, and to the *Amended 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* (“*Amended Complaint*”) filed by the Plaintiffs in this matter on May 2, 2023. On May 2, 2023, the Parties filed a *Joint Motion to Set Deadline for State of Idaho’s Amended Answer*, in which the Parties agreed that the State would respond to both the *Notice of Errata* and the *Amended Complaint* by May 16, 2023. That Motion was granted by this Court on May 4, 2023. The *Amended Answer* addresses the changes made in both the *Notice of Errata* and the *Amended Complaint*.¹ The State’s *Amended Answer* is as follows:

GENERAL DENIAL

1. The State denies any allegation of the complaint not expressly admitted herein.
2. The State does not agree to or admit that paragraph or section headings or subheadings are accurate, appropriate, or substantiated, and not all such headings or subheadings are restated here.
3. The State denies each and every instance of Plaintiff’s use of the terms “Rule 7.3” and “Last to Fill Rule.” While the State admits the WD01 Rental Pool Procedures are often colloquially referred to as “rules,” the State denies that they are “rules” as defined by the Idaho Administrative Procedure Act I.C. § 67-5201–67-5286 and therefore, the State denies each and every instance of Plaintiffs use of the terms “Rule 7.3,” “Last to Fill Rule,” and “rule” as they refer to the WD01 Rental Pool Procedures.

¹ The State’s updated, amended, or new paragraphs are designated with an asterisk *.

4. All allegations in the Complaint that make assertions regarding the nature, extent, or administration of a “storage right” or “storage rights” are inherently vague and ambiguous. These allegations ignore and/or obscure the significant legal differences between decreed storage water rights and contractual spaceholder storage rights, leaving the State to speculate or guess as to which type of “storage right” or “storage rights” is the subject of any given allegation, or whether both types are being referenced, making it impossible for the State to form a belief as to the truth of the allegation. The State therefore, denies each and every allegation in the Complaint that makes assertions regarding the extent or administration of a “storage right” or “storage rights.”

PARTIES

The numbered paragraphs below correspond to the numbered paragraphs of the *Amended Complaint*.

1. The State admits the City of Pocatello is located in Bannock County. The State lacks sufficient information to form a belief as to the truth of the remaining allegations in paragraph 1 of the Complaint, and therefore denies them.

2. The State admits that the Idaho Water Resource Board (“IWRB”) is the “Water Resource Agency” authorized by Idaho Constitution Art. XV, § 7 and “established” by I.C. § 42-1732. The State denies the remaining allegations in paragraph 2.

3. The State admits the Idaho Department of Water Resources (“IDWR”) is an executive department of Idaho State government “created” by I.C. § 42-1701(1). The State denies the remaining allegations in paragraph 3.

4. The State admits that Gary Spackman is the current Director of IDWR and that the quoted language is an accurate partial quote of I.C. § 42-602. The State denies the

remaining allegations of paragraph 4.

5. The State admits that Tony Olenichak (“WD01 Watermaster” or “Olenichak”) is the current legally-appointed watermaster of Water District 01 (“WD01”), and that his authorities and duties are outlined within and controlled by statute, including but not limited to I.C. § 42-605(3). The State denies the remaining allegations in paragraph 5.

JURISDICTION AND VENUE

6. Paragraph 6 is a conclusion of law and does not contain factual allegations to which an answer is required. Insofar as an answer is required, the State denies the same.” *

7. The State denies the allegations and legal conclusions in the introductory sentence of paragraph 7.

7. a. The State admits that the IWRB is granted rulemaking authority under I.C. § 42-1762. The State denies that the WD01 Rental Pool Procedures are rules under the Idaho Administrative Procedure Act I.C. § 67-5201–67-5286. The State denies that the IWRB has delegated its rulemaking authority to the Committee of Nine. The State denies that the WD01 Rental Pool Procedures are *ultra vires*. The State further denies all other allegations and legal conclusions in paragraph 7.a. *

7. b. The State denies it has deprived holders of water rights of water “to which they are entitled.” The State denies that the WD01 Watermaster’s act of applying Procedure 7.3 of the Rental Pool Procedures is *ultra vires*. The State further denies all other allegations and legal conclusions in paragraph 7.b.

