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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.	Case No. CV01-25-19039 **CITY OF POCATELLO'S OPENING BRIEF** Fee Category: Exempt Idaho Code § 67-2301
IN THE MATTER OF THE ALLOCATION OF STORED WATER TO THE CITY OF POCATELLO BY WATER DISTRICT 01	

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Petitioner City of Pocatello ("Pocatello" or "City"), by and through undersigned counsel of record, submits this opening brief pursuant to paragraph 9 of the Court's *Procedural Order* dated October 20, 2025, the Court's *Order Granting Motion to Modify Briefing Schedule* dated November 19, 2023, Rule 84(p) of the Idaho Rules of Civil Procedure, and Rules 34 and 35 of the Idaho Appellate Rules.

STATEMENT OF THE CASE

A. Nature of the Case

This case was brought to challenge the Idaho Department of Water Resources' ("IDWR" or "Department") application of the "last-to-fill provision" or "LTF Provision" as set forth in the Water District 01 ("WD01") Rental Pool Procedures to Pocatello's storage account in 2023. It follows Pocatello's facial constitutional challenge to the LTF Provision, which this Court rejected in its January 10, 2024 *Amended Order on Cross Motions for Summary Judgment* ("*Facial Order*").[1] In its *Facial Order* this Court rejected the City's constitutional challenge holding that there is *a* circumstance where application of the LTF Provision is constitutionally valid—when it operates to prevent unlawful, *per se* injury to junior storage spaceholders by prohibiting the Department from filling the senior's storage space in priority in the year after stored water had been used in a manner that is not authorized by the water right. R. 226-28.[2] The Court noted

[1] The *Amended Order on Cross Motions for Summary Judgment* (Jan. 10, 2024) entered in *City of Pocatello v. Idaho Water Resource Board et al.*, Case No. CV42-23-1668 (5th Jud. Dist., Twin Falls County) is in the agency record at R. 213-34.

[2] "While a water user has a constitutional right to have his water right administered in priority, that right extends only so far as the water right is being used within the parameters of its defined elements. A water user has no right to have his water right administered to points of diversion, places of use, periods of use, or purposes of use that differ from those authorized under his right. . . . Permitting Water User A to refill his water right in priority [when there was "an enlargement in the purpose of use of the water right by permitting the water to be used for a purpose not otherwise authorized under the right"] would result in impermissible injury to the priority of junior water rights under Idaho law. . . . The last-to-fill provision operates to prevent this injury by requiring Water User A's water right to be last-to-fill the following year."

that "Pocatello presents a unique scenario," but declined to determine "the scope of authorized use for the City's storage right," stating that resolution of that issue would "need to be resolved in an 'as-applied' constitutional challenge. . . ." R. 228-31. The instant case was brought to exhaust administrative remedies before bringing an as-applied constitutional challenge to this Court. *See* R. 231-33.

In this case, the Department denied Pocatello's requests for administrative remedies in its *Preliminary Order Denying Motion for Summary Judgment and Upholding Department Action* dated September 3, 2025 ("*As-Applied Order*"). R. 881-908. Pocatello now seeks timely judicial review of the *As-Applied Order* and requests that the Court set aside the *As-Applied Order* and declare that the Department's application of the LTF Provision against Pocatello in 2023: violated Idaho Const. art. XV, § 3; violated Idaho Const. art. I, § 13; violated Idaho Const. art. I, § 2; violated the Department's duties under I.C. § 42-101; violated the Department's duties under I.C. § 42-602; and was arbitrary and capricious. Pocatello also requests that the Court enjoin the Department from applying the LTF Provision against Pocatello's contract space in Palisades Reservoir insofar as the City's stored water was "used within the parameters of [water right 1-2068's] defined elements." R. 226.

B. Procedural History

a. Case No. CV42-23-1668

Pocatello initiated its facial constitutional challenge by filing a complaint in state district court on March 16, 2023. This Court entered the *Facial Order* on January 10, 2024, and a *Judgment* on February 1, 2024.[3]

[3] Pocatello requests that the Court take judicial notice, as needed, of any records, exhibits, or transcripts from Case No. CV42-23-1668, which are available at http://www.srba.state.id.us/TWINFALLS1668.htm (last visited Dec. 3, 2025). *See* I.R.E. 201; *see also Citizens Against Linscott v. Bonner Cty. Bd. of Comm'rs*, 168 Idaho 705, 717 (2021)

b. Administrative Proceedings Below

Following the Court's direction in the *Facial Order*, Pocatello initiated this as-applied constitutional challenge by requesting a hearing before the Department regarding Water District 01's ("WD01") 2023 Storage Report on April 25, 2024. R. 001-03. On September 9, 2024, the Director granted Pocatello's request for hearing and appointed IDWR Eastern Region Manager James Cefalo to serve as Hearing Officer in the contested case matter. R. 017-18. On October 10, 2024, the Hearing Officer granted intervention by Burley Irrigation District, Fremont-Madison Irrigation District, and Idaho Irrigation District (collectively, the "Spaceholders"). R. 029-31. On November 22, 2024, the Hearing Officer granted intervention by the Coalition of Cities.[4] R. 037-39.

On December 9, 2024, the Hearing Officer held a prehearing conference wherein the parties discussed resolving the contested case through dispositive motions, R. 033-34, and the Hearing Officer set a briefing schedule on December 16, 2024. R. 041-42. On February 18, 2025, Pocatello filed a *Motion for Summary Judgment* ("*MSJ*") with a supporting brief and declarations, R. 044-548, and the Spaceholders filed a *Motion to Dismiss* ("*MTD*") with a supporting brief and declaration. R. 549-619. Response and reply briefs for each motion, along with supporting declarations, were filed between May and August of 2025.[5] R. 627-767 (Pocatello's and Coalition of Cities' responses/declarations in opposition to *MTD*); R. 768-98

(taking judicial notice of a judgment in another case notwithstanding that the "IDAPA provides that '[j]udicial review of disputed issues of fact must be confined to the agency record[.]'") (citing I.C. § 67-5277); *Friends of the Clearwater v. Higgins*, 523 F. Supp. 3d 1213, 1223 (D. Idaho 2021) (even though the case was brought under federal APA, the court stated that it "may consider evidence outside the administrative record" and took "judicial notice of government documents for their existence and contents, but not for the truth of the matter asserted when the facts are in dispute.").

[4] The Coalition of Cities consists of the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell. R. 037.

[5] Upon the joint motion of the parties, in April 2025 the Hearing Officer amended the briefing schedule and staggered the briefing on the *MTD* and *MSJ*. R. 620-26.

