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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 POCA TELLO,

Petitioner,

vs.

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

Respondents,

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

Case No. CV01-25-19039

**INTERVENOR-SPACEHOLDERS'
COMBINED RESPONSE TO THE CITY
OF POCA TELLO'S PETITION FOR
REHEARING**

OF RICHFIELD, CITY OF RUPERT, CITY
OF SHOSHONE, CITY OF WENDELL,
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

COME NOW, Burley Irrigation District, Fremont-Madison Irrigation District, and Idaho Irrigation District (hereafter collectively referred to as “Spaceholders”), by and through their undersigned counsel of record, and hereby respond to the *City of Pocatello’s Petition for Rehearing* (June 17, 2026) and *City of Pocatello’s Brief in Support of Petition for Rehearing* (June 30, 2026) (“*Poc. Br.*”) filed by the City of Pocatello (“City” or “Pocatello”).

This *Response* is filed pursuant to the Court’s August 10, 2026, *Notice of Hearing on Petition for Rehearing* and Idaho’s relevant civil and appellate rules. For the reasons set forth below, the Spaceholders respectfully request the Court to deny Pocatello’s petition for rehearing.

ARGUMENT

I. The Court Properly Interpreted and Applied the Decree’s Pioneer Remark.

Pocatello alleges the Court erred in its interpretation of water right decree 01-2068 on the basis that the Pioneer Remark only applies to “ownership” and is not related to the “place of use” element. *See Poc. Br.* at 3-6. Pocatello argues for an overly broad reading of the decree’s place of use for irrigation from storage, believing any Palisades spaceholder can have its storage delivered anywhere within the decree’s fifteen listed counties. R. 600. Again, the City ignores the

“other provisions necessary for definition and administration of this water right” which includes what is referred to in this appeal as the “Pioneer Remark.” R. 601. Pocatello’s argument misses the mark on Idaho law as well as the legal effect of the Pioneer Remark.

In this case the Court properly held the following:

The language of the Pioneer Remark is clear. It establishes that while the consumers or users of water under water right 01-2068 have “title to the use of the water,” that interest is appurtenant to the lands served by such consumers or users. With respect to Pocatello, this is its municipal service area. Therefore, the Court finds that the Department did not err in determining that the authorized place of use for Pocatello’s 50,000 acre-feet of Storage Water under water right 01-2068 is Pocatello’s municipal service area.

Memo. Decision at 11.

Idaho law is clear with respect to perfecting an appropriation of water in that it must be applied to beneficial use. *See Basinger v. Taylor*, 36 Idaho 591, 211 P. 1085, 1086-87 (1922) (“In order to warrant the issuance of a license, it must appear that the water is being used at the place claimed and for the purpose for which it was originally intended. . . . respondents must depend upon actual appropriation – that is to say, actual diversion and application to beneficial use”) (emphasis added); *Cantlin v. Carter*, 88 Idaho 179, 186, 397 P.2d 761, 765 (1964) (“By actually diverting and applying water to a beneficial use, a legal appropriation is made . . .”); *State ex rel. Tappan v. Smith*, 92 Idaho 451, 455, 444 P.2d 412, 416 (1968).

Water rights for “irrigation” use, including “irrigation from storage,” are appurtenant to the land where the water is beneficially used. *See* I.C. § 42-101 (“such right shall become the complement of, or one of the appurtenances of, the land or other thing to which, through necessity, said water is being applied”); *see* I.C. § 42-220 (“[A]ll rights to water confirmed under the provisions of this chapter . . . shall become appurtenant to, and shall pass with a conveyance of, the land for which the right of use is granted”); *see also, Memorandum Decision and Order*

on Challenge, Subcase Nos. 55-10288B *et al.* (Apr. 25, 2000), pp. 15-16, *citing*, Clesson S. Kinney, *Kinney on Irrigation and Water Rights*, § 1011 (2nd Ed. 1912) (“The doctrine is well settled in States of the arid region that a water right used in connection with a certain tract of land . . . become[s] appurtenant[t] to the land, provided that they are owned by the same parties”).