7. c. The State denies that the Rental Pool Procedures are rules under the Idaho Administrative Procedure Act I.C. § 67-5201–67-5286. The State denies the IWRB’s adoption of the WD01 Rental Pool Procedures violates the Idaho Administrative Procedure

Act I.C. § 67-5201–67-5286. The State denies the IWRB’s adoption of the WD01 Rental Pool Procedures denied due process guarantees of the Idaho Constitution. The State further denies all other allegations and legal conclusions in paragraph 7.c.

8. The State denies that this Court has jurisdiction under I.C. § 67-5278(1) because it only applies to “rules” promulgated pursuant to the Idaho Administrative Procedure Act, I.C. § 67-5201–67-5286, and the WD01 Rental Pool Procedures are not “rules” under the Act.

9. The State denies the court has jurisdiction under Idaho Const. Art. I, § 14 because there has been no taking of private property for public use in this matter. The State denies the court has jurisdiction under Idaho Const. Art. XV, § 3 because any agency actions administering water rights using the prior appropriation doctrine are final agency actions that are subject to review under I.C. §§ 42-1701, 67-5201–67-5286 and Plaintiff must exhaust all administrative remedies prior to seeking review by this court. I.C. § 67-5271.

10. The State admits that the original complaint was filed in Bannock County District Court. The State denies that Procedure 7.3 of the WD01 Rental Pool Procedures “impairs” any of Plaintiff’s rights because the WD01 Rental Pool Procedures are optional rather than mandatory and apply only to storage spaceholders who have voluntarily agreed to them. The State denies that Bannock County District Court is the proper venue for this matter. Answering further, under the *Administrative Order in the Matter for the Appointment of the SRBA District Court to Hear all Petitions for Judicial Review from the Department of Water Resources Involving Administration of Water Rights*, issued by the Idaho Supreme Court on December 9, 2009 and the *Administrative Order Regarding*

Transition to Electronic Filing System Re: Petitions for Judicial Review or Actions for Declaratory Judgment of Decisions from the Idaho Department of Water Resources, issued by the District Court in the Fifth Judicial District of Idaho, Twin Falls County (“SRBA Court”) on December 3, 2020, all petitions for judicial review or action for declaratory judgment of any decision from the Idaho Department of Water Resources must be filed electronically with the appropriate County, but then the clerk of the district court where the action is filed will reassign the case to the presiding judge of the Snake River Basin Adjudication District Court. The State answers further that, even if venue in Bannock County is correct, the case should be heard by the presiding judge of the SRBA Court. *

11. The State admits that on April 24, 2023, the City of Pocatello and the State filed a *Joint Motion for Change of Venue I.R.C.P. 40.1(a)(1)(B)*. The contents of said Joint Motion speak for themselves. The State admits the Bannock County District court granted the *Joint Motion for Change of Venue I.R.C.P. 40.1(a)(1)(B)* on May 1, 2023. *

ALLEGATIONS COMMON TO ALL COUNTS

12. The State lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 12, and therefore denies the same.

13. The State admits that the quoted language is an accurate recital of the first sentence of paragraph 15(a) of Exhibit 1 to the Complaint. The State lacks sufficient information or knowledge to form a belief about the validity or relevance of Exhibit 1 attached to the Complaint and therefore denies the remaining allegations of paragraph 13.

14. The State admits that Exhibit 2 attached to the *Amended Complaint* contains the Second Amended Partial Decree 01-02068 that was issued by the SRBA Court on February 28, 2020. The State denies the Partial Decree attached as Exhibit 2 to the

Complaint is the only water right applicable to Palisades Reservoir or to the allegations alleged herein. The State denies the remaining allegations of paragraph 14. *

15. The State admits the Second Amended Partial Decree for Water Right 01-02068 (“Water Right 01-02068”) has a quantity of 940,400 acre-feet per year. The State admits the purpose of use for Water Right 01-02068 is “Irrigation Storage, Irrigation from Storage, Power Storage, and Power from Storage.” The State further admits the quoted language is an accurate recital of a portion of “Other Provisions Necessary for Definition or Administration of this Water Right” No. 1 contained on the face of Water Right 01-02068. The State admits that “Other Provision Necessary for Definition or Administration of this Water Right” No. 1 contained on the face of Water Right 01-02068 states: “title to *the use* of the water is held by the consumers or users of the water,” therefore the State denies the remainder of paragraph 15. Water Right 01-02068 (emphasis added). *

16. The State lacks knowledge or information sufficient to form a belief about the truth of the allegations or paragraph 16, and therefore denies the same.