(Spaceholder's reply/declaration in support of *MTD*); R. 806-68 (Spaceholder's response/declarations in opposition to *MSJ*); R. 869-80 (Pocatello's reply in support of *MSJ*).

On June 25, 2025, the Hearing Officer denied the *MTD* based, at least in part, on his conclusion that the mootness exception set forth in *Mitchell v. Ramlow*, 174 Idaho 723, 727 (2024), properly applies in this case. R. 799-804.[6] On September 3, 2025, the Hearing Officer denied the *MSJ*, dismissed the contested case, and upheld the Department's application of the LTF Provision against Pocatello in 2023 based, at least in part, on his conclusion that the use of Pocatello's stored water in 2022 was not authorized by water right 1-2068 and therefore enlarged the water right's defined place of use and nature of use elements.[7] R. 881-908. No oral argument or evidentiary hearing was held in the matter.

c. Case No. CV01-25-19039

On October 15, 2025, Pocatello timely filed a *Petition for Judicial Review* with the District Court of the Fourth Judicial District Court, in and for the County of Ada. On October 20, 2025, the Clerk of the Ada County District Court issued a *Notice of Reassignment SRBA*, assigning this case to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District. This Court issued a *Procedural Order* on that same date.

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[6] "A contested case that is moot may still be considered by an agency if 'the challenged conduct is likely to evade judicial review and thus is capable of repetition.' This exception is 'limited to the situation where . . . (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to that same action again[.]' . . . Even though the allocation being challenged by Pocatello has been rendered moot, the case can still be considered by the Department because it qualifies under the exception set forth in *Mitchell*. The effects of the challenged action are short in duration (often limited to one or two years) and there is a reasonable expectation that the complaining party will be subject to the same action again. Given the ongoing mitigation obligations of Pocatello and the Coalition of Cities, it is highly likely that the facts that gave rise to Pocatello's *Hearing Request* will exist again in future years. Further, the very nature of annual storage allocations makes it difficult for a party to fully litigate a challenge to the allocation of storage water prior to the case becoming moot." (Citations omitted.)

[7] "Nature of use" is synonymous with "purpose of use."

Between October 21 and October 27, 2025, the Spaceholders, the Coalition of Cities, and the Department each filed a *Notice of Appearance*. On November 4, 2025, the Court issued an *Order Treating Appearances as Motion to Intervene and Granting Same*.

On October 30, 2025, the Department lodged the Agency record with the Court. No objections were filed. On November 14, 2025, the Department lodged the Settled Agency Record with the Court. On November 17, 2025, Pocatello filed an *Unopposed Motion to Modify Briefing Schedule*. On November 19, 2025, the Court issued an *Order Granting Motion to Modify Briefing Schedule* that set December 19, 2025, as the deadline for to file this opening brief.

C. Statement of Facts

As stated in the *As-Applied Order*, "there are no genuine disputes with respect to the facts relied on by the hearing officer," who disposed of the contested case on summary judgment without a hearing. R. 904. The undisputed material facts in this case are:

1. The United States Bureau of Reclamation ("Bureau" or "Reclamation") is the owner of record for water right 1-2068, which bears a priority date of July 28, 1939, and authorizes the storage of 940,400 acre-feet of water in Palisades Reservoir. R. 480, 882 (¶ 1).

2. This Court issued a second amended partial decree for water right 1-2068 on February 28, 2020 (the "Decree"), which defines the following as authorized purposes of use: irrigation storage, irrigation from storage, power storage, and power from storage. R. 480, 882 (¶ 2).

3. The Decree defines the following counties as the authorized place of use for the purpose of irrigation from storage:[8] Fremont, Madison, Jefferson, Bonneville, Bingham,

[8] This place of use is colloquially referred to as being "above Milner" or "above Milner Dam"

Bannock, Power, Minidoka, Cassia, Lincoln, Jerome, Twin Falls, Gooding, Teton and Elmore. R. 480, 883 (¶ 3).

4. The Decree also contains the following conditions:

> 1. The name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address sections 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, 883 (¶ 3).

5. In 1960, Pocatello entered into Contract No. 14-06-100-1825 (the "Contract") with Reclamation to obtain the right to use 50,000 acre-feet of the water stored under water right 1-2068, and accordingly holds equitable title to 50,000 acre-feet of the total storage space in Palisades Reservoir. R. 072-115, 883 (¶ 3).

6. The Contract contains the following provision:

> The City may rent stored water which has accrued to its credit in any reservoir of the system, but such rentals shall be for only one year at a time and at rates to be approved in advance by the Secretary [of the United States Department of the Interior, in which the Bureau is housed] and the Advisory Committee.

R. 096 (¶ 15(a)), 884 (¶ 6)

7. WD01 is "an instrumentality of the state of Idaho [created] for the purpose of performing the essential governmental function of distribution of water among appropriators under the laws of the state of Idaho." R. 885 (¶ 11) (quoting I.C. § 42-604).

8. WD01 is "an instrumentality of the state of Idaho [created] for the purpose of performing the essential governmental function of distribution of water among appropriators under the laws of the state of Idaho." R. 885 (¶ 11) (quoting I.C. § 42-604).

9. The Idaho Water Resource Board ("IWRB") operates a Water Supply Bank, which allows water users to lease and/or rent storage water. The approval of a rental through the Water Supply Bank may act as a substitute for filing a transfer application under I.C. § 42-222. R. 885 (¶ 13) (citing I.C. § 42-1764).

10. The administrative structure created to facilitate the rental of storage water in the Upper Snake River Basin is commonly referred to as the "WD01 Rental Pool." R. 885-86 (¶ 14).

11. The water users approved WD01's 2023 Rental Pool Procedures (the "Procedures") at WD01's annual meeting held on March 7, 2023. WD01's 2023 Procedures were approved by IWRB on March 31, 2023. R. 886 (¶ 15).

12. Procedure 7.3 establishes a process where, with a few exceptions, the storage space evacuated as part of a private lease becomes the last space to fill in the subsequent water year. This procedure is commonly referred to as the "LTF Provision." WD01's 2022 and 2023 Procedures included the LTF Provision. R. 889 (¶ 16).

13. Based on an understanding that it is the only viable mechanism by which its storage water can be rented and delivered to a lessee (R. 651-52, 878),[9] Pocatello participated in the WD01 Rental Pool in 2022 and 2023 to rent its storage water. R. 652, 889 (¶ 17).

14. In 2022, Pocatello rented a volume of storage water to American Falls Reservoir District #2 ("AFRD#2"). R. 889 (¶ 18). AFRD#2 applied the water to beneficial use for the

[9] In the *As-Applied Order,* the Department contends that Pocatello could also accomplish renting and delivering water to lessees through an I.C. section 42-222 transfer proceeding (*see* R. 898), but it remains unclear how Pocatello would go about "transferring" the portion of water right 1-2068 to which it holds equitable title,

purpose of "irrigation from storage" in one or more of the following counties: Gooding, Jerome, and Lincoln. R. 054, 871.