Pocatello attempts to side-step well established law by alleging the Pioneer Remark only affects “ownership” and does not further define or clarify the decree’s place of use element. *See Poc. Br.* at 3-4. In essence, Pocatello asks the Court to read the “county” place of use element in isolation without regard to the rest of the decree’s language, which includes the Pioneer Remark. Contrary to Pocatello’s theory, the Palisades storage right decree must be read “as a whole” and the Court must “give meaning to all of its terms to the extent possible.” *See Sylte v. Idaho Dept. of Water Res.*, 165 Idaho 238, 244, 443 P.3d 252, 258 (2019); *see also*, *Twin Lakes Village Property Ass’n, Inc. v. Crowley*, 124 Idaho 132, 138, 857 P.2d 611, 617 (1993).

Moreover, the Idaho Supreme Court’s decision in *Pioneer* belies the City’s argument that attempts to rewrite or eliminate the decree’s remark. *See United States v. Pioneer Irr. Dist.*, 144 Idaho 106, 157 P.3d 600 (2007). First, the Supreme Court explained the very basis for the issuance of the relevant Basin 63 storage water rights:

There is no dispute that the BOR does not beneficially use the water for irrigation. It manages and operates the storage facilities. Irrigation of the lands serviced by the irrigation districts was the basis upon which original water right licenses were issued. Without the diversion by the irrigation districts and beneficial use of water for irrigation purposes by the irrigators, valid water rights for the reservoirs would not exist under Idaho law. The beneficial use theme is consistent with federal law. 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.”

144 Idaho at 109, 157 P.3d at 603.

Although the United States argued the SRBA Court erred in its decision, the Supreme Court disagreed and held:

A common theme throughout these cases is the recognition of the connection between beneficial use of water and ownership rights. The underlying principle of the state law, which requires application of the water to beneficial use before a water right is perfected, is the same. In Idaho the appropriator must apply the water to a beneficial use in order to have a valid water right under both the constitutional method of appropriation and statutory method of appropriation.

144 Idaho at 112, 157 P.3d at 606.

Therefore, application of water to land, which confirms the irrigation beneficial use, is the seminal component for purposes of perfecting and maintaining a water right, which in this case is the storage water applied to the various spaceholders' service areas. Pocatello wrongly suggests that only an ownership "interest" is appurtenant to the land, and that the water right's place of use element is not relevant. *See Poc. Br.* at 4-5. In this regard, Pocatello erroneously attempts to divorce the storage right's place of use from the actual ownership of the water right and how the right was perfected in the first place. Stated another way, the spaceholders in Palisades did not obtain a beneficial interest in the storage water in any "county" listed in the decree's place of use. R. 600. Instead, those appurtenant property rights were legally perfected through application of the water to the irrigation entities' patrons' specific lands. Two of the Intervenor Spaceholders hold specific beneficial interests in the Palisades storage right that confirms their rights to deliver water to their respective landowners in their districts (i.e. Burley Irrigation District and Idaho Irrigation District). That does not mean Burley can deliver its storage to Idaho's landowners and vice versa. Instead, their landowners' ownership interests are appurtenant to the lands, or the places of use, within their respective districts and those interests do not exist in a vacuum of fifteen different counties throughout southern and eastern Idaho as Pocatello's argument suggests.

Moreover, certainly the citizens of Pocatello would not appreciate their city leaders attempting to deliver its storage water anywhere within Water District 01 contrary to the irrigation needs of its water users should that water ever be delivered to the City. Yet, that is the result Pocatello seeks, an unfettered right to lease and have its water used anywhere without regard to actual beneficial use and the appurtenance limitation set forth in the water right decree.

Pocatello's effort to enlarge the scope of its authorized place of use through an erroneous interpretation of the decree should be denied. The Pioneer Remark confirms the water users' interests and rights to have that water delivered to specific appurtenant service areas, and Pocatello's misplaced argument to the contrary is wholly without merit. The Court should reject Pocatello's argument on rehearing accordingly.