17. The State admits that “Other Provisions Necessary for Definition or Administration of this Water Right” No. 2 contained on the face of Water Right 01-02068 sets forth certain obligations of the United States Bureau of Reclamation and the Water District 01 Watermaster. Said condition speaks for itself. The State denies the remainder of paragraph 17. *

18. The State denies that “Pocatello’s Contract volume” was “adjudicated” in the “01-2068 Decree” or in any other water right decree issued by the Snake River Basin Adjudication Court. The quoted language is a partial quote. The full quote is “The district court’s decision is based on the assumption that storage rights are property rights entitled

to legal protection. *Washington County Irrigation Dist. v. Talboy*, 55 Idaho 382, 385, 43 P.2d 943, 945 (1935).” The State denies the partially-quoted language fully encapsulates the legal holding of the case(s) cited. The State denies the remaining allegations of paragraph 18.

19. The State admits that Palisades Reservoir is located within Water District 01. The State admits that the authority to create water districts is outlined in Chapter 6, Title 42, Idaho Code, which includes, but is not limited to, I.C. § 42-604. The State denies the remaining allegations in paragraph 19.

20. The State admits that the quoted language is an accurate recital of the text of Idaho Const. Art. XV, § 3, except as to the addition of italics. The State denies the allegation that Idaho Const. Art. XV, § 3 applies to “storage water.” The State denies the remaining allegations of paragraph 20.

21. The State admits that the duties and authorities of the WD01 Watermaster are outlined within Chapter 6, Title 42, Idaho Code, which includes, but is not limited to, I.C. § 42-602. The State denies the remaining allegations in paragraph 21 regarding the characterization of a WD01 Watermaster duties.

22. The State admits that the quoted language is an accurate recital of portions of I.C. § 42-605(6), with the exception of the insertion of the word “[water].” The State denies the remaining allegations of paragraph 22.

23. The State lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 23, including the accompanying footnote 2, and therefore denies the same.

24. The State lacks knowledge or information sufficient to form a belief about the truth of the allegations or paragraph 24, and therefore denies the same.

25. The State admits I.C. § 42-1761 was first enacted in 1979. 1979 Idaho Sess. Law ch. 193. The State admits that current I.C. § 42-1761 provides: “The water resource board shall have the duty of operating a water supply bank.” The State admits that current I.C. § 42-1762 requires the IWRB to “adopt rules and regulations governing the management, control, delivery and use, and distribution of water to and from the water supply bank in compliance with chapter 52, title 67, Idaho Code.” The State admits that, under current I.C. § 42-1765, the IWRB “may appoint local committees, including water district advisory committees as provided in section 42-605(6), Idaho Code, to facilitate the rental of stored water.” The State admits the allegations of footnote 3 of paragraph 25. The State denies the remaining allegations of paragraph 25. *

26. The State admits that 1992 Idaho Sess. Law ch. 339 added the following language to I.C. § 42-1765 “committees, including water district advisory committees as provided in section 42-605(6), Idaho Code” The State admits the Committee of Nine is an advisory committee under I.C. § 42-605(6). The State denies the remainder of paragraph 26. *

27. The State lacks knowledge sufficient to make a statement regarding whether the IWRB has “regularly appointed” the Committee of Nine as the local committee for WD01 since 1992. The State admits the Committee of Nine is the currently-appointed local rental pool committee under I.C. § 42-1765 for the Water District 01 Rental Pool. The State denies the remaining allegations of paragraph 27. *

28. The State admits the Committee of Nine is currently appointed as the local rental pool committee for the Water District 01 Rental Pool under I.C. § 42-1765. The State admits that the WD01 Rental Pool Procedures adopted by resolution by the IWRB on March 31, 2023, are the current 2023-approved version of the WD01 Rental Pool Procedures, however the State has not done a line by line comparison of the document attached as Exhibit 4 to determine if it is the same document adopted by the IWRB on March 31, 2023. The State lacks knowledge or information sufficient to form a belief about the remaining allegations of paragraph 28, and therefore denies the same. *

29. The State denies the allegations of paragraph 29 because use of the terms “administration” and “storage rights” are vague and ambiguous and because the WD01 Rental Pool Procedures do not apply to all water users, nor all storage spaceholders, within WD01.