15. In 2023, WD01 applied the LTF Provision to a portion of Pocatello's storage space that was evacuated to deliver the leased storage water to AFRD#2. R. 890 (¶ 21).

16. Because of a limited water supply in 2023, there was no water available to fill any of the space designated as last-to-fill, so the portion of Pocatello's storage space subject to the LTF Provision did not receive any fill in 2023. R. 890-91 (¶ 22).

STANDARD OF REVIEW

Any party "aggrieved by a final order in a contested case decided by an agency may file a petition for judicial review in the district court." *Sagewillow, Inc. v. Idaho Dep't of Water Res.,* 138 Idaho 831, 835 (2003) (citing I.C. § 67-5270(3)). Judicial review of a final decision or order of the Director is governed by the Idaho Administrative Procedure Act ("APA"). I.C. § 42-1701A(4). Under the APA, the Court shall "review an appeal from an agency decision based upon the record created before the agency." *Chisholm v. State Dep't of Water Res.,* 142 Idaho 159, 162 (2005). District courts acting pursuant to the APA independently review the agency record on appeal. *Maclay v. Idaho Real Estate Comm'n*, 154 Idaho 540, 544 (2012).

"A reviewing court defers to the agency's findings of fact unless they are clearly erroneous, and the agency's factual determinations are binding on the reviewing court, even when there is conflicting evidence before the agency, so long as the determinations are supported by substantial competent evidence in the record." *Rangen, Inc. v. Idaho Dep't of Waters Res.*,

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particularly when Pocatello seeks for its stored water to be used for a purpose and at a place that is explicitly authorized on the face of the Decree, and also because Pocatello exclusively rents water in one-year increments per the Contract. Regardless, Pocatello did not initiate a transfer proceeding in 2022 or 2023, so it participated in the WD01 Rental Pool in those years.

160 Idaho 251, 255 (2016) (quotations and citations omitted). Conversely, courts "freely review[] questions of law." *Id.* (citation omitted).

An agency's order must "be set aside, in whole or in part, and remanded for further proceedings as necessary" if the "findings, inferences, conclusions, or decisions" within are "(a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion," and if the order prejudices the petitioner's substantial rights. I.C. § 67-5279(3)-(4).

An agency action is arbitrary "if it was done in disregard of the facts and circumstances presented or without adequate determining principles," and capricious "if it was done without a rational basis." *In re Delivery Call of A&B Irrig. Dist.*, 153 Idaho 500, 511 (2012).

"Substantial evidence is such relevant evidence as a reasonable mind might accept to support a conclusion . . . . It is more than a scintilla, but less than a preponderance." *Williams v. Idaho State Bd. of Real Estate Appraisers*, 157 Idaho 496, 507 (2014) (citation omitted). Courts "will uphold an agency's findings if they are supported by substantial and competent evidence." *Id.* "The substantial and competent evidence standard is also equivalent to the 'clearly erroneous' standard of I.R.C.P. 52(a)." *Higgins v. Larry Miller Subaru-Mitsubishi*, 145 Idaho 1, 4 (2007); *see also Nw. Farm Credit Servs. v. Lake Cascade Airpark, LLC*, 156 Idaho 758, 763 (2014) ("A finding is clearly erroneous if is not supported by substantial and competent evidence").

ISSUES ON APPEAL

1. Whether the Department erred in concluding that, in 2022, "Pocatello's delivery of its storage water to AFRD#2 constitutes a change in place of use for water right 1-2068."

2. Whether the Department erred in concluding that, in 2022, "Pocatello's delivery of its storage water to AFRD#2 for mitigation purposes constitutes a change in nature of use for water right 1-2068."

3. Whether the Department had a valid basis to apply the LTF Provision against Pocatello in 2023.

4. Whether the Department's application of the LTF Provision against Pocatello in 2023 violated Idaho Const. art. XV, § 3.

5. Whether the Department's application of the LTF Provision against Pocatello in 2023 violated Idaho Const. art. I, § 14.

6. Whether the Department's application of the LTF Provision against Pocatello in 2023 violated Idaho Const. art. I, § 2.

7. Whether the Department's application of the LTF Provision against Pocatello in 2023 violated I.C. § 42-101.

8. Whether the Department's application of the LTF Provision against Pocatello in 2023 violated I.C. § 42-602.

9. Whether the Department's application of the LTF Provision against Pocatello in 2023 prejudiced Pocatello's substantial rights.

10. Whether Pocatello is entitled to attorneys fees under I.C. § 12-117(4).

ARGUMENT

Summary of Argument

The Court should determine that the Department violated multiple provisions of the Idaho Constitution and Idaho Code by applying the LTF Provision against a portion of Pocatello's storage space in 2023 based on Pocatello's rental and delivery of stored water to AFRD#2 in

2022. In the *Facial Order*, this Court held that there is *a* circumstance where application of the LTF Provision is valid: when it "prevent[s] unlawful injury to the priority of junior water rights in the reservoir" that results from an appropriator "hav[ing] [his] water right administered in priority in a manner that is not authorized under that right." R. 225-28.[10] AFRD#2's irrigation use of Pocatello's storage water in 2022 does not satisfy this condition.

In 2022, Pocatello's stored water was used by AFRD#2 for a purpose of use (irrigation from storage) and within the place of use (in the Counties of Gooding, Jerome, and/or Lincoln) that are explicitly authorized by the Decree. Notwithstanding, in 2023, the Department, through WD01, applied the LTF Provision against a portion of Pocatello's space in Palisades Reservoir. The Department's application of LTF was improper because it failed to administer water right 1-2068—or the part in which Pocatello has an equitable interest—"in priority" even though "the water right [was] being used within the parameters of its defined elements." R. 226.