II. The Decree's Pioneer Remark is Unambiguous.

Dissatisfied with the Court's interpretation as a matter of law, Pocatello next argues that the Pioneer Remark is now ambiguous and that "extrinsic evidence" should be taken to determine its meaning. *See Poc. Br.* at 6. However, in its opening brief on appeal Pocatello did not allege the decree was ambiguous or seek a remand back to the agency for further fact finding. *See Pocatello Op. Br.* at 13 ("The place of use for water right 1-2068 is unambiguous as set forth on the face of the Decree"); at 27 ("Pocatello does not request that the Court remand the *As-Applied Order* to the Department for further proceedings"). Pocatello cannot change its mind and bootstrap a new issue on appeal through its present petition for rehearing. *See e.g.* I.R.C.P. 84(r); I.A.R. 35(a)(4); *Shubert v. Macy's West, Inc.*, 158 Idaho 92, 98, 343 P.3d 1099, 1105 (2015) ("We only consider issues supported by argument and authority in the opening brief . . . The appellant cannot raise new issues in the reply brief"). As such, the Court should reject Pocatello's belated effort to have this case remanded for further fact finding.

Regardless, Pocatello wrongly suggests that the Pioneer Remark’s only purpose was to “serve as a layer of protection from the Bureau un-consensually depriving [spaceholders] of water and instead delivering it to other places of use (below Milner) and for other purposes of use (in-stream/environmental), particularly since the Upper Snake Flow Augmentation program had commenced in Idaho around the turn of the 21st century.” *Poc. Br.* at 6. Notably, Pocatello cites to briefing in the *Pioneer* litigation, but fails to acknowledge certain spaceholders’ positions in that case, which expressly stated:

The Irrigation Organizations have always diverted the water from the Boise River, and distributed it through their canal systems for use upon the lands they serve. . . . In other words, the landowners acquired, and own, valuable property rights which were dedicated to their lands and held in trust by the irrigation district. . . . The contractual right to receive the water and the water right which is appurtenant and dedicated to the land are separate and distinct.

See Poc. Reply, Ex. 1 at 5-6, 9-10 (emphasis added).

Clearly, the “lands served,” or the place of use where the water right is appurtenant was integral to the issue litigated and ultimately decided by the Supreme Court in *Pioneer*.¹ The Court properly recognized this in affirming the Department’s decision in this case. *See Memo. Decision* at 10-11. Pocatello’s effort to divorce the remark’s meaning from the place of use and limit it to the ownership, or name and address element, is misplaced and should be rejected.

III. Pocatello’s Argument Regarding Idaho Code § 67-5279(5) Should be Denied.

Pocatello next alleges the Court must follow section 67-5279(5) when reviewing IDWR’s action and maximize the City’s “liberties” on judicial review. *See Poc. Br.* at 7. Despite its argument, Pocatello does not identify the particular “liberty” the statute protects in this case.

¹ Pocatello claims its argument is supported by the fact the term “place of use” is not used in the *Pioneer* decision. *See Poc. Br.* at 6. However, Pocatello ignores the entirety of the Court’s “beneficial use” discussion and the fact water is used for “irrigation” purposes on the lands that are served by the irrigation districts. *See Pioneer Irr. Dist.*, 144 Idaho at 109-114, 157 P.3d at 603-608. Undoubtedly that holding describes and implicates the land where the storage water is used, or the storage water right’s “place of use.”

Most constitutional cases reference a person’s “liberty” or “property” interests as being separate rights. *See e.g. State v. Rogers*, 144 Idaho 738, 740-41, 170 P.3d 881, 883-84 (2007) (“It is fundamental to our legal system that the State shall not deprive ‘any person of life, liberty, or property, without due process of law’”) (emphasis added). Water rights in Idaho are “real property” rights, not a personal “liberty.” *See* I.C. § 55-101. Regardless, since the Court interprets an agency’s decision on questions of law *de novo*, Pocatello fails to show how the statute has any relevance anyway.

Neither IDWR nor the Court denied Pocatello any “liberty” contrary to section 67-5279(5). Pocatello’s storage lease was treated similarly to the other private lessors pursuant to the applicable rental pool procedures. The statute simply has no application to Pocatello’s requested relief in this instance and its argument on this point should be rejected.

IV. The Court Properly Affirmed IDWR’s Analysis Concerning Pocatello’s “Mitigation” Use for the Rental.

Pocatello further alleges the Court erred in finding the storage lease was “for a mitigation purpose of use.” *See Poc. Br.* at 8. Seeking to distract from the issue at hand, the City argues that storage water “is used for multiple purposes” and that “a lessor’s intent for purposes of a rental is simply irrelevant.” *Id.* Pocatello even goes so far on rehearing to suggest that its lease in 2022 should now be construed to have been for a “power from storage” purpose of use instead of the leased purpose to protect junior priority ground water rights from curtailment. Pocatello’s arguments are at odds with Idaho law and the Water District 01 rental pool procedures and should be summarily denied.