30. The State lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 30, and therefore denies the same.

31. The State lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 31, and therefore denies the same.

32. The State admits I.C. § 42-1765 authorizes the IWRB to appoint a local rental pool committee and that the Committee of Nine is the currently-appointed local rental pool committee for WD01. The State denies WD01 Rental Pool Procedures are rules under the Idaho Administrative Procedure Act I.C. § 67-5201–67-5286 and therefore denies the Committee of Nine promulgates rules. The State denies the remainder of paragraph 32. *

33. While the State admits the WD01 Rental Pool Procedures are often colloquially referred to as “rules,” the State denies that they are “rules” as defined by the Idaho

Administrative Procedure Act I.C. § 67-5201–67-5286 and therefore, the State denies use of the terms “Rule 7.3,” “Last to Fill Rule,” and “rule” as they refer to the WD01 Rental Pool Procedures. The State denies the remainder of paragraph 33. *

34. The State admits that the current WD01 Rental Pool Procedures adopted by the IWRB by resolution dated March 31, 2023, contain a Procedure 7.3 entitled “Impacts to Spaceholders resulting from all common pool, private leases, assignments, supplemental pool, and extraordinary circumstances pool rentals.” The State admits that this rule may sometimes colloquially be referred to as the “Last to Fill Rule,” however the state denies Procedure 7.3 is a “rule” as defined by the Idaho Administrative Procedure Act I.C. § 67-5201–67-5286 and therefore, the State denies use of the terms “Last to Fill Rule.” The State denies the remaining allegations of paragraph 33. *

35. The State admits that Procedure 7.3 entitled “Impacts to Spaceholders resulting from all common pool, private leases, assignments, supplemental pool, and extraordinary circumstances pool rentals” that is found in the current WD01 Rental Pool Procedures adopted by the IWRB by resolution dated March 31, 2023, applies only in years when the Upper Snake Reservoir System does not fill or when water is not spilled past Milner Dam. The State denies the remaining allegations of paragraph 35.

36. The State denies the remaining allegations of paragraph 36.

37. The State denies the allegations of paragraph 37.

REQUEST FOR DECLARATORY RELIEF

RESPONSES TO COUNT 1:

38. The State denies the allegations of Request for Declaratory Relief Count 1 and the allegations of paragraph 38.

39. The State denies the allegations of paragraph 39 because the WD01 Rental Pool Procedures are not rules under the Idaho Administrative Procedure Act I.C. § 67-5201–67-5286. The State further denies that the WD01 Rental Pool Procedures are an “agency statement of general applicability” as defined by I.C. § 67-5201(21).

40. The State denies the allegations of paragraph 40.

41. The State admits I.C. § 42-1765 authorizes the IWRB to appoint a local rental pool committee and that the Committee of Nine is the currently-appointed local rental pool committee for WD01. The State admits that the quoted language, with the exception of the addition of italics, is an accurate recital of portions of I.C. § 42-1765. The State denies the remaining allegations of paragraph 41.

42. The State admits that the IWRB is not authorized to delegate formal rulemaking authority to the Committee of Nine, but denies that it has delegated rulemaking authority to the Committee of Nine because the WD01 Rental Pool Procedures are not rules under the Idaho Administrative Procedure Act I.C. § 67-5201–67-5286. The State denies the applicability of the quoted language which is a quote within a quote. The State denies the remainder of the allegations in paragraph 42.