To defend its action, the Department devised a rationale out of whole cloth. First, the Department held that "the authorized place of use for [contract holder] holding equitable title to a portion of water right 1-2068 is inherently limited to the service boundary of the [contract holder]," so moving storage water to another contract holder "expand[s] the place of use for that portion of water right 1-2068." R. 901 (citing *United States v. Pioneer Irr. Dist.,* 144 Idaho 106 (2007)). Second, without any citations to legal authority, the Department held that the "use of water by Pocatello is properly characterized as 'mitigation'" and thus delivery to the AFRD#2

[10] "While a water user has a constitutional right to have his water right administered in priority, that right extends only so far as the water right is being used within the parameters of its defined elements. A water user has no right to have his water right administered to points of diversion, places of use, periods of use, or purposes of use that differ from those authorized under his right. . . . When an enlargement receives priority there is injury to junior water rights. . . . As a general principle, Idaho law prohibits using a water right outside the scope of its authorized use as defined by its elements absent a transfer proceeding. . . . The use of this water for other than its authorized purpose results in an enlargement of the water right and injury to other water rights."

headgate "constitutes a change in nature of use of water right 1-2068" because "Pocatello's use of the water for mitigation purposes occurred at the time of delivery to the AFRD#2 headgate." The Department further concluded that "the fact that AFRD#2 used the mitigation water for irrigation . . . is inconsequential." R. 900.

The Department's determinations below are unsupported and should be overturned. If affirmed, the Department would be authorized to invalidate beneficial uses even when it is undisputed that the water right "is being used within the parameters of its defined elements." R. 226. Stated differently, the Hearing Officer's decision would authorize the Department to administer individual beneficial users as having separate, *implied* water rights that are more limited than the decreed water right to which they hold partial equitable title. The Hearing Officer's decision makes this finding even though this Court disallowed such sub-claims in the Snake River Basin Adjudication ("SRBA") proceedings.

The errors in the *As-Applied Order* prejudice Pocatello's substantial rights and warrant judicial relief. Because the issue of whether the Department must revise the 2023 Storage Report to re-allocate storage water to Pocatello is now moot based on subsequent hydrology, but the mootness exceptions set forth in *Mitchell* apply in this case (R. 803), Pocatello seeks prospective relief in the form of judicial declarations and a corresponding injunction.

I. 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"

The "place of use" is the first of two elements of water right 1-2068 that the Department held Pocatello improperly changed by renting and delivering storage water to AFRD#2 in 2022.

To support this erroneous holding, the Department misconstrues the Idaho Supreme Court's decision in *Pioneer*.

The Department interprets Condition No. 1 in the Decree, taken verbatim from *Pioneer*, 144 Idaho at 115, not by reading the plain language but by invoking the alleged "principles set forth in *Pioneer*" to support the conclusion that "the equitable title to the portion of water right 1-2068 is limited to the service area of the [contract holder]," and "mov[ing] storage water from one [contract holder] to another constitutes a change in place of use . . . ." R. 898. Thus, the Department concludes that the pertinent language in Condition No. 1 ("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") limits "the authorized place of use for Pocatello's portion of water right 1-2068 [to] the land within Pocatello's municipal service area." R. 897.

Contrary to the Department's reasoning, the *Pioneer* decision did not resolve a dispute over the place of use of storage water rights associated with Bureau projects. The case dealt with the ownership of such rights, as shown by its caption: "In re: SRBA Case No. 39756 (Subcase 91-63) Re: Ownership of Water Rights."[11]

The place of use for water right 1-2068 is unambiguous as set forth on the face of the Decree. R. 480, 883. The partial decree's place of use is also consistent with the Bureau's pre-SRBA water right license[12], which authorized the use of storage water for irrigation on the million-plus acres that comprise the various contract holders. Bureau contracts authorize rentals

[11] The court's opinion begins, "This is a water rights case arising from the [SRBA] regarding ownership interests of the United States and various irrigation entities," 144 Idaho 108, and uses the term "ownership" seventeen times. The opinion does not contain the phrase "place of use," or any variation thereof.

[12] *See* License of Water Right No. R-670/01-2068 (Mar. 19, 1973), a copy of which is available at pp. 5-6 within https://research.idwr.idaho.gov/apps/Shared/LfRelatedDocs/Home/DownloadDoc?eid=1668037 (last visited Dec. 16, 2025) (highlight in original). Pocatello request that the Court take judicial notice of License of Water Right No. R-670/01-2068.

of storage water[13] and for decades contract holders rented water to other contract holders above Milner Dam without WD01 applying the LTF Provision (*see* R. 052-53, 217).[14] Neither the *Pioneer* decision nor associated briefing suggests the relief sought by the parties included additional restrictions on the place of use that would support application of the LTF Provision against water rented above Milner. In other words, there is no basis for the Department to conclude that the *Pioneer* decision (or this Court's entry of the Decree, containing Condition No. 1) created a legal basis for the Department to apply the LTF Provision based on rentals between contract holders above Milner Dam.

The Department's position on Condition No. 1 articulated in the *As-Applied Order* is also newly-minted. When the State opposed Pocatello's sub-claim for water right 1-2068Y in 2012, it invoked *Pioneer* as "the controlling legal authority for resolving the City of Pocatello's ownership objection" to water right 1-2068, but did not invoke *Pioneer* as a basis to oppose Pocatello's place of use objection.[15] *See Memorandum in Support of State of Idaho's Motion for Summary Judgment*, In re SRBA Case No. 49576, at 8-9 (Feb. 21, 2012).[16] In short, there is no

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[13] Pocatello's contract, *see* R. 096 (¶ 15(a)) is not exclusive in permitting rentals on a one-year basis. *See, e.g.*, Contract No. 14-06-100-1881, a copy of which is included as Exhibit A to the *Opening Brief of Palisades Water Users, Inc. and the City of Idaho Falls Re: Threshold Legal Question*, IDWR Docket No. P-WRA-2017-002 (Jan. 19, 2018), available at https://idwr.idaho.gov/wp-content/uploads/sites/2/legal/P-WRA-2017-002/P-WRA-2017-002-20180119-Opening-Brief-of-PWU-and-City-of-Idaho-Falls-Re-Threshold-Legal-Question.pdf (last visited Dec. 5, 2025). Pocatello request that the Court take judicial notice of Contract No. 14-06-100-1881.

[14] Until 2005, WD01 limited its application of the LTF Provision to rentals below Milner. R. 053. Renting water for beneficial uses below Milner does, in fact, entail uses on lands outside the authorized place of use, thus it is lawful for the Department to apply the LTF Provision in that circumstance. *Accord* R. 053, 120-21 (the Department became concerned in 1979 that rentals to Idaho Power Company changed the nature of use); R. 226-28 (this Court explaining that rentals of water for municipal purposes entails uses that are not within the authorized purposes of use, thus it is lawful to apply the LTF Provision in that circumstance).

[15] Pocatello listed "place of use" in its *Statement of Issues* filed in SRBA Subcase Nos. 01-02068, 01-02068Y, 01-10043 on February 7, 2011. Pocatello requests that the Court take judicial notice of this document, which is available at https://research.idwr.idaho.gov/apps/Shared/LfRelatedDocs/Home/DownloadDoc?eid=1513452 (last visited Dec. 5, 2025).