The Court properly found the following with respect to Pocatello’s storage lease in 2022:

It is clear to the Court that Pocatello’s rental of 6,290.2 acre-feet of its Storage Water to AFRD#2 in 2022 was done for a mitigation purpose of use. That is, it was done to satisfy its mitigation obligation to the Surface Water Coalition

under the Final Settlement Agreement. Mitigation is not an authorized use under the purpose of use element of water right 01-2068. As mitigation is not an authorized purpose of use under water right 01-2068, the Court finds the Department's determination that Pocatello's rental of Storage Water to AFRD#2 in 2022 constituted a change in the purpose of use element of water right 01-2068 must be affirmed.

Memo. Decision at 16.

Pocatello's lease of storage to satisfy the Cities' mitigation plan allowed those cities to pump their junior groundwater rights out-of-priority in 2022. R. 130 ("The assignment of **6,290.2 af** of Pocatello's Palisades Reservoir storage water provided directly to AFRD #2 to satisfy a portion of the Mitigation Obligation") (emphasis in original).² The Cities were not using the storage water for irrigation purposes within an authorized place of use, i.e. Pocatello's service area. Instead, that water was temporarily acquired by the Cities as "mitigation" and then assigned and delivered to AFRD#2 for use by its landowners within the AFRD#2 irrigation service area. The rental was a substitute for a transfer, hence the reason for the lease through the Water District 01 rental pool. Pocatello's argument suggests no rental or transfer authorization is needed, and that surface and groundwater users can intermix and move storage water anywhere within Water District 01, seemingly for any purpose. The Court properly saw through this argument and denied it. Pocatello's other rentals to other water users for irrigation use have no bearing on this issue as those rentals are similarly subject to the last-to-fill provision. *See Poc. Br.* at 9.

² The assignment of the storage water was accomplished pursuant to the parties' *Agreement for Direct Delivery in Lieu of Aquifer Enhancement Activities* (2022). R. 137-140. Through that agreement the Cities received "mitigation credit" for delivering the storage as it counted "in 1:1 in the five-year rolling average calculation required for determining the Cities' compliance with their mitigation obligation under section II.A of the Settlement Agreement." R. 138. Pocatello essentially benefitted twice through the rental: first, it was paid by the various cities for the water to cover their mitigation obligation; and second, Pocatello received mitigation credit towards its own out-of-priority groundwater pumping.

Finally, Pocatello claims the Court’s decision violates *A&B Irr. Dist. v. State (In re SRBA)*, 157 Idaho 385, 336 P.3d 792 (2014) (“*Basin Wide 17*”). *See Poc. Br.* at 8. The issue in the *Basin Wide 17* case concerned whether a remark was necessary authorizing storage water rights to “refill” in priority space that was previously vacated for flood control. 157 Idaho at 387, 336 P.3d at 794. The case had nothing to do with storage rentals or application of the Water District 01 rental pool procedures for water that has already been stored pursuant to water right administration. The case is not controlling “on the question of how the Department should evaluate the purpose for which a given volume of water was used,” and simply has no relevance. Consequently, the Court should reject Pocatello’s arguments on rehearing.

V. Application of the Last to Fill (LTF) Provision to Pocatello’s Voluntary Storage Lease Was Not an Equal Protection Clause Violation.

The Court’s determination that there was no equal protection clause violation was correct (*Memo. Decision* at 16-17), and the City’s accusation that the Court analyzed the wrong issue is misplaced. *See Poc. Br.* at 10. Insofar as the Court analyzed whether there is a rational basis for local committees to adopt or utilize unique rental pool procedures, as the City characterized the analysis (*Id.* at 10), that was the correct inquiry. The City makes much ado about nothing when it engages in criticism that the Court analyzed adoption or utilization of rental pool procedures rather than application of LTF—there is little definitional difference between application of LTF to WD1 versus adoption or utilization of rental pool procedures in WD1. Merriam Webster’s Dictionary defines the three underlined terms in the following manner: “utilize”: to make use of; turn to practical use or account;³ “adopt”: to begin to practice or use;⁴ “application”: an act of putting something to use.⁵

³ *Utilize*, Merriam Webster, (August 17, 2026), <https://www.merriam-webster.com/dictionary/utilize>.