43. The State admits that the IWRB has adopted Water Supply Bank Rules, IDAPA 37.02.03.000 to 37.02.03.040. The State admits that IDAPA 37.02.03.040.01.a–k, sets forth certain criteria that must be included by a local rental pool committee when putting together proposed rental pool procedures. The State denies that IDAPA 37.02.04.040 is “the means by which [the IWRB] delegates to the Committee of Nine the task of promulgating the Procedures.”

44. The State admits that the Committee of Nine is not statutorily authorized to adopt rules. The State admits that IDAPA 37.02.03.040.01.a–k, sets forth certain criteria that must be included by a local rental pool committee when putting together proposed rental pool procedures, including prevention of injury to other water rights. The State admits the WD01 Rental Pool Procedures direct allocation of storage water in certain years, under certain circumstances to prevent impacts to spaceholders. The State denies the remaining allegations of paragraph 44.

45. The State denies that the WD01 Rental Pool Procedures are “promulgated” by the Rental Pool Subcommittee of the Committee of Nine or by the Committee of Nine because the State denies that the WD01 Rental Pool Procedures are rules under the Idaho Administrative Procedure Act I.C. § 67-5201–67-5286. The State admits that the Rental Pool Subcommittee of the Committee of Nine presents proposed WD01 Rental Pool Procedures to the Committee of Nine. The State admits proposed WD01 Rental Pool Procedures are presented at the Water District 01 annual meeting that takes place pursuant to I.C. § 42-605(1). The State denies the remainder of paragraph 45.

46. The State admits the allegations of paragraph 46.

47. The State admits that, pursuant to IDAPA 37.02.03.040.03, “the Director will review the local committee procedures and submit them along with the Director’s recommendation to the Board.” The State denies the remainder of paragraph 47.

48. The State lacks sufficient information to form a belief about the allegations of paragraph 48, and therefore denies the same.

49. The State lacks sufficient information to form a belief about the allegations of paragraph 49, and therefore denies the same.

50. The State denies that it has “delegated” rulemaking authority or that the Committee of Nine “promulgates” rules because it denies that the WD01 Rental Pool Procedures are rules under the Idaho Administrative Procedure Act I.C. § 67-5201–67-5286. The State admits the Committee of Nine does not have rulemaking authority but the State denies that the Committee of Nine lacks authority to propose WD01 Rental Pool Procedures because they are not rules under the Idaho Administrative Procedure Act I.C. § 67-5201–67-5286. The State denies the remainder of paragraph 50.

51. The State denies that it has “delegated” rulemaking authority because it denies that the WD01 Rental Pool Procedures are rules under the Idaho Administrative Procedure Act I.C. § 67-5201–67-5286. The State admits the Committee of Nine does not have rulemaking authority but the State denies that the Committee of Nine lacks authority to propose WD01 Rental Pool Procedures because they are not rules under the Idaho Administrative Procedure Act I.C. § 67-5201–67-5286. The State denies the remainder of paragraph 51.

52. The State denies the WD01 Rental Pool Procedures “deprive spaceholders of water to which they are entitled and instead give that water to other spaceholders.” The State admits the quoted language is an accurate recital of language found in the cited case, with the exception of the insertion of [Director] for “state engineer” and that it is a quote of a quote. The State denies the quoted authority stands for the legal proposition alleged in paragraph 52. The State denies the remainder of paragraph 52.

53. The State denies that IDWR or the WD01 Watermaster has acted contrary or in excess of their statutory authority under I.C. § 42-602. The State denies the remainder of paragraph 53.

RESPONSES TO COUNT 2:

54. The State denies the allegations of Request for Declaratory Relief Count 2 and the allegations of paragraph 54.

55. The State denies the procedures are subject to “promulgation” in compliance with the procedural requirements of the Idaho Administrative Procedure Act I.C. § 67-5201–67-5286 because the WD01 Rental Pool Procedures are not rules under the Idaho Administrative Procedure Act I.C. § 67-5201–67-5286. The State denies the WD01 Rental Pool Procedures violate due process or that they deprive anyone of a property right. The State denies the remainder of the introductory paragraph 55.

55.a. The State lacks sufficient information to form a belief about the timeframe of meeting of the Rental Pool Subcommittee of the Committee of Nine, and therefore denies the same. The State admits the Rental Pool Subcommittee of the Committee of Nine is made up on members of the Committee of Nine.