[16] Pocatello request that the Court take judicial notice of this document, which is available at https://research.idwr.idaho.gov/apps/Shared/LfRelatedDocs/Home/DownloadDoc?eid=1537324 (last visited Dec. 5, 2025).

basis to invoke *Pioneer* as support for an interpretation of Condition No. 1 that individual contract holders possess implied water rights that are "inherently limited to the service boundary of the [contract holder]." R. 901.

The erroneous nature of the Department's interpretation of Condition No. 1 to include a new, more restrictive, and unstated limitation on place of use is demonstrated by three additional problems: first, the *As-Applied Order* found "water right 1-2068 must be viewed as a combination of multiple individual water rights." R. 897. But the possibility of "multiple individual water rights" within 1-2068 was rejected by the SRBA Court, at the Department's recommendation, when it disallowed all of the contract holder's sub-claims, including Pocatello's claim for water right 01-2068Y.[17] Second, Pocatello's storage water associated with its Contract was never meant to be physically delivered to Pocatello's service area. R. 098. This begs the question: how can Pocatello ever use its storage water consistent with the Department's interpretation of Condition No. 1? And third, Condition No. 1 is associated with storage water rights in Bureau projects across the state, including the Boise Basin,[18] yet the Boise Basin Rental Pool does not apply the LTF Provision except for rentals that involve water leaving the basin altogether (i.e., outside the authorized place of use), like the WD01 Rental Pool pre-2005. *See* R. 191 (¶ 6.3). If the Department's made-up interpretation of Condition No. 1 is to be the rule, it must be the rule statewide. *See* Sections VI, VII, *infra*.

In sum, there is no "defined element" in the Decree that requires the Department to subdivide or split water right 1-2068 into "multiple individual water rights" (R. 897), nor does

[17] Pocatello requests that the Court take judicial notice of the list of Disallowed Water Right Claims, available at http://164.165.134.61/Images/disallowed.pdf (last visited Dec. 5, 2025).

[18] *See, e.g.*, Amended Partial Decree for water right 63-303, a copy of which is available at https://research.idwr.idaho.gov/apps/Shared/LfRelatedDocs/Home/DownloadDoc?eid=1859965 (last visited Dec. 12, 2025). Pocatello requests that the Court take judicial notice of the document.

Decree language support limiting delivery of each contract holder's contracted-for amount of water to solely their service area. Just as the Department rightfully does not purport to regulate a rental from one landowner to another within an irrigation organization (let alone evaluate whether it is lawful) when the end use of the water is authorized by the subject water right's defined elements, there is no basis for the Department to evaluate whether some portion of the 940,400 acre-feet appropriated by the Bureau under water right 1-2068 can be used by a contract holder in Bannock County but not by one in Gooding, Jerome, or Lincoln County. *See* R. 480-81; *cf. Response to the United States' Motion for Clarification*, In re SRBA Case No. 39576, Consolidated Case No. 91-63, at 2 (Oct. 4, 2004) ("[t]he Irrigation Entities respectfully contend that . . . the relationship between the [Bureau] and the Irrigation Entities is analogous to the relationship between an irrigation district and its landowners.").[19] The Department's position that the LTF Provision is supported by Condition No. 1 or other Decree language is erroneous.

II. THE DEPARTMENT ERRED IN CONCLUDING THAT, IN 2022, "POCATELLO'S DELIVERY OF ITS STORAGE WATER TO AFRD#2 FOR MITIGATION PURPOSES CONSTITUTE[D] A CHANGE IN NATURE OF USE FOR WATER RIGHT 1-2068"

The "purpose of use" is the second of the two elements of water right 1-2068 that the Department concluded Pocatello changed by renting and delivering storage water to AFRD#2 in 2022. The Decree lists four purposes of use for the stored water: "irrigation storage", "irrigation from storage", "power storage" and "power from storage". R. 480. Thus, when AFRD#2

[19] Pocatello request that the Court take judicial notice of the *Response to the United States' Motion for Clarification*, a true and correct copy of which is attached hereto as Exhibit A.

applied Pocatello's rented storage water for irrigation purposes, it lawfully used the water for the purpose of "irrigation from storage."

The Department, however, erroneously held that the "use of water by Pocatello is properly characterized as 'mitigation,'" that the use "occurred at the time of delivery to the AFRD#2 headgate," and that "the fact that AFRD#2 used the mitigation water for irrigation, after the water was delivered and the mitigation benefit was obtained by Pocatello, is inconsequential" (R. 900). First, it is a fundamental principal of prior appropriation that stored water is not *used* until "application of the water to the beneficial use for which the water is appropriated." *A&B Irrigation Dist. v. State*, 157 Idaho 385, 389 (2014) (citing *Pioneer*, 144 Idaho at 110); *id.* ("[w]hen water is stored, it becomes 'the property of the appropriators . . . impressed with the public trust to apply it to a beneficial use'") (citing *Washington Cnty. Irr. Dist. v. Talboy*, 55 Idaho 382, 385 (1935).

The "end use"[20] is what should be analyzed to determine whether stored water "is being used within the parameters of its defined elements." R. 226. Indeed, the irrigation organizations that litigated Condition No. 1 in *Pioneer* also emphasized to this Court the importance of the "end use" when evaluating disputes over the use of storage water in *A&B*.[21] And this is true even

[20] *A&B*, 157 Idaho at 389 ("The purpose of use element of a storage water right generally contains at least two authorized purposes of use. The first authorizes the storage of water for a particular purpose (i.e., 'irrigation storage,' or 'power storage'). The second authorizes the subsequent use of that stored water for an associated purpose, which is often referred to as the 'end use' (i.e., 'irrigation from storage,' or 'power from storage').") (emphasis added.)

[21] *See Pioneer Irrigation District's Response Brief*, In re SRBA Case No. 39576, Subcase No. 00-91017, at 4, 9 (Jan. 11, 2013) ("[t]he water right's corresponding administration is driven by end irrigation use . . . . the proper administration of water rights is determined by the end beneficial use of the storage water . . . end beneficial use not only validates and perfects a water right under Idaho law, end beneficial use is the true measure of a water right under Idaho law."), available at pp. 570-86 within https://digitalcommons.law.uidaho.edu/cgi/viewcontent.cgi?article=5647&context=idaho_supreme_court_record_briefs (last visited Dec. 12, 2025); *Surface Water Coalition's Response Brief*, In re SRBA Case No. 39576, Subcase No. 00-91017, at 9-11 (Jan. 11, 2013) ("The . . . end beneficial use must . . . be considered to determine whether or not a transfer would result in an enlargement. . . . If . . . the total amount of actual water in storage available for beneficial use does not exceed the water right, there is no basis to claim an enlargement. Stated another way, the end use of the

if the authorized "end use" occurs after a rental, and regardless of the reason the contract holder decided to lease the water. In the absence of the sub-claims that were disallowed by the SRBA Court (on the Department's recommendation), the Department has no basis to scrutinize anything other than whether the rented water was used for the "purpose of use" in the Decree.