⁴ *Adopt*, Merriam Webster, (August 17, 2026), <https://www.merriam-webster.com/dictionary/adopt>.

⁵ *Application*, Merriam Webster, (August 17, 2026), <https://www.merriam-webster.com/dictionary/application>.

Regardless of which word you choose to describe the process, it boils down to using unique rental pool procedures and associated injury determinations depending on where in the state of Idaho the relevant basin is located. Each basin's rules and injuries are bound to be different to adequately protect each unique basin and their respective multiple storage reservoir operations. Such a practice is not only logical but successfully passes the rational basis standard.

Pocatello clarified that its challenge is to disparate application of the injury standard in rental pools across the State and that, had the City rented storage water for mitigation in WD63, that rental would not have been subject to LTF. *Poc. Br.* at 11. Thus, the City believes WD1's injury determination violates equal protection. *Id.* The City also observed that the Court's determination in the *Memorandum Decision* that rental pool procedures "should" address injury (*Memo. Decision* at 18) is plainly erroneous and cites IDAPA 37.02.03.040.01(h), presumably in support of this claim. *Id.* at fn. 4.

The City admits that rental pools must include procedures that avoid injury to other water rights but claims that the procedures cannot determine *what* injury is. Upon review of that citation, it appears to support quite the opposite conclusion. The relevant language states that "local committee procedures must be approved by the Board and must provide for the following...(h) Prevention of injury to other water rights;..." IDAPA 37.02.03.040.01(h). This appears to be an explicit directive to rental pool committees to provide for prevention of injury to other water rights, and inherent in that, is determining what that injury looks like in that particular basin in order to adequately avoid such injury. How else would someone prevent injury if they were not able to help shape what that injury is? As the rental pool local committee for the basin, that entity would be in the best position to determine what injury looks like locally, while still complying with applicable laws. If a singular approach to injury was supposed to be

uniformly applied across all basins by the Director, there would be no point in directing each rental pool committee to submit local procedures.

The equal protection clause of Idaho's Constitution provides for equal protection of all persons in like circumstances. *State's Br.* at 26. Thus, the relevant question for equal protection analysis is whether Pocatello is being treated differently from *other spaceholders in WDI*—not whether there is disparate treatment between rental pools across the state of Idaho or varying definitions of injury basin-to-basin. Rental pool procedures are, by their nature, not procedures of general applicability. *Memo. Decision* at 17.

The City describes the applicable test for violation of the equal protection clause as whether such classification is “rationally related to,” or “furthers,” a “legitimate state interest.” *Anderson v. Spalding*, 137 Idaho 509, 514, 50 P.3d 1004, 1009 (2002); *In re Bermudes*, 141 Idaho 157, 162, 106 P.3d 1123, 1128 (2005); *Langmeyer v. State*, 104 Idaho 53, 57, 656 P.2d 114, 118 (1982); *Poc. Br.* at 10. Classifying a group of similarly situated water users within a basin is rationally related to and furthers the state interest of protecting property rights from injury and facilitating appropriate procedures that most effectively rent stored water on a local basis within each basin. What is appropriate in each basin will vary, so to truly accomplish the goal of preventing injury to property rights, procedures need to be flexible and tailored—it is logical that specific procedures, injury, and application are unique. Case law states that “all persons in like circumstances should receive the same benefits and burdens of the law.” *Alpine Vill. Co. v. City of McCall*, 154 Idaho 930, 937, 303 P.3d 617, 624 (2013) (quoting *Bon Appetit Gourmet Foods, Inc. v. State, Dep't of Employment*, 117 Idaho 1002, 1003, 793 P.2d 675, 676 (1989)). Provided other spaceholders *in WDI* have the same injury standard consistently applied to them, equal protection is not violated.

Further, the City’s argument that LTF is not intended to prevent injury, but to penalize contract holders from financial gain associated with renting surplus misses the point. *Poc. Br.* at 10. The two are intertwined. A water right is a property right. Property rights inherently hold value. When senior spaceholders do not need to use their water but use it anyway through rental to other water users, junior spaceholders are at serious risk of not having access to their property right at all—thereby losing the value of their water right. Essentially, non-spaceholders would be allowed to take precedent over spaceholders, which is patently unfair to junior spaceholders. In a basin with as much demand for water as WD1, it makes sense that this would be the district to find a way to protect junior spaceholders from being aced out by senior spaceholders intent on maximizing their financial gain, rather than honoring the terms of relevant water rights and prior appropriation. Appropriate procedures have thus been formulated to prevent that injustice and the Court properly upheld the application to Pocatello’s 2022 private lease.

