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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 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 POCA TELLO  
BY WATER DISTRICT 01.

Case No. CV01-25-19039

**CITY OF POCA TELLO'S  
REPLY BRIEF IN SUPPORT  
OF PETITION FOR  
REHEARING**

Fee Category: Exempt  
Idaho Code § 67-2301

COMES NOW Petitioner City of Pocatello (“Pocatello”), by and through its undersigned counsel of record, pursuant to the *Notice of Hearing on Petition for Rehearing* dated August 10, 2026, and hereby submits this reply brief in support of its *Petition for Rehearing* dated June 17, 2026, to respond to the arguments raised in the *Intervenor-Spaceholders’ Combined Response to the City of Pocatello’s Petition for Rehearing* (“*Spaceholders Br.*”) and the *Respondents’ Response to City of Pocatello’s Petition for Rehearing* (“*IDWR Br.*”) respectively dated August 24, 2026.

## INTRODUCTION

Respondents Idaho Department of Water Resources and Mathew Weaver (collectively, “IDWR”) and Intervenor-Respondents Burley Irrigation District, Fremont-Madison Irrigation District, and Idaho Irrigation District (collectively, the “Spaceholders”) ask the Court to affirm the *Memorandum Decision* dated May 27, 2026. They argue the *Memorandum Decision* correctly determined (1) the so-called *Pioneer* Remark modifies the “place of use” element of water right 01-2068 by creating an implied place of use for each contract holder, and therefore Pocatello’s rental changed this element in 2022; (2) Pocatello’s storage water was not used for the purpose of irrigation from storage, which is an authorized “purpose of use” under water right 01-2068, so Pocatello’s rental changed this element in 2022; and (3) IDWR’s application of the Last-to-Fill (“LTF”) Provision against Pocatello in 2023 did not violate the Equal Protection clause of the Idaho Constitution, nor Idaho Code (“I.C.”) § 42-101, nor was it arbitrary and capricious. Pocatello addresses each of these arguments in turn.

## ARGUMENT

### **I. Respondents' Arguments Regarding the Place of Use Element Are Unavailing**

#### **a. Idaho Law Precludes Respondents' Argument that the *Pioneer* Remark Can Modify the Place of Use of Water Right 01-2068 by Incorporation**

The Spaceholders argue that Pocatello seeks to “enlarge the scope of its authorized place of use” through its “attempts to rewrite or eliminate” the *Pioneer* Remark from the 01-2068 decree, or “divorce the remark’s meaning from the place of use[.]” *Spaceholders Br.* at 4, 6, 7. This argument assumes, however, that there is a connection between the *Pioneer* Remark and the defined place of use element in the decree, a position adopted by IDWR as well. *See IDWR Br.* at 2.

The Court should reject these arguments. Idaho code and case law precludes a determination that a remark (or “other provision”) that incorporates language from another document can “alter, add, or subtract from” the statement defining the element in the decree. *City of Blackfoot v. Spackman*, 162 Idaho 302, 306-07, 309-10 (2017) (interpreting I.C. § 42-1412(6)). As the Idaho Supreme Court explained, I.C. section 42-1412(6) requires that a decree either contain a statement of each element (here, place of use) or incorporate one, “but not both.” *Id.* In *Blackfoot*, the City argued that a settlement agreement incorporated in the “other provisions element” of a water right altered the purpose of use element of the subject water right by adding recharge as an authorized use. *Id.* at 309, 311. In a decision affirming this Court’s ruling, the Supreme Court rejected Blackfoot’s argument, holding that I.C. section 42-1412(6) prohibits giving effect to the language incorporating the settlement agreement because there was already a stated purpose of use, and further, that doing so “would impermissibly muddy the decree.” *Id.* at 309-10.

Respondents' arguments in this case are analogous to Blackfoot's losing arguments. Here, Respondents argue the *Pioneer* Remark should be interpreted to narrow the statement for the "place of use" element in the 01-2068 decree, which defines the place of use as the counties in Water District ("WD") 01, to the service areas of each contract holder. Like Blackfoot, Respondents advance an "argument that an incorporated document under the other provisions element" may alter an element defined in the decree, which is "not reasonably based in law." *Blackfoot*, 162 Idaho at 311. Respondents' argument "flies in the face of section 42-1412(6)." *Id.* at 309. Like the Supreme Court in *Blackfoot*, this Court should find the 01-2068 decree already "contains a clear statement that plainly provides [where] water be used," and that "no ambiguity lurks in this element." *Id.* at 307.

b. The Spaceholders are Incorrect: Multiple Idaho Water Rights Have Entire Counties as Places of Use

The Spaceholders then argue that county-wide places of use are simply unheard of in Idaho. *See Spaceholders Br.* at 15 ("One would be hard pressed to find water rights in the state of Idaho that authorize use ... anywhere in an entire county."). As Spaceholders are surely aware, county-wide places of use do exist and are commonly found in decrees associated with storage water rights in Bureau of Reclamation projects. The storage water rights for Arrowrock Reservoir (63-303)<sup>1</sup> and Anderson Ranch Reservoir (63-3614)<sup>2</sup> each contain the following statement in their respective decrees: "The place of use is within the Boise Federal Reclamation Project within Ada, Canyon, Boise, Elmore Counties, Idaho, and Malheur County, Oregon (Big

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<sup>1</sup> The 63-303 Partial Decree is available at <https://research.idwr.idaho.gov/apps/Shared/LfRelatedDocs/Home/DownloadDoc?eid=1859965> (last visited Sep. 3, 2026). Pocatello requests that the Court take judicial notice of this document.