55.b. The State lacks sufficient information to form a belief about the timeframe of meeting of the Rental Pool Subcommittee of the Committee of Nine, and therefore denies the same. The State lacks sufficient information to form a belief about the individuals that are involved in drafting proposed WD01 Rental Pool Procedures and therefore denies the same. The State admits that the Rental Pool Subcommittee of the Committee of Nine drafts proposed WD01 Rental Pool Procedures.

55.c. The State denies that the Rental Pool Subcommittee of the Committee of Nine is subject to the notice requirements of the Idaho Administrative Procedure Act I.C. § 67-5220–67-5221. The State denies the remainder of paragraph 55.c.

55.d. The State lacks sufficient information to form a belief as to the allegations of paragraph 55.d and therefore denies the same.

55.e. The State lacks sufficient information to form a belief as to the allegations of paragraph 55.e and therefore denies the same.

55.f. The State admits the Rental Pool Subcommittee of the Committee of Nine submits proposed WD01 Rental Pool Procedures to the full Committee of Nine at a Committee of Nine meeting. The State lacks information to form a belief about the number of meetings held by the Rental Pool Subcommittee prior to submitting proposed WD01 Rental Pool Procedures to the full Committee of Nine and therefore denies the same. The State admits that the Committee of Nine adopts the proposed WD01 Rental Pool Procedures by resolution. The State denies the remainder of paragraph 55.f.

55.g. The State admits that the proposed WD01 Rental Pool Procedures adopted by the Committee of Nine are presented at the WD01 Annual Meeting. The State lacks sufficient information to form a belief about any “‘resolutions’ annually voted on” at the WD01 Annual Meeting and as to the origin or validity of Exhibit 6 attached to the Complaint, and therefore denies the same. The State denies the remainder of paragraph 55.g.

56. The State admits that the IWRB is granted rulemaking authority under I.C. § 42-1762. The State denies that the WD01 Rental Pool Procedures are rules under the Idaho Administrative Procedure Act I.C. § 67-5201–67-5286. The State denies the IWRB has delegated its rulemaking authority because the State denies the WD01 Rental Pool Procedures are rules under the Idaho Administrative Procedure Act I.C. § 67-5201–67-5286. The State denies the remainder of paragraph 56. *

57. The State denies the IWRB’s adoption, by resolution, of the WD01 Rental Pool Procedures violates the requirements of Idaho Administrative Procedure Act I.C. § 67-5201–67-5286 or due process. The State denies the remainder paragraph 57.

RESPONSES TO COUNT 3:

58. The State denies the allegations of Request for Declaratory Relief Count 3 and the allegations of paragraph 58.

59. The State admits that, with the exception of the addition of italics, the quoted language is an accurate recital of Procedure 7.3 of the 2023 WD01 Rental Pool Procedures adopted by the IWRB by resolution on March 31, 2023. *

60. The State admits the WD01 Watermaster makes allocations on paper to spaceholders storage accounts based on, among other factors, procedures set forth in WD01 Rental Pool Procedure 7.3. The State denies the remainder of paragraph 60.

61. The State disputes the Plaintiff’s use of the terms “non-leasing,” “leasing,” and “evacuate water” as vague and therefore denies the Plaintiff’s use of the same. The State admits that, under I.C. § 42-1764, the “approval of a rental of water from the water supply bank may be a substitute for the transfer proceedings requirements of section 42-222, Idaho Code.” The State denies the remainder of paragraph 61.

62. The State disputes use of the term “this purpose” as vague. The State denies the WD01 Rental Pool Procedures defy the prior appropriation doctrine, therefore the State denies allegations of paragraph 62.

63. The State disputes the use of the term “actual impacts” as vague, and therefore the State denies the allegations of paragraph 63.

64. The State disputes use of the term “impact other spaceholders” as vague and

therefore the State denies the allegations of paragraph 64.

65. The State disputes the terms “such analysis” and “disclosed” as vague, and therefore the State denies the allegations of paragraph 65.