In sum, the Department's conclusion that Pocatello's rental and delivery of water to AFRD#2 changes the purpose of use for water right 1-2068 is not supported by any other source of authority. The Court should reject any argument that Pocatello's storage water was used for the purpose of "mitigation" rather than "irrigation from storage," as the "end use" of the storage water is what matters when evaluating how it is being used.

III. BECAUSE POCATELLO'S STORAGE WATER WAS USED "WITHIN THE PARAMETERS OF [THE] DEFINED ELEMENTS" OF WATER RIGHT 1-2068 IN 2022, THE DEPARTMENT'S APPLICATION OF LTF AGAINST POCATELLO'S SPACE IN 2023 WAS CONTRARY TO IDAHO CONSTITUTIONAL AND STATUTORY LAW.

The foregoing two sections establish that, in 2022, Pocatello's storage water was used "in a manner that *is* . . . authorized under" water right 1-2068. R. 226-27 (emphasis added). Accordingly, no enlargement occurred, and there was no *per se* unlawful injury to prevent. R. 226-28. The circumstance where the application of the LTF Provision is constitutionally valid, as described by this Court, did not occur in 2022-2023. Yet, the Department still applied the LTF Provision in the WD01 2023 Storage Report and refused to administer a portion of water right 1-

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storage water for irrigation is not increased or enlarged. . . . there is no enlargement of the storage water right [if] the amount of water diverted and available for beneficial use remains the same as that reflected on the quantity element."), available at pp. 643-71 within https://digitalcommons.law.uidaho.edu/cgi/viewcontent.cgi?article=5647&context=idaho_supreme_court_record_briefs (last visited Dec. 12, 2025); *Respondent Pioneer Irrigation District's Brief*, Supreme Court No. 40947, at 8, 15 (Oct. 23, 2013) ("The nature and measure of water rights are determined by end beneficial use. . . . end irrigation use is the 'basis, measure, and limit' of an 'irrigation from storage' water right."), available at https://digitalcommons.law.uidaho.edu/cgi/viewcontent.cgi?article=5649&context=idaho_supreme_court_record_briefs (last visited Dec. 12, 2025). Pocatello requests that the Court take judicial notice of these documents.

2068 in priority. R. 890. This erroneous application caused Pocatello to receive a reduced allocation of storage water in 2023, thereby depriving Pocatello of water to which it is entitled. R. 890-91. The *As-Applied Order* upheld the Department's action.

As this Court has stated, "a water user has a constitutional right to have his water right administered in priority . . . [when] the water right is being used within the parameters of its defined elements." R. 225-26. The following sections establish that, through its application of the LTF Provision against Pocatello's space in 2023, the Department violated multiple provisions of the Idaho Constitution and the Idaho Code.

A. The Department's Application of the LTF Provision Against Pocatello in 2023 Violated Article XV, § 3 of the Idaho Constitution

"It is the unquestioned rule in this jurisdiction that priority of appropriation shall give the better right between those using the water." *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 800 (2011) (citing Idaho Const. Art. XV, § 3). "[T]he prior appropriation doctrine . . . governs the use of Idaho's water." *S. Valley Ground Water Dist. v. Idaho Dep't of Water Res.*, 173 Idaho 762, 780 (2024) (citing Idaho Const. art. XV, § 3; I.C. § 42-106). The full provision is as follows:

> The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied, except that the state may regulate and limit the use thereof for power purposes. Priority of appropriation shall give the better right as between those using the water; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall (subject to such limitations as may be prescribed by law) have the preference over those claiming for any other purpose; and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes. And in any organized mining district those using the water for mining purposes or milling purposes connected with mining, shall have preference over those using the same for manufacturing or agricultural purposes. But the usage by such subsequent appropriators shall be

> subject to such provisions of law regulating the taking of private property for public and private use, as referred to in section 14 of article I of this Constitution.

Idaho Const. art. XV, § 3 (emphasis added).

This Court has qualified the provision by stating, "there is no right under Idaho's Constitution to have a water right administered in priority in a manner that is not authorized under that right." R. 227; *cf.* R. 226.[22] As the foregoing sections explain, however, that does not apply to the use of Pocatello's stored water in 2022.

Accordingly, Pocatello requests that the Court declare, as a matter of law, that the Department's application of the LTF Provision against Pocatello in 2023 violated article XV, section 3 of the Idaho Constitution.

B. The Department's Application of the LTF Provision Against Pocatello in 2023 Violated Article I, § 14 of the Idaho Constitution

As shown above, article XV, section 3 of the Idaho Constitution references article I, section 14, which provides:

> RIGHT OF EMINENT DOMAIN. The necessary use of lands for the construction of reservoirs or storage basins, for the purpose of irrigation, or for rights of way for the construction of canals, ditches, flumes or pipes, to convey water to the place of use for any useful, beneficial or necessary purpose, or for drainage; or for the drainage of mines, or the working thereof, by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps, or other necessary means to their complete development, or any other use necessary to the complete development of the material resources of the state, or the preservation of the health of its inhabitants,

[22] "While a water user has a constitutional right to have his water right administered in priority, that right extends only so far as the water right is being used within the parameters of its defined elements. A water user has no right to have his water right administered to points of diversion, places of use, periods of use, or purposes of use that differ from those authorized under his right."

> is hereby declared to be a public use, and subject to the regulation and control of the state.
>
> Private property may be taken for public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor.

(Emphasis added.)

By applying the LTF Provision against a portion of Pocatello's space in 2023, the Department did not administer that part of water right 1-2068 "in priority." Instead, it allocated stored water to which Pocatello is entitled to junior water rights, depriving Pocatello of the same. *See* R. 237 (¶ 8.d.). The Department's allocation of Pocatello's stored water to "subsequent appropriators" was thus a taking of Pocatello's real property without "just compensation." Idaho Const. art. XV, § 3; *id.*, art. I, § 14.

Pocatello requests that the Court rule, as a matter of law, that the Department's application of the LTF Provision against Pocatello's space in 2023 was a taking without just compensation in violation of article I, section 14 of the Idaho Constitution. It is proper for the Court to make such a ruling before determining the extent of damages, which could be done in subsequent proceedings. *See Covington v. Jefferson Cty.*, 137 Idaho 777, 780 (2002) (the determination of whether there has been a taking, as a matter of law, is a threshold matter that precedes the factual determination of damages) (citing *Rueth v. State*, 100 Idaho 203 (1979)); *Farber v. State*, 107 Idaho 823, 824 (Ct. App. 1984).