<sup>2</sup> The 63-3614 Partial Decree is available at <https://research.idwr.idaho.gov/apps/Shared/LfRelatedDocs/Home/DownloadDoc?eid=1859963> (last visited Sep. 3, 2026). Pocatello requests that the Court take judicial notice of this document.

Bend Irrigation District).” Ironically, these were the rights that spurred the *Pioneer* litigation.<sup>3</sup>

These rights also contain the *Pioneer* Remark, yet (as discussed further, *infra*) IDWR does not make contract holders’ space LTF so long as their storage water is rented within the subject water right’s defined place of use. *See* R. 191 (Boise Basin Rental Pool Procedure whereby IDWR only makes contract holders’ space LTF for *out-of-basin* rentals). Respondents do not dispute this fact.

c. IDWR Concedes the Extrinsic Evidence Behind the *Pioneer* Remark Does Not Support a Determination that the *Pioneer* Remark Limits the Place of Use

IDWR argues the Court should not examine extrinsic evidence to determine the meaning of the *Pioneer* Remark (*IDWR Br.* at 4) and then concedes that the extrinsic evidence does not support their interpretation.

Even if there was a need to refer to extrinsic evidence, the background cited by the City of Pocatello does not provide persuasive evidence that the *Pioneer* Remark does not limit the place of use for Water Right 01-2068. The Court’s decision in *United States v. Pioneer Irr. Dist.*, 144 Idaho 106, 115, 157 P.3d 600,609 (2007) that the ownership of the water right is split does not undermine or preclude a determination that the *Pioneer* Remark limits the place of use to the service area boundaries of the consumers or users of the water.

*Id.* at 4 n.3 (emphasis added). If the *Pioneer* Remark arises from the substance of the *Pioneer* litigation, then surely the Idaho Supreme Court’s decision and underlying record in that case would *support* (rather than “not undermine or preclude”) a determination that the *Pioneer* Remark limits the place of use of water right 01-2068. But to take such a position would put IDWR on the horns of a dilemma: how can the *Pioneer* Remark limit the place of use in WD01 to contract holders’ service areas, and not so limit contract holders in WD63/65/65K?

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<sup>3</sup> *See Motion to Consolidate and Memorandum in Support of Motion to Consolidate Common Issue in Subcases Listed in Attachment A*, Case No. 39756 (Jun. 19, 2003), available at <https://research.idwr.idaho.gov/apps/Shared/LfRelatedDocs/Home/DownloadDoc?eid=1209403> (last visited Sep. 3, 2026). Pocatello requests that the Court take judicial notice of this document.

## **II. Respondents' Arguments Regarding the Purpose of Use Element Are Unavailing**

Respondents argue that Pocatello's storage water was *not* used for the purpose of "irrigation from storage" in 2022. However, their arguments require the Court to ignore the reality that, in 2022, Pocatello's rented water was applied to beneficial use for irrigation much like its other historical rentals to LCSC Enterprises, LLC ("LCSC"), and Southwest Irrigation District ("SWID"). Spaceholders do not dispute that the LCSC and SWID rentals were for irrigation but argue the Court should ignore them. *Spaceholders Br.* at 9 ("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."). Respondents have not identified a principled basis to distinguish between Pocatello's rental to AFRD#2 in 2022, the "end use" from which was for irrigation purposes, and its historical rentals to LCSC and SWID, which Respondents' concede were used for irrigation purposes. The Court should reject Respondents' arguments. *See Blackfoot*, 162 Idaho at 309 ("[a] perspective that would render a 'partial decree less, rather than more, clear' is disfavored") (quoting *Rangen, Inc. v. Idaho Dep't of Water Res.*, 159 Idaho 798, 808 (2016)).

Second, IDWR posits that,

it is difficult to hypothesize a situation in which a ... rental of storage water would not involve a change in at least one element of the water right involved. If there were no changes to an element of the water right, there would be no need to use the ... water supply bank to effectuate use of the water.

*IDWR Br.* at 7 n.5. Yet, in the Boise Basin, IDWR does not perceive rentals between contract holders in the WD63 Rental Pool to result in a change in any of the elements of the subject water right unless the storage water is rented for use *outside of the basin*—only then does IDWR make their space LTF.