Finally, the City briefly observes that allowing two meanings of the Pioneer Remark to coexist is contrary to the Idaho Constitution. It is unclear where these two meanings come from, in the City’s view. It appears that the Court, State, and Spaceholders have unanimously agreed that the Pioneer Remark addresses where water rights can be used. The City having a different interpretation of the Pioneer Remark from the Court is inconsequential and does not create a constitutional crisis.

VI. The *Memorandum Decision* Did Not Cause a Judicial Taking of Pocatello’s Storage Water Right.

The City’s latest attempt at a takings claim alleges that a judicial taking occurred via the *Memorandum Decision* issued by the Court. This claim is as equally unavailing as the involuntary taking claim that it previously advanced.

In the United States Supreme Court decision the City cites, *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection*, 560 U.S. 702, 715, 130 S. Ct. 2592, 2602 (2010), the plurality stated that “if a legislature *or a court* declares that what was once an established right of private property no longer exists, it has taken that property.” *Id.* The City appears to characterize its claimed property right as the right to use its storage water right however, whenever, and for whatever purpose it chooses. But that is not the City’s established property right. The Court’s decision did not take the City’s property; it properly prevented an enlargement or overextension of the City’s water right and adhered to the terms of the decree consistent with Idaho law. As Spaceholders and IDWR explained in prior briefing, the City’s participation in the Rental Pool was—and remains—voluntary. The City could have used its water right within the City’s service area, or chosen not to use it that year, and thereby avoided LTF. Having voluntarily participated in the Rental Pool, with knowledge that doing so would subject its water right to LTF the following year, the City cannot plausibly claim a taking, judicial or otherwise. Moreover, the Court did not declare that an established property right ceased to exist; it held that the City retained its decreed property right but voluntarily and temporarily relinquished the ability to use it by application of the rental terms on its priority.

Finally, the City’s debate about whether the *Pioneer* case was intended to address the place of use of its water right is also misguided. *See Poc. Br.* at 14. Though the case discusses title to water rights respective to the Bureau and irrigation organizations, it also specifically observes that this interest is “appurtenant to the lands within the boundaries of or served by such irrigation organization.” *Pioneer Irr. Dist.*, 144 Idaho at 109, 157 P.3d at 603. If *Pioneer* was not commenting on place of use for water rights, why would it bring up land and boundaries? Ultimately, when the City’s water right was decreed, the *Amended Decree* included the provision

that water right use under the decree was to be “within the boundaries of or served by such irrigation organizations.” *Amended Decree* at 2, R. 600. As properly stated by the Court, the language of the Pioneer Remark is clear. *Memo. Decision* at 11. Per the Remark, derived from the *Pioneer* case, 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 not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.” *Amended Decree* at 2, R. 600. In other words—each entity may use their water within their respective boundary. Their water right use is tied to *their* organization’s land—not just any land within the various counties listed in the decree. Further, the Remark clarifies that any contracts in existence before the decree are not the end all, be all.

One would be hard pressed to find water rights in the state of Idaho that authorize use *anywhere* the water right holder chose to utilize the water right, or even anywhere in an entire county. This is largely because where a water right is used can massively impact other water users and water rights. Given that the City was not using its water in alignment with the decree’s conditions and terms, no taking occurred because no property right was removed. How the City may have used its water prior to the *Amended Decree* does not matter and is superseded by the decree. The Court’s determination that the City cannot continue to try to use its water right however it wishes or used to before the decree, whether ever authorized or not, is not a judicial taking.

CONCLUSION

The Court properly denied Pocatello’s arguments on judicial review in its *Memorandum Decision*. The City’s petition for rehearing does not raise any new arguments that warrant any

changes in the Court’s decision. For the reasons set forth above, the Spaceholders respectfully request that the Court deny the City’s petition.

DATED this 24th day of August, 2026.

PARSONS BEHLE & LATIMER

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of August, 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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/s/ Jess Nielsen

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