66. The State denies that any of the WD01 Renal Pool Procedures result “in distribution of water without regard to a decreed priority date” or otherwise result in distributing or allocating water contrary to any alleged legal “entitlement.” The State denies the remaining allegations of paragraph 66.

67. The State denies the allegations of paragraph 67.

68. The State denies the allegations of paragraph 68.

UNCONSTITUTIONAL TAKING OF PRIVATE PROPERTY

RESPONSES TO COUNT 1:

69. The State denies the allegations of Unconstitutional Taking of Private Property Count 1 and the allegations of paragraph 69.

70. The State admits this quoted language accurately recites a portion of Idaho Const. Art. I, § 14. The State disputes the quoted language is “relevant” to this matter, therefore, the State denies the allegation of paragraph 70.

71. The State denies the allegations of paragraph 71.

72. The State disputes the characterization, description, and completeness of Exhibit 7 attached to the Complaint. The State disputes the analysis contained in Exhibit 8 to the Complaint. Therefore, the State denies the allegations of paragraph 72.

73. The State disputes the legal conclusions regarding property and physical takings under Idaho Const. Art. XV, § 3. Therefore, the State denies the allegations of paragraph 73.

74. The State disputes the legal conclusions contained in paragraph 74 regarding regulatory taking. Therefore, the State denies the allegations of paragraph 74.

75. The State denies the allegations of paragraph 75.

76. The State denies the allegations of paragraph 76.

77. The State denies the allegations of paragraph 77.

RESPONSES TO COUNT 2:

78. The State denies the allegations of Unconstitutional Taking of Private Property Count 2 and the allegations of paragraph 78.

79. The State denies the allegations of paragraph 79.

RESPONSES TO REQUEST FOR ATTORNEYS' FEES AND COSTS

80. The State denies the allegations of paragraph 80.

81. The State denies the allegations of paragraph 81.

RESPONSES TO PRAYERS FOR RELIEF

The State denies the Plaintiff is entitled to a judgment awarding the relief requested in the prayer for relief, denies Plaintiff has stated facts entitling it to relief, denies that the Plaintiff has stated claims for which relief may be granted, denies that the Plaintiff is entitled to any relief whatsoever, and requests that this Court dismiss the Complaint.

A. The State denies prayer for relief A.

B. The State denies prayer for relief B.

C. The State denies prayer for relief C.

D. The State denies prayer for relief D.

E. The State denies prayer for relief E.

F. The State denies prayer for relief F.

- G. The State denies prayer for relief G.
- H. The State denies prayer for relief H. *
- I. The State denies prayer for relief I. *

AFFIRMATIVE DEFENSES

- 1. Plaintiff's claims, or some of them, fail to state a claim upon which relief can be granted.
- 2. Plaintiff's claims are barred by the statute of limitations.
- 3. Plaintiff has failed to exhaust its administrative remedies.
- 4. The Plaintiffs' claims for special, or economic, damages must be dismissed because they are insufficiently pled in contravention of the requirements of Idaho Rule of Civil Procedure 9(g).
- 5. The State has a right to discovery from other parties to this action and reserves the right to amend this Answer to add additional affirmative defenses supported by the facts, and the non-inclusion of such defenses here should not be deemed to waive any such further amendment of this Answer.

THE STATE'S REQUEST FOR RELIEF

The State respectfully requests the Court enter judgment in its favor and against Plaintiff, as follows:

- 1. That Plaintiff's claims be dismissed with prejudice in its entirety and judgment entered in the State's favor.
- 2. That the State be awarded costs.
- 3. That the State be awarded reasonable attorney's fees.

4. For such other and further relief as the Court deems just and proper.

DATED this 16th day of May 2023.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

/s/ Ann Yribar

ANN N. YRIBAR
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of May 2023, I caused to be served a true and correct copy of the foregoing Answer to Complaint via iCourt E-File and Serve, upon the following:

Sarah A. Klahn
SOMACH SIMMONS & DUNN, P.C.
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Richard A. Diehl
Deputy City Attorney
CITY OF POCA TELLO
rdiehl@pocatello.gov

/s/ Ann Yribar

ANN N. YRIBAR
Deputy Attorney General