### **III. Respondents' Arguments Regarding Equal Protection Issues Are Unavailing**

Notwithstanding the fact that if Pocatello were in WD63 it could rent storage water to other contract holders without its space being made LTF, Respondents insist that there is “nothing to see” over in the western part of the state.

First, IDWR argues that “the factual circumstances of Basin 63 and Basin 65 are not in evidence in this matter,” and that “the issue of how the Basin 63 and Basin 65 Rental Pool procedures deal with the question of injury is not before this Court.” *IDWR Br.* at 8. These statements lack credibility. Pocatello argued in its opening brief on appeal, dated December 18, 2025, that IDWR’s disparate application of LTF Provisions across WD01 and WD63/WD65 violated the Equal Protection clause, violated I.C. § 42-101, and was arbitrary and capricious. The WD63, WD65, and WD65K Rental Pool Procedures are all included in the agency record. *See R.* 183-211. There can be no question that a core issue in this case is whether the agency’s final order should be set aside because IDWR’s disparate application of LTF against contract holders across these basins fits the criteria set forth in I.C. § 67-5279(3). That necessarily means that what IDWR does (or does not do) in other parts of the state is relevant to this case and must be considered by this Court.

Second, the Spaceholders argue, against all evidence to the contrary, that “the Court, State, and Spaceholders have unanimously agreed that the *Pioneer* Remark addresses where water rights can be used.” *Spaceholders Br.* at 13. This misses the point. It is clear that IDWR gives the *Pioneer* Remark one meaning in WD01 (the remark narrows the decreed place of use, so if one contract holder rents water to another, it changes the place of use, thereby causing *per se* injury, so it is appropriate to make their space LTF) and a different meaning in WD63 (the remark does *not* narrow the decreed place of use, so contract holders can rent water to each other

without causing any injury, and there is no need to make their space LTF). The Spaceholders try to explain away that conflict by asserting it is well within a local committee's purview to adopt unique procedures, and in so doing, to create their own standards for what constitutes injury in their jurisdiction. *See Spaceholders Br.* at 10-12.

The fundamental flaw in this argument is that the application of a Rental Pool Procedure's LTF Provision when allocating storage water is an action of the Director, *see Am. Order on Cross Mots. for Summ. J.* at 20, *City of Pocatello v. Idaho Water Resource Board*, CV42-23-1668, (Idaho Dist. Ct. Jan. 10, 2024), and Rental Pool Procedures do not supersede the Director's statutory authorities or duty to follow the law when administering water rights. *Id.* at 12. Moreover, given that they are not even "rules" under the APA, *id.* at 10-13, Rental Pool Procedures carry no "force and effect of law," so there is no basis for them to override applicable law. *Pizzuto v. Idaho Dep't of Corr.*, 170 Idaho 94, 97 (2022). Ultimately, regardless of what is stated in the WD01 Procedures and WD63/65/65K Procedures, the Director must "equally guard all the various interests involved," must not act arbitrarily and capriciously, and must follow other applicable law<sup>4</sup> when allocating storage water as set forth in final storage reports. *See* I.C. §§ 42-101, 67-5279(3); Idaho Const. art. I, § 2. Issuing final storage reports that include reduced allocations because the Director made contract holders' space LTF due to *in-basin* rentals in one WD, but not in other WDs, violates those obligations.

Finally, the Spaceholders defend the Director's action of making space LTF in connection with *any* rental in WD01 on the basis that allowing contract holders to rent their storage water means that, "essentially, non-spaceholders would be allowed to take precedent over

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<sup>4</sup> For example, if the Director is going to rely on the *Pioneer* Remark as the basis for his determination that WD01 contract holders have implied places of use limited to their service areas, he *must* apply the same interpretation in WD63. *See* Idaho Const. art. V, § 26.

spaceholders, which is patently unfair to junior spaceholders.” *Spaceholders Br.* at 13. As a practical matter, in 2022, the storage water was rented *between spaceholders* and the water was applied to its end beneficial use *by a spaceholder*, AFRD#2. Moreover, this argument suggests the Spaceholders’ view of what is “fair” should take priority over the Director’s legal obligations described above. IDWR’s disparate treatment of in-basin rentals between WD01 and WD63/65/65K is *per se* arbitrary and capricious, in excess of the Director’s authority, and in violation of law.

In sum, even if IDWR were correct in determining that Pocatello’s rental changed the “place of use” or “purpose of use” of water right 01-2068 in 2022 by delivering storage water to another contract holder within the basin, the agency’s final order still must be set aside because it is impossible to square IDWR making Pocatello’s space LTF but not doing the same to contract holders with similar rentals in other WDs.

### CONCLUSION

Pocatello respectfully requests that the Court grant Pocatello’s *Petition for Rehearing* and modify the *Memorandum Decision* consistent with the arguments herein.

DATED this 4th day of September 2026.

SOMACH SIMMONS & DUNN, P.C.

By:   
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## CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2026, I served the foregoing document on the persons below via iCourt unless otherwise indicated:

|                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
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