C. The Department's Application of the LTF Provision Against Pocatello in 2023 Violated Article I, § 2 of the Idaho Constitution

"The principle underlying the equal protection clauses of both the Idaho and United States Constitutions is 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 (2013) (citation omitted). Idaho's equal protection clause provides:

> POLITICAL POWER INHERENT IN THE PEOPLE. All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform or abolish the same whenever they may deem it necessary; and no special privileges or immunities shall ever be granted that may not be altered, revoked, or repealed by the legislature.

Idaho Const. art. I, § 2.

Equal protection violations occur "where the State has . . . engaged in the disparate treatment of similarly situated individuals." *Alpine*, 154 Idaho at 937. "Equal protection claims require a three-step analysis: the reviewing court must first, identify the classification that is being challenged; second, determine the standard under which the classification will be judicially reviewed; and third, decide whether the appropriate standard has been satisfied." *E. Idaho Reg'l Med. Ctr. v. Minidoka Cty. (In re Bermudes)*, 141 Idaho 157, 160 (2005). "[S]trict scrutiny applies to fundamental rights and suspect classes; intermediate scrutiny applies to classifications involving gender and illegitimacy; and rational basis scrutiny applies to all other challenges." *Id.* at 161. "The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *Id.* at 162; *Primary Health Network v. Dep't of Admin.*, 137 Idaho 663, 670 (2002) ("Under the rational basis test, the equal protection clause is violated only if classification is based solely on reasons totally unrelated to the pursuit of the state's goals and only if no grounds can be advanced to justify those goals.").

Here, the classification being challenged is the distinction the Department makes between contract holders in WD01 and contract holders in other water districts when adopting and applying the LTF Provision. The Department applies the LTF Provision in at least four water

districts in the state, but WD01 is the *only* district where the LTF Provision is applied to *all* rentals, including rentals where the water is used within the authorized place of use for water right 1-2068. *See* R. 060-61. As this Court noted, WD01 "presumes that all water rights put into the Rental Pool will be used for purposes [and at places] that are not authorized under the elements of the water right," and does not evaluate whether a given rental constituted an enlargement. R. 226. In other words, contract holders in Water Districts 63, 65, and 65K are subject to different and lesser burdens of the law than contract holders in WD01. *See* R. 191, 202, 208. Accordingly, regardless of whether the Department had a valid basis to apply the LTF Provision against Pocatello's space in 2023, the application violated the equal protection clause of the Idaho Constitution.

The rational basis test is the appropriate standard of review here because there is no suspect or quasi-suspect class. *E. Idaho Reg'l Med. Ctr.*, 141 Idaho at 161. The Department's disparate application of the LTF Provision, however, does not pass that test. As the Court explained, the Department has a legitimate state interest in ensuring participants in the WD01 Rental Pool use water in accordance with the "defined elements" of their water rights, and can rightfully apply the LTF Provision to prevent "unlawful" or "impermissible" injury to juniors. R. 227. This interest prompted the Department to adopt the LTF Provision in the late 1980s, and, in WD01, began applying it based on rentals for non-consumptive uses below Milner. R. 053, 120-21, 123. Since 2005, however, the Department has applied the LTF Provision in WD01 based on *any* rental, even those who use the water for irrigation from storage, and do so above Milner. R. 053, 459. The policy change in 2005 was not due to the legitimate state interest in preventing injury; rather, the "concern was that spaceholders in senior reservoirs could receive money by leasing all of their surplus storage . . . ." R. 466. Thus, the Department's application of the LTF

Provision against WD01 contract holders whose stored water is "used within the parameters of its defined elements" (R. 226) is totally unrelated to a legitimate state interest and there is no justification for such application.

In sum, regardless of whether the Department had a valid basis to apply the LTF Provision against Pocatello in 2023, the application was in violation of article I, section 2 of the Idaho Constitution because the Department disparately treated similarly situated contract holders across the state without a rational basis.

D. The Department's Application of the LTF Provision Against Pocatello in 2023 Violated I.C. § 42-101

I.C. section 42-101 is similar to the equal protection clause of the Idaho Constitution in that it provides:

> Water being essential to the industrial prosperity of the state, and all agricultural development throughout the greater portion of the state depending upon its just apportionment to, and economical use by, those making a beneficial application of the same, its control shall be in the state, which, in providing for its use, shall equally guard all the various interests involved.

(Emphasis added.)

As described above, the Department 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. *See,* Section VI, *supra*. If the Department is going to apply the LTF Provision to prevent unlawful injury to juniors, it must do

so throughout the state and not just within WD01. The Department's disparate application violates the statutory duty it owes to all water users.

E. The Department's Application of the LTF Provision Against Pocatello in 2023 Violated I.C. § 42-602

I.C. section 42-602 is similar to article XV, section 3 of the Idaho Constitution in that it reiterates prior appropriation as the law in Idaho. It provides:

> The director of the department of water resources shall have direction and control of the distribution of water from all natural water sources within a water district to the canals, ditches, pumps and other facilities diverting therefrom. Distribution of water within water districts created pursuant to section 42-604, Idaho Code, shall be accomplished by watermasters as provided in this chapter and supervised by the director.
>
> The director of the department of water resources shall distribute water in water districts in accordance with the prior appropriation doctrine. The provisions of chapter 6, title 42, Idaho Code, shall apply only to distribution of water within a water district.

(Emphasis added.)

The LTF Provision is anathema to the prior appropriation doctrine, and the application thereof is only valid in the limited circumstance described by this Court. Because there was not an enlargement of water right 1-2068 due to Pocatello's rental in 2022, nor any other allegation of injury therefrom, there was no basis for the Department to apply the LTF Provision against Pocatello in 2023. By distributing water based on the LTF Provision, rather than prior appropriation, in 2023, the Department violated its statutory duties I.C. section 42-602.

F. The Department's Application of the LTF Provision Against Pocatello in 2023 was Arbitrary and Capricious

Just as the Department's disparate application of the LTF Provision violated the equal protection clause of the Idaho Constitution and Idaho Code 42-101, it was also arbitrary and capricious. An agency action is arbitrary "if it was done in disregard of the facts and

circumstances presented or without adequate determining principles," and capricious "if it was done without a rational basis." *In re Delivery Call of A&B Irrig. Dist.*, 153 Idaho 500, 511 (2012).

