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Fourth Judicial District, Ada County
Trent Tripple, Clerk of the Court
By: Caterina Moritz Gutierrez, Deputy Clerk

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CITY OF POCATELLO,

Petitioner,

vs.

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

Respondents,

and

CITY OF BLISS, CITY OF BURLEY, CITY OF CAREY, CITY OF DECLO, CITY OF DIETRICH, CITY OF GOODING, CITY OF HAZELTON, CITY OF HEYBURN, CITY OF JEROME, CITY OF PAUL, CITY OF RICHFIELD, CITY OF RUPERT, CITY OF SHOSHONE, 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.

Case No. CV01-25-19039

NOTICE OF APPEAL

Fee Category: Exempt
Idaho Code § 67-2301

TO: THE ABOVE NAMED RESPONDENTS, IDAHO DEPARTMENT OF WATER RESOURCES, and MATHEW WEAVER in his capacity as Director of the Idaho Department of Water Resources ("Director"), AND THE PARTY'S ATTORNEYS, Garrick Baxter and Ann Yribar, P.O. Box 83720, Boise, Idaho 83720-0098, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, CITY OF POCATELLO, appeals against the above named Respondents to the Idaho Supreme Court from the *Order Denying Petition for Rehearing* entered in the above entitled action on the 30th day of September, 2026, the *Memorandum Decision* entered in the above entitled action on the 27th day of May, 2026, as well as the *Final Judgment* entered in the above entitled action on the 27th day of May, 2026, Honorable Judge Eric J. Wildman presiding. Copies of the orders being appealed are attached to this notice, as well as a copy of the final judgment because this appeal includes an order entered after final judgment.

2. That Appellant has a right to appeal to the Idaho Supreme Court, and the judgments and orders described in paragraph one are appealable orders pursuant to Rule 11(f), I.A.R.

3. The following is a preliminary statement of the issues on appeal which Appellant intends to assert in the appeal; provided, this list of issues on appeal shall not prevent Appellant from asserting other issues on appeal:

a. Whether the Department's conclusion that the Director properly applied the Last-to-Fill Provision against Pocatello's space because any rental of storage water in Water District 01 injures junior water rights, based in part on his construction of a decree remark taken verbatim from *United States v. Pioneer Irrigation Dist.*, 144 Idaho 106, 115

(2007) ("*Pioneer*"), violates constitutional and statutory provisions, exceeds his statutory authority, or is arbitrary, capricious, or an abuse of discretion.

b. Whether the Department's conflicting conclusions that, in Water District 01, the Last-to-Fill Provision is properly applied against all rented space, but, in Water District 63, the Last-to-Fill Provision is only properly applied against space that was rented for out-of-basin uses, violates constitutional and statutory provisions, exceeds his statutory authority, or is arbitrary, capricious, or an abuse of discretion.

c. Whether the Department's inconsistent construction of the *Pioneer* remark and inconsistent administration of water rights across Water District 01 and Water District 63 violates constitutional and statutory provisions, exceeds his statutory authority, or is arbitrary, capricious, or an abuse of discretion.

4. No order has been entered sealing all or any portion of the record.

5. Appellant requests a reporter's transcript, in electronic format, of the following district court proceedings:

a. Oral argument on Appellant's *Petition for Judicial Review* held on April 30, 2026.

b. Oral argument on Appellant's *Petition for Rehearing* held on September 10, 2026.

6. Appellant requests that the clerk's record include all pleadings, documents or papers filed or lodged with, or entered by, the district court in addition to those documents automatically included under Rule 28, I.A.R.

7. I hereby certify:

a. That a copy of this Notice of Appeal will be promptly served on the court reporter identified by the clerk of the district court once Appellant is informed of the court reporter's identity and contact information.

b. That the clerk of the district court has been contacted regarding the fees for the reporter's transcript and Appellant will promptly submit payment upon receiving an invoice.

c. That Appellant is exempt from paying the estimated fees for preparation of the record under Idaho Code section 67-2301.

d. That Appellant is exempt from paying the appellate filing fee under Idaho Code section 67-2301.

e. That service has been made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 10th day of November, 2026.

SOMACH SIMMONS & DUNN, P.C.

By: _____
Sarah A. Klahn (ISB #7928)
Maximilian C. Bricker (ISB #12283)
Attorneys for City of Pocatello

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2026, I served the foregoing document on the persons below via iCourt unless otherwise indicated:

IDAHO DEPARTMENT OF WATER RESOURCES Director Mathew Weaver Garrick Baxter Ann Yribar mathew.weaver@idwr.idaho.gov garrick.baxter@idwr.idaho.gov ann.yribar@ag.idaho.gov	**COALITION OF CITIES** Candice M. McHugh Chris M. Bromley MCHUGH BROMLEY, PLLC cbromley@mchughbromley.com cmchugh@mchughbromley.com
WATER DISTRICT 01 Craig Chandler Craig.chandler@idwr.idaho.gov	**FREMONT MADISON IRRIGATION DISTRICT; IDAHO IRRIGATION DISTRICT** Jerry Rigby Hyrum Erickson RIGBY ANDRUS & RIGBY LAW PPLC jrigby@rex-law.com herickson@rex-law.com
BURLEY IRRIGATION DISTRICT Travis L. Thompson Abby Bitzenburg PARSONS BEHLE & LATIMER tthompson@parsonsbehle.com abitzenburg@parsonsbehle.com jnielsen@parsonsbehle.com John K. Simpson IDAH20, PLLC jks@idahowaters.com	**CITY OF POCATELLO** Richard A. Diehl, Jr. rdiehl@pocatello.gov

Maximilian C. Bricker (ISB #12283)