As explained above, the Department did not apply the LTF Provision against Pocatello in 2023 because there was an enlargement of water right 1-2068 in 2022. Rather, the Department simply applied the LTF Provision because it does so for all rentals in WD01—regardless of whether they constitute an enlargement—due to its erroneous presumption "that all water rights put into the Rental Pool will be used for purposes that are not authorized under the elements of the water right." R. 226. The Department disregarded the fact that Pocatello's stored water was used within the parameters of its defined elements and applied the LTF Provision against Pocatello—but *not* against contract holders who did the same thing in Water Districts 63, 65, and 65K—without a rational basis. This arbitrary and capricious action requires that the *As-Applied Order* be set aside.

IV. THE DEPARTMENT'S APPLICATION OF THE LTF PROVISION AGAINST POCATELLO IN 2023 PREJUDICED POCATELLO'S SUBSTANTIAL RIGHTS

There can be no question that Pocatello has a substantial right to have the Department properly administer water right 1-2068. By applying the LTF Provision in the year after Pocatello's stored water was properly used within the parameters of its defined elements, and disparately applying the LTF Provision across the state, the Department has violated its duties and prejudiced Pocatello's substantial rights. See *Lane Ranch P'ship v. City of Sun Valley*, 145 Idaho 87, 91 (2007) (finding that petitioners' substantial right was prejudiced because their application was not evaluated properly and they were "unable to develop their property for admittedly permissible uses").

V. POCATELLO IS ENTITLED TO ATTORNEYS FEES UNDER I.C. § 12-117(4)

If Pocatello prevails in this matter, Pocatello requests that the Court award it fees and costs under I.C. section 12-117(4), which provides:

> In any civil judicial proceeding involving as adverse parties a governmental entity and another governmental entity, the court shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses. For purposes of this subsection, "governmental entity" means any state agency or political subdivision.

Pocatello and the Department are both government entities, as the former is a political subdivision and the latter is a state agency. I.C. § 12-117(6)(d), (6)(f). Thus, Pocatello is entitled to fees and costs if it prevails.

CONCLUSION

Pocatello requests that the Court set aside the *As-Applied Order*, at least with respect to the conclusions that Pocatello's delivery of storage water to AFRD#2 in 2022 "resulted in a change in place of use and nature of use for Pocatello's portion of water right 1-2068" and "was an expansion of both place of use and nature of use." Pocatello further requests that the Court declare that rentals that result in uses of water at the places, and for the purposes, authorized on the face of a partial decree do not enlarge the subject water right and do not justify application of the LTF Provision in the following year. Finally, Pocatello requests that the Court enjoin the Department from applying the LTF Provision in the absence of an enlargement. Because the requested relief is prospective in nature, Pocatello does not request that the Court remand the *As-Applied Order* to the Department for further proceedings.

DATED this 18th day of December 2025.

SOMACH SIMMONS & DUNN, P.C.

By: _____
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CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2025, I served the foregoing document on the persons below via email and iCourt unless otherwise indicated:

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Exhibit A

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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

In Re SRBA	**Consolidated Case No. 91-63**
Case No. 39576	**RESPONSE TO THE UNITED STATES' MOTION FOR CLARIFICATION**

COMES NOW Ballentyne Ditch Company, Boise Valley Irrigation Ditch Co., Eagle Island Water Users Association, Eureka Water Co., Farmers Cooperative Ditch Co., Nampa & Meridian Irrigation District, New Dry Creek Ditch Company, South Boise Water Company, and Thurman Mill Ditch Co. (hereinafter these parties, and other irrigation districts and companies that claim ownership of portions of the rights involved in this consolidated case, are collectively referred to as "Irrigation Entities"), by and through their counsel of record, Ringert Clark, Chartered, and files this Response to the United States' Motion for Clarification.

I. INTRODUCTION

On September 1, 2004, the above-titled Court issued a *Memorandum Decision and Order on Cross-Motions for Summary Judgment* which held that the Irrigation Entities hold equitable title to the subject water rights for the benefit of the end water user and that partial decrees for the water rights should be issued in the name of the United States Bureau of Reclamation (BOR) with a remark clarifying the equitable ownership interest. On or about September 15, 2004, the BOR filed a *Motion for Clarification* requesting the Court to clarify the language guiding the remarks for the water rights. The BOR's motion, however, goes beyond simply requesting clarification and attempts to suggest that the a remark which includes the words "in trust" were inadvertently or should not have been included in the Court's Decision. These Irrigation Entities contend that the remark should include the words "in trust" and that if any clarification is made to the Court's Decision it should be to include the words "in trust" in paragraphs 4 and 6 of the Court's Conclusions.

II. DISCUSSION.

This Court is obviously in the best position to decide what it intended in its own Decision and can decide what clarification, if any, is needed. However, the Irrigation Entities respectfully contend that the Decision clearly provides that the relationship between the BOR and the Irrigation Entities is analogous to the relationship between an irrigation district and its landowners. As this Court stated, it "views the relationship between the BOR and the Irrigation Entities more akin to the relationship between an irrigation district and the water users within the district, wherein water rights are decreed in the name of the irrigation district and by law the irrigation district holds the title to the rights in trust for the water users within the district. *See* I.C. § 43-316." *Memorandum Decision*,

pg. 29 of 33. If the Irrigation Organizations own equitable title to the water rights, but the partial decrees are to be issued in the name of the BOR, then the BOR must hold nominal title to the water rights in trust. The BOR is holding property for the benefit and use by the Irrigation Entities. If one party is going to hold property for the benefit of another, whether it be an irrigation district for its landowners, a bank for its customers, an attorney for his/her client or the BOR for the Irrigation Entities, a trust relationship exists. It is this trust relationship that must be recognized in the remark for the subject water rights.

III. CONCLUSION.

The Irrigation Entities contend that this Court characterized the relationship between the BOR and the Irrigation Entities as being a trust relationship. The partial decrees are to be in the name of the BOR, but the Irrigation Entities own equitable title which must be recognized in a remark. In other words, the BOR is holding the water rights in trust for the Irrigation Entities' benefit and use. This trust relationship must be recognized in the remark. The fact that the BOR is suggesting that they do not hold title to the water rights in trust is indicative of the very necessity for including such language. Thus, if any clarification to this Court's Decision is needed, it would be to clarify that the remark should provide that the subject water rights are held in trust for the Irrigation Entities.

DATED this 4th day of October, 2004.

RINGERT CLARK CHARTERED

S. Bryce Farris

CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing document, was mailed on October 4th, 2004, to the following via U.S. mail.

Boise Project Board of Control
Represented by:
Albert P. Barker
205 N. 10th Street, Ste. 520
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Middleton Irrigation Assoc.
Middleton mill Ditch Company
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Represented